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COMMERCIAL CODE

Bank Deposits and Collections: Provide Regulations Relating to Funds Transfers Between Banks

CODE SECTIONS: O.C.G.A. §§ 11-1-105, 11-3-103, 11-4-104
(amended), 11-4A-101 to -507 (new)

BILL NUMBER: HB 762

ACT NUMBER: 1370

SUMMARY: The Act amends Georgia's Commercial Code to add a new Article 4A, designed to provide a uniform set of rules to govern funds transfers between financial institutions. The addition of Article 4A to Georgia's Commercial Code follows the 1989 completion of the new Article 4A of the Uniform Commercial Code.

EFFECTIVE DATE: July 1, 1992

History

In 1984, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) were commissioned to draft an addition to the existing Article 4 of the Uniform Commercial Code which would comprehensively and uniformly deal with problems encountered between banks in the area of "funds transfers,"¹ also referred to in the commercial setting as "wholesale wire transfers."²

The addition of Article 4A was needed to provide guidance and uniformity in an area which carries potentially large amounts of liability, but in which no comprehensive legal guidelines governing such transactions had been imposed before the adoption of Article 4A.³ One commentator explains:

1. Article 4A of the Uniform Commercial Code expressly coined the term "funds transfers" to refer to wholesale wire transfers. U.C.C. art. 4A (1991). Funds transfers are of two types—"[i]f the instruction is given by the person making the payment, the transfer is commonly referred to as a 'credit transfer.' If the instruction is given by the person receiving payment, the transfer is commonly referred to as a 'debit transfer.'" U.C.C. art. 4A, prefatory note (1991). Article 4A only applies to credit transfers, and does not govern debit transfers. *Id.*

2. Frederick H. Miller, *An Overview of Article 4A*, in ALI-ABA COURSE OF STUDY: THE EMERGED AND EMERGING NEW UNIFORM COMMERCIAL CODE 1, 2 (American Law Institute, 1991). It is estimated that over one trillion dollars is transferred by wholesale wire transfers nearly every day. *Id.* at 1.

3. U.C.C. art. 4A, prefatory note (1991).

[N]o comprehensive rule or law governs the transactions from the customer (originator) through the banks to the payee (beneficiary). Banks certainly try to negotiate a contract with their customers but the major corporate users often refuse to accept the banks' terms. Similarly, corporate users are largely unable to get the banks to accept their proposed terms. As a result, in dollar volume, most transfers are made with no provision for the significant liabilities should something go wrong.⁴

Article 4A was incorporated into the Uniform Commercial Code in 1989 to provide uniform guidance in the area of funds transfers.⁵ In drafting Article 4A, "a deliberate decision was made to write on a clean slate and treat a funds transfer as a unique method of payment to be governed by unique rules that address the particular issues raised by this method of payment."⁶ Further, because "[f]unds transfers involve competing interests—those of the banks that provide funds transfer services and the commercial and financial organizations that use the services, as well as the public interest,"⁷ such "competing interests were represented in the drafting process and . . . were thoroughly considered."⁸ Article 4A "represent[s] a careful and delicate balancing of those interests and [is] intended to be the *exclusive* means of determining the rights, duties and liabilities of the affected parties in any situation covered by the particular provisions of the Article."⁹

As of September 1991, Article 4A had been enacted by the state legislatures of Colorado, Kansas, Minnesota, Oklahoma, Utah, Virginia, West Virginia, Connecticut, California, and New York, and was being considered by the Illinois Legislature.¹⁰ The passage of HB 762 adds Georgia to this list.

4. Miller, *supra* note 2, at 1. Further, the prefatory note to U.C.C. Article 4A points out the state of the law prior to Article 4A:

The resolution of the many issues that are not covered by funds transfer system rules depends on contracts of the parties, to the extent that they exist, or principles of law applicable to other payment mechanisms that might be applied by analogy. The result is a great deal of uncertainty. There is no consensus about the judicial nature of a wire transfer and consequently of the rights and obligations that are created. Article 4A is intended to provide the comprehensive body of law that we do not have today.

