

**97TH GENERAL ASSEMBLY****State of Illinois****2011 and 2012****SB2939**

Introduced 2/1/2012, by Sen. Emil Jones, III

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. Creates a provision concerning general-use prepaid cards. Provides that all vendors of general-use prepaid cards must be licensees or authorized sellers of a licensee under the Act. Provides that the permitted fees a vendor may charge includes an activation fee not to exceed the greater of \$1 or 1% of the value of the general-use prepaid card. Provides that a prohibition on the imposition of certain fees or charges shall provide that it is unlawful for any person to impose a reloading fee, balance check fee, overdraft protection fee, dormancy fee, inactivity charge or fee, or service fee with respect to a general-use prepaid card. Provides that there are exceptions to the prohibition on imposition of certain fees or charges and the prohibitions shall not apply to any general-use prepaid card (i) that is distributed pursuant to an award, loyalty, or promotional program and (ii) with respect to which, there is no money or other value exchanged. Creates a provision concerning check-cashing. Provides that any vendor issuing, selling, or offering for sale general-use prepaid cards may not commit, or have committed on behalf of the vendor, certain specified acts. Provides that all vendors must comply with all State and federal requirements applicable to general-use prepaid cards to be in compliance. Provides that no licensee under the Act or an authorized seller of a licensee may cash checks for a fee unless licensed under the Currency Exchange Act or unless the licensee or authorized seller is an entity exempt under the Currency Exchange Act and operating in compliance with the Check Cashing Act. Makes changes to the provisions concerning definitions and notice of source of instrument and transaction records.

LRB097 14481 CEL 59335 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) used to withdraw cash at automated teller machines
25 or by other means, including cash back transactions whereby
26 an amount is added to the total purchase price of a

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

3 The term "general-use prepaid card" does not include an
4 electronic promise, plastic card, or payment code or device
5 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
10 tickets and events;

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

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

17 (i) at the event or venue after admission; or

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

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

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

25 "Material litigation" means any litigation that, according
26 to generally accepted accounting principles, is deemed

1 significant to a licensee's financial health and would be
2 required to be referenced in a licensee's annual audited
3 financial statements, reports to shareholders, or similar
4 documents.

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

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

12 (1) Sells or issues payment instruments.

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

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

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

26 "Overdraft protection" means a credit arrangement under

1 which an issuer of general use prepaid cards automatically
2 extends a loan to cover an amount that exceeds the general-use
3 prepaid card account balance.

4 "Overdraft protection fee" means a fee charged by a
5 licensee for overdraft protection.

6 "Payment instrument" means a check, draft, money order,
7 traveler's check, general-use prepaid ~~stored value~~ card, or
8 other instrument or memorandum, written order or written
9 receipt for the transmission or payment of money sold or issued
10 to one or more persons whether or not that instrument or order
11 is 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 "Reloading fee" means a fee charged to load cash or value
22 to a general-use prepaid card.

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

26 ~~"Stored value card" means any magnetic stripe card or other~~

1 ~~electronic payment instrument given in exchange for money and~~
2 ~~other similar consideration, including but not limited to~~
3 ~~checks, debit payments, money orders, drafts, credit payments,~~
4 ~~and traveler's checks, where the card or other electronic~~
5 ~~payment instrument represents a dollar value that the consumer~~
6 ~~can either use or give to another individual.~~

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

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

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

16 (205 ILCS 657/65)

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

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

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

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

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

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

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

1 the receipt using photographic, electronic, or other means.

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

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

9 (205 ILCS 657/66 new)

10 Sec. 66. General-use prepaid cards.

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

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

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

1 (c) Except as provided under subsections (d) and (e) of
2 this Section, it is unlawful for any person to impose a
3 reloading fee, balance check fee, overdraft protection fee,
4 dormancy fee, inactivity charge or fee, or service fee with
5 respect to a general-use prepaid card.

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

9 (1) there has been no activity with respect to the
10 general-use prepaid card in the 18-month period ending on
11 the date that the charge or fee is imposed;

12 (2) the following disclosure requirements are met:

13 (A) the general-use prepaid card clearly and
14 conspicuously states:

15 (i) that a dormancy fee, inactivity charge or
16 fee, or service fee may be charged;

17 (ii) the amount of such fee or charge;

18 (iii) how often such fee or charge may be
19 assessed; and

20 (iv) that such fee or charge may be assessed
21 for inactivity; and

22 (B) the vendor of such general-use prepaid card
23 informs the purchaser of such charge or fee before such
24 general-use prepaid card is purchased, regardless of
25 whether the general-use prepaid card is purchased in
26 person, over the internet, or by telephone;

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

5 (4) any additional requirements that the Secretary may
6 deem necessary.

7 (e) The prohibition under subsection (b) shall not apply to
8 any general-use prepaid card:

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

11 (2) with respect to which, there is no money or other
12 value exchanged.

13 (f) Any vendor issuing, selling, or offering for sale
14 general-use prepaid cards may not commit, or have committed on
15 behalf of the vendor, any of the following acts:

16 (1) sell or issue a general-use prepaid card that is
17 subject to an expiration date;

18 (2) use any device or agreement that may have the
19 effect of charging or collecting more fees or charges than
20 allowed by this Act, including, but not limited to,
21 entering into a different type of transaction with the
22 consumer;

23 (3) engage in unfair, deceptive, or fraudulent
24 practices in the issuing or selling of a general-use
25 prepaid card;

26 (4) use or cause to be published or disseminated any

1 advertising communication that contains false, misleading,
2 or deceptive statements or representations;

3 (5) make loans of money, discounting notes, bills of
4 exchange, or other evidences of debt, including overdraft
5 protection;

6 (6) extend credit; or

7 (7) charge any fees or charges other than those
8 specifically authorized by this Act.

9 (g) In addition to the requirements of this Act, all
10 vendors must comply with all State and federal requirements
11 applicable to general-use prepaid cards to be in compliance
12 with this Section.

13 (205 ILCS 657/76 new)

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