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TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Wednesday, January 30, 2013
2:00 p.m.

TESTIMONY ON H.B. NO. 135
RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 4A

THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR;
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying in support of H.B. No. 135, Relating to the Uniform Commercial Code Article 4A, on behalf of the Department of Commerce and Consumer Affairs ("DCCA" or the "Department").

This bill seeks to clarify the relationship between UCC Article 4A and the federal Electronic Fund Transfer Act (the "EFTA") and confirms Article 4A's applicability to remittance transfers under the EFTA.

The enactment of Section 1073 under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") caused some difficulties about the way that Uniform Commercial Code ("UCC") Article 4A applied to wire transfers. Prior to Dodd-Frank, Article 4A stated that a payment was not a wire transfer subject to Article 4A if any part of that payment was subject to the Electronic Funds Transfer Act (EFTA). Also before Dodd-Frank, EFTA stated that a consumer payment made by means of a wire transfer system was not an electronic funds transfer subject to the EFTA and Regulation E.

Section 1073 disrupted this delineation of what EFTA covered and what Article 4A covered. Section 1073 brought consumer-initiated international wire transfers under the coverage of the EFTA, as amended by Dodd-Frank. After 1073, an international wire initiated by a consumer in the United States became a "remittance transfer" subject to the amended EFTA, and the legal consequence was that the entire series of bank-to-bank transfers that occur to complete the consumer-initiated wire were also taken out from under the structure of Article 4A. This was an undesirable legal result, because virtually all of the agreements among U.S. banks for handling international wire transfers assumed that the rights and obligations of the banks with respect to those transfers were defined by Article 4A.

Recognizing the uncertainty around which laws now govern the rights and responsibilities for the interbank piece of the remittance transfer, the industry and regulators have worked to provide fixes in Regulation J (which governs FedWire transfers)

and the Clearing House Interbank Payments System(or CHIPS) rules. The fixes allow UCC 4A to continue to apply regardless of whether a funds transfer is also a remittance transfer governed by Section 919 of EFTA. The Bank Secrecy Act rules have a similar definitional cross-reference issue as Regulation J, CHIPS rules, and UCC 4A. The issue does not currently have a fix in place but is under review by the Federal Reserve and the U.S. Department of the Treasury's Financial Crimes Enforcement Network (or FinCEN).

The EFTA and amended Regulation E cover “electronic fund transfers,” an electronic payment initiated by or on behalf of a consumer to debit or credit a consumer’s account. Generally, UCC Article 4A governs “funds transfers,” such as a wholesale wire transfer originated on behalf of a business enterprise. Article 4A governs the rights and responsibilities among commercial parties to a wire transfer, including payment obligations among the parties and allocation of risk of loss.

The UCC Article 4A provides that the provisions do not apply to a funds transfer any part of which is governed by the EFTA. By virtue of UCC 4A, funds transfers governed by the EFTA and funds transfers governed by UCC 4A are clearly separated by this statutory divide.

Thus, Section 1073 changes current law. If UCC 4A remains unchanged, effective February 7, 2013, the effect of current UCC 4A is to make funds transfers that are remittance transfers (but not electronic fund transfers) fall outside the coverage of UCC 4A, leaving the rights and responsibilities among providers of international funds transfers,

such as international wire transfers, unregulated by UCC 4A. The amendment to UCC 4A under H.B. 135 makes such remittance transfers subject to UCC 4A as long as the transfers do not fall within the definition of an electronic fund transfer and such coverage is not inconsistent with the EFTA.

In summary, H.B. 135 would recognize the division between the EFTA and UCC 4A. Therefore, the rights and responsibilities among providers of international funds transfers, including international wire transfers, would continue to be regulated by UCC 4A. Further, the consumer's rights and protections afforded under the EFTA and Regulation E to such remittance transfers would continue to be available to consumers, as the EFTA will be the governing law as between the consumer sender and the remittance transfer provider.

Thank you for the opportunity to provide this testimony. I would be pleased to respond to any questions you may have.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

ON H.B. NO. 135

RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 4A.

**BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION &
COMMERCE.**

DATE: Wednesday, January 30, 2013, at 2:00 p.m.
Conference Room 325, State Capitol

PERSON(S) TESTIFYING: PETER J. HAMASAKI, Commissioner
Commission to Promote Uniform Legislation

To Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Peter Hamasaki and I am testifying on behalf of the Commission to Promote Uniform Legislation, which supports passage of the H. B. No. 135, Relating to **UNIFORM COMMERCIAL CODE ARTICLE 4A.**

Article 4A of the Uniform Commercial Code (HRS chapter 490:4A) was originally drafted to govern transfers between commercial parties. At the time that UCC Article 4A was drafted, the federal Electronic Funds Transfer Act (“EFTA”) governed only consumer wire transfers. UCC §4A-108 was drafted based EFTA’s original scope and excludes any funds transfer governed in any part by EFTA.

However, effective in February 2013, amendments to the EFTA made by the Dodd-Frank Wall Street Reform and Consumer Protection Act will cause EFTA to govern a broader category of “remittance transfers” even if they are not electronic funds transfer under EFTA. As a result, under UCC §4A-108 as currently drafted, certain types of remittance transfer will not be subject to UCC Article 4A, nor to the rules applicable to electronic funds transfers under EFTA. Thus, there will be a gap in governing law for these types of remittance transfers.

The proposed amendment revises UCC §4A-108 to provide that UCC Article 4A will 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

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House CPC on 1/30/2013

conflict between UCC Article 4A and the EFTA. Thus, the gap between UCC Article 4A and EFTA that otherwise would have occurred will be closed.

The federal regulations implementing the amendments to EFTA specifically delayed implementation until February 2013, to allow amendments to UCC Article 4A.

We respectfully urge adoption of H.B. No. 135 to amend UCC Article 4A in light of the amendments to the EFTA.