

ASSEMBLY BILL

No. 2606

Introduced by Assembly Members Emmerson and Krekorian

February 22, 2008

An act to amend Sections 1001.60, 1001.62, 1001.64, and 1001.65 of the Penal Code, relating to the bad check diversion program.

LEGISLATIVE COUNSEL'S DIGEST

AB 2606, as introduced, Emmerson. Bad check diversion program.

Existing law authorizes a prosecution diversion program for bad check criminal cases. Existing law sets the processing fees that may be collected for each bad check in addition to the actual amount of any bank charges at \$35, for an aggregate total not to exceed \$1,000. Existing law sets the amount that the district attorney may pay victims for bank fees that have been assessed for a bad check at \$10.

This bill would increase processing fees to \$50, would authorize inclusion of returned check fees in the processing fees, and would increase the allowable aggregate total to be collected to \$1,200. The bill would increase the amount that the district attorney may pay victims for assessed bank fees to \$15 per check. The bill would make other technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1001.60 of the Penal Code is amended
2 to read:

1 1001.60. Upon the adoption of a resolution by the board of
 2 supervisors declaring that there are sufficient funds available to
 3 fund the program, the district attorney may create within his *or*
 4 *her* office a diversion program pursuant to this chapter for persons
 5 who write bad checks. For purposes of this chapter, “writing a bad
 6 check” means making, drawing, uttering, or delivering any check
 7 or draft upon any bank or depository for the payment of money
 8 where there is probable cause to believe there has been a violation
 9 of Section 476a. The program may be conducted by the district
 10 attorney or by a private entity under contract with the district
 11 attorney.

12 SEC. 2. Section 1001.62 of the Penal Code is amended to read:

13 1001.62. (a) On receipt of a bad check case, the district
 14 attorney shall determine if the case is one which is appropriate to
 15 be referred to the bad check diversion program. In determining
 16 whether to refer a case to the bad check diversion program, the
 17 district attorney shall consider, but is not limited to, all of the
 18 following:

19 (a)

20 (1) The amount of the bad check.

21 (b)

22 (2) If the person has a prior criminal record or has previously
 23 been diverted.

24 (c)

25 (3) The number of bad check grievances against the person
 26 previously received by the district attorney.

27 (d)

28 (4) Whether there are other bad check grievances currently
 29 pending against the person.

30 (e)

31 (5) The strength of the evidence, if any, of intent to defraud the
 32 victim.

33 (b) *Any private entity conducting a diversion program under*
 34 *contract with a district attorney shall apply referral criteria as*
 35 *established and maintained by the district attorney.*

36 SEC. 3. Section 1001.64 of the Penal Code is amended to read:

37 1001.64. The district attorney may enter into a written
 38 agreement with the person to forego prosecution on the bad check
 39 for a period to be determined by the district attorney, not to exceed
 40 six months, pending all of the following:

1 (a) Completion of *and payment for, pursuant to subdivision (c)*
2 *of Section 1001.65*, a class or classes conducted by the district
3 attorney or private entity under contract with the district attorney.

4 (b) Full restitution being made to the victim of the bad check
5 *to hold offenders accountable for victims' losses as a result of*
6 *criminal conduct.*

7 (c) Full payment of the ~~collection~~ *fee diversion fees*, if any,
8 specified in Section 1001.65.

9 SEC. 4. Section 1001.65 of the Penal Code is amended to read:

10 1001.65. (a) A district attorney may collect a *processing* fee
11 if his or her office collects and processes a bad check. The amount
12 of the fee shall not exceed ~~thirty-five dollars (\$35)~~ *fifty dollars*
13 *(\$50)* for each bad check in addition to the actual amount of any
14 bank charges, *including the returned check fee, if any*, incurred by
15 the victim as a result of the offense.

16 (b) Notwithstanding subdivision (a), when a criminal complaint
17 is filed in a bad check case after the maker of the check fails to
18 comply with the terms of the bad check diversion program, the
19 court, after conviction, may impose a bad check ~~collection~~
20 *processing* fee for the ~~collection~~ *recovery* and processing efforts
21 by the district attorney of not more than ~~thirty-five dollars (\$35)~~
22 *fifty dollars (\$50)* for each bad check in addition to the actual
23 amount of any bank charges incurred by the victim as a result of
24 the offense, *including the returned check fee, if any*, not to exceed
25 one thousand ~~two hundred~~ *dollars (\$1,000) (\$1,200)* in the
26 aggregate. The court also may, as a condition of probation, require
27 a defendant to participate in and successfully complete a check
28 writing education class. If so required, the court shall make inquiry
29 into the financial condition of the defendant and, upon a finding
30 that the defendant is able in whole or part to pay the expense of
31 the education class, the court may order him or her to pay for all
32 or part of that expense.

33 (c) If the district attorney elects to collect any fee for bank
34 charges incurred by the victim pursuant to this section, *including*
35 *any fee charged for a returned check*, that fee shall be paid to the
36 victim for any bank fees that the victim may have been assessed.
37 In no event shall reimbursement of a bank charge to the victim

- 1 pursuant to subdivision (a) or (b) exceed ~~ten~~ *fifteen* dollars ~~(\$10)~~
- 2 *(\$15)* per check.