

2013 HOUSE JUDICIARY

HB 1127

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1127
Job 17219
DATE January 15, 2013

Conference Committee

Cameron Dickle

Explanation or reason for introduction of bill/resolution:

Relating to funds transfers under the Uniform Commercial Code

Minutes:

Testimony 1

Chairman Kim Koppelman: Opened HB 1127.

Vice Chairman Larry Klemin: Written testimony 1. See attached. The idea of this bill is to make sure we don't have conflict between state law versus federal law.

Rep. Ben Hanson: Could you give an example of how this law would take effect in someone's every day in their banking or in their business?

Vice Chairman Larry Klemin: It deals with remittance transfers as I mentioned.

Rep. Ben Hanson: Does Dodd-Frank require the states to comply with the law or is it something that they left out that we wouldn't be uniform with them if we didn't?

Vice Chairman Larry Klemin: We have what call a supremacy clause in both the United States Constitution and the North Dakota Constitution and in federal law. Which essential says in the event of a conflict between state law and federal law that federal law controls. But we have the Uniform Commercial Code which has been adopted in all of the states which sets out how commercial transactions are handled under a great variety of circumstances, only one of which deals with funds transfers. There are some provisions in that federal law and the regulations that are being implemented which could create some uncertainty about what governs in a specific case and that as I mentioned has to do with Commercial remittance transfers.

Chairman Kim Koppelman: Ms. Foss is also in the room and represents the bankers and is very familiar with that industry so she might be able to shed some light on real world examples.

Rep. Roger Brabandt: You mentioned the supremacy clause. There is another clause that is a step below that, is that called primary clause? Supremacy clause is supreme and there is one notch lower.

Vice Chairman Larry Klemin: I am not entirely sure I know the answer to that question.

Marilyn Foss, General Counsel of the North Dakota Bankers Association: Electronic funds transfer, wire transfers, and fund transfers is not my area of expertise. But the Dodd-Frank Act did modify the federal electronic funds transfer act which used to apply only to consume electronic funds transfer. Dodd-Frank added in one of its sections a requirement that all remittance transfers be included within regulations that the Consumer Financial Protection agency had to make for remittance transfers. Which I understand to be transfers of funds that originates in the United States and end up in a foreign country. In the consumer context where that is most commonly occurring is when a person of foreign origin but working in the United States sends money back home. But they can occur in a business transaction as well. What Dodd- Frank did to say, the consumer financial protection Bureau has to enact regulations for remittance transfers. It will apply to remittance transfers whether or not they are electronic funds transfers. The CFPB has engaged in 3 rounds of rulemaking with respect to remittance transfers. The expansion of coverage was that money transmitters are like Western Union they move money around but they not commercial banks. These rounds of regulations got a lot of attention because they have imposed requirements for disclosures. Such as the fees that may be charged by the recipient entity and taxes that may be charged by the foreign jurisdiction. They have sifted liability for mistakes to the originating institution even mistakes that were caused by originator, the person who ordered the transfers. If they gave you the wrong account number as an example. These rules in their current form provide that the originating bank or money transmitters are liable for them. They are doing another round of rulemaking and working on additional exemptions because they seem to now be convinced that the requirements are so burdensome relating to policies. For what CFPB sees as protection, but also money laundering concerns that community banks will be out of this business because they cannot abide by the rules. But they are the rules and we have to follow them. I think there will be additional exemptions, they are narrowing

coverage of the rules that apply to people that only do this in the ordinary course of business. What they are looking is what is the threshold for that? For the purposes of this committee I am informed by my trade association for financial institutions primarily banks and thrifts that CFBP rules did create this gap. There is a class of wire transfers that if we do not make this the change that the Uniform Law Commission has designed will be left out without any federal or state statutory guidance as to the rules that apply to certain commercial transactions. For that reason it is a gap that this legislation will fill and we support filling it.

Chairman Kim Koppelman: If you're a small business in North Dakota, if you're a consumer and engage in one of these kinds of transfers how would this law change your experience? Would it at all or is it strictly how the institutions facility in the transactions would be regulated?

Marilyn Foss: As a practical matter it makes clear that for consumer remittance transfers there isn't an argument over which rules apply it will be the CFPB rules. If you leave our current statute in place there could be some question about that. For the small business which would be a commercial transaction without the legislation there would be a real gap with respect to which rules would apply.

Chairman Kim Koppelman: So maybe no rules at all for those transactions.

Marilyn Foss: Maybe no rules that would apply at all except the whole business is founded on, we know the rules and we know which rules apply.

