The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 260

INTRODUCER: Banking and Insurance Committee and Senator Smith and others

SUBJECT: Financial Transactions

DATE: January 19, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Brown	Cibula	JU	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 260 clarifies that ch. 670, F.S., applies to funds transfers that are remittance transfers under the federal Electronic Funds Transfer Act (EFTA), unless the remittance transfer is also an electronic funds transfer under the EFTA. Current law is silent regarding whether the state Uniform Commercial Code: Funds Transfers law (chapter 670, F.S.) applies to a funds transfer that is a remittance transfer under the federal Electronic Funds Transfer Act. The bill also provides that the federal EFTA will preempt ch. 670, F.S., in the event any inconsistency exists between ch. 670, F.S., and the EFTA regarding a funds transfer.

Funds transfers are generally large, rapid money transfers between commercial entities involving a series of transactions. The rights and obligations of the commercial parties involved in a funds transfer are governed primarily by ch. 670, F.S. (act), which is Florida's codification of the Uniform Commercial Code (UCC) Article 4A. On the other hand, the federal Electronic Funds Transfer Act (EFTA) governs electronic funds transfers initiated through certain electronic means, such as direct deposits and telephone transfers, to authorize a financial institution to debit or credit a consumer's account. Both the act and the EFTA may apply to a transfer, depending on how the transaction is structured. Effective 2013, the EFTA was amended to add consumer protections for transfers of funds sent from U.S. consumers to individuals or businesses in other countries, known as remittance transfers.

Currently, once a borrower fully repays his or her mortgage securing property in Florida, the lender is required to cancel the mortgage within 60 days after payment. This is required

regardless of whether the mortgage is open-end, which allows a borrower to borrow new sums of money on the same loan up to a certain limit. The current cancellation restriction can be burdensome on consumers and lending institutions, as a new line of credit must be established each time the consumer seeks additional access to credit.

This bill also provides that a lender must cancel an open-end mortgage within 45 days after full payment of the mortgage and receipt of the borrower's written notice of intent to close the open-end mortgage. This would allow an open-end mortgage to remain open after the payoff of the mortgage securing the property.

The Florida Consumer Finance Act prohibits and imposes disciplinary action on any person who compensates another person for referring a loan applicant to a licensed consumer finance lender. This bill provides a narrow exception to the prohibition, in instances in which an amount is not charged directly or indirectly to the borrower.

II. Present Situation:

Federal Electronic Funds Transfer Act

In 1978, Congress enacted the federal Electronic Funds Transfers Act (EFTA) to protect individual consumers who are parties to electronic funds transfers.[1] Under the EFTA, an electronic funds transfer means any transfer of funds initiated through certain electronic means that authorize a financial institution to debit or credit a consumer's account.[2] Electronic funds transfers include:
- Transfers through automated teller machines (ATMs);
- Point-of-sale (POS) terminals;
- Automated clearinghouse (ACH) systems;
- Telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- Remote banking programs; and
- Remittance transfers.

However, electronic funds transfers do not include transactions originated by paper instruments, such as checks, and certain other transfers set forth in the EFTA. The EFTA covers topics such as disclosure of fees and limits, error resolution procedures, liability, preauthorized transfers, and receipts.

Uniform Commercial Code Article 4A and Chapter 670, F.S.

In 1989, the Uniform Law Commission adopted Uniform Commercial Code (UCC) Article 4A for the states' enactment, and described it as an essential statutory backdrop to promote uniformity, efficiency, and certainty by governing the rights and obligations among the commercial participants in funds transfers and allocating the risk of loss for unauthorized or improperly executed payment orders. At the time the original UCC Article 4A was drafted, the intent was to govern large, rapid money transfers, such as wire transfers, between the

[1] The EFTA is codified at 15 U.S.C. s. 1693 et seq. The EFTA is implemented in Regulation E at 12 C.F.R. pt. 1005.
[2] 15 U.S.C. s. 1693(7).

