

**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 FINANCE

DATE: Wednesday, March 27, 2013, at 4:45 p.m.

LOCATION: Conference Room 308, State Capitol

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

To Chair Luke 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 makes substantially the same changes to UCC Article 4A as House Bill No. 139, House Draft 1, which was heard and passed by this Committee.

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 FIN on 3/27/2013

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.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

March 27, 2013

Rep. Sylvia Luke, Chair
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 511 (Uniform Commercial Code Article 4A)**
Hearing Date/Time: Wednesday, March 27, 2013, 4:45 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.

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 considered 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.

Because 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

Rep. Sylvia Luke, Chair
and members of the House Committee on Finance
Senate Bill 511 (Uniform Commercial Code Article 4A)
March 27, 2013
Page 2


transfers (but not 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. The rights and responsibilities among providers of international funds transfers, including international wire transfers, would continue to be regulated by Article 4A. Additionally, the consumer’s rights and protections under the Act and Regulation E for 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)