

1 AN ACT concerning transmitters of money.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Transmitters of Money Act is amended by
5 changing Sections 5, 65, and 90 and adding Sections 37 and 93
6 as follows:

7 (205 ILCS 657/5)

8 Sec. 5. Definitions. As used in this Act, unless the
9 context otherwise requires, the words and phrases defined in
10 this Section have the meanings set forth in this Section.

11 "Authorized seller" means a person not an employee of a
12 licensee who engages in the business regulated by this Act on
13 behalf of a licensee under a contract between that person and
14 the licensee.

15 "Bill payment service" means the business of transmitting
16 money on behalf of an Illinois resident for the purpose of
17 paying the resident's bills.

18 "Controlling person" means a person owning or holding the
19 power to vote 25% or more of the outstanding voting
20 securities of a licensee or the power to vote the securities
21 of another controlling person of the licensee. For purposes
22 of determining the percentage of a licensee controlled by a
23 controlling person, the person's interest shall be combined
24 with the interest of any other person controlled, directly or
25 indirectly, by that person or by a spouse, parent, or child
26 of that person.

27 "Department" means the Department of Financial
28 Institutions.

29 "Director" means the Director of Financial Institutions.

30 "Licensee" means a person licensed under this Act.

31 "Location" means a place of business at which activity

1 regulated by this Act occurs.

2 "Material litigation" means any litigation that,
3 according to generally accepted accounting principles, is
4 deemed significant to a licensee's financial health and would
5 be required to be referenced in a licensee's annual audited
6 financial statements, reports to shareholders, or similar
7 documents.

8 "Money" means a medium of exchange that is authorized or
9 adopted by a domestic or foreign government as a part of its
10 currency and that is customarily used and accepted as a
11 medium of exchange in the country of issuance.

12 "Money transmitter" means a person who is located in or
13 doing business in this State and who directly or through
14 authorized sellers does any of the following in this State:

15 (1) Sells or issues payment instruments.

16 (2) Engages in the business of receiving money for
17 transmission or transmitting money.

18 (3) Engages in the business of exchanging, for
19 compensation, money of the United States Government or a
20 foreign government to or from money of another
21 government.

22 "Outstanding payment instrument" means, unless otherwise
23 treated by or accounted for under generally accepted
24 accounting principles on the books of the licensee, a payment
25 instrument issued by the licensee that has been sold in the
26 United States directly by the licensee or has been sold in
27 the United States by an authorized seller of the licensee and
28 reported to the licensee as having been sold, but has not
29 been paid by or for the licensee.

30 "Payment instrument" means a check, draft, money order,
31 traveler's check, stored value card, or other instrument or
32 memorandum, written order or written receipt for the
33 transmission or payment of money sold or issued to one or
34 more persons whether or not that instrument or order is

1 negotiable. Payment instrument does not include an
 2 instrument that is redeemable by the issuer in merchandise or
 3 service, a credit card voucher, or a letter of credit. A
 4 written order for the transmission or payment of money that
 5 results in the issuance of a check, draft, money order,
 6 traveler's check, or other instrument or memorandum is not a
 7 payment instrument.

8 "Person" means an individual, partnership, association,
 9 joint stock association, corporation, or any other form of
 10 business organization.

11 "Stored value card" means any magnetic stripe card or
 12 other electronic payment instrument given in exchange for
 13 money received, merchandise returned, or other consideration,
 14 where the card or other electronic payment instrument
 15 represents a dollar value that the consumer can either use or
 16 give to another individual.

17 "Transmitting money" means the transmission of money by
 18 any means, including transmissions to or from locations
 19 within the United States or to and from locations outside of
 20 the United States by payment instrument, facsimile or
 21 electronic transfer, or otherwise, and includes bill payment
 22 services.

23 (Source: P.A. 92-400, eff. 1-1-02.)

24 (205 ILCS 657/37 new)

25 Sec. 37. Display of disclosure notice.

26 (a) Each authorized seller shall conspicuously display a
 27 disclosure notice supplied by the licensee.

28 (b) The disclosure notice shall contain all of the
 29 following information:

30 (1) The name of the authorized seller's licensee
 31 issuing the disclosure notice.

32 (2) The office or agent authorized to accept
 33 service of process for the licensee and the office's or

1 agent's address and telephone number.

2 (3) A toll-free telephone number for the Department
3 of Financial Institutions which will provide customer
4 support for suspected violations of this Act.

5 (4) A statement that the authorization may be
6 revoked at any time by the licensee.

7 (c) A licensee shall notify the Department when an
8 authorized seller is no longer an authorized seller for the
9 licensee. An authorized seller who has been terminated shall
10 remove the disclosure notice from the premises within 10
11 business days after such termination. A terminated
12 authorized seller who wilfully and knowingly refuses to
13 remove the disclosure notice within 10 business days of
14 termination commits a Class B misdemeanor.