commercial parties to a funds transfer, keeping in mind that the primary objective of the EFTA is the provision of individual consumer rights.[3]

A majority of the states have adopted UCC Article 4A. In 1991, the Florida Legislature adopted the UCC Article 4A through the enactment of ch. 670, F.S. (act), relating to funds transfers.[4] The act defines "funds transfers" as a series of transactions that begin with the originator's payment order (an unconditional instruction to a bank to pay a fixed amount), made for making payment to the beneficiary of the order.[5] The funds transfer transaction includes the relationship between intermediary banks that execute and settle the payment order, and concludes upon the ultimate, actual payment to the beneficiary.

Frequently, the EFTA may partially apply to a funds transfer because the transfer is intended to credit a consumer's account in a financial institution. In these cases, the act does not apply to the funds transfer to the extent it is governed and preempted by the EFTA.[6]

Remittance Transfers

Consumers transfer tens of billions of dollars from the United States each year.[7] In the United States, remittance transfers sent by nondepository money transmitters, depository institutions, and credit unions are generally subject to federal anti-money laundering laws and restrictions on transfers to or from certain persons. Although remittances can be sent through depository institutions (such as an ACH transaction or a wire transfer), a large number of U.S. remittance transfers are sent through money transmitters, which are regulated primarily by state regulators. Chapter 560, F.S., governs nondepository money services businesses, which include "money transmitters" who receive and transmit currency or monetary value through a broad range of means within the U.S. or to or from the U.S.[8] However, ch. 560, F.S., is a regulatory statute administered by the Office of Financial Regulation and does not contain specific consumer protections or private remedies.[9]

On the federal level, wire transfers and transfers sent by money transmitters have generally fallen outside of the scope of the EFTA and its implementing rule, Regulation E. Until 2010, no federal consumer protection law directly regulated foreign remittance transfers, which can be sent through depository institutions as well as money transmitters. In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act[10] was signed into law. Among many changes, Dodd-Frank amended the EFTA to create new compliance requirements for remittance

[3] 15 U.S.C. s.1693(b). *See also* Uniform Law Commission, *Why States Should Adopt UCC Article 4A*, at http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UCC%20Article%204A

[4] Ch. 91-70, Laws of Fla.

[5] Sections 670.103(1)(c) and 670.104(1), F.S.

[6] Section 670.108, F.S., Business Law Section of the Florida Bar, *White Paper in Support of the Proposed Amendment to UCC Section 670.108* (on file with the Senate Committee on Judiciary).

[7] 77 FR 6194 (Feb. 11, 2012).

[8] Section 560.103(23), F.S.

[9] Ch. 560, F.S., requires money transmitter licensees to maintain a corporate surety bond or a collateral deposit to ensure a source of recovery for aggrieved claimants. Section 560.209, F.S.

[10] Pub. L. 111-203, H.R. 4173, commonly referred to as "Dodd-Frank."

transfers.[11] The rule defines a "remittance transfer" to mean the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is an electronic fund transfer.[12] Similar to the other consumer protections in the EFTA, these new remittance regulations require certain protections for the sending consumer, including disclosures, error resolution procedures, cancellation and refund policies, and a remittance transfer provider's liability for the acts of its agents.

Under the EFTA, not all remittance transfers qualify as an "electronic funds transfer," raising questions about the applicability of the EFTA. This could occur, for example, if the transfer permits payment in cash and does not instruct nor authorize a financial institution to credit a consumer account in a financial institution. The Uniform Law Commission expressed concern that absent a change to UCC Article 4A, there could be legal uncertainty for some remittance transfers currently governed by Article 4A, particularly for industry participants.[13] The Consumer Financial Protection Bureau, in its proposed remittance transfer rules (Regulation E), also noted the uncertainty raised for traditional cash-based remittances sent through money transmitters (which have not been covered by the EFTA) and international wire transfers, which are not electronic funds transfers.[14]

