HLS 14RS-833 ENGROSSED

Regular Session, 2014

HOUSE BILL NO. 611

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BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

COMMERCIAL LAWS/LA.(UCC): Provides for revisions relative to the electronic transfer of funds

AN ACT

2	To amend and reenact R.S. 10:4A-108, relative to the electronic transfer of funds; to provide
3	for the applicability of Chapter 4A of Title 10 of the Louisiana Revised Statutes of
4	1950 to a funds transfer that is a remittance transfer as defined in the federal
5	Electronic Fund Transfer Act; to provide for a solution to an inconsistency between
6	an applicable provision of Louisiana law and an applicable provision of the federal
7	Electronic Fund Transfer Act; and to provide for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. R.S. 10:4A-108 is hereby amended and reenacted to read as follows:
10	§4A-108. Exclusion of consumer transactions governed by federal law Relationship
1	to the federal Electronic Fund Transfer Act
12	(a) Except as provided in Subsection (b) of this Section, this This Chapter
13	does not apply to a funds transfer any part of which is governed by the Electronic
14	Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C.
15	§1693 et seq.) as amended from time to time.
16	(b) This Chapter applies to a funds transfer that is a remittance transfer as
17	defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1) as amended
18	from time to time, unless the remittance transfer is an electronic fund transfer as
19	defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a) as amended from
20	time to time.

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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(c) In a funds transfer to which this Chapter applies, in the event of an
 inconsistency between an applicable provision of this Chapter and an applicable
 provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund
 Transfer Act governs to the extent of the inconsistency.

Uniform Commercial Code Comment - 2014 Revision

The Electronic Fund Transfer Act of 1978 is a federal statute that covers a wide variety of electronic funds transfers involving consumers. The types of transfers covered by the federal statute are essentially different from the wholesale wire transfers that are the primary focus of Article 4A. Section 4A-108 excludes a funds transfer from Article 4A if any part of the transfer is covered by the federal law. Existing procedures designed to comply with federal law will not be affected by Article 4A. The effect of Section 4A-108 is to make Article 4A and EFTA mutually exclusive. For example, if a funds transfer is to a consumer account in the beneficiary's bank and the funds transfer is made in part by use of Fedwire and in part by means of an automated clearing house, EFTA applies to the ACH part of the transfer but not to the Fedwire part. Under Section 4A-108, Article 4A does not apply to any part of the transfer. However, in the absence of any law to govern the part of the funds transfer that is not subject to EFTA, a court might apply appropriate principles from Article 4A by analogy.

1. The Electronic Fund Transfer Act (EFTA), implemented by Regulation E, 12 C.F.R. Part 1005, is a federal statute that covers aspects of electronic fund transfers involving consumers. EFTA also governs remittance transfers, defined in 15 U.S.C. Sec. 16930-1, which involve transfers of funds through electronic means by consumers to recipients in another country through persons or financial institutions that provide such transfers in the normal course of their business. Not all "remittance transfers" as defined in EFTA, however, qualify as "electronic fund transfers" as defined under the EFTA, 15 U.S.C. Sec. 1693a(7). While Section 4A-108(a) broadly states that Article 4A does not apply to any funds transfer that is governed in any part by EFTA, Subsection (b) provides an exception. The purpose of Section 4A-108(b) is to allow this Article to apply to a funds transfer as defined in Section 4A-104(a) (see Section 4A-102) that also is a remittance transfer as defined in EFTA, so long as that remittance transfer is not an electronic fund transfer as defined in EFTA. If the resulting application of this Article to an EFTA-defined "remittance transfer" that is not an EFTA-defined "electronic fund transfer" creates an inconsistency between an applicable provision of this Article and an applicable provision of EFTA, as a matter of federal supremacy, the provision of EFTA governs to the extent of the inconsistency. Section 4A-108(c). Of course, applicable choice of law principles or enforceable choice of law provisions in an applicable agreement will also affect whether Article 4A will apply to all or part of any funds transfer, including a remittance transfer. See Section 4A 507. The following examples assume that choice of law principles or an enforceable choice of law provision will lead a court to examine the applicability of Article 4A to the funds transfer.

2. The following examples illustrate the relationship between EFTA and this Article pursuant to Section 4A-108.

Example 1. A commercial customer of Bank A sends a payment order to Bank A, instructing Bank A to transfer funds from its account at Bank A to the account of a consumer at Bank B. The funds transfer is executed by a payment order from Bank A to an intermediary bank and is executed by the intermediary bank by means of a clearinghouse credit entry to the consumer's account at Bank B (the beneficiary's bank). The transfer into the consumer's account is an electronic fund

transfer as defined in 15 U.S.C. Sec. 1693a(7). Pursuant to Section 4A-108(a), Article 4A does not apply to any part of the funds transfer because EFTA governs part of the funds transfer. The funds transfer is not a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1 because the originator is not a consumer customer. Thus Section 4A-108(b) does not apply.