Vice Chairman Larry Klemin: This does happen in North Dakota. I did have a situation in which I was representing a business in ND and they received a wire transfer from China. It was sent to a closing agent here in order for my client to be able to sell something to that Chinese entity. We do have these international wire transfers on a commercial basis here in ND.

Marilyn Foss: The UCC is such a foundational act it's been adopted by all of the states. The Federal Reserve regulations relating to funds transfer do reflect UCC provisions international chamber of commerce. The whole purpose of all of these intermingled statutes is so that we know what the rules of Commerce are. It is better when we know what the rules are. We do support the bill.

Chairman Kim Koppelman: Closed the hearing.

Chairman Kim Koppelman: Reopened later on electronic fund transfer.

Rep. Lois Delmore: moved the amendments to the bill.

Rep. Vicky Steiner: second the motion.

Voice vote for amendments carries.

Rep. Lois Delmore: Moved a do pass recommendation on HB 1127 as amended.

Rep. Diane Larson: Second.

Vice Chairman Larry Klemin: will carry the bill.

13-0-1.

13.0131.01001
Title.02000

Adopted by the Judiciary Committee

January 16, 2013

V/C
1/16/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1127

Page 1, line 2, after "Code" insert "; and to declare an emergency"

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-15-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES HB 1127
BILL/RESOLUTION NO.

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Delmore Seconded By Rep. Steiner

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman | | | Rep. Lois Delmore | | |
| Vice Chairman Lawrence Klemin | | | Rep. Ben Hanson | | |
| Rep. Randy Boehning | | | Rep. Kathy Hogan | | |
| Rep. Roger Brabandt | | | | | |
| Rep. Karen Karls | | | | | |
| Rep. William Kretschmar | | | | | |
| Rep. Diane Larson | | | | | |
| Rep. Andrew Maragos | | | | | |
| Rep. Gary Paur | | | | | |
| Rep. Vicky Steiner | | | | | |
| Rep. Nathan Toman | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote - Passed -

HB 1127

Date: 1-15-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Larson

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman | / | | Rep. Lois Delmore | / | |
| Vice Chairman Lawrence Klemin | / | | Rep. Ben Hanson | / | |
| Rep. Randy Boehning | / | | Rep. Kathy Hogan | / | |
| Rep. Roger Brabandt | / | | | | |
| Rep. Karen Karls | / | | | | |
| Rep. William Kretschmar | / | | | | |
| Rep. Diane Larson | / | | | | |
| Rep. Andrew Maragos | | | | | |
| Rep. Gary Paur | / | | | | |
| Rep. Vicky Steiner | / | | | | |
| Rep. Nathan Toman | / | | | | |
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Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1127: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1127 was placed on the Sixth order on the calendar.

Page 1, line 2, after "Code" insert "; and to declare an emergency"

Page 1, after line 18, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2013 SENATE JUDICIARY

HB 1127

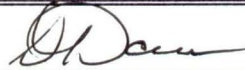
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1127
2/25/2013
Job #19447

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to funds transfers under the Uniform Commercial Code

Senator David Hogue - Chairman

Representative L. Klemin - District 47 - Introduces the bill - See written testimony **(1)**

Marilyn Foss - General Counsel for ND Banker's Association - She explains the remittance funds transfer and the gaps it has. HB1127 is the nationally agreed upon fix. She reads from the DOT Frank Act and says Western Union would be included. She addresses the emergency clause. She says this bill is a critical piece in having ND have contract rules for this as well as the other States.

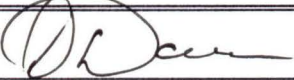
Close hearing on HB1127

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1127
3/18/2013
Job #20110

Conference Committee

Committee Clerk Signature 

Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Sitte moves a do not pass
Senator Armstrong seconded

Discussion

Committee is unsure of this bill and reluctant to pass because they don't understand what it is for exactly. They think it may be for only federal wire transfers over-seas.

Vote - 7 yes, 0 no

Motion passes

Senator Nelson will carry

Date: 3-18-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1127**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|------------------------|-----|----|
| Chariman David Hogue | X | | Senator Carolyn Nelson | X | |
| Vice Chairman Margaret Sitte | X | | Senator John Grabinger | X | |
| Senator Stanley Lyson | X | | | | |
| Senator Spencer Berry | X | | | | |
| Senator Kelly Armstrong | X | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1127, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1127 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1127

/

TESTIMONY OF REP. LAWRENCE R. KLEMIN

HOUSE JUDICIARY COMMITTEE

HOUSE BILL NO. 1127

JANUARY 15, 2013

Mr. Chairman and members of the House Judiciary Committee. I am also a Commissioner serving on the National Uniform Law Commission. I am here to testify in support of House Bill 1127, relating to funds transfers under the Uniform Commercial Code, which is contained in Chapter 41-04.1 of the North Dakota Century Code. This chapter is also referred to as Article 4A of the UCC.