15 (d) If a customer of a former authorized seller
16 detrimentally relies on a disclosure notice that was not
17 removed, the former authorized seller shall be civilly liable
18 if the customer proves: (1) that the entity possessed the
19 disclosure notice beyond 10 business days from the
20 termination of authorization by the licensee, (2) that the
21 entity held itself out as an authorized seller, without
22 informing the customer that the seller was no longer
23 authorized by the licensee, (3) that the customer justifiably
24 relied upon the conspicuously displayed disclosure notice
25 formerly provided by the licensee, and (4) that the entity
26 engaged in the business of transmitting money after its
27 termination as an authorized seller.

28 (e) As used in this Section, "civil liability" means
29 liability for actual loss, reasonable attorney's fees, and
30 costs.

31 (205 ILCS 657/65)

32 Sec. 65. Notice of source of instrument; transaction
33 records.

1 (a) Every payment instrument sold through an authorized
2 seller shall bear the name of the licensee and a unique
3 consecutive number clearly stamped or imprinted on it. When
4 an order for the transmission of money results in the
5 issuance of a payment instrument, both the order and the
6 payment instrument may bear the same unique number.

7 (b) A licensee or authorized seller shall create a
8 record, which may be reduced to computer or other electronic
9 medium, upon receiving any money from a customer.

10 (c) For each payment instrument sold, the licensee shall
11 require the authorized seller to record the face amount of
12 the payment instrument and the serial number of the payment
13 instrument.

14 (d) For each transmission of money, the licensee or
15 authorized seller shall record the date the money was
16 received, the face amount of the payment instrument, the name
17 of the customer, the manner of transmission, including the
18 identity and location of any bank or other financial
19 institution receiving or otherwise involved in accomplishing
20 the transmission, the location to which the money is
21 transmitted if different from the bank or other financial
22 institution required to be recorded, the name of the intended
23 recipient, and the date the transmission was accomplished or
24 the money was refunded to the customer due to an inability to
25 transmit or failure of the intended recipient to receive or
26 obtain the money transmitted. The transmission shall be made
27 by the licensee or authorized seller within 3 business days
28 after the receipt of the money to be transmitted. The
29 licensee or authorized seller, in addition to the records
30 required to be kept, shall issue a receipt to each person
31 delivering or depositing money with the licensee or
32 authorized seller indicating the date of the transaction, the
33 face amount of the payment instrument, to whom the money is
34 to be transmitted, the service charge, and the name and

1 address of the licensee or authorized seller. The licensee
2 or authorized seller shall keep a copy of every receipt in a
3 permanent record book or maintain the data embodied in the
4 receipt using photographic, electronic, or other means.

5 (e) For each exchange of money of the United States
6 government or a foreign government to or from money of
7 another government, the licensee or authorized seller shall
8 record the date of the transaction, the amount of the
9 transaction, the amount of funds stated in currency received
10 by the recipient, and the rate of exchange at the time of the
11 transaction. The licensee or authorized seller, in addition
12 to the records required to be kept, shall issue a receipt to
13 each person delivering or depositing money with the licensee
14 or authorized seller indicating the date of the transaction,
15 the amount of the transaction, the service charge, and the
16 name and address of the licensee or authorized seller making
17 the transaction. The licensee or authorized seller shall
18 keep a copy of every receipt in a permanent record book or
19 maintain data embodied in the receipt using photographic,
20 electronic, or other means.

21 An authorized seller shall also include the following,
22 either on each receipt or a separate disclosure: "This
23 facility is an authorized seller of (insert name of licensee)
24 who is licensed under the Transmitters of Money Act. The
25 Department of Financial Institutions regulates licensed
26 transmitters of money. Consumers have certain protections
27 under that Act. For assistance regarding your transmission of
28 money, contact (insert telephone number), a toll-free
29 telephone number for the licensee which will provide customer
30 support for suspected violations of this Act, or call (insert
31 telephone number), a toll-free telephone number for the
32 Department of Financial Institutions which will provide
33 customer support for suspected violations of this Act.". An
34 inadvertent or non-wilful failure to give a consumer the

1 disclosure provided for in this Section shall not constitute
2 a violation of this Act.

3 (f) Records required to be kept by the licensee or
4 authorized seller under this Act shall be preserved for at
5 least 5 years or as required to comply with any other Act the
6 administration of which is vested in the Director. The
7 records shall be made available for examination in accordance
8 with Sections 55 and 60 of this Act.

9 (Source: P.A. 88-643, eff. 1-1-95.)

10 (205 ILCS 657/90)

11 Sec. 90. Enforcement.

12 (a) If it appears to the Director that a person has
13 committed or is about to commit a violation of this Act, a
14 rule promulgated under this Act, or an order of the Director,
15 the Director may apply to the circuit court for an order
16 enjoining the person from violating or continuing to violate
17 this Act, the rule, or order and for injunctive or other
18 relief that the nature of the case may require and may, in
19 addition, request the court to assess a civil penalty up to
20 \$1,000 along with costs and attorney fees.

