



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4451

Introduced 1/30/2012, by Rep. Elizabeth Hernandez

SYNOPSIS AS INTRODUCED:

205 ILCS 657/5
205 ILCS 657/65
205 ILCS 657/66 new
205 ILCS 657/76 new

Amends the Transmitters of Money Act. Defines "general-use prepaid card". Provides that all vendors of general-use prepaid cards must be licensees or authorized sellers of licensees. Provides that a vendor of a general-use prepaid card may charge an activation fee not to exceed the greater of \$1 or 1% of the value of the card. Provides that, subject to certain exceptions, no person shall impose a reloading fee, balance check fee, overdraft protection fee, dormancy fee, inactivity charge, or service fee with respect to a general-use prepaid card. Provides that the vendor of a general-use prepaid card shall inform the purchaser of a charge or fee before the card is purchased. Sets forth certain prohibited acts that any vendor issuing, selling, or offering for sale general-use prepaid cards may not commit. Provides that no licensee or authorized seller of a licensee may cash checks for a fee unless licensed under the Currency Exchange Act.

LRB097 16789 PJG 61969 b

1 AN ACT concerning regulation.

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 and 65 and by adding Sections 66 and 76 as
6 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 "Balance check fee" means a fee assessed to a consumer for
16 checking the balance on a general-use prepaid card.

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

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

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

6 "Department" means the Department of Financial and
7 Professional Regulation Institutions.

8 "Director" means the Director of the Division of Financial
9 Institutions.

10 "Dormancy fee" or "inactivity charge or fee" means a fee,
11 charge, or penalty for non-use or inactivity of a general-use
12 prepaid card.

13 "General-use prepaid card" or "stored value card" means an
14 electronic promise, plastic card, or other payment code or
15 device, not marketed or labeled as a gift card, issued by any
16 person that is:

17 (1) redeemable or honored, upon presentation, at
18 multiple, unaffiliated merchants or service providers, or
19 automated teller machines;

20 (2) issued in a requested amount, whether or not that
21 amount may, at the option of the issuer, be increased in
22 value or reloaded if requested by the holder;

23 (3) purchased or loaded on a prepaid basis; and

24 (4) can be used to withdraw cash at automated teller
25 machines or by other means, including cash back
26 transactions whereby an amount is added to the total

1 purchase price of a transaction and a consumer receives
2 that amount in cash along with the purchase.

3 The term "general-use prepaid card" or "stored value card"
4 does not include an electronic promise, plastic card, or
5 payment code or device that is:

6 (1) used solely for telephone services;

7 (2) a loyalty, award, or promotional gift card;

8 (3) not marketed to the general public;

9 (4) issued in paper form only (including for tickets
10 and events);

11 (5) not redeemable at automated teller machines or for
12 cash back;

13 (6) redeemable solely for admission to events or venues
14 at a particular location or group of affiliated locations,
15 which may also include services or goods obtainable:

16 (A) at the event or venue after admission; or

17 (B) in conjunction with admission to such events or
18 venues at specific locations affiliated with and in
19 geographic proximity to the event or venue.

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

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

23 "Material litigation" means any litigation that, according
24 to generally accepted accounting principles, is deemed
25 significant to a licensee's financial health and would be
26 required to be referenced in a licensee's annual audited

1 financial statements, reports to shareholders, or similar
2 documents.

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

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

10 (1) Sells or issues payment instruments.

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

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

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

24 "Overdraft protection" means a credit arrangement under
25 which an issuer of general use prepaid cards automatically
26 extends a loan to cover an amount that exceeds the general use

1 prepaid card account balance.

2 "Overdraft protection fee" means a fee charged by a
3 licensee for overdraft protection.

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

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

19 "Reloading fee" means a fee charged to load cash or value
20 to a general-use prepaid card.

21 "Service fee" means a periodic fee, charge, or penalty for
22 holding or use of a general-use prepaid card. The term "service
23 fee" does not include a one-time initial issuance fee.

24 ~~"Stored value card" means any magnetic stripe card or other~~
25 ~~electronic payment instrument given in exchange for money and~~
26 ~~other similar consideration, including but not limited to~~

1 ~~checks, debit payments, money orders, drafts, credit payments,~~
2 ~~and traveler's checks, where the card or other electronic~~
3 ~~payment instrument represents a dollar value that the consumer~~
4 ~~can either use or give to another individual.~~

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

10 "Vendor" means a licensee or an authorized seller of a
11 licensee that sells or offers to sell general-use prepaid cards
12 to consumers.

13 (Source: P.A. 92-400, eff. 1-1-02; 93-535, eff. 1-1-04.)

14 (205 ILCS 657/65)

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

17 (a) Every payment instrument other than a general-use
18 prepaid ~~stored value~~ card sold through an authorized seller
19 shall bear the name of the licensee and a unique consecutive
20 number clearly stamped or imprinted on it. When an order for
21 the transmission of money results in the issuance of a payment
22 instrument, both the order and the payment instrument may bear
23 the same unique number.

24 (b) A licensee or authorized seller shall create a record,
25 which may be reduced to computer or other electronic medium,

1 upon receiving any money from a customer.

