Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1156 (Delegates Stewart and Griffith)
Economic Matters

Commercial Law - Consumer Wire Transfers - Liability (Elder Fraud Prevention Act of 2024)

This bill exempts certain "consumer wire transfers" (defined by the bill as a wire transfer that is initiated by a consumer) from provisions of the Maryland Uniform Commercial Code (UCC) and establishes a new regulatory framework for such transactions in the State. Specifically, the bill establishes (1) when and how much a consumer is liable for unauthorized wire transfers; (2) requirements and procedures for how financial institutions must handle such transfers; and (3) liability for a financial institution's noncompliance with the bill's requirements. The bill does not apply to a wire transfer of which any part is governed by the federal Electronic Fund Transfer Act. A consumer may not waive the rights conferred under the bill through any means, including through a contract. The bill may not be construed to limit any other rights of a consumer.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations. The Office of Financial Regulation (OFR) within the Maryland Department of Labor can likely handle any complaints with existing resources.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill alters Title 4A of the Maryland UCC (which governs fund transfers) to generally exclude a funds transfer that is a wire transfer initiated by an individual. To the extent provisions of the Maryland UCC do not conflict with the bill's requirements, Title 4A of the Maryland UCC continues to apply.

Liability

Generally, a consumer is not liable for damages resulting from an unauthorized consumer wire transfer. However, a consumer is liable for damages resulting from an unauthorized consumer wire transfer if (1) it was initiated by means authorized by the consumer and (2) the means used to initiate the transfer was enabled using a verification mechanism at the time the consumer wire transfer was initiated. A verification mechanism is a means by which an individual's authority to initiate a consumer wire transfer can be confirmed.

If a consumer notifies the consumer's financial institution of an unauthorized consumer wire transfer within 60 days after the transmittal of an account statement that includes an allegedly unauthorized consumer wire transfer, the consumer is liable for damages that are the *lesser* of $50 or the amount of the unauthorized consumer wire transfer.

Similarly, if a consumer notifies the consumer's financial institution of the loss or theft of a means by which a consumer wire transfer may be initiated within two business days after the discovery of the loss or theft, the consumer is liable for damages resulting from the loss of theft that are the *lesser* of $500 or the amount of the unauthorized consumer wire transfer.

If a consumer fails to provide the consumer's financial institution sufficient notice, the consumer it *not* entitled to reimbursement for damages.

A consumer's liability for unauthorized transactions that trigger overdraft protection must be determined exclusively in accordance with these requirements. Additionally, these requirements may not be construed to impose liability in excess of the amounts identified above.

Notice required under the bill is not sufficient unless specified requirements are met (*e.g.*, the consumer takes steps to notify the consumer's financial institution that are reasonable in the ordinary course of business and the notice enables the financial institution to identify the relevant account).

Requirements and Procedures for Financial Institutions

If a consumer's financial institution receives sufficient notice of an error within 60 days after transmittal of an account statement that contains the alleged error, the financial institution must initiative an investigation. A decision must be transmitted (1) within 10 business days after the investigation was initiated and (2) within 45 business days after the investigation was initiated if the financial institution elects to provisionally credit the consumer's account in the amount of the error alleged. The consumer may use any provisionally credited funds at any time for any purpose.

If an investigation results in a decision that no error occurred, the bill requires the financial institution to meet certain requirements (*e.g.*, transmit the decision to the consumer within three business days and provide specified records upon request).

If, however, an investigation results in a decision that an error occurred, the decision must be transmitted to the consumer within one business day after the decision is made and the financial institution must correct the error in accordance with the bill, including any interest that would have accrued if the funds had not been erroneously debited from the consumer's account.

A consumer is entitled to treble damages if the consumer shows that the consumer's financial institution:

- did not make a good faith investigation of an alleged error;
- did not have a reasonable basis to believe that there was no error and did not provisionally credit the consumer's account within 10 days after receipt of notice of the alleged error; or
- knowingly and willfully concluded that the consumer's account was not in error and the conclusion was unreasonable considering the evidence available.

Noncompliance by Financial Institutions

If a consumer's financial institution fails to comply with the bill with respect to a consumer or group of consumers, the financial institution is liable in amounts that vary based on the type of action. For an individual action, the financial institution is liable in the amount of any damages sustained by the consumer (but not less than $100 and not more than $1,000).

For a class action, the bill establishes no minimum recovery per claimant. The financial institution is liable in the amount the court may allow; however, the total liability of the consumer's financial institution may not be in excess of the *greater* of $500,000 or 1% of the financial institution's net worth.

If a violation is found by a court, the consumer's financial institution must be liable for reasonable attorney's fees associated with the action. An affirmative defense must be available to a consumer's financial institution with respect to an alleged error if it shows, by a preponderance of the evidence, that the error (1) was a good faith error regardless of any reasonable procedures in place designed to avoid such an error and (2) was not intentional.

In determining liability, a court must consider specified factors (*e.g.*, the frequency and persistence of the violation, the nature of the violation).

In an action to determine a consumer's liability for a consumer wire transfer (1) the consumer's financial institution must have the burden of proof to show that the consumer wire transfer was authorized and (2) if the transfer was unauthorized, the financial institution must have the burden of proof to show that the conditions for the consumer's liability pursuant to the bill were met.

Current Law: Title 4A of the Maryland Uniform Commercial Code governs funds transfers. Generally, Title 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (as amended from time to time). In the event of an inconsistency between an applicable provision of Title 4A and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs (to the extent of the inconsistency).

Small Business Effect: OFR notes that the bill may place Maryland-chartered depository institutions at a competitive disadvantage with other state and national banks, as those institutions would not be subject to the bill's requirements.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 930 (Senator Rosapepe) - Finance.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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