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Testimony of Thomas J. Welsh

In SUPPORT of HOUSE BILL 6337

AAC the Uniform Commercial Code and
the Electronic Fund Transfer Act

Banks Committee
February 14, 2013

Honorable Chairmen and Members of the Banks Committee:

It is a pleasure to address you today relating to House Bill 6337 “An Act Concerning the Uniform Commercial Code and the Electronic Fund Transfer Act”.

My name is Thomas Welsh. I am an attorney and a principal of the law firm of Brown & Welsh, P.C. in Meriden, Connecticut. I am also the Chair of the Commercial Finance Committee, and a member of the Executive Committee of the Commercial Law and Bankruptcy Section, of the Connecticut Bar Association, in which capacity I am testifying before you today. I am also a member of the American Law Institute, a Fellow of the American College of Commercial Finance Attorneys and am also a member of the Connecticut Law Revision Commission; although I wish to make clear that the Commission has not studied this bill and has taken no position on it.

Article 4A of the Uniform Commercial Code relates to “funds transfers”, meaning a series of transactions beginning with an originator’s payment order to a receiving bank for the purpose of making payment to the beneficiary of the order. These transactions can occur between originating and receiving banks directly or, most often, through a series of intermediary banks. Article 4A provides the uniform state law background underlying these funds transfers – however federal law, most notably Electronic Funds Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et. seq.) (“EFTA”), may apply in certain situations and provide additional rights and remedies.

In deference to federal law supremacy and the consumer protection provisions of EFTA that are not included in Article 4A, Section 4A-108 of the Uniform Commercial Code (enacted in Connecticut as Conn. Gen. Stat. §42a-4-108) was drafted to make clear that Article 4A would not apply to a funds transfer “**any part of which is governed by [EFTA]**” (emphasis added). Unfortunately, as a result of recent amendments to the federal law in the recent Dodd-Frank

legislation, it became clear that some “remittance transfers”¹ otherwise governed by EFTA would be excluded from EFTA². In addition, portions of the transaction (for example an initial payment order by a commercial entity or bank) might not be governed by EFTA while other portions (for example, the deposit of the funds unto a bank account of a consumer) might be governed by EFTA.

This could result in a situation where EFTA would not apply to a portion of a transaction and the ‘blanket’ exclusion in UCC §4A-108 would also make Article 4A not apply –resulting in no governing law. The technical revisions in the proposed Bill are intended by the promulgators of the Uniform Commercial Code³ to address this problem.

The proposed revisions to Conn. Gen. Stat. §4A-108 will allow Article 4A to govern portions of funds transfers that are not governed by EFTA when only a portion of the transaction is governed by the federal law. The provision for supremacy of federal legislation is also preserved in the revised text. While subsection (a) of the proposed bill 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 subsection (b) is to allow this Article to apply to a funds transfer 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. Subsection (c) also makes clear that 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 Article 4A and an applicable provision of EFTA, as a matter of federal supremacy, the provision of EFTA governs to the extent of the inconsistency.

This proposed bill creates a more nuanced approach that assures that every portion of these transactions will have applicable law to govern them in the event of a dispute. A copy of the relatively short NCCUSL revision and comments is attached to this testimony to provide additional examples for your consideration and information.

The adoption of these amendments in Connecticut will make its laws and practice generally conform to that of other states adopting these relatively noncontroversial amendments and will remove any perceived disincentive for consumers and for industry and financiers in Connecticut.

The Connecticut Bar Association Commercial Finance Committee and the Commercial Law and Bankruptcy Section support adoption in Connecticut of this limited technical amendment to Article 4A of the Uniform Commercial Code.

We look forward to your consideration of this Bill and recommend its approval.

¹ Such “remittance transfers” generally 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.

² 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).

³ The National Conference of Commissioners of Uniform State Laws (“NCCUSL”) and the American Law Institute (“ALI”) jointly adopt and amend the UCC and adopted this proposed revision to resolve this problem in 2012.