

1 AMENDMENT TO SENATE BILL 24

2 AMENDMENT NO. _____. Amend Senate Bill 24, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

8 (205 ILCS 657/5)

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

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

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

19 "Controlling person" means a person owning or holding the
20 power to vote 25% or more of the outstanding voting
21 securities of a licensee or the power to vote the securities
22 of another controlling person of the licensee. For purposes

1 of determining the percentage of a licensee controlled by a
2 controlling person, the person's interest shall be combined
3 with the interest of any other person controlled, directly or
4 indirectly, by that person or by a spouse, parent, or child
5 of that person.

6 "Department" means the Department of Financial
7 Institutions.

8 "Director" means the Director of Financial Institutions.

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

10 "Location" means a place of business at which activity
11 regulated by this Act occurs.

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

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

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

25 (1) Sells or issues payment instruments.

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

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

32 "Outstanding payment instrument" means, unless otherwise
33 treated by or accounted for under generally accepted
34 accounting principles on the books of the licensee, a payment

1 instrument issued by the licensee that has been sold in the
2 United States directly by the licensee or has been sold in
3 the United States by an authorized seller of the licensee and
4 reported to the licensee as having been sold, but has not
5 been paid by or for the licensee.

6 "Payment instrument" means a check, draft, money order,
7 traveler's check, stored value card, or other instrument or
8 memorandum, written order or written receipt for the
9 transmission or payment of money sold or issued to one or
10 more persons whether or not that instrument or order is
11 negotiable. Payment instrument does not include an
12 instrument that is redeemable by the issuer in merchandise or
13 service, a credit card voucher, or a letter of credit. A
14 written order for the transmission or payment of money that
15 results in the issuance of a check, draft, money order,
16 traveler's check, or other instrument or memorandum is not a
17 payment instrument.

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

21 "Stored value card" means any magnetic stripe card or
22 other electronic payment instrument given in exchange for
23 money received, merchandise returned, or other consideration,
24 where the card or other electronic payment instrument
25 represents a dollar value that the consumer can either use or
26 give to another individual.

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

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

1 (205 ILCS 657/37 new)

2 Sec. 37. Display of disclosure notice.

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

5 (b) The disclosure notice shall contain all of the
6 following information:

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

9 (2) The office or agent authorized to accept
10 service of process for the licensee and the office's or
11 agent's address and telephone number.

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

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

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

25 (d) If a customer of a former authorized seller
26 detrimentally relies on a disclosure notice that was not
27 removed, the former authorized seller shall be civilly liable
28 if the customer proves: (1) that the entity possessed the
29 disclosure notice beyond 10 business days from the
30 termination of authorization by the licensee, (2) that the
31 entity held itself out as an authorized seller, without
32 informing the customer that the seller was no longer
33 authorized by the licensee, (3) that the customer justifiably
34 relied upon the conspicuously displayed disclosure notice

1 formerly provided by the licensee, and (4) that the entity
2 engaged in the business of transmitting money after its
3 termination as an authorized seller.

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

7 (205 ILCS 657/65)

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

10 (a) Every payment instrument sold through an authorized
11 seller shall bear the name of the licensee and a unique
12 consecutive number clearly stamped or imprinted on it. When
13 an order for the transmission of money results in the
14 issuance of a payment instrument, both the order and the
15 payment instrument may bear the same unique number.

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

19 (c) For each payment instrument sold, the licensee shall
20 require the authorized seller to record the face amount of
21 the payment instrument and the serial number of the payment
22 instrument.

23 (d) For each transmission of money, the licensee or
24 authorized seller shall record the date the money was
25 received, the face amount of the payment instrument, the name
26 of the customer, the manner of transmission, including the
27 identity and location of any bank or other financial
28 institution receiving or otherwise involved in accomplishing
29 the transmission, the location to which the money is
30 transmitted if different from the bank or other financial
31 institution required to be recorded, the name of the intended
32 recipient, and the date the transmission was accomplished or
33 the money was refunded to the customer due to an inability to

1 transmit or failure of the intended recipient to receive or
2 obtain the money transmitted. The transmission shall be made
3 by the licensee or authorized seller within 3 business days
4 after the receipt of the money to be transmitted. The
5 licensee or authorized seller, in addition to the records
6 required to be kept, shall issue a receipt to each person
7 delivering or depositing money with the licensee or
8 authorized seller indicating the date of the transaction, the
9 face amount of the payment instrument, to whom the money is
10 to be transmitted, the service charge, and the name and
11 address of the licensee or authorized seller. The licensee
12 or authorized seller shall keep a copy of every receipt in a
13 permanent record book or maintain the data embodied in the
14 receipt using photographic, electronic, or other means.