In 2012, the Uniform Law Commission proposed an amendment to UCC Article 4. A majority of states have adopted this amendment.[15] The amendment provides an affirmative statement of the act's applicability to remittance transfers that are not electronic funds transfers under the EFTA. Without this amendment, neither the federal EFTA nor UCC Article 4A (as codified in the act) will apply to some aspects of remittance transfers, and the result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries, and other issues beyond the initial sending of the transfer.[16]

Cancellation of Mortgages

Under current law, a lender must cancel a mortgage within 60 days after it has been paid in full.[17] The statute does not distinguish as to different types of mortgages, such as open-end mortgages and home equity lines of credit, and does not provide any exceptions. The Florida Statutes do not define the term, "open-end mortgages." In the context of the financial services industry, these

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[11] Section 1073 of Dodd-Frank created Section 919 of the EFTA, relating to remittance transfers. Section 919 is codified at 15 U.S.C. s. 1693o-1. Dodd-Frank transferred EFTA rulemaking authority from the Board of Governors of the Federal Reserve System to the Consumer Financial Protection Bureau (CFPB). The CFPB's remittance transfer rule became effective on October 28, 2013. The CFPB's final remittance transfer rule was codified as new subpart B to Regulation E, 12 C.F.R. ss. 1005.30-1005.36.

[12] 12 CFR s. 1005.30(e).

[13] Uniform Law Commission, *UCC Article 4A Amendments (2012) Summary*, at http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20(2012).

[14] Electronic Fund Transfers (Regulation E), Final Rule and Proposed Rule, 77 FR 6211-6212 (Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005).

[15] Uniform Law Commission, *UCC Article 4A Amendments (2012): Enactment Status Map*, at http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments (2012) (last visited Jan. 7, 2016).

[16] Uniform Law Commission, *supra* note 13.

[17] Section 701.03, F.S.

products generally allow borrowers to draw cash, up to the maximum credit limit, and then as the borrower pays down the balance of the loan, the borrower can draw cash again up to the limit. A home equity line of credit is a form of revolving credit in which the home serves as collateral. In contrast, “closed-end mortgages” disburse the entire loan amount upfront to or on behalf of the borrower and do not allow future redraws of credit.[18]

According to the Florida Bankers Association, open-end lines of credit provide flexibility to consumers by allowing continual access to their home equity by paying the mortgage in full and then having the ability to access the equity when and if it is needed again by the consumer. Under current law, lenders must cancel “any mortgage” upon payoff and must release the lien without exception. This undermines the purpose of open-end mortgages and creates costly and burdensome work for both the consumer and the lender each time the consumer seeks new access to credit secured by the home.[19] Surrounding states such as Alabama, Georgia, Mississippi, and North Carolina have laws requiring that open-end mortgages and similar lines of credit be cancelled only upon the borrower’s full payment and written notice to the lender requesting termination of the open-end mortgage.[20]

Consumer Finance Loans

The Division of Consumer Finance of the Florida Office of Financial Regulation (OFR) is responsible for the licensure and regulation of nondepository financial service entities and individuals. One of the regulatory programs, administered by OFR, is the Florida Consumer Finance Act (act),[21] which sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is permitted in Florida. The act sets forth maximum interest rates for a consumer finance loan, which is a loan of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.[22]

The act provides the grounds for denial of a license of other disciplinary action by the OFR. In particular, s. 516.07(1)(k), F.S, provides that it is grounds for administrative action, for any person to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender.

[18] Consumer Financial Protection Bureau, *Ask CFPB: What is a second mortgage loan or “junior-lien”?* Available at http://www.consumerfinance.gov/askcfpb/105/what-is-a-second-mortgage-loan-or-junior-lien.html Additionally, Regulation Z, which implements the federal Truth in Lending Act, defines “open-end credit” as “consumer credit extended by a credit under a plan in which: (1) The creditor reasonably contemplates repeated transactions; (2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. 12 C.F.R. s. 226.2(20).

