

Date of Hearing: July 2, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 708 (Corbett) – As Amended: June 26, 2012

SENATE VOTE: Not relevant

SUBJECT: Funds Transfers.

SUMMARY: Clarifies the relationship between the Uniform Commercial Code (UCC) and federal law relating to provisions governing electronic fund transfers (EFTs). Specifically, this bill:

EXISTING LAW

The Federal Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.) of 1978 is intended to protect individual consumers engaging in EFTs. EFT services include transfers through automated teller machines, point-of-sale terminals, automated clearinghouse systems, telephone bill-payment plans in which periodic or recurring transfers are contemplated, and remote banking programs.

FISCAL EFFECT: None

COMMENTS:

This bill specifies that Article 4A of the UCC does not apply to a remittance transfer that is not an EFT, and provides clarity necessary because of changes to federal law. Article 4A of the UCC was designed to provide a set of rules to govern wholesale wire transfers-high-value commercial payments normally made exclusively by businesses firms.

Section 1073 of the Dodd-Frank Act amended the EFTA to provide protections for senders of "remittance transfers," which are defined to include any electronic transfer of funds from a consumer in the U.S. to a recipient located in a foreign country regardless of whether the transfer is technically an "electronic fund transfer" under the EFTA. These consumer protections include disclosure requirements regarding the amount that the recipient will receive, the fees charged for the remittance transfer, the exchange rate (if the recipient is to receive funds in a different currency), and the promised delivery date; section 1073 also provides procedures for the resolution of disputes. Rules implementing section 1073 have been adopted by the Consumer Financial Protection Bureau (CFPB) and take effect in February 2013. The effect of section 1073 was to include in the EFT Act a certain class of funds transfers.

Faced with this legal uncertainty, the Board of Governors of the Federal Reserve System has adopted an amendment to its Regulation J, which governs funds transfers by the Federal Reserve Banks to clarify that "Regulation J continues to apply to a Fedwire funds transfer even if the funds transfer also meets the definition of 'remittance transfer under the EFTA'" While this works for Fedwire, private-sector systems do not have the ability to issue federal regulations that have the effect of overriding conflicting provisions of state law. Thus, private-sector systems are left in the position of having to process some payments for when it is not clear which legal principles apply.

According to the Federal Reserve:

Prior to the adoption of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the exclusion from Regulation J and Article 4A of transactions governed by the EFTA did not create any gaps or overlap because the EFTA was excluded from the definition of "electronic fund transfer" wire transfers over systems that are not designed primarily for consumer transfers (such as Fedwire).

The Dodd-Frank Act, however, added new Section 919 to the EFTA, which defines "remittance transfer" to include an electronic transfer of funds requested by a U.S. consumer sender through a remittance transfer provider, whether or not the remittance transfer is also an electronic fund transfer as defined in the EFTA. Therefore, a Fedwire funds transfer could potentially be part of a remittance transfer under the new section 919 of the EFTA. Consequently, under Regulation J's current scope provision (Sec. 210.25(b)(3)), Fedwire funds transfers that meet the EFTA's definition of "remittance transfer" could be viewed as "governed by" the EFTA and therefore not governed by Regulation J.

To avoid a gap in coverage for Fedwire funds transfers, the Board proposed to amend Sec. 210.25 of Regulation J to clarify that Regulation J continues to apply to "remittance transfers" as defined by the EFTA, to the extent there is not an inconsistency between Regulation J and section 919 of the EFTA (in which case section 919 would prevail). The proposed clarification was intended to ensure that the provisions of Regulation J, and therefore Article 4A of the UCC, apply to all Fedwire funds transfers, except to the extent that section 919 of the EFTA and rules established thereunder apply.

The CFPB is very aware of this problem and understands that there is no conflict between the consumer-protection provisions of section 1073 and the interbank-liability rules of Article 4A. Nevertheless, it declined to issue a rule that would have adopted Article 4A to govern the aspects of remittance transfers that do not affect consumers while incorporating the consumer-protection provision of section 1073; the CFPB stated:

The Bureau recognizes that one consequence of covering remittance transfers under the EFTA could be legal uncertainty under the UCC for certain remittance transfer providers. Specifically, to the extent that providers of international wire transfers were previously able to rely on UCC Article 4A's rules governing the rights and responsibilities among the parties to a wire transfer, they may no longer be able to do so. However, given the factors discussed above, the Bureau believes that the best mechanisms for resolving this uncertainty rests with the states, which can amend their respective versions of UCC Article 4A, with the purveyors of rules applicable to specific wire transfer systems, which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts.

Importantly, the consumer protections afforded under section 1073 of the Dodd-Frank Act would not be impaired by this bill. The consumer who sends a remittance transfer would still have the full set of protections with respect to the institution directly providing the remittance-transfer service. This bill would simply be analogous to the recently amended Federal Reserve Regulation J providing the same legal protections to users and operators of private-sector funds-transfer systems.

REGISTERED SUPPORT / OPPOSITION:

Support

California Bankers Association (CBA) - Sponsor

Opposition

None on file.

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