A court might, however, apply appropriate principles from Article 4A by analogy in analyzing any part of the funds transfer that is not subject to the provisions of EFTA or other law, such as the obligation of the intermediary bank to execute the payment order of the originator's bank.

Example 2. A consumer originates a payment order that is a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1 by providing the remittance transfer provider (Bank A) with cash in the amount of the transfer plus any relevant fees. The funds transfer is routed through an intermediary bank for final credit to the designated recipient's account at Bank B. Bank A's payment order identifies the designated recipient by both name and account number in Bank B, but the name and number provided identify different persons. This remittance transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because it is not initiated by electronic means from a consumer's account, but does qualify as a funds transfer as defined in Section 4A-104. Both Article 4A and EFTA apply to the funds transfer. Sections 4A-102 and 4A-108(a) and (b). Article 4A's provision on mistakes in identifying the designated beneficiary, Section 4A-207, would apply as long as it is not inconsistent with the governing EFTA provisions. Section 4A-108(c).

Example 3. A consumer originates a payment order from the consumer's account at Bank A to the designated recipient's account at Bank B located outside the United States. Bank A uses the CHIPS system to execute that payment order. The funds transfer is a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1. This transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because of the exclusion for such types of transfers in 15 U.S.C. Sec. 1693a(7)(B), but qualifies as a funds transfer as defined in Section 4A-104. Under Sections 4A-102 and 4A-108(b), both Article 4A and EFTA apply to the funds transfer. The EFTA will prevail to the extent of any inconsistency between EFTA and Article 4A. Section 4A-108(c). For example, suppose the consumer subsequently exercised the right to cancel the remittance transfer under the right given under EFTA and obtain a refund. Bank A would be required to comply with the EFTA rule concerning cancellation even if Article 4A prevents Bank A from cancelling or reversing its payment order it sent to its receiving bank. Section 4A-211.

Example 4. A person fraudulently originates an unauthorized payment order from a consumer's account through use of an online banking interface. This transaction is an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) and would be governed by EFTA and not Article 4A. Section 4A-108(a). Whether the funds transfer also qualifies as a remittance transfer under 15 U.S.C. Sec. 1693o-1 does not matter to the application of Article 4A.

Example 5. A person fraudulently originates an unauthorized payment order from a consumer's account at Bank A through forging written documents that are provided in person to an employee of Bank A. This funds transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because the fund transfer from the consumer's account is not initiated by electronic means, but the funds transfer qualifies as a funds transfer as defined in Section 4A-104. Article 4A will apply to this funds transfer regardless of whether the funds transfer also qualifies as a remittance transfer under 15 U.S.C. Sec. 1693o-1. If the funds transfer is not a remittance transfer, the provisions of Section 4A-108 are not implicated because the funds transfer does not fall under EFTA, and the general scope provision of Article 4A governs. Section 4A-102. If the funds transfer is a remittance transfer, and thus

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governed by EFTA, Section 4A-108(b) provides that Article 4A also applies. The provisions of Article 4A will allocate the loss arising from the unauthorized payment order as long as those provisions are not inconsistent with the provisions of the EFTA applicable to remittance transfers. Section 4A-108(c).

3. Regulation J. 12 C.F.R. Part 210, of the Federal Reserve Board addresses

3. Regulation J, 12 C.F.R. Part 210, of the Federal Reserve Board addresses the application of that regulation and EFTA to fund transfers made through Fedwire. Fedwire transfers are further described in Official Comments 1 and 2 to Section 4A-107. In addition, funds transfer system rules may be applicable pursuant to Section 4A-501.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Abramson HB No. 611

Abstract: Provides relative to conflicts of applicability of the U.C.C. - Funds Transfers Chapter and the federal Electronic Fund Transfer Act all with respect to electronic funds transfers and remittance transfers.

<u>Present law</u> (R.S. 10:4A-108) provides that the U.C.C. - Funds Transfers Chapter does not apply to a funds transfer that is governed by the federal Electronic Fund Transfer Act of 1978 (15 U.S.C. Sec. 1693 et seq.).

<u>Proposed law</u> retains <u>present law</u> but provides an exception for the application of the U.C.C.-Funds Transfers Chapter to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 16930-1), unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a).

<u>Present federal law</u> (15 U.S.C. Sec. 1693a) defines "electronic funds transfer", in part, as any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

<u>Present federal law</u> (15 U.S.C. Sec. 1693o-1) defines "remittance transfer", in part, as the electronic transfer of funds requested by a sender located in any state to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer.

<u>Present federal law</u> (15 U.S.C. Sec. 1693o-1) defines "designated recipient", in part, as any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider.

(Amends R.S. 10:4A-108)