[19] E-mail from the Florida Bankers Association, SB 260, Financial Transactions (Sept. 28, 2015) (on file with Senate Committee on Banking and Insurance).

[20] Ala. Code 1975 s. 35-10-26; Ga. Code Ann. s. 44-14-3; Miss. Code Ann. s. 89-5-21; N.C.G.S.A. s. 45-36.9.

[21] Ch. 516, F.S.

[22] Section 516.01(2), F.S.

III. Effect of Proposed Changes:

Electronic Funds Transfers (Section 670.108)

Current law is silent regarding whether the state Uniform Commercial Code: Funds Transfers law (chapter 670, F.S.) applies to a funds transfer that is a remittance transfer under the federal Electronic Funds Transfer Act. This bill adopts the federal Uniform Law Commission's 2012 amendment, which clarifies that the act applies to funds transfers that are remittance transfers as defined in the EFTA, unless the remittance transfer is an electronic funds transfer, which would be covered by EFTA. The bill provides that if there is any inconsistency between a funds transfer under the act and the EFTA, the EFTA will govern the inconsistency. This provision is consistent with language in the EFTA providing that state law is preempted only if it is inconsistent with the EFTA or Regulation E, and then only to the extent of the inconsistency.[23]

Cancellation of Mortgages (Section 701.03, F.S.)

Current law requires a mortgage lender to cancel a mortgage within 60 days after it has been paid in full. Current law treats all types of mortgages the same for purposes of mortgage cancellation. This bill reduces the time period for cancellation of a mortgage from 60 days to 45 days after full payment of the amount due under a promissory note secured by a mortgage. The bill also provides that this section does not apply to any existing or future open-end mortgages, unless otherwise stated in the loan agreement. After satisfaction of an open-end mortgage, it must remain open as provided in the loan agreement, unless the borrower provides written notice of the intent to close the mortgage. Upon receipt of the notice, the mortgagee or assignee shall cancel the mortgage within 45 days.

Consumer Finance Loans (Section 516.07, F.S.)

The Florida Consumer Finance Act prohibits and imposes disciplinary action on any person who pays money or anything of value to a person for referring a loan applicant to a licensed consumer finance lender. This bill provides a narrow exception to the prohibition, in instances in which an amount is not charged directly or indirectly to the borrower.

This bill takes effect July 1, 2016, and applies to remittance transfers initiated on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[23] 15 U.S.C. s. 1693q.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Art. III, s. 6, of the Florida Constitution requires, in part that "Every law shall embrace but one subject and matter properly connected therewith". This constitutional provision is commonly known as the single-subject requirement.

The bill revises the law on electronic fund transfers, the cancellation of mortgages, and activities of licensed consumer finance lenders. Although each of these changes addresses financial transactions, which is the short title of the bill, the bill may appear to address multiple subjects.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's clarification of the coverage of ch. 670, F.S., to remittance transfers may provide greater operational efficiency for remittance transfer providers and intermediary institutions. In addition, the bill's provision to allow an open-end mortgage to remain open after a borrower pays off the amount due under a promissory note secured by a mortgage may reduce administrative costs for lenders and borrowers.

C. Government Sector Impact:

The Department of Financial Services indicates that it does not expect a fiscal impact from the provisions of this bill.[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.07, 670.108, and 701.03.

[24] Letter from Chief Financial Officer Jeff Atwater (Dec. 16, 2015).

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 11, 2015:

The CS:

- Allows a licensed consumer finance lender to pay compensation to any person for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower.
- Requires a lender to cancel a mortgage within 45 days instead of 60 days if certain conditions are met.
- Provides that s. 701.03, F.S., relating to the cancellation of mortgages, does not apply to any existing or future open-end mortgage unless otherwise stated in the loan agreement.
- Clarifies that the act applies to remittance transfers made on or after July 1, 2016, the effective date of the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.