

White Paper in support of the proposed amendment to UCC Section 670.108.

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Three years ago, the National Conference of Commissioners on Uniform State Laws proposed an amendment to Section 4A-108 of the UCC. Chapter 4A of the Uniform Commercial Code is codified in Florida as Chapter 670, Fla. Stat. This amendment is essentially a clarification, and is not controversial. It has been adopted by a majority of the States. The Business Law Section of the Florida Bar now recommends that the Florida legislature adopt this amendment to Section 670.108, Fla. Stat.

Chapter 670 regulates certain Funds Transfers, which are defined as a series of transactions that begin with the originator's payment order made for the purpose of making payment to the beneficiary of the order. Chapter 670 applies to payment orders, defined as an unconditional instruction to a bank to pay or to cause another bank to pay a fixed amount to a beneficiary. There are countless other types of electronic transfers of funds currently employed in modern commerce, such as point-of-sale debits, credit card charges, preauthorized withdrawals from bank accounts, and the like, that do not fall within the scope of Chapter 670, primarily because they are not initiated by a payment order to a bank. Understanding the thrust of the proposed amendment requires reference to another statutory regime, the Electronic Fund Transfer Act (EFTA), implemented by Reg. E, 12 C.F.R. Part 1005. This is a federal statute that was part of the Federal Consumer Credit Protection Act of 1978, providing protection for consumers that are parties to an electronic fund transfer, defined as one that is initiated [electronically] so as to instruct or authorize a financial institution to debit or credit a [consumer] account. 15 U.S.C. Sec. 1693a(7). It is frequently the case that funds transfers that fall within the scope of Chapter 670 will also fall either wholly or partially within the scope of the EFTA because the transfer is intended to credit a consumer's account in a financial institution. In these cases, due to the supremacy of federal law, to the extent that there is any conflict between the provisions of Chapter 670 and the EFTA, the EFTA will control. As currently enacted, Section 670.108, says exactly that.

The proposed amendment to section 670.108 is intended to resolve the confusion that has arisen as to the treatment of a specialized type of electronic funds transfer known as a remittance transfer. These are defined in the EFTA as a transfer of funds requested by a consumer/sender to a designated recipient that is initiated by a remittance transfer provider, which is defined as a person or financial institution that provides this service for a consumer in the normal course of its business, 15 U.S.C. Sec. 1693o-1. Typically, these transfers are made to recipients in another country. Although "remittance transfer" is defined in the EFTA, not all remittance transfers meet the definition of a funds transfer under the EFTA. This could occur, for example, if the transfer permits payment in cash and does not instruct or authorize a

financial institution to credit a consumer account in a financial institution. To eliminate confusion, the purpose of new subsection 670.108(b) is to make clear that Chapter 4A applies to remittance transfers that do not fall within the scope of the EFTA. Of course, if Chapter 4A and the EFTA are inconsistent in whole or in part, new subsection 670.108(c) provides that the EFTA governs to the extent of the inconsistency.¹

¹ The Uniform Law Commissioners described the purpose of the amendment of Section 108(c) as follows:

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.