Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 522 (Senator Feldman)
Finance Economic Matters

Commercial Law - Maryland Uniform Commercial Code - Funds Transfers

This bill alters the applicability of provisions of the Maryland Uniform Commercial Code (UCC) governing funds transfers. The bill requires the provisions to apply to a remittance transfer as defined in the federal Electronic Fund Transfer Act (EFTA) unless the remittance transfer is an electronic fund transfer as defined in the EFTA. To the extent the applicable UCC provisions governing funds transfers are inconsistent with the federal EFTA, the federal law governs.

Fiscal Summary

State Effect: None. The bill codifies existing practice.

Local Effect: None. The bill pertains to State law.

Small Business Effect: Minimal.

Analysis

Current Law:

Maryland Uniform Commercial Code – Funds Transfers

According to the Official Comment, Title 4A of the Commercial Law Article, or the Maryland Uniform Commercial Code – Funds Transfers, governs a specialized method of payment, funds transfers, also commonly referred to in the commercial community as a wholesale wire transfer. Section 4A-104 defines "funds transfers" as:

> the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or by an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

Section 4A-108 specifically excludes the applicability of Title 4A to a funds transfer that is governed by the federal EFTA.

Federal Electronic Fund Transfer Act of 1978

Section 1693o-1 of the EFTA defines "remittance transfer" as the "electronic transfer of funds requested by a sender (consumer) located in any state to a designated recipient that is initiated by a remittance transfer provider…whether or not the remittance transfer is also an electronic fund transfer" with a value above a specified amount. The EFTA defines "remittance transfer provider" as "any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution."

Section 1693a defines "electronic transfer" as any transfer of funds, other than specified commercial paper, which is initiated through specified electronic means "so as to order, instruct, or authorize a financial institution to debit or credit an account." The term includes, among other things, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.

Section 1693a provides several exclusions to the definition of electronic transfer, including (1) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account; (2) specified transfers of funds made by a financial institution on behalf of a consumer by means of a service that transfers funds held at depository institutions and which is not designed primarily to transfer funds on behalf of a consumer; (3) any transaction the primary purpose of which is the purpose or sale of securities or commodities through a broker; and (4) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated.

Background: According to the National Conference of Commissioners on Uniform State Laws (NCCUSL), Title 4A was drafted to only govern transfers between two commercial parties. The federal EFTA was originally drafted to protect individual consumers engaging in wire transfers.

The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFTA to apply to "remittance transfers." According to the federal Bureau of Consumer Final Protection, this raises certain issues with respect to traditional cash-based remittance transfers sent through money transmitters, which have not previously been covered by the EFTA, as well as international wire transfers, which are not electronic fund transfers.

NCCUSL has recommended that states consider legislation to amend Title 4A to assure that Title 4A continues to cover commercial wire transfers (including wholesale remittance transfers), while consumer remittance transfers are covered on the federal level. According to NCCUSL, without amendments, Title 4A may not apply to some aspects of remittance transfers and no statutory rules for such transfers may apply to mistaken addresses or payees, duties of intermediaries, and other issues beyond the initial sending of the transfer.

Additional Information

Prior Introductions: None.

Cross File: HB 564 (Delegate Olszewski) - Economic Matters.

Information Source(s): State Department of Assessments and Taxation; Comptroller's Office; Department of Labor, Licensing, and Regulation; Federal Bureau of Consumer Financial Protection; *Federal Register*; Federal Reserve Bank; *Yale & Policy Review*; Cornell University Law School; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2014
mam/kdm

Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510