

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 593 Misdescription of Beneficiaries and Banks

SPONSOR(S): Insurance & Banking Subcommittee, Beltran

TIED BILLS: IDEN./SIM. **BILLS:** SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fletcher	Lloyd
2) Commerce Committee			

SUMMARY ANALYSIS

Florida's Uniform Commercial Code (UCC), chs. 670-680, F.S., regulates commercial and secured transactions in the state. Chapter 670, F.S., of the UCC applies to funds transfers. "Funds transfers" refers to the series of transactions, beginning with an originator's payment order, that is made for the purpose of making payment to the beneficiary of the order (i.e., a person or business issuing a payment to another through the payment system of banks).

The UCC currently provides that if the name, bank account number, or other identification of a beneficiary in a payment order refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur at the beneficiary's bank. However, if a payment order received by the beneficiary's bank identifies the beneficiary both by name and an identifying or bank account number and the name and number identify different persons, then certain rules apply.

The UCC also currently provides that if a payment order identifies an intermediary bank or the beneficiary's bank only by an identifying number, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank. However, the sender must compensate the receiving bank for any loss and expense incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order. Certain rules also apply to a payment order that identifies an intermediary bank or the beneficiary's bank both by name and an identifying number, but the name and number identify different persons.

According to the Federal Bureau of Investigation, consumers in America lost more than \$220 million in 2020 from fraudulent schemes known as real estate wire fraud. In these schemes, hackers infiltrate legitimate email conversations between consumers and real estate title companies and send fraudulent wiring instructions.

The bill amends the chapter of the UCC relating to funds transfers to require that:

- A payment order must accurately identify the beneficiary both by name and by an identifying or bank account number;
- A beneficiary's bank must determine in good faith, and using reasonable care, whether the name and number refer to the same person;
- A bank accepting orders at a location in Florida, or from a customer who resides in Florida, must comply with certain verification, acceptance, and indemnification requirements; and
- A payment order identifying an intermediary bank or the beneficiary's bank must accurately use both an identifying number and a name, in addition to other requirements of the receiving bank.

The bill has no impact on state government nor local government revenues and expenses. It may have an indeterminate positive and negative impact on consumers in Florida and an indeterminate negative impact on financial institutions operating in Florida.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Uniform Commercial Code

The model Uniform Commercial Code (Model Code) is a comprehensive set of laws governing all commercial transactions in the United States.¹ It is not a federal law, but a uniformly adopted state law.² The Model Code is a joint project of the Uniform Law Commission (ULC) and the American Law Institute (ALI).³ In 1951, the ULC and ALI first offered the Model Code to the states for their consideration.⁴ Pennsylvania was the first state to adopt the Model Code in 1953, and every other state followed suit over the next twenty years.⁵

Florida's Uniform Commercial Code

Florida's Uniform Commercial Code (UCC)⁶ regulates commercial and secured transactions in the state. The UCC contains the following chapters:

- Ch. 670: Funds Transfers
- Ch. 671: General Provisions
- Ch. 672: Sales
- Ch. 673: Negotiable Instruments
- Ch. 674: Bank Deposits and Collections
- Ch. 675: Letters of Credit
- Ch. 677: Documents of Title
- Ch. 678: Investment Securities
- Ch. 679: Secured Transactions
- Ch. 680: Leases

Funds Transfers

Chapter 670, F.S., of the UCC applies to funds transfers. "Funds transfers" refers to the series of transactions, beginning with an originator's payment order, that is made for the purpose of making payment to the beneficiary of the order.⁷ The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the order.⁸ A funds transfer is completed by acceptance of the beneficiary's bank of a payment order for the benefit of the beneficiary.⁹

¹ Uniform Law Commission, *Uniform Commercial Code*, <https://www.uniformlaws.org/acts/ucc> (last visited Jan. 18, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Chapters 670-680, F.S., codifies Florida's UCC. See s. 671.101, F.S.

⁷ S. 670.104(1), F.S.