U.C.C. art. 4A, prefatory note (1991).

5. Miller, *supra* note 2, at 2.

6. U.C.C. § 4A-102 cmt. (1991).

7. *Id.*

8. *Id.*

9. *Id.* (emphasis added).

10. Miller, *supra* note 2, at 2.

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The Act amends title 11 of the Official Code of Georgia Annotated¹¹ to enact a new Article 4A to govern the practice of funds transfers between financial institutions.¹² In addition, the Act amends certain other provisions of title 11 in order to conform those provisions with the new mandates of Article 4A.¹³

The Act amends Code section 11-1-105 which provides that parties may choose to apply the law of Georgia or the law of another state in a title 11 transaction "when a transaction bears a reasonable relation to [Georgia] and also to another state or nation."¹⁴ That section also provides that the parties may agree to a choice of governing law, unless the subject of the transaction at issue involves any of the title 11 statutory provisions specified in section 11-1-105.¹⁵ Among these specified provisions are rights of creditors regarding sold goods, bank deposits and collections, bulk transfers subject to Article 11, investment securities under Article 11, and perfection provisions relating to secured transactions that fall under Article 11.¹⁶ The Act adds the provision that Article 4A controls, "and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules)."¹⁷

11. Title 11 is Georgia's Commercial Code.

12. O.C.G.A. tit. 11 art. 4A (Supp. 1992). The nature of the transaction that Article 4A is designed to govern is as follows:

Suppose X has an account in Bank A and instructs the bank to pay \$1,000,000 to Y's account in Bank A. Bank A carries out the instruction by crediting \$1,000,000 to Y's account and notifying Y that the credit is available for immediate withdrawal. X's instruction is a payment order in which X is both the originator and sender. Bank A is both the originator's bank and the receiving bank. Y, of course, is the beneficiary, and thus Bank A also is the beneficiary's bank.

When Bank A notified Y of receipt of the payment order, Bank A accepted the payment order. When Bank A accepted the order, it incurred an obligation to pay the amount of the order to Y, and X incurred an obligation to pay Bank A the amount of the order. Payment from X to Bank A is made by a debit to X's account in Bank A, and payment of \$1,000,000 by X to Y occurred at the time Bank A incurred the obligation to pay Y by acceptance of X's order. The overall transaction is the funds transfer.

Frederick H. Miller, *U.C.C. Articles 3, 4, and 4A: A Study in Process and Scope*, 42 *ALA. L. REV.* 405, 427 (1991) (footnotes omitted).

13. See O.C.G.A. §§ 11-1-105, 11-3-103, 11-4-104 (Supp. 1992).

14. *Id.* § 11-1-105 (Supp. 1992).

15. *Id.*

16. *Id.* § 11-1-105(2) (Supp. 1992).

17. *Id.*

The Act amends Code section 11-3-103, which indicates limitations on the scope of Article 3 of title 11,¹⁸ by adding payment orders governed by Article 4A to the list of section 11-3-103 monetary instruments which are not controlled by Article 3.¹⁹

The Act also amends Code section 11-4-104(g), which contains the definition of "item."²⁰ The first version of HB 762 deleted from the definition of item a "stored electronic message unit for the payment of money" and added to the existing definition of item that "a payment order governed by Article 4A or a credit or debit card slip" is not considered an item under section 11-4-104.²¹ A substitute bill from the House Committee on Banks and Banking, however, added back into the definition of item "any stored electronic message unit for the payment of money."²² The committee substitute kept the earlier version's language regarding payment orders under Article 4A and credit or debit slips as non-items.²³ This substituted version was incorporated into the Act as passed and was the only change made to the Act as it passed through the General Assembly.²⁴

18. O.C.G.A. tit. 11, art. 3 relates to negotiable instruments.

19. O.C.G.A. § 11-1-103 previously read: "This article does not apply to money, documents of title, or investment securities." 1962 Ga. Laws 156 (formerly found at O.C.G.A. § 11-1-103 (Supp. 1991)). The new § 11-1-103 created by the Act now reads: "This article does not apply to money, documents of title, to securities governed by Article 8, or to payment orders governed by Article 4A." O.C.G.A. § 11-1-103 (Supp. 1992) (emphasis added).

