

Introduced by: The Committee To Elect Stephen McDow

Subject: The National ACH/EFT Transfer Error & Mediation Law

Referred to:

A RESOLUTION FROM THE COMMITTEE TO ELECT STEPHEN MCDOW [MONROVIA, MARYLAND], EXPRESSING SUPPORT FOR LEGISLATION TO ENSURE THE LAW IS APPLIED EQUALLY ACROSS THE UNITED STATES AND THAT CASES INVOLVING MATTERS OF ACH/EFT ERRORS OF \$50,000 OR MORE ARE MEDIATED, AND ALL PARTIES INVOLVED HAVE CONSISTANT REPRESENTATION BEFORE ENTERING INTO MEDIATION. IF THE MATTER CANNOT BE RESOLVED THROUGH MEDIATION AFTER A PERIOD OF 1 YEAR, OR IF THE NON-BENEFICIARY HAS WILLFUL DISREGARD FOR THE BENEFICIARIES ACH/EFT PROPERTY BY AVOIDING MEDIATION, THE NON-BENEFICIARY SHALL BE ADJUDICATED CONSISTANT WITH FEDERAL AND STATE LAW. IF ALL PARTIES ENTER INTO MEDIATION AND HAS LEGAL REPRESENTATION, THEN ALL PARTIES MUST ENGAGE THE PROCESS FOR A PERIOD OF AT MAX 1 YEAR. IF ALL PARTIES FAIL, IN GOOD FAITH, TO REACH A RESOLUTION THEN THE MATTER IS AUTOMATICALLY REFERRED TO A JUDGE. THE JUDGE HAS DISCRETION TO ADJUDICATE CONSISTANT WITH STATE OR LOCAL LAW OR, FORCE AN ADEQUATE REMEDY THROUGH AN ALTERNATIVE DISPUTE RESOLUTION.

WHEREAS, ACH/EFT transfers are now valued at \$72.6 trillion and dominate the banking industry according to Nacha; ACH/EFT transfers equal 29.1 Billion transactions per year and cover diverse sectors; and

WHEREAS, the migration from paper to ACH/EFT transfers will and has increased transfer errors involving non-Beneficiaries receiving Beneficiary payments across the United States, involving multiple Jurisdictions;

WHEREAS, the majority of these cases are a matter where the beneficiary inadvertently provided the banking institution a previously closed account number; or

WHEREAS, the Non-Beneficiary has been issued the account number of a Beneficiary;

WHEREAS, the prevailing thought is that matters involving ACH/EFT transfer errors are rare, recent history is expressed differently; and

WHEREAS, ACH/EFT transfer errors occur, the errors garnering the most attention are \$50,000 or more; referencing case law in Pennsylvania, California, and Minnesota; and

WHEREAS, cases referenced has inconsistent legal remedies imposed; and was exasperated by premature media attention burdening all parties including the Beneficiary and Non-Beneficiary with adverse impacts on their lives. **Therefore, be it resolved**

RESOLVED, that ACH/EFT transfer errors that occur, up to acts of GOD, the Beneficiary and Non-Beneficiary must enter into mediation for up to 1 year; and

RESOLVED, mediation is not an admission of guilt, rather, an admission that the ACH/EFT transfer was an error and that the Beneficiary must be made whole;

RESOLVED, both the Beneficiary and Non-Beneficiary will have 40 days to secure legal counsel;
and

RESOLVED, if the Non-Beneficiary fails to communicate with the Beneficiary before mediation, the matter is referred to a Judge for adjudication consistent with state and local law; and

RESOLVED, if the Non-Beneficiary enters into a documented legal counsel search, or has secured legal counsel and in a period of discovery, then all parties MUST halt adjudication consistent with state and local law;

RESOLVED, if the Non-Beneficiary willfully neglects responsibility or has willful disregard for the Beneficiaries ACH/EFT property before or during mediation, then ALL parties may move forward with adjudication consistent with federal, state, and local law; and

RESOLVED, when/if the Non-Beneficiary and Beneficiary enter into mediation any outside groups and the media may be notified of the matter for the interest of the public; however, ALL Parties must agree to a gag order during the period of mediation for the protection of ALL PARTIES;

RESOLVED, both the beneficiary and Non-Beneficiary will negotiate any civil damages during the period of Mediation; and

RESOLVED, final decision on civil damages, or lack thereof, is at the discretion of the Judge post mediation;

RESOLVED, A district attorney, or a representative for the people, may participate and engage with both the Non-Beneficiary and Beneficiary to ensure ALL PARTIES needs are being met in an ethical manner consistent with law; district attorneys, or their legal representative cannot use mediation to gain an unfair advantage for prosecutorial purposes;

RESOLVED, district attorneys may file an affidavit to the Judge/with the Court to dissolve mediation in circumstances where civil rights are grossly violated;

RESOLVED, legal counsel for either the Beneficiary or Non-Beneficiary may not use mediation to abuse, manipulate or misrepresent either side; nor, can legal counsel discuss the details of mediation with the media during the mediation process;

RESOLVED, the assigned Judge has 30 days to approve the mutually agreed resolution, and may move to return arbitration back to the mediator or a different mediator, during that time, if the agreement is not consistent with state or federal law or violates civil rights; and both parties have 15 days to resolve the Judge's concerns; and if those concerns are not met the Judge can move to FORCE AN ADEQUATE REMEDY THROUGH AN ALTERNATIVE DISPUTE RESOLUTION;

RESOLVE, if there are no issues with the mediated resolution the judge can approve.