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**TO THE**  
**HOUSE COMMITTEE ON**  
**CONSUMER PROTECTION AND COMMERCE**

**THE TWENTY-SEVENTH STATE LEGISLATURE**  
**REGULAR SESSION OF 2013**

Thursday, March 14, 2013  
5:30 p.m.

**TESTIMONY ON S.B. NO. 511**  
**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 S.B. No. 511, Relating to 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 Section 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

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to UCC 4A under S.B. No. 511 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, S.B. No. 511 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 in support of this measure. I would be pleased to respond to any questions you may have.

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

**ON S.B. NO. 511**

**RELATING TO UNIFORM COMMERCIAL CODE ARTICLE 4A.**

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

**DATE:** Thursday, March 14, 2013, at 5:30 p.m.  
**LOCATION:** Conference Room 325, State Capitol

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

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To Chair McKelvey 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 S. B. No. 511, Relating to **UNIFORM COMMERCIAL CODE ARTICLE 4A.**

S.B. No. 511 is substantially the same as H.B. No. 135, which was heard and passed by this Committee, as well as H.B. No. 139, H.D.1, which passed the House.

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,” in particular certain international consumer 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 transfers 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.

TESTIMONY of CPUL on S.B. NO. 511  
Relating to Uniform Commercial Code Article 4A  
HOUSE CPC on 3/14/2013

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 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 S.B. No. 511 to amend UCC Article 4A in light of the amendments to the EFTA.

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March 14, 2013

Rep. Angus L.K. McKelvey, Chair  
and members of the House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 511 (Uniform Commercial Code Article 4A)**  
**Hearing Date/Time: Thursday, March 14, 2013, 5:30 p.m.**

I am Marvin Dang, the attorney for the Hawaii Financial Services Association (“HFSA”). The HFSA is a trade association for Hawaii’s consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

## **The HFSA supports this Bill.**

The purpose of this Bill is to clarify the relationship between the Uniform Commercial Code Article 4A and the federal Electronic Fund Transfer Act (“Act”).

The Act and Regulation E issued under the Act cover “electronic fund transfers”, an electronic payment initiated by or on behalf of a consumer to debit or credit a consumer’s account.

UCC Article 4A, entitled Funds Transfers, is in HRS Chapter 490, It governs “funds transfers” such as a wholesale wire transfer originated on behalf of a business enterprise. Article 4A describes the rights and responsibilities of commercial parties to a wire transfer, including payment obligations among the parties and allocation of risk of loss.

Under current law, UCC Article 4A does not apply to a funds transfer if any part of the transfer is governed by the Act. Because of UCC Article 4A-108 (which is HRS Sec. 490:4A-108), funds transfers governed by the Act and funds transfers governed by UCC Article 4A are clearly separated by this statutory firewall.

Section 1073 of the federal Dodd-Frank Act amended the Act to add a new section 919 governing “remittance transfers”. A remittance transfer includes a wire transfer originated by a consumer to send funds to a designated recipient located in a foreign country. The Consumer Financial Protection Bureau implemented section 919 by issuing amendments to Regulation E. On the effective date of these amendments (which is expected to be in the early summer of 2013, see 77 Fed.Reg. 77188, December 31, 2012), a wire transfer sent on a consumer’s behalf that is a remittance transfer will be governed by the Act. As a result, to the extent some funds transfers, such as an international wire transfer originated by a consumer, are remittance transfers under Regulation E, the transfers are governed by the Act, even if they are not “electronic fund transfers”, as defined in the Act.

Section 1073 of the Dodd-Frank Act changed the current law. If HRS Sec. 490:4A-108 remains unchanged, the effect will be to make funds transfers that are remittance transfers (but not

Rep. Angus L.K. McKelvey, Chair  
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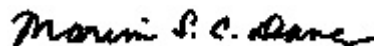
electronic fund transfers) fall outside the coverage of Article 4A. This will leave the rights and responsibilities among providers of international funds transfers, such as international wire transfers, unregulated by Article 4A.

The amendment in this Bill to HRS Sec. 4A-108 makes remittance transfers subject to Article 4A if the transfers do not fall within the definition of an “electronic fund transfer” and if such coverage is not inconsistent with the Act.

This Bill would continue the firewall between the Act and Article 4A. Therefore, the rights and responsibilities among providers of international funds transfers, including international wire transfers, would continue to be regulated by Article 4A. Further, the consumer’s rights and protections afforded under the Act and Regulation E to such remittance transfers would continue to be available to consumers because the Act will be the governing law between the consumer sender and the remittance transfer provider.

For the above reasons we support this Bill.

Thank you for considering our testimony.



MARVIN S.C. DANG  
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)