⁸ *Id.*

⁹ *Id.*

For purposes of ch. 670, F.S., (including for purposes of the definition of “funds transfers”), the terms below have the following definitions:

- “Beneficiary” means the person to be paid by the beneficiary’s bank.¹⁰
- “Beneficiary’s bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.¹¹
- “Intermediary bank” means a receiving bank other than the originator’s bank or the beneficiary’s bank.¹²
- “Originator” means the sender of the first payment order in a funds transfer.¹³
- “Originator’s bank” means:
 - The receiving bank to which the payment order of the originator is issued if the originator is not a bank; or
 - The originator if the originator is a bank.¹⁴
- “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay (or to cause another bank to pay) a fixed or determinable amount of money if:
 - The instruction does not state a condition to payment to the beneficiary other than time of payment;
 - The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
 - The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.¹⁵
- “Receiving bank” means the bank to which the sender’s instruction is addressed.¹⁶
- “Sender” means the person giving the instruction to the receiving bank.¹⁷

The law governing funds transfers should “serve the interests of commercial parties that look to large-value credit transfer systems to settle their payment obligations and facilitate growth in domestic and international transactions.”¹⁸ The International Monetary Fund claims that with so much money transferred by wire each day, and with the average value of each transfer so high, the potential for large losses is great.¹⁹ Therefore, commercial parties making and receiving such payments require a clear, comprehensible, and sensible legal framework.²⁰

¹⁰ S. 670.103(1)(a), F.S.

¹¹ S. 670.103(1)(b), F.S.

¹² S. 670.104(2), F.S.

¹³ S. 670.104(3), F.S.

¹⁴ S. 670.104(4), F.S.

¹⁵ S. 670.103(1)(c), F.S.

¹⁶ S. 670.103(1)(d), F.S.

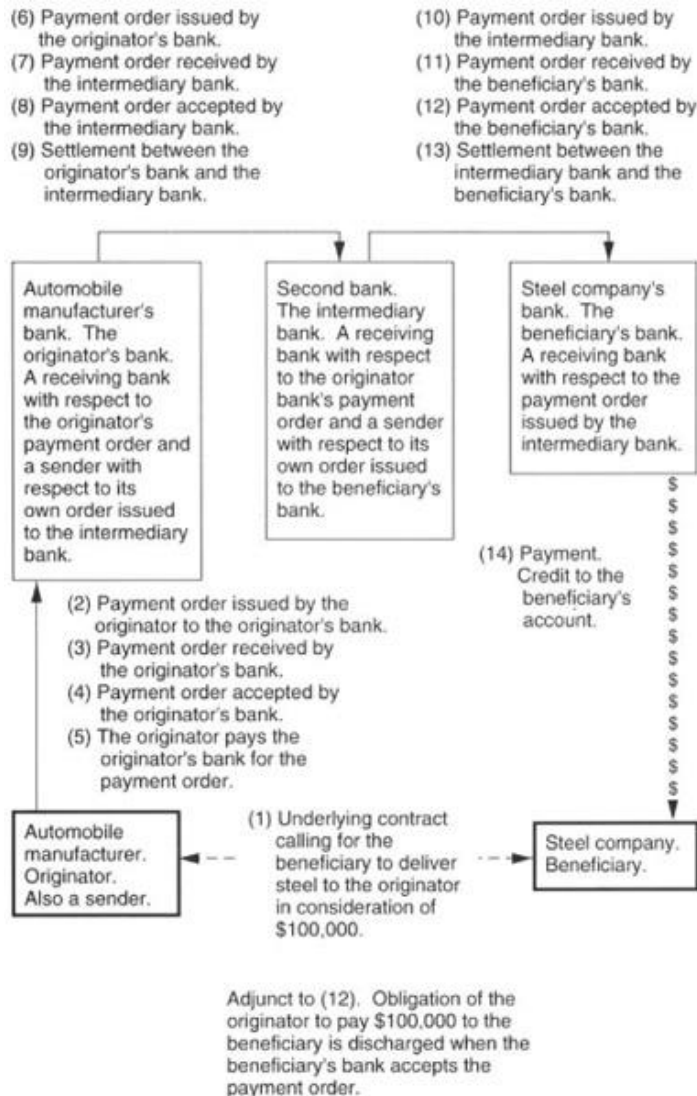
¹⁷ S. 670.103(1)(e), F.S.

