

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act permitting bad check restitution programs.

PETITION OF:

NAME:

James E. Timilty

DISTRICT/ADDRESS:

Bristol and Norfolk

SENATE No.

By Mr. Timilty, a petition (subject to Joint Rule 12) of James E. Timilty for legislation to permit bad check restitution programs. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act permitting bad check restitution programs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 24 of Chapter 93 as appearing in the 2010 Official Edition is hereby
2 amended in line 56 by inserting after the word “corporation” the following: --

3 (i) Certain bad check enforcement programs operated by private entities, defined in
4 paragraph (1) of this subsection:

5 (1) A private entity, with respect to the operation by the entity of a program described in
6 subparagraph (A) under a contract described in subparagraph (B), if--

7 (A) the Commonwealth or a District Attorney establishes, within the jurisdiction of the
8 Commonwealth or District Attorney and with respect to alleged bad check violations that do not
9 involve a check described in paragraph (2) of this section, a pretrial diversion program for
10 alleged bad check offenders who agree to participate voluntarily in such program to avoid
11 criminal prosecution;

12 (B) a private entity, that is subject to an administrative support services contract with the
13 Commonwealth or a District Attorney and operates under the direction, supervision, and control
14 of the Commonwealth or a District Attorney, operates the pretrial diversion program described in
15 subparagraph (A); and

16 (C) in the course of performing duties delegated to it by the Commonwealth or District
17 Attorney under the contract, the private entity referred to in subparagraph (B)--

18 (i) complies with the penal laws of the Commonwealth;

(ii) conforms with the terms of the contract and directives of the Commonwealth or District Attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph--

(I) only as a result of any determination by the Commonwealth or District Attorney that probable cause of a bad check violation under the penal law of the Commonwealth exists, and that contact with the alleged offender for purposes of participation in the program is appropriate. For purposes of this section, probable cause is satisfied by proof of returned check along with notice from merchant that offender has failed to pay the bad check after demand for payment; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to the law of the Commonwealth, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that--

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the District Attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the District Attorney or an employee of the District Attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the Commonwealth or District Attorney.

(2) Certain checks excluded

A check is described in this paragraph if the check involves, or is subsequently found to involve--

(a) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(b) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(c) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(d) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(e) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(f) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the Commonwealth or District Attorney at the time the check was made, drawn, or delivered.

(3) Definitions

For purposes of this paragraph, the following definitions shall apply:

(a) Commonwealth or District Attorney

The term "Commonwealth or District Attorney" means the Attorney General of the Commonwealth or any of the several District Attorneys of the respective districts of the Commonwealth.

(b) Check

The term "check" has the same meaning as in Section 3-104(f) of Chapter 106.

(c) Bad check violation

The term "bad check violation" means a violation of the applicable Commonwealth criminal law relating to the writing of dishonored checks.