

ACT No. 520

Regular Session, 2014

HOUSE BILL NO. 611

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ACT

To amend and reenact R.S. 10:4A-108, relative to the electronic transfer of funds; to provide for the applicability of Chapter 4A of Title 10 of the Louisiana Revised Statutes of 1950 to a funds transfer that is a remittance transfer as defined in the federal Electronic Fund Transfer Act; to provide for a solution to an inconsistency between an applicable provision of Louisiana law and an applicable provision of the federal Electronic Fund Transfer Act; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 10:4A-108 is hereby amended and reenacted to read as follows:

~~§4A-108. Exclusion of consumer transactions governed by federal law~~ Relationship to the federal Electronic Fund Transfer Act

(a) Except as provided in Subsection (b) of this Section, this Chapter ~~This Chapter~~ does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

(b) This Chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a) as amended from time to time.

(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.

1 Uniform Commercial Code Comment - 2014 Revision

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

16 1. The Electronic Fund Transfer Act (EFTA), implemented by Regulation
17 E, 12 C.F.R. Part 1005, is a federal statute that covers aspects of electronic fund
18 transfers involving consumers. EFTA also governs remittance transfers, defined in
19 15 U.S.C. Sec. 1693o-1, which involve transfers of funds through electronic means
20 by consumers to recipients in another country through persons or financial
21 institutions that provide such transfers in the normal course of their business. Not all
22 "remittance transfers" as defined in EFTA, however, qualify as "electronic fund
23 transfers" as defined under the EFTA, 15 U.S.C. Sec. 1693a(7). While Section
24 4A-108(a) broadly states that Article 4A does not apply to any funds transfer that is
25 governed in any part by EFTA, Subsection (b) provides an exception. The purpose
26 of Section 4A-108(b) is to allow this Article to apply to a funds transfer as defined
27 in Section 4A-104(a) (see Section 4A-102) that also is a remittance transfer as
28 defined in EFTA, so long as that remittance transfer is not an electronic fund transfer
29 as defined in EFTA. If the resulting application of this Article to an EFTA-defined
30 "remittance transfer" that is not an EFTA-defined "electronic fund transfer" creates
31 an inconsistency between an applicable provision of this Article and an applicable
32 provision of EFTA, as a matter of federal supremacy, the provision of EFTA governs
33 to the extent of the inconsistency. Section 4A-108(c). Of course, applicable choice
34 of law principles or enforceable choice of law provisions in an applicable agreement
35 will also affect whether Article 4A will apply to all or part of any funds transfer,
36 including a remittance transfer. See Section 4A-507. The following examples
37 assume that choice of law principles or an enforceable choice of law provision will
38 lead a court to examine the applicability of Article 4A to the funds transfer.

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

41 Example 1. A commercial customer of Bank A sends a payment order to
42 Bank A, instructing Bank A to transfer funds from its account at Bank A to the
43 account of a consumer at Bank B. The funds transfer is executed by a payment order
44 from Bank A to an intermediary bank and is executed by the intermediary bank by
45 means of a clearinghouse credit entry to the consumer's account at Bank B (the
46 beneficiary's bank). The transfer into the consumer's account is an electronic fund
47 transfer as defined in 15 U.S.C. Sec. 1693a(7). Pursuant to Section 4A-108(a),
48 Article 4A does not apply to any part of the funds transfer because EFTA governs
49 part of the funds transfer. The funds transfer is not a remittance transfer as defined
50 in 15 U.S.C. Sec. 1693o-1 because the originator is not a consumer customer. Thus
51 Section 4A-108(b) does not apply.

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____