

HOUSE BILL REPORT

HB 1115

As Reported by House Committee On:
Judiciary

Title: An act relating to the Uniform Commercial code.

Brief Description: Concerning the Uniform Commercial code.

Sponsors: Representatives Pedersen and Rodne; by request of Uniform Laws Commission.

Brief History:

Committee Activity:

Judiciary: 1/23/13, 1/29/13 [DPS].

Brief Summary of Substitute Bill

- Amends Article 4A of the Uniform Commercial Code (UCC) to address the relationship between Article 4A and the federal Electronic Fund Transfer Act with respect to remittance transfers, and to correct drafting errors and inconsistencies with the uniform act.
- Amends provisions of UCC Article 9A relating to how to identify an individual debtor on a financing statement.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall and Shea.

Staff: Edie Adams (786-7180).

Background:

The Uniform Commercial Code (UCC), organized into 11 articles, is a model code drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for the purpose of providing a consistent and integrated framework of rules to deal with commercial transactions. All 50 states have adopted the UCC.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The UCC Article 4A.

Article 4A of the UCC governs funds transfers. Article 4A establishes the rights and responsibilities of the parties to a funds transfer, including payment obligations among the parties and allocation of risk of loss for unauthorized or improperly executed payment orders. Article 4A was drafted principally to govern funds transfer involving commercial entities.

The federal Electronic Fund Transfer Act (EFTA) provides consumer protections to consumers engaging in electronic funds transfers. The EFTA was amended in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to apply the EFTA to "remittance transfers." Remittance transfers were broadly defined to include transactions that traditionally had not been governed by the EFTA, such as consumer wire transfers. Under the Dodd-Frank Act amendments and implementing regulations (Regulation E), a "remittance transfer" is an electronic transfer of funds requested by a consumer in the United States to a recipient in a foreign country that is made by any person or financial institution that provides consumer remittance transfers in the normal course of business.

The amendments to the EFTA specifically provide that the EFTA governs a remittance transfer, even if the remittance transfer is not an electronic fund transfer under the EFTA. The UCC Article 4A–108 provides that Article 4A does not apply to a funds transfer, any part of which is governed by the EFTA. Under the Dodd-Frank Act amendments, remittance transfers that were formerly covered by the provisions of Article 4A, such as consumer international wire transfers, will no longer be subject to Article 4A due to the operation of 4A-108. Some aspects of these transfers also will not be governed by the EFTA because they are not electronic fund transfers under that act.

The American Law Institute and the NCCUSL recently approved revisions to Article 4A to ensure that Article 4A will apply to a funds transfer that is a remittance transfer, so long as the transfer does not also meet the definition of "electronic fund transfer" under the EFTA.

The UCC Article 9A.

Article 9A of the UCC governs the creation and operation of security interests in various types of personal property and fixtures. Article 9A provides methods of creating and filing a security interest and the manner in which a security interest may be "perfected." Perfection of a security interest is the means by which a secured creditor obtains priority over other creditors who have a security interest in the same collateral. One common method of perfection is by the filing of a financing statement that indicates the debtor, the secured party, and the property subject to the security interest.

Article 9A was revised in 2011 to incorporate the 2010 amendments to Article 9 adopted by the NCCUSL. The 2011 legislation covered a number of topics, including standards regarding the sufficiency of a debtor's name on a financing statement. With respect to how to identify the name of an individual debtor on a financing statement, the NCCUSL provided states with two alternative options, Alternate A and Alternate B.

Washington adopted Alternate B, which provides that, with respect to an individual, the name of the debtor is sufficient if the financing statement provides the individual name of the

debtor, the surname and first personal name of the debtor, or the name of the individual indicated on an unexpired Washington driver's license or identification card. (In contrast, Alternate A requires that an individual debtor be identified by the name on his or her valid driver's license or identification card.)

Summary of Substitute Bill:

The UCC Article 4A.

Article 4A applies to a funds transfer that is a remittance transfer under the EFTA unless the remittance transfer is an electronic fund transfer under the EFTA. The EFTA controls in the case of an inconsistency between an applicable provision of Article 4A and the EFTA.

Various technical corrections are made to Article 4A to correct drafting errors and inconsistencies with the uniform act created when Article 4A was originally enacted. Provisions of Article 4A are renumbered to be consistent with the numbering system used in the uniform act.

The UCC Article 9A.

Article 9A is amended to alter the acceptable methods for indicating the name of a debtor who is an individual on a financing statement. A financing statement sufficiently provides the name of a debtor who is an individual if it provides the name indicated on the individual's valid driver's license or identification card. If the individual does not have a valid driver's license or identification card, the financing statement is sufficient if it provides the individual name of the debtor or the surname and first personal name of the debtor.

With respect to the effectiveness of a recorded mortgage filed as a fixture filing or a financing statement covering as-extracted collateral or timber to be cut, the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor.

Substitute Bill Compared to Original Bill:

The original bill did not contain the amendment to the UCC Article 9A relating to the name that must be used to identify a debtor who is an individual on a financing statement.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill makes a technical fix to clarify application of Article 4A in light of changes to federal law. This is an important change for the banking industry which handles a large number of international funds transfers that are remittance transfers. The bill will ensure that these transactions receive the protection that Article 4A provides in addressing rights and remedies of parties to a funds transfer.

(In support with amendment) The Legislature should amend Article 9A to use Alternate A, which provides a more consistent, reliable, and cost-effective approach for the industry. Alternate A provides certainty as to perfection and priority; whereas Alternate B provides certainty only as to perfection. With Alternate B, the creditor takes a risk that there is a prior filing that would take priority, and this will result in more extensive and more expensive searches. Uncertainty surrounding a debtor's name could lead to multiple filings under different names. Banks that do business across state lines will have to train their staff on two sets of rules. Only five states have passed Alternate B, whereas 24 states have enacted Alternate A. We need uniformity in state laws so that we can use uniform systems across the country.

(Opposed to amendment) The Legislature should stick with Alternate B. There are a number of states that currently are considering adoption of Alternate B. This issue does not come up very often because it applies only to a relatively small group of commercial debtors who are individuals. Alternate A's reliance on the name listed on the debtor's driver's license is problematic because states do not have consistent methods of listing or formatting names on drivers' licenses. In addition, it often is not clear which is the first name and the surname on the license, and sometimes a person's name gets changed, or there is a mistake on the driver's license. Alternate A is too strict a rule to apply to an individual's name because, unlike corporate names, there is no database listing all possible names for individuals.

(Opposed) None.

Persons Testifying: (In support) Anita Ramasastry, Washington Uniform Legislative Commission.

(In support with amendment) Jessica Fortescue, Washington Bankers Association; and Peter Mucklestone, Washington Bankers Association.

(Opposed to amendment) Richard Goldfarb, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.