¹⁸ Bruce J. Summers, *The Payment System: Design, Management, and Supervision* (Dec. 15, 1994), International Monetary Fund (Dec. 1994), <https://www.elibrary.imf.org/display/book/9781557753861/ch05.xml> (last visited Jan. 21, 2024).

¹⁹ *Id.*

²⁰ *Id.*

An example of a funds transfer is illustrated in the hypothetical transaction below:²¹



Misdescription of Beneficiary

The UCC provides that if the name, bank account number, or other identification of a beneficiary in a payment order refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.²²

However, if a payment order received by the beneficiary's bank identifies the beneficiary both by name and an identifying or bank account number and the name and number identify different persons, the following rules currently apply:

- If the beneficiary's bank does not know that the name and number refer to different persons, the bank may rely on the number as the proper identification of the beneficiary of the order, and the bank need not determine whether the name and number refer to the same person.²³

²¹ Bruce J. Summers, *The Payment System: Design, Management, and Supervision* (Dec. 15, 1994), International Monetary Fund (Dec. 1994), <https://www.elibrary.imf.org/display/book/9781557753861/ch05.xml> (last visited Jan. 21, 2024).

²² S. 670.207(1), F.S.

²³ Section 670.207(4), F.S., provides that in a case such as this, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order because the originator is a bank, the originator has the right to recover.

- If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.²⁴

If a payment order is accepted, the originator's order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number, the originator is obliged to pay its order *if the originator is a bank*.²⁵

However, if the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not required to pay its order *unless* the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number, even if it identifies a person different from the named beneficiary.²⁶

Misdescription of Intermediary Bank or Beneficiary's Bank

The UCC currently provides that if a payment order identifies an intermediary bank or the beneficiary's bank only by an identifying number, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.²⁷ However, the sender must compensate the receiving bank for any loss and expense incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.²⁸

The following rules apply to a payment order that identifies an intermediary bank or the beneficiary's bank both by name and an identifying number, but the name and number identify different persons:

- If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is required to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.
- If the sender is *not* a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are treated as if the sender were a bank.²⁹

Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons.³⁰ The receiving bank need not determine whether the name and number refer to the same person.³¹

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

²⁴ S. 670.207(2), F.S.

²⁵ S. 670.207(3)(a), F.S.

²⁶ Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates. S. 670.207(3)(b), F.S.

²⁷ S. 670.208(1)(a), F.S.

²⁸ S. 670.208(1)(b), F.S.

²⁹ S. 670.208(2)(a)-(b), F.S.

³⁰ S. 670.208(2)(c), F.S.

³¹ *Id.*

Moreover, if the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the receiving bank's obligation to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer.³²

Wire Fraud

According to the Federal Bureau of Investigation (FBI), consumers in America lost more than \$220 million in 2020 from fraudulent schemes known as real estate wire fraud.³³ In these growing schemes, hackers infiltrate legitimate email conversations between consumers and real estate title companies and send fraudulent wiring instructions that divert the money to the fraudsters and their accomplices.³⁴ Real estate wire fraud has become increasingly common, and the fraudsters are targeting expensive markets, such as New York, Los Angeles, and Palm Beach.³⁵

In California, a husband and wife wired over \$900,000 to a Wells Fargo account for the down payment on a home, only to later discover the money was sent to criminals as part of a wire transfer fraud scheme.³⁶ Using spoofed email addresses, the hackers infiltrated an email thread between the couple and their real estate agent.³⁷ The fraudsters then sent digital copies of the actual closing documents and wire transfer instructions, but swapped out the money transfer's destination for their own.³⁸

A couple in Florida were victims of a similar crime when they were trying to close on a retirement home in Naples.³⁹ The couple is now out nearly \$1 million after being tricked into wiring money to a fraudulent account, falling victim to the same scheme used by the fraudsters in California.⁴⁰ The couple filed a lawsuit in Collier County against the title company that the couple thought they were wiring money to and Truist Bank, which accepted the fraudulent wire transfer and later allowed it to be withdrawn by the fraudsters.⁴¹

Effect of the Bill

Misdescription of Beneficiary

The bill amends the UCC to provide that a payment order received by a beneficiary's bank *must* identify the beneficiary both by name and by an identifying or bank account number. If the name and number identify different persons, the bill provides that no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

The bill requires the beneficiary's bank to determine in good faith, and using reasonable care, whether the name and number refer to the same person. The duty of reasonable care must include, at a minimum, an automated system for name and number match which escalates any transaction with any discrepancy to a human reviewer.

