



February 13, 2013

Re: HB 2590

Chair Doherty and Members of the Committee:

My name is Lane Shetterly. I am an attorney in private practice and a member from Oregon of the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission. I appreciate the opportunity to speak briefly in support of HB 2590, which would amend ORS 74A-1080, and to ask for one amendment.

ORS chapter 74A is Oregon's enactment of Article 4A of the Uniform Commercial Code or UCC, which governs wire transfers, which is to say electronic transfers of a bank balance from a payor to a payee. Oregon first enacted UCC Article 4A in 1991 and it is also the law in all of the rest of the 50 states and the District of Columbia. Nationwide, the statute governs well over a trillion dollars in wire transfers per day.

The section being amended by HB 2590, that is, ORS 74A-1080, deals with the interaction between state and federal law. The state law is UCC Article 4A, and the federal law is the federal Electronic Funds Transfer Act of 1978, or "EFTA". Up until recently, there has been a black-and-white distinction between wire transfers covered by state law on one hand, and federal law on the other. And we see this distinction in the current version of the statute: chapter 74A does not apply to a funds transfer "any part of which" is governed by EFTA. (For example, EFTA generally covers wire transfers that debit or credit a consumer's account, and UCC Article 4A generally covers wire transfers entirely between businesses.)

However, the federal law has recently expanded, so that it now provides some but not all of the rules for a kind of transaction called remittance transfers. (Remittance transfers are carefully defined under the new federal law, but in essence these are wire transfers from the U.S. to overseas, sent through a person in the business of providing such transfers. Some remittance transfers were not previously covered by EFTA, for example because they were originated face-to-face at the transfer business rather than electronically.) Federal law now requires



February 13, 2013

Page 2

disclosure of fees, conversion rates, and similar matters to the sender of a remittance transfer.

Since the federal coverage only provides some of the rules for remittance transfers, such as disclosure, it is important for state law to continue to provide the rest of the rules for remittance transfers. (The important state-law rules include allocating rights and responsibilities among private parties. For example, what if there is a mistake in identifying the recipient of the transfer, so that the name and account number don't match? How careful must the sending bank be in verifying that a wire transfer instruction is genuine?) So, for the first time the distinction between federal and state law should not be black-and-white, and the two bodies of law should peacefully co-exist. HB 2590 accomplishes this peaceful co-existence. You can see that in subsection (2), UCC Article 4A does apply to a remittance transfer. And in subsection (3), since UCC Article 4A and EFTA might both apply (for example, to questions of the right of the sender to cancel the transfer), UCC Article 4A steps out of the way in the event of any conflict between the two.

Without HB 2590, the current exclusion in ORS 74A-1080 for all aspects of all transactions covered by EFTA would suddenly be too broad. HB 2590 makes sure that ORS chapter 74A's rules about allocations of rights and responsibilities will continue to apply to remittance transfers, and also prevents conflicts with the new federal legislation.

One final note: prompt action by this Committee and in the rest of the legislative process would be very helpful. The revised federal law very recently became effective (as of February 7, I believe), so this bill should include an emergency clause, in order to minimize problems of transition as much as possible. In fact, the LC draft of the bill, LC 1515, did include an emergency clause, as you can see from the copy of the LC draft attached to this testimony. I would ask that before the committee moves this bill to the floor you amend it to replace the emergency clause, which was somehow omitted from the printed version of the bill.

Thank you very much for your consideration.


LANE SHETTERLY

D R A F T

SUMMARY

Provides that Uniform Commercial Code governs funds transfer that is remittance transfer, as defined in federal Electronic Fund Transfer Act, unless funds transfer is electronic fund transfer.

Provides that if provisions of Uniform Commercial Code are inconsistent with Electronic Fund Transfer Act, Electronic Fund Transfer Act controls to extent of inconsistency.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to funds transfers subject to Uniform Commercial Code; amending
3 ORS 74A.1080; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 74A.1080 is amended to read:

6 74A.1080. (1) **Except as provided in subsection (2) of this section**, this
7 chapter does not apply to a funds transfer any part of which is governed by
8 the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95.630, 92 Stat. 3728,
9 15 U.S.C. §1693 et seq.).

10 (2) **This chapter applies to a funds transfer that is a remittance**
11 **transfer, as defined in the Electronic Fund Transfer Act, 15 U.S.C.**
12 **1693o-1, unless the remittance transfer is an electronic fund transfer,**
13 **as defined in 15 U.S.C. 1693a.**

14 (3) **In a funds transfer to which this chapter applies, in the event**
15 **of an inconsistency between an applicable provision of this chapter and**
16 **an applicable provision of the Electronic Fund Transfer Act, the pro-**
17 **vision of the Electronic Fund Transfer Act governs to the extent of**
18 **the inconsistency.**

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in boldfaced type.

1 **SECTION 2.** This 2013 Act being necessary for the immediate pres-
2 ervation of the public peace, health and safety, an emergency is de-
3 clared to exist, and this 2013 Act takes effect on its passage.

4