21 (b) If the Director finds, after an investigation that
22 he considers appropriate, that a licensee or other person is
23 engaged in practices contrary to this Act or to the rules
24 promulgated under this Act, the Director may issue an order
25 directing the licensee or person to cease and desist the
26 violation. The Director may, in addition to or without the
27 issuance of a cease and desist order, assess an
28 administrative penalty up to \$1,000 against a licensee for
29 each violation of this Act or the rules promulgated under
30 this Act. The issuance of an order under this Section shall
31 not be a prerequisite to the taking of any action by the
32 Director under this or any other Section of this Act. The
33 Director shall serve notice of his action, including a

1 statement of the reasons for his actions, either personally
2 or by certified mail, return receipt requested. Service by
3 mail shall be deemed completed if the notice is deposited in
4 the post office, postage paid, addressed to the last known
5 address for a license.

6 (c) In the case of the issuance of a cease and desist
7 order or assessment order, a hearing may be requested in
8 writing within 30 days after the date of service. The
9 hearing shall be held at the time and place designated by the
10 Director in either the City of Springfield or the City of
11 Chicago. The Director and any administrative law judge
12 designated by him shall have the power to administer oaths
13 and affirmations, subpoena witnesses and compel their
14 attendance, take evidence, authorize the taking of
15 depositions, and require the production of books, papers,
16 correspondence, and other records or information that he
17 considers relevant or material to the inquiry.

18 (d) After the Director's final determination under a
19 hearing under this Section, a party to the proceedings whose
20 interests are affected by the Director's final determination
21 shall be entitled to judicial review of that final
22 determination under the Administrative Review Law.

23 (e) The costs for administrative hearings shall be set
24 by rule.

25 (f) Except as otherwise provided in this Act, a
26 violation of this Act shall subject to the party violating it
27 to a fine of \$1,000 for each offense.

28 (g) Each transaction in violation of this Act or the
29 rules promulgated under this Act and each day that a
30 violation continues shall be a separate offense.

31 (h) A person who engages in conduct requiring a license
32 under this Act and fails to obtain a license from the
33 Director or knowingly makes a false statement,
34 misrepresentation, or false certification in an application,

1 financial statement, account record, report, or other
2 document filed or required to be maintained or filed under
3 this Act or who knowingly makes a false entry or omits a
4 material entry in a document is guilty of a Class 3 felony.

5 (i) The Director is authorized to compromise, settle,
6 and collect civil penalties and administrative penalties, as
7 set by rule, with any person for violations of this Act or of
8 any rule or order issued or promulgated under this Act. Any
9 person who, without the required license, engages in conduct
10 requiring a license under this Act shall be liable to the
11 Department in an amount equal to the greater of (i) \$5,000 or
12 (ii) an amount of money accepted for transmission plus an
13 amount equal to 3 times the amount accepted for transmission.
14 The Department shall cause any funds so recovered to be
15 deposited in the TOMA Consumer Protection Fund.

16 (j) The Director may enter into consent orders at any
17 time with a person to resolve a matter arising under this
18 Act. A consent order must be signed by the person to whom it
19 is issued and must indicate agreement to the terms contained
20 in it. A consent order need not constitute an admission by a
21 person that this Act or a rule or order issued or promulgated
22 under this Act has been violated, nor need it constitute a
23 finding by the Director that the person has violated this Act
24 or a rule or order promulgated under this Act.

25 (k) Notwithstanding the issuance of a consent order, the
26 Director may seek civil or criminal penalties or compromise
27 civil penalties concerning matter encompassed by the consent
28 order unless the consent order by its terms expressly
29 precludes the Director from doing so.

30 (l) Appeals from all final orders and judgments entered
31 by the circuit court under this Section in review of a
32 decision of the Director may be taken as in other civil
33 actions by any party to the proceeding.

34 (Source: P.A. 88-643, eff. 1-1-95; 89-601, eff. 8-2-96.)

1 (205 ILCS 657/93 new)

2 Sec. 93. Consumer Protection Fund.

3 (a) A special income-earning fund is hereby created in
4 the State treasury, known as the TOMA Consumer Protection
5 Fund.

6 (b) All moneys paid into the fund together with all
7 accumulated undistributed income thereon shall be held as a
8 special fund in the State treasury. The fund shall be used
9 solely for the purpose of providing restitution to consumers
10 who have suffered monetary loss arising out of a transaction
11 regulated by this Act.

12 (c) The fund shall be applied only to restitution when
13 restitution has been ordered by the Director. Restitution
14 shall not exceed the amount actually lost by the consumer.
15 The fund shall not be used for the payment of any attorney or
16 other fees.

17 (d) The fund shall be subrogated to the amount of the
18 restitution, and the Director shall request the Attorney
19 General to engage in all reasonable collection steps to
20 collect restitution from the party responsible for the loss
21 and reimburse the fund.

22 (e) Notwithstanding any other provisions of this
23 Section, the payment of restitution from the fund shall be a
24 matter of grace and not of right, and no consumer shall have
25 any vested rights in the fund as a beneficiary or otherwise.
26 Before seeking restitution from the fund, the consumer or
27 beneficiary seeking payment of restitution shall apply for
28 restitution on a form provided by the Director. The form
29 shall include any information the Director may reasonably
30 require in order to determine that restitution is
31 appropriate.

32 Section 95. The State Finance Act is amended by adding
33 Section 5.595 as follows:

1 (30 ILCS 105/5.595 new)

2 Sec. 5.595. The TOMA Consumer Protection Fund.