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## **An Act To Support Pretrial Diversion Programs for Issuers of Worthless Checks**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 32 MRSA §11003, sub-§7, ¶D,** as enacted by PL 1985, c. 702, §2, is amended to read:

D. Concerns a debt obtained by that person as a secured party in a commercial credit transaction involving the creditor; and

**Sec. 2. 32 MRSA §11003, sub-§8,** as enacted by PL 1985, c. 702, §2, is amended to read:

**8. Collection activities related to the operation of a business.** Any person whose collection activities are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Title 9-B.; and

**Sec. 3. 32 MRSA §11003, sub-§9** is enacted to read:

**9. Certain pretrial diversion programs for issuers of worthless checks.** A private entity operating a worthless check enforcement program that meets the conditions set forth in section 11013-A, subsection 3.

**Sec. 4. 32 MRSA §11013-A** is enacted to read:

**§ 11013-A. Exception for certain pretrial diversion programs for issuers of worthless checks operated by private entities**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Check" has the same meaning as in Title 14, section 6071, subsection 4.

B. "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county, municipality or comparable jurisdiction, including the Attorney General acting as chief elected or appointed prosecuting attorney in a district, county, municipality or comparable jurisdiction, who is responsible for the prosecution of state crimes and violations of jurisdiction-specific local ordinances.

C. "Worthless check violation" means a violation of Title 17-A, section 708, subsection 1, paragraph A.

**2. Pretrial diversion program for issuers of worthless checks.** If a state or district attorney wants to be excluded from consideration as a debt collector as provided in section 11003, subsection 9, that state or district attorney shall establish, within the jurisdiction of that state or district

attorney and with respect to alleged worthless check violations that do not involve a check described in subsection 4, a pretrial diversion program for issuers of worthless checks who agree to participate voluntarily in that program to avoid criminal prosecution.

**3. Conditions for exception.** A private entity operating a pretrial diversion program for issuers of worthless checks that meets the following requirements is excluded from being considered a debt collector.

A. The private entity must operate the pretrial diversion program for issuers of worthless checks described in subsection 2 subject to an administrative support services contract with the state or district attorney and under the direction, supervision and control of that state or district attorney.

B. In the course of performing duties delegated to it by a state or district attorney under an administrative support services contract, the private entity referred to in paragraph A:

(1) Shall comply with the criminal laws of the State;

(2) Shall conform with the terms of the administrative support services contract and directives of the state or district attorney;

(3) May not exercise independent prosecutorial discretion;

(4) Shall contact any issuer of an alleged worthless check for the purposes of participating in a pretrial diversion program for issuers of worthless checks as described in subsection 2:

(a) Only as a result of a determination by the state or district attorney that probable cause of a worthless check violation under state criminal law exists, and that contact with the issuer of an alleged worthless check for purposes of participation in the program is appropriate; and

(b) Only if the issuer of an alleged worthless check has failed to pay the worthless check after demand for payment is made for the check amount pursuant to state law;

(5) Shall include as part of an initial written communication with an issuer of an alleged worthless check a clear and conspicuous statement that:

(a) The issuer of an alleged worthless check may dispute the validity of any alleged worthless check violation;

(b) When the issuer of an alleged worthless check knows, or has reasonable cause to believe, that the alleged worthless 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 issuer of an alleged worthless check, the issuer of the alleged worthless check may file a crime report with the appropriate law enforcement agency; and

(c) If the issuer of an alleged worthless check notifies the private entity or the state or district attorney in writing, not later than 30 days after being contacted for the first time pursuant to subparagraph (4), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the state or district attorney or an employee of that state or district attorney must make a determination that there is probable cause to believe that a crime has been committed; and

(6) May charge fees only in connection with services under the administrative support services contract under paragraph A that have been authorized by the contract with the state or district attorney.

**4. Certain checks excluded.** A check described in this subsection is not considered a worthless check eligible for the pretrial diversion program for issuers of worthless checks described in subsection 2 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 when 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 when 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 that 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 that 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;

F. A check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the state or district attorney at the time the check was made, drawn or delivered; or

G. A check that 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 worthless check offender.

**5. Registration.** Notwithstanding the exemptions in subsections 3 and 4, a private entity that operates a pretrial diversion program for issuers of worthless checks pursuant to this section shall register with the administrator on forms acceptable to the administrator and in a manner consistent with section 11031, subsection 2. Before granting a registration pursuant to this subsection, the administrator shall:

A. Review the administrative support services contract under subsection 3, paragraph A between the private entity and the state or district attorney;

B. Review all form communications to issuers of alleged worthless checks that will be used as part of the pretrial diversion program for issuers of worthless checks; and

C. Review the quality controls to be implemented by the state or district attorney and the private entity to ensure continued compliance with this section and to maintain the exemption granted in section 11003, subsection 9.

**6. Enforcement.** To ensure compliance with this section, the administrator may receive and act on complaints in accordance with Title 9-A, section 6-104, conduct compliance examinations pursuant to Title 9-A, section 6-106 and exercise regulatory and remedial authority pursuant to Title 9-A, Article 6.

**Sec. 5. Appropriations and allocations.** The following appropriations and allocations are made.

**PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

**Administrative Services - Professional and Financial Regulation 0094**

Initiative: Allocates funds for the one-time costs to establish a new registration category in the agency's licensing system.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
All Other	\$2,500	\$0
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$2,500</b>	<b>\$0</b>

Effective September 12, 2009