³² If the originator's bank issues a payment order to an intermediary bank, the originator's bank is required to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts. S. 670.302(1)(a), F.S. See also, s. 670.208(2)(d), F.S.

³³ CNBC, *How one family's nightmare illustrates the growing threat of real estate wire fraud* (Oct. 15, 2020), <https://www.cnbc.com/2020/10/15/how-one-family-s-nightmare-illustrates-the-growing-threat-of-real-estate-wire-fraud.html> (last visited Jan. 19, 2024).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Aura, *The 9 Worst Wire Transfer Scams (and How to Avoid Them)* (Jul. 11, 2023), <https://www.aura.com/learn/wire-transfer-scams> (last visited Jan. 19, 2024).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Wink News, *Truist troubles persist: Family files lawsuit; out nearly \$1 Million* (Dec. 8, 2023), <https://winknews.com/2023/12/08/truist-troubles-persist-million-dollar-lawsuit/> (last visited Jan. 19, 2024).

⁴⁰ *Id.*

⁴¹ *Id.*

If the receiving bank cannot reasonably verify that the name and number refer to the same person, acceptance of the order cannot occur until the bank has certified with the originator or the receiving bank that the payment order should be processed and any discrepancy is corrected.

The bill provides that:

- If a payment order is accepted, the originator's payment order described the beneficiary inconsistently by name and number and the beneficiary's bank pays any person who the originator did not intend to pay, then the originator is not required to pay its order, unless the originator was grossly negligent in sending the original instructions, and the beneficiary's bank was diligent in ascertaining whether the number and name referred to the same person.
- However, if the beneficiary's bank improperly pays any person not entitled or intended to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution.

The bill requires that a bank accepting orders at a location in Florida, or from a customer who resides in Florida, must comply with the requirements described above. The bill also requires that the bank must enter into an agreement with any counterparty bank requiring name and account number identification as described above and, if any beneficiary bank does not engage in name identification and any loss occurs, the receiving bank must indemnify the originator.

Misdescription of Intermediary Bank or Beneficiary's Bank

The bill revises the provisions of the UCC relating to misdescription of an intermediary bank or beneficiary's bank to require that:

- A payment order identifying an intermediary bank or the beneficiary's bank must use both an identifying number and a name;
- The receiving bank must determine whether the number identifies a bank and whether the bank identified by number matches the number provided; and
- The receiving bank must also determine whether the name and number refer to the same intermediary or beneficiary's bank.

If the receiving bank determines that the name and number identify different banks, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer or the means by which payment orders are to be transmitted in the funds transfer.

B. SECTION DIRECTORY:

Section 1. Amends s. 670.207, F.S., relating to misdescription of beneficiary.

Section 2. Amends s. 670.208, F.S., relating to misdescription of intermediary bank or beneficiary's bank.

Section 3. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on consumers to the extent that it strengthens safeguards in Florida law relating to wire fraud. However, the bill also has an indeterminate negative impact on the private sector to the extent that transactions are rejected more often due to enhanced verification and non-acceptance requirements. Further, some transactions may be delayed due to the enhanced requirements to verify or reject such transactions, whereas before a beneficiary's bank could solely rely on an identifying bank account number to verify such transactions.

The bill has an indeterminable negative impact on financial institutions because of the duty to have an automated system for name and number match, to the extent that such institutions do not already have systems in place for those purposes. Additionally, the requirement for a financial institution to enter into an agreement with any counterparty bank (i.e., any other bank party to a funds transfer transaction with the originator's bank) requiring name identification may require additional labor to draft the agreements, thus increasing overhead costs, and may prove impractical for financial institutions.⁴²

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁴² Email from Ash Mason, Legislative & Cabinet Affairs Director, Office of Financial Regulation, Re: HB 593 No Impact (Jan. 5, 2024).

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment removes language relating to gross negligence on behalf of an originator in a funds transfer transaction.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.