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BILL ANALYSIS

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Senate Bill 550 (as passed by the Senate)
Sponsor: Senator Darwin L. Booher
Committee: Banking and Financial Institutions

Date Completed: 11-26-13

RATIONALE

Article 4A of the Uniform Commercial Code governs funds transfers. In general, a funds transfer is a series of transactions by which funds are transferred from the bank account of one party, upon that party's payment order, to the bank account of another person, who is the beneficiary of the order. According to the National Conference of Commissioners on Uniform State Laws (the Uniform Law Commission, or ULC), Article 4A originally was drafted to govern transactions between commercial parties. Article 4A does not apply to a funds transfer if any part of it is governed by the Electronic Fund Transfer Act (EFTA), a Federal law that originally applied only to consumer wire transfers. As a result of an amendment under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the EFTA also governs "remittance transfers". Remittance transfers involve the transfer of funds through electronic means by consumers to recipients in another country through persons or financial institutions that provide such transfers in the normal course of their business. Federal regulations implementing the amendment went into effect in February 2013.

Since the EFTA applies to remittance transfers whether or not they are also electronic fund transfers, and Article 4A does not apply to fund transfers that are governed by the EFTA, a remittance transfer will be outside the scope of Article 4A, even if the remittance transfer is not an electronic fund transfer. To address this situation, the ULC recommended that Article 4A should be extended to remittance transfers. It has been suggested that Michigan adopt this recommendation.

CONTENT

The bill would amend Article 4A of the Uniform Commercial Code to apply it to a remittance transfer, and provide that if there were an inconsistency between the article and an applicable provision of the Electronic Fund Transfer Act, the Act would govern.

Article 4A states that it does not apply to a funds transfer that is governed by the EFTA. The bill would make an exception to this. Under the bill, Article 4A would apply to a funds transfer that was a remittance transfer, unless the remittance transfer was an electronic fund transfer as defined in the EFTA.

"Remittance transfer" would mean that term as defined under the EFTA, i.e., an 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.

"Electronic fund transfer" also would mean that term as defined under the EFTA; i.e., 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. The term includes, but is not limited to, point-of-sale transfers, ATM transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

In a funds transfer subject to Article 4A, if there were an inconsistency between Article 4A and the EFTA, the provisions of EFTA would govern to the extent of the inconsistency.

MCL 440.4608

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Commonly referred to as "international wires", "international money transfers", and "remittances", remittance transfers are used by many immigrants to send money to family in their home countries. Since no rules under the UCC govern these transactions, there is no method for allocating loss. Without the enactment of the amendment, there will be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries, or other issues beyond the initial sending of the transfers, according to the ULC. By including remittance transfers in Article 4A, the bill would offer protection to people who engage in these transactions.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton