UCC Article 4A Amendments (2012) Summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act is an amendment to the Federal Electronic Funds Transfer Act (EFTA) that will have an important impact on the scope of Article 4A of the Uniform Commercial Code. Presently Article 4A does not apply to a funds transfer any part of which of which is governed by EFTA. The implementing regulations for the federal act were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013, expressly to permit changes to UCC 4A so it might continue to govern aspects of some remittance transfers. Absent a change to Article 4A, there could be legal uncertainty for a class of remittance transfers currently governed by Article 4A. The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to §4A-108 and its comments. Both the ALI and the ULC have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. UCC §4A-108 was drafted with that in mind. When the amendment to EFTA goes into effect in 2013, EFTA will govern "remittance transfers", whether or not those remittance transfers are also "electronic fund transfers" as defined in EFTA. Thus, when the amendment and its implementing regulation go into effect, the result of UCC §4A-108 in its present form will be that a fund transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers will be governed neither by Article 4A or the EFTA.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

Why States Should Adopt the Amendment to UCC Article 4A

Preemptive federal regulations for remittance transfers will become effective in February 2013. The delayed implementation was given to provide the Uniform Law Commission and/or interested parties time to make changes that would permit some aspects of remittance transfers to continue to be covered by UCC Article 4A. The federal regulation is intended to cover primarily consumer remittance provider disclosure and limited other issues in funds transfers (remittances) that go out of the United States.

The proposed amendment revises UCC §4A-108 to provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act (EFTA). The amendment maintains the coverage of UCC 4A for some aspects of wire transfers, while initial aspects of generated consumer remittance transfers will be covered by the federal rules. Without enactment of the amendment, neither the federal rule nor UCC 4A will apply to some aspects of remittance transfers. The result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries and other issues beyond the initial sending of the transfer.

Frank Lasee

WISCONSIN STATE SENATOR

FIRST SENATE DISTRICT

Testimony of Senator Frank Lasee

Senate Bill 116

May 8, 2013

This bill fixes a loophole in the laws governing fund transfers. This loophole was created when Dodd-Frank was passed by Congress in 2010.

Remittance fund transfers (transfers of funds to a person in a foreign country) are regulated by both federal and state law. Consumer fund transfers are governed under the Electronic Transfer Act (EFTA) and commercial fund transfers are governed by the state under adoption of the Uniform Commercial Code (UCC) Article 4A. There are times where regulation can fall under both sets of laws.

A remittance transfer is governed by Article 4A if it is not an electronic funds transfer as defined by EFTA. Because of an amendment to Dodd-Frank, remittance fund transfers are excluded from governance by Article 4A, even when the funds are not ETFA governed transfers. Because of this amendment, these types of transfers are unregulated by both Article 4A and ETFA. This bill closes this loophole.

This bill is supported by both credit unions and banks and it has received bi-partisan support in the legislature.

Chair: Committee on Insurance and Housing

Post Office Box 7882
Madison, Wisconsin 53707-7882

(608) 266-3512
Sen.Lasee@legis.wi.gov