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

31 An authorized seller shall also include the following,
32 either on each receipt or a separate disclosure: "This
33 facility is an authorized seller of (insert name of licensee)
34 who is licensed under the Transmitters of Money Act. The

1 Department of Financial Institutions regulates licensed
2 transmitters of money. Consumers have certain protections
3 under that Act. For assistance regarding your transmission of
4 money, contact (insert telephone number), a toll-free
5 telephone number for the licensee which will provide customer
6 support for suspected violations of this Act, or call (insert
7 telephone number), a toll-free telephone number for the
8 Department of Financial Institutions which will provide
9 customer support for suspected violations of this Act.". An
10 inadvertent or non-wilful failure to give a consumer the
11 disclosure provided for in this Section shall not constitute
12 a violation of this Act.

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

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

20 (205 ILCS 657/90)

21 Sec. 90. Enforcement.

22 (a) If it appears to the Director that a person has
23 committed or is about to commit a violation of this Act, a
24 rule promulgated under this Act, or an order of the Director,
25 the Director may apply to the circuit court for an order
26 enjoining the person from violating or continuing to violate
27 this Act, the rule, or order and for injunctive or other
28 relief that the nature of the case may require and may, in
29 addition, request the court to assess a civil penalty up to
30 \$1,000 along with costs and attorney fees.

31 (b) If the Director finds, after an investigation that
32 he considers appropriate, that a licensee or other person is
33 engaged in practices contrary to this Act or to the rules

1 promulgated under this Act, the Director may issue an order
2 directing the licensee or person to cease and desist the
3 violation. The Director may, in addition to or without the
4 issuance of a cease and desist order, assess an
5 administrative penalty up to \$1,000 against a licensee for
6 each violation of this Act or the rules promulgated under
7 this Act. The issuance of an order under this Section shall
8 not be a prerequisite to the taking of any action by the
9 Director under this or any other Section of this Act. The
10 Director shall serve notice of his action, including a
11 statement of the reasons for his actions, either personally
12 or by certified mail, return receipt requested. Service by
13 mail shall be deemed completed if the notice is deposited in
14 the post office, postage paid, addressed to the last known
15 address for a license.

16 (c) In the case of the issuance of a cease and desist
17 order or assessment order, a hearing may be requested in
18 writing within 30 days after the date of service. The
19 hearing shall be held at the time and place designated by the
20 Director in either the City of Springfield or the City of
21 Chicago. The Director and any administrative law judge
22 designated by him shall have the power to administer oaths
23 and affirmations, subpoena witnesses and compel their
24 attendance, take evidence, authorize the taking of
25 depositions, and require the production of books, papers,
26 correspondence, and other records or information that he
27 considers relevant or material to the inquiry.

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

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

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

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

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

15 (i) The Director is authorized to compromise, settle,
16 and collect civil penalties and administrative penalties, as
17 set by rule, with any person for violations of this Act or of
18 any rule or order issued or promulgated under this Act. Any
19 person who, without the required license, engages in conduct
20 requiring a license under this Act shall be liable to the
21 Department in an amount equal to the greater of (i) \$5,000 or
22 (ii) an amount of money accepted for transmission plus an
23 amount equal to 3 times the amount accepted for transmission.
24 The Department shall cause any funds so recovered to be
25 deposited in the TOMA Consumer Protection Fund.

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

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

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

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

11 (205 ILCS 657/93 new)

12 Sec. 93. Consumer Protection Fund.

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

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

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

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

32 (e) Notwithstanding any other provisions of this
33 Section, the payment of restitution from the fund shall be a

1 matter of grace and not of right, and no consumer shall have
2 any vested rights in the fund as a beneficiary or otherwise.
3 Before seeking restitution from the fund, the consumer or
4 beneficiary seeking payment of restitution shall apply for
5 restitution on a form provided by the Director. The form
6 shall include any information the Director may reasonably
7 require in order to determine that restitution is
8 appropriate.

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

11 (30 ILCS 105/5.595 new)

12 Sec. 5.595. The TOMA Consumer Protection Fund."