

Assembly Bill No. 2606

CHAPTER 264

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

[Approved by Governor August 4, 2008. Filed with
Secretary of State August 4, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2606, 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.

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

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

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

SEC. 2. Section 1001.64 of the Penal Code is amended to read:

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

(a) Completion of a class or classes conducted by the district attorney or private entity under contract with the district attorney.

(b) Full restitution being made to the victim of the bad check to hold offenders accountable for victims' losses as a result of criminal conduct. For the purpose of this subdivision, "restitution" means the face value of the bad check or bad checks and any bank charges, as described in Section 1001.65.

(c) Full payment of the diversion fees, if any, specified in Section 1001.65.

SEC. 3. Section 1001.65 of the Penal Code is amended to read:

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

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

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, including any fee charged for a returned check, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed fifteen dollars (\$15) per check.