2 (c) For each payment instrument other than a general-use
3 prepaid ~~stored value~~ card sold, the licensee shall require the
4 authorized seller to record the face amount of the payment
5 instrument and the serial number of the payment instrument.

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

1 authorized seller. The receipt or a separate disclosure at the
2 time of the money transmission shall also include a statement
3 of the licensee's refund procedures as well as a toll-free
4 telephone number for customer assistance. An inadvertent or
5 non-wilful failure to give a consumer the disclosure provided
6 for in this Section shall not constitute a violation of this
7 Act. The licensee or authorized seller shall keep a copy of
8 every receipt in a permanent record book or maintain the data
9 embodied in the receipt using photographic, electronic, or
10 other means.

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

26 (f) Records required to be kept by the licensee or

1 authorized seller under this Act shall be preserved for at
2 least 5 years or as required to comply with any other Act the
3 administration of which is vested in the Director. The records
4 shall be made available for examination in accordance with
5 Sections 55 and 60 of this Act.

6 (Source: P.A. 93-535, eff. 1-1-04.)

7 (205 ILCS 657/66 new)

8 Sec. 66. General-use prepaid cards.

9 (a) Except as otherwise provided in this Act, this Section
10 applies to all persons that issue, sell, or offer for sale
11 general-use prepaid cards to consumers. All vendors of
12 general-use prepaid cards must be licensees or authorized
13 sellers of a licensee under Section 75 of this Act, unless
14 otherwise exempt from the requirements of this Act.

15 (b) A vendor may charge an activation fee not to exceed the
16 greater of \$1 or 1% of the value of the general-use prepaid
17 card. Only one activation fee may be charged per general-use
18 prepaid card. No vendor shall charge or collect any sum in
19 excess of those allowed by this Act.

20 The schedule of fees and charges permitted under this
21 Section shall be conspicuously disclosed on the face of the
22 general-use prepaid card or on any packaging.

23 (c) Except as provided under subsections (d), (e), and (f),
24 no person shall impose a reloading fee, balance check fee,
25 overdraft protection fee, dormancy fee, inactivity charge or

1 fee, or service fee with respect to a general-use prepaid card.

2 (d) A dormancy fee, inactivity charge or fee, or service
3 fee may be charged with respect to a general-use prepaid card,
4 if:

5 (1) there has been no activity with respect to the
6 general-use prepaid card in the 18-month period ending on
7 the date on which the charge or fee is imposed;

8 (2) the disclosure requirements of subsection (e) have
9 been met;

10 (3) not more than one dormancy, inactivity charge or
11 fee, or service fee may be charged per month of inactivity,
12 not to exceed \$1 or 1% of the value of the card, whichever
13 is less, on the date of assessment; and

14 (4) any additional requirements that the Secretary may
15 deem necessary.

16 (e) The general-use prepaid card shall clearly and
17 conspicuously state:

18 (1) that a dormancy fee, inactivity charge or fee, or
19 service fee may be charged;

20 (2) the amount of the fee or charge;

21 (3) how often the fee or charge may be assessed; and

22 (4) that the fee or charge may be assessed for
23 inactivity.

24 The vendor of a general-use prepaid card shall inform the
25 purchaser of any charge or fee before the general-use prepaid
26 card is purchased, regardless of whether the general-use

1 prepaid card is purchased in person, over the Internet, or by
2 telephone.

3 (f) The prohibition under subsection (c) shall not apply to
4 any general-use prepaid card:

5 (1) that is distributed pursuant to an award, loyalty,
6 or promotional program; and

7 (2) with respect to which there is no money or other
8 value exchanged.

9 (g) Any vendor issuing, selling, or offering for sale
10 general-use prepaid cards may not commit, or have committed on
11 behalf of the vendor, any of the following acts:

12 (1) selling or issuing a general-use prepaid card that
13 is subject to an expiration date;

14 (2) using any device or agreement that would have the
15 effect of charging or collecting more fees or charges than
16 allowed by this Act, including, but not limited to,
17 entering into a different type of transaction with the
18 consumer;

19 (3) engaging in unfair, deceptive, or fraudulent
20 practices in the issuing or selling of a general-use
21 prepaid card;

22 (4) using or causing to be published or disseminated
23 any advertising communication that contains false,
24 misleading, or deceptive statements or representations;

25 (5) making loans of money, discounting notes, bills of
26 exchange, or other evidences of debt, including overdraft

1 protection;

2 (6) extending credit; or

3 (7) charging any fees or charges other than those
4 specifically authorized by this Act.

5 (h) In addition to the requirements of this Act, all
6 vendors must comply with all State and federal requirements
7 applicable to general-use prepaid cards.

8 (205 ILCS 657/76 new)

9 Sec. 76. Check cashing. No licensee under this Act or
10 authorized seller of a licensee may cash checks for a fee
11 unless licensed under the Currency Exchange Act, or unless the
12 licensee or authorized seller is an entity exempt from that Act
13 under subsection (b) of Section 1 of the Currency Exchange Act
14 and operating in compliance with the Check Cashing Act. This
15 Section does not apply to any transaction where a customer
16 presents a check for the exact amount of any purchase.