20. O.C.G.A. § 11-4-104(g) formerly read: "'Item' means any instrument for the payment of money even though it is not negotiable but does not include money; 'item' shall also include any stored electronic message unit for the payment of money." 1962 Ga. Laws 156 (formerly found at O.C.G.A. § 11-4-104(g) (Supp. 1991)).

21. HB 762, as introduced, 1992 Ga. Gen. Assem. The first version of HB 762 contained in its entirety this definition for item: "'Item' means any instrument for the payment of money even though it is not negotiable but does not include money. The term does not include a payment order governed by Article 4A or a credit or debit card slip." *Id.*

22. HB 762 (HCS), 1992 Ga. Gen. Assem.

23. *Id.* Thus, the final definition of item as contained in HB 762 as passed read in its entirety as follows:

'Item' means any instrument for the payment of money even though it is not negotiable but does not include money; 'item' shall also include any stored electronic message unit for the payment of money. The term does not include a payment order governed by Article 4A or a credit or debit card slip.

O.C.G.A. § 11-4-104(g) (Supp. 1992).

24. O.C.G.A. § 11-4-104(g) (Supp. 1992). The reason for the committee substitute's inclusion of payments made by electronically based methods within the Code's definition of item as applied solely to Article 4, thereby keeping such payment methods outside the parameters of Article 4A, was because Article 4A was intended to govern only payments made by wire transfer, and not payments made by other means. The prefatory note to the Uniform Commercial Code explains:

The Act adopts verbatim the Uniform Commercial Code's Article 4A regarding funds transfers by and between financial institutions.²⁵ Part 1 of Article 4A indicates the subject matter of the Article and provides relevant definitions.²⁶ Part 2 addresses issuance and acceptance of payment orders by financial institutions.²⁷ Part 3 deals with the receiving bank's execution of the sending bank's payment order.²⁸ Part 4 details payment and payment obligations of the sender and receiving banks.²⁹ Finally, Part 5 of Article 4A addresses miscellaneous provisions relating to funds transfers, such as the beneficiary bank's right of setoff, rate of interest, and choice of law.³⁰

The legislative intent of the Act was to incorporate the Uniform Commercial Code's uniform treatment of funds transfers into Georgia's Commercial Code so that Georgia financial institutions would be provided with a set of comprehensive legal guidelines governing intrastate, interstate, and international funds transfers.³¹

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There is some resemblance between payments made by wire transfer and payments made by other means such as paper-based checks and credit cards or electronically-based consumer payments, but there are also many differences. Article 4A excludes from its coverage these other payment mechanisms. Article 4A follows a policy of treating the transaction that it covers—a "funds transfer"—as a unique method of payment that is governed by unique principles of law that address the operational and policy issues presented by this kind of payment.

U.C.C. art. 4A, prefatory note (1991).

25. Compare O.C.G.A. §§11-4A-101 to -507 (Supp. 1992) with U.C.C. art. 4A (1991).

26. O.C.G.A. §§ 11-4A-101 to -108 (Supp. 1992).

27. *Id.* §§ 11-4A-201 to -212 (Supp. 1992).

28. *Id.* §§ 11-4A-301 to -305 (Supp. 1992).

29. *Id.* §§ 11-4A-401 to -406 (Supp. 1992).

30. *Id.* §§ 11-4A-501 to -507 (Supp. 1992).

31. Telephone Interview with Rep. Jimmy Floyd, House District No. 154 (July 27, 1992). Indeed, as was the case in the passage of the Uniform Commercial Code's Article 4A, it appears that in Georgia, "the major actors in the field, the corporate users, the banks, and the Fed, agreed that the wire transfer business was ripe for legislative regulation." Robert L. Jordan and Willam D. Warren, Introduction to Symposium: *Revised U.C.C. Articles 3 & 4 and New Article 4A*, 42 ALA. L. REV. 373, 377 (1991).