

Sec.4A-108. Relationship to Electronic Fund Transfer Act.

(a) Except as provided in subsection (b), this Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et. seq.) as amended from time to time.

(b) This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a) as amended from time to time.

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

Official Comment

1. The Electronic Fund Transfer Act (EFTA), implemented by Regulation E, 12 C.F.R. Part 1005, is a federal statute that covers aspects of electronic fund transfers involving consumers. EFTA also governs remittance transfers, defined in 15 U.S.C. Sec. 1693o-1, which involve transfers of funds through electronic means by consumers to recipients in another country through persons or financial institutions that provide such transfers in the normal course of their business. Not all “remittance transfers” as defined in EFTA, however, qualify as “electronic fund transfers” as defined under the EFTA, 15 U.S.C. Sec. 1693a(7). While Section 4A-108(a) broadly states that Article 4A does not apply to any funds transfer that is governed in any part by EFTA, subsection (b) provides an exception. The purpose of Section 4A-108(b) is to allow this Article to apply to a funds transfer as defined in Section 4A-104(a) (see Section 4A-102) that also is a remittance transfer as defined in EFTA, so long as that remittance transfer is not an electronic fund transfer as defined in EFTA. If the resulting application of this Article to an EFTA-defined “remittance transfer” that is not an EFTA-defined “electronic fund transfer” creates an inconsistency between an applicable provision of this Article and an applicable provision of EFTA, then, as a matter of federal supremacy, the provision of EFTA governs to the extent of the inconsistency. Section 4A-108(c). Of course, in the case of a funds transfer that also relates to another jurisdiction, the forum’s conflict of laws principles determine whether it will apply the law in effect in this State (including this Article and EFTA) or the law of another jurisdiction to all or any part of the funds transfer. See Section 4A-507.

2. The following cases illustrate the relationship between EFTA and this Article pursuant to Section 4A-108.

Case #1. A commercial customer of Bank A sends a payment order to Bank A, instructing Bank A to transfer funds from its account at Bank A to the account of a consumer at Bank B. The funds transfer is executed by a payment order from Bank A to an intermediary bank and is executed by the intermediary bank by means of an automated clearinghouse credit entry to the consumer’s account at Bank B (the beneficiary’s bank). The transfer into the consumer’s account is an “electronic fund transfer” as defined in 15 U.S.C. Sec. 1693a(7). Pursuant to Section 4A-108(a), Article 4A does not apply to any part of the funds transfer because EFTA governs part of the funds transfer. The transfer is not a “remittance transfer” as defined in 15

U.S.C. Sec. 1693o-1 because the originator is not a consumer customer. Thus Section 4A-108(b) does not apply.

A court might, however, apply appropriate principles from Article 4A by analogy in analyzing any part of the funds transfer that is not subject to the provisions of EFTA or other law, such as the obligation of the intermediary bank to execute the payment order of the originator's bank (Section 4A-302), or whether the payment order of the commercial customer to Bank A is authorized or verified (Sections 4A-202 and 4A-203).

Case #2. A consumer originates a payment order that is a remittance transfer as defined in 15 U.S.C. Sec. 1693o-1 and provides the remittance transfer provider (Bank A) with cash in the amount of the transfer plus any relevant fees. The funds transfer is routed through an intermediary bank for final credit to the designated recipient's account at Bank B. Bank A's payment order identifies the designated recipient by both name and account number in Bank B, but the name and number provided identify different persons. This remittance transfer is not an "electronic fund transfer" as defined in 15 U.S.C. Sec. 1693a(7) because it is not initiated by electronic means from a consumer's account, but does qualify as a "funds transfer" as defined in Section 4A-104. Both Article 4A and EFTA apply to the funds transfer. Sections 4A-102, 4A-108(a), (b). Article 4A's provision on mistakes in identifying the designated beneficiary, Section 4A-207, would apply as long as not inconsistent with the governing EFTA provisions. See 15 U.S.C. Sec. 1693o-1(d), Section 4A-108(c). See Comment 1 to this Section.

Case #3. A consumer originates a payment order from the consumer's account at Bank A to the designated recipient's account at Bank B located outside the United States. Bank A uses the CHIPS system to execute that payment order. The funds transfer is a "remittance transfer" as defined in 15 U.S.C. Sec. 1693o-1. This transfer is not an "electronic fund transfer" as defined in 15 U.S.C. Sec. 1693a(7) because of the exclusion for transfers through systems such as CHIPS in 15 U.S.C. Sec. 1693a(7)(B), but qualifies as a "funds transfer" as defined in Section 4A-104. Under Sections 4A-102 and 4A-108(b), both Article 4A and EFTA apply to the funds transfer. The EFTA will prevail to the extent of any inconsistency between EFTA and Article 4A. Section 4A-108(c). See Comment 1 to this Section. For example, if the consumer subsequently exercises a right under EFTA to cancel the remittance transfer and obtain a refund, Bank A would be required to comply with the EFTA rule even if Article 4A prevents Bank A from cancelling or reversing the payment order that Bank A sent to its receiving bank. Section 4A-211.

Case #4. A person fraudulently originates an unauthorized payment order from a consumer's account through use of an online banking interface and the payment order is executed using a system that qualifies the transaction as an "electronic fund transfer" under EFTA. The funds transfer that results from execution of the unauthorized payment order is not governed by Article 4A. Section 4A-108(a). Whether the funds transfer also qualifies as a "remittance transfer" under EFTA has no bearing on the application of Article 4A.

Case #5. A person fraudulently originates an unauthorized payment order from a consumer's account at Bank A through forging written documents that are provided in person to an employee of Bank A. This transaction is not an "electronic fund transfer" as defined in 15 U.S.C. Sec. 1693a(7) because it was not initiated by electronic means, but qualifies as a "funds transfer" as defined in Section 4A-104. Article 4A applies regardless of whether the funds transfer also qualifies as a "remittance transfer" under 15 U.S.C. Sec. 1693o-1. If the funds transfer is not a remittance transfer, the provisions of Section 4A-108 are not implicated because the funds transfer does not fall under EFTA, and the general scope provision of Article 4A governs. Section 4A-102. If the funds transfer is a remittance transfer, and thus governed by EFTA,

Section 4A-108(b) provides that Article 4A also applies. The provisions of Article 4A allocate the loss arising from the unauthorized payment order as long as those provisions are not inconsistent with the provisions of the EFTA applicable to remittance transfers. See 15 U.S.C. Sec. 1693o-1, Section 4A-108(c). See Comment 1 to this Section.

3. Regulation J, 12 C.F.R. Part 210, of the Federal Reserve Board addresses the application of that regulation and EFTA to fund transfers made through Fedwire. Fedwire transfers are further described in Official Comments 1 and 2 to Section 4A-107. In addition, funds transfer system rules may be applicable pursuant to Section 4A-501.

Legislative Note

The reference to EFTA “as amended from time to time” means that the operation of this section at any particular time after enactment may depend on federal legislative action occurring after enactment. In states in which such an arrangement may constitute improper delegation, the language “as amended from time to time” may be deleted. In that case, however, the legislature should consider other mechanisms to assure that this section continues to operate harmoniously with EFTA as it may be subsequently amended.