Article 4A governs a specialized method of payment referred to in the Article as a funds transfer, but is also commonly referred to in the commercial banking community as a wholesale wire transfer. A funds transfer is made by means of one or more payment orders in which the person making payment (the originator) directly transmits an instruction to a bank either to make payment to the person receiving payment (the beneficiary) or to instruct some other bank to make payment to the beneficiary. The payment from the originator to the beneficiary occurs when the bank that is to pay the beneficiary becomes obligated to pay the beneficiary.

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 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.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At the time of drafting, the EFTA governed only consumer wire transfers. Section 41-04.1-08 [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 Section 41-04.1-08 [§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.

HB 1127 revises Section 41-04.1-08 [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.

Without enactment of the amendment, neither the federal rule nor UCC 4A will apply to some aspects of remittance transfers. The result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries and other issues beyond the initial sending of the transfer.

I also have an amendment to HB 1127 to add an emergency clause to the bill, so that it will become effective when signed by the Governor and filed with the Secretary of State. Without the emergency clause, it would become effective on August 1, 2013. As I mentioned, the federal rules become effective in February, 2013, so we would like to have the state law also become effective as soon as possible.

1127 (1)
2/25/13

TESTIMONY OF REP. LAWRENCE R. KLEMIN

SENATE JUDICIARY COMMITTEE

HOUSE BILL NO. 1127

FEBRUARY 25, 2013

Mr. Chairman and members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also a Commissioner serving on the Uniform Law Commission. House Bill 1127 relates to certain wire funds transfers under the Uniform Commercial Code contained in Chapter 41-04.1 of the North Dakota Century Code. This chapter is also referred to as Article 4A of the UCC.

The purpose of HB 1127 is to comply with federal regulations of the Consumer Financial Protection Bureau implementing provisions of the federal Electronic Funds Transfer Act for international wire funds transfers from the United States to foreign countries, known as remittance transfers. Remittance transfers include wire transfers to friends, family members, or businesses in foreign countries. The federal regulations were published in the Federal Register in November, 2011, and are expected to become effective in the Spring of 2013. The delayed effective date of the federal regulations is to allow the states to conform state law with respect to these remittance transfers.

Section 1 of HB 1127 revises Section 41-04.1-08 [UCC §4A-108] to provide that state law applies to a remittance transfer, unless the remittance transfer is an electronic funds transfer as defined in the EFTA. If there is any inconsistency between state law and federal law on this subject, then federal law controls. Similar amendments to the UCC are expected to be enacted throughout the states this year in order to maintain consistency with federal law and uniformity among the states.

Attached to my testimony is a detailed explanation of this change to UCC Article 4A from the National Uniform Law Commission.

Section 2 includes an emergency clause, so that the bill will become effective when signed by the Governor and filed with the Secretary of State, rather than on the normal effective date of August 1, 2013. This will allow the state change to become effective closer to the effective date of the federal regulations this Spring.

I encourage the committee to give a favorable recommendation to HB 1127.

2012 Amendment to UCC Article 4A

Need for Prompt Enactment in 2013

Preemptive federal regulations for remittance transfers will become effective in February 2013. The delayed implementation was given to provide NCCUSL and/or interested parties time to make changes that would permit wholesale (commercial) remittance transfers to continue to be covered by UCC 4A. The federal regulation is intended to cover primarily consumer overseas remittances.

The amendment maintains the coverage of UCC 4A for commercial wire transfers, while consumer remittance transfers will be covered by the federal rules. Without enactment of the amendment, neither the federal rule nor UCC 4A will apply to commercial remittance transfers. The result would be no statutory rules for overseas commercial remittance transfers that are typically in large dollar amounts.

The Impact of Federal Law and Regulations

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. The implementing regulations were published in the Federal Register in November 2011, with a delayed effective date of the rules to February 2013. The impact could result in legal uncertainty for a class of transactions currently governed by Article 4A unless Section 4A-108 is amended.

The Permanent Editorial Board for the Uniform Commercial Code has recommended an amendment to §4A-108 and its comments. A bill supported by the N.Y. Clearing House embodying the amendment is proceeding in N.Y., and Federal Reserve Regulation J has been amended for Fedwire to adapt the amendment for that law. 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 Electronic Funds Transfer Act governed consumer wire transfers. UCC §4A-108 was drafted to read that if any part of a funds transfers was subject to the federal act, that it would not be subject to Article 4A. When the amendment to EFTA goes into effect 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, so that 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.