

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 and other similar consideration, including but not  
 14 limited to checks, debit payments, money orders, drafts,  
 15 credit payments, and traveler's checks, where the card or  
 16 other electronic payment instrument represents a dollar value  
 17 that the consumer can either use or give to another  
 18 individual.

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

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

26 (205 ILCS 657/37 new)

27 Sec. 37. Display of disclosure notice.

28 (a) Each authorized seller shall conspicuously display a  
 29 disclosure notice supplied by the licensee; each licensee  
 30 that transmits money directly shall also conspicuously  
 31 display a disclosure notice.

32 (b) The disclosure notice shall contain the following  
 33 information:

1           (1) In the case of an authorized seller only, the  
2           name of the authorized seller's licensee issuing the  
3           disclosure notice.

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

7           (3) A statement that the authorization may be  
8           revoked at any time by the licensee.

9           (c) A licensee shall notify the Department within 30  
10          days when an authorized seller is no longer an authorized  
11          seller for the licensee. An authorized seller who has been  
12          terminated shall remove the disclosure notice from the  
13          premises within 10 business days after such termination. A  
14          terminated authorized seller who wilfully and knowingly  
15          refuses to remove the disclosure notice within 10 business  
16          days of termination commits a Class B misdemeanor.

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

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

1           Sec. 65. Notice of source of instrument; transaction  
2 records.

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

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

13          (c) For each payment instrument other than a stored  
14 value card sold, the licensee shall require the authorized  
15 seller to record the face amount of the payment instrument  
16 and the serial number of the payment instrument.

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

1 authorized seller indicating the date of the transaction, the  
2 face amount of the payment instrument, to whom the money is  
3 to be transmitted, the service charge, and the name and  
4 address of the licensee or authorized seller. The receipt or  
5 a separate disclosure at the time of the money transmission  
6 shall also include a statement of the licensee's refund  
7 procedures as well as a toll-free telephone number for  
8 customer assistance. An inadvertent or non-wilful failure to  
9 give a consumer the disclosure provided for in this Section  
10 shall not constitute a violation of this Act. The licensee or  
11 authorized seller shall keep a copy of every receipt in a  
12 permanent record book or maintain the data embodied in the  
13 receipt using photographic, electronic, or other means.

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

30 (f) Records required to be kept by the licensee or  
31 authorized seller under this Act shall be preserved for at  
32 least 5 years or as required to comply with any other Act the  
33 administration of which is vested in the Director. The  
34 records shall be made available for examination in accordance

1 with Sections 55 and 60 of this Act.

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

3 (205 ILCS 657/90)

4 Sec. 90. Enforcement.

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

14 (b) If the Director finds, after an investigation that  
15 he considers appropriate, that a licensee or other person is  
16 engaged in practices contrary to this Act or to the rules  
17 promulgated under this Act, the Director may issue an order  
18 directing the licensee or person to cease and desist the  
19 violation. The Director may, in addition to or without the  
20 issuance of a cease and desist order, assess an  
21 administrative penalty up to \$1,000 against a licensee for  
22 each violation of this Act or the rules promulgated under  
23 this Act. The issuance of an order under this Section shall  
24 not be a prerequisite to the taking of any action by the  
25 Director under this or any other Section of this Act. The  
26 Director shall serve notice of his action, including a  
27 statement of the reasons for his actions, either personally  
28 or by certified mail, return receipt requested. Service by  
29 mail shall be deemed completed if the notice is deposited in  
30 the post office, postage paid, addressed to the last known  
31 address for a license.

32 (c) In the case of the issuance of a cease and desist  
33 order or assessment order, a hearing may be requested in

1 writing within 30 days after the date of service. The  
2 hearing shall be held at the time and place designated by the  
3 Director in either the City of Springfield or the City of  
4 Chicago. The Director and any administrative law judge  
5 designated by him shall have the power to administer oaths  
6 and affirmations, subpoena witnesses and compel their  
7 attendance, take evidence, authorize the taking of  
8 depositions, and require the production of books, papers,  
9 correspondence, and other records or information that he  
10 considers relevant or material to the inquiry.

11 (d) After the Director's final determination under a  
12 hearing under this Section, a party to the proceedings whose  
13 interests are affected by the Director's final determination  
14 shall be entitled to judicial review of that final  
15 determination under the Administrative Review Law.

16 (e) The costs for administrative hearings shall be set  
17 by rule.

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

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

24 (h) A person who engages in conduct requiring a license  
25 under this Act and fails to obtain a license from the  
26 Director or knowingly makes a false statement,  
27 misrepresentation, or false certification in an application,  
28 financial statement, account record, report, or other  
29 document filed or required to be maintained or filed under  
30 this Act or who knowingly makes a false entry or omits a  
31 material entry in a document is guilty of a Class 3 felony.

32 (i) The Director is authorized to compromise, settle,  
33 and collect civil penalties and administrative penalties, as  
34 set by rule, with any person for violations of this Act or of



1 any rule or order issued or promulgated under this Act. Any  
2 person who, without the required license, engages in conduct  
3 requiring a license under this Act shall be liable to the  
4 Department in an amount equal to the greater of (i) \$5,000 or  
5 (ii) an amount of money accepted for transmission plus an  
6 amount equal to 3 times the amount accepted for transmission.  
7 The Department shall cause any funds so recovered to be  
8 deposited in the TOMA Consumer Protection Fund.

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

18 (k) Notwithstanding the issuance of a consent order, the  
19 Director may seek civil or criminal penalties or compromise  
20 civil penalties concerning matter encompassed by the consent  
21 order unless the consent order by its terms expressly  
22 precludes the Director from doing so.

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

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

28 (205 ILCS 657/93 new)

29 Sec. 93. Consumer Protection Fund.

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

33 (b) All moneys paid into the fund together with all

1 accumulated undistributed income thereon shall be held as a  
2 special fund in the State treasury. The fund shall be used  
3 solely for the purpose of providing restitution to consumers  
4 who have suffered monetary loss arising out of a transaction  
5 regulated by this Act.

6 (c) The fund shall be applied only to restitution when  
7 restitution has been ordered by the Director. Restitution  
8 shall not exceed the amount actually lost by the consumer.  
9 The fund shall not be used for the payment of any attorney or  
10 other fees.

11 (d) The fund shall be subrogated to the amount of the  
12 restitution, and the Director shall request the Attorney  
13 General to engage in all reasonable collection steps to  
14 collect restitution from the party responsible for the loss  
15 and reimburse the fund.

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

26 Section 95. The State Finance Act is amended by adding  
27 Section 5.595 as follows:

28 (30 ILCS 105/5.595 new)

29 Sec. 5.595. The TOMA Consumer Protection Fund.