

Regular Session, 2014

HOUSE BILL NO. 611

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

1 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
11 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.

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

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

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

23 Example 3. A consumer originates a payment order from the consumer's
24 account at Bank A to the designated recipient's account at Bank B located outside the
25 United States. Bank A uses the CHIPS system to execute that payment order. The
26 funds transfer is a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1. This
27 transfer is not an electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7)
28 because of the exclusion for such types of transfers in 15 U.S.C. Sec. 1693a(7)(B),
29 but qualifies as a funds transfer as defined in Section 4A-104. Under Sections
30 4A-102 and 4A-108(b), both Article 4A and EFTA apply to the funds transfer. The
31 EFTA will prevail to the extent of any inconsistency between EFTA and Article 4A.
32 Section 4A-108(c). For example, suppose the consumer subsequently exercised the
33 right to cancel the remittance transfer under the right given under EFTA and obtain
34 a refund. Bank A would be required to comply with the EFTA rule concerning
35 cancellation even if Article 4A prevents Bank A from cancelling or reversing its
36 payment order it sent to its receiving bank. Section 4A-211.

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

43 Example 5. A person fraudulently originates an unauthorized payment order
44 from a consumer's account at Bank A through forging written documents that are
45 provided in person to an employee of Bank A. This funds transfer is not an
46 electronic fund transfer as defined in 15 U.S.C. Sec. 1693a(7) because the fund
47 transfer from the consumer's account is not initiated by electronic means, but the
48 funds transfer qualifies as a funds transfer as defined in Section 4A-104. Article 4A
49 will apply to this funds transfer regardless of whether the funds transfer also qualifies
50 as a remittance transfer under 15 U.S.C. Sec. 1693o-1. If the funds transfer is not a
51 remittance transfer, the provisions of Section 4A-108 are not implicated because the
52 funds transfer does not fall under EFTA, and the general scope provision of Article
53 4A governs. Section 4A-102. If the funds transfer is a remittance transfer, and thus

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

5 3. Regulation J, 12 C.F.R. Part 210, of the Federal Reserve Board addresses
 6 the application of that regulation and EFTA to fund transfers made through Fedwire.
 7 Fedwire transfers are further described in Official Comments 1 and 2 to Section
 8 4A-107. In addition, funds transfer system rules may be applicable pursuant to
 9 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.

Present law (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.).

Proposed law retains present law 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. 1693o-1), unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a).

Present federal law (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.

Present federal law (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.

Present federal law (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)