

AN ACT concerning transmitters of money.

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

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

(205 ILCS 657/5)

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

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

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

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

"Department" means the Department of Financial Institutions.

"Director" means the Director of Financial Institutions.

"Licensee" means a person licensed under this Act.

"Location" means a place of business at which activity

regulated by this Act occurs.

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

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

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

(1) Sells or issues payment instruments.

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

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

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

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

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

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

"Stored value card" means any magnetic stripe card or other electronic payment instrument given in exchange for money and other similar consideration, including but not limited to checks, debit payments, money orders, drafts, credit payments, and traveler's checks, where the card or other electronic payment instrument represents a dollar value that the consumer can either use or give to another individual.

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

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

(205 ILCS 657/37 new)

Sec. 37. Display of disclosure notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with Sections 55 and 60 of this Act.

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

(205 ILCS 657/90)

Sec. 90. Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(205 ILCS 657/93 new)

Sec. 93. Consumer Protection Fund.

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

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

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

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

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

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

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

(30 ILCS 105/5.595 new)

Sec. 5.595. The TOMA Consumer Protection Fund.