



March 29, 2021

The Honorable Luke Clippinger, Chairman
House Judiciary Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Senate Bill 327 - Civil Actions - Financial Exploitation of Susceptible Adults and Older Adults (Maryland SAFE Act) Informational Letter

Dear Chairman Clippinger and Members of the Committee,

FSI represents the independent financial services community. More specifically, FSI advocates on behalf of independent financial services firms and their affiliated independent financial advisors. In the U.S., there are more than 160,000 independent financial advisors, which account for over 60% of all producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees, of the independent financial services firms, or independent broker-dealers.

FSI strongly supports legislation that protects investors, especially those most vulnerable, from unscrupulous actors. We have supported legislation that empowers financial advisors and financial services firms to identify and report suspected financial exploitation of seniors and vulnerable investors, and to place a temporary hold on account disbursements when they reasonably suspect financial exploitation. The Maryland General Assembly joined many other states and adopted such financial exploitation legislation in 2017. Our concern is focused on possible unintended consequences if Senate Bill 327 should be enacted as currently drafted.

Financial advisors and financial services firms operate under an array of state and federal laws, and the rules of self-regulatory bodies. They are subject to oversight and enforcement by state, federal and self-regulatory authorities. Separately and collectively, the laws, regulations and authorities provide robust investor protection proscribing the conduct of financial advisers and financial services firms, including establishing enforceable standards that govern the customer relationship. Additionally, investors may seek recourse for wrongdoing through courts or in arbitration. In sum, the conduct that S.B. 327 seeks to address and combat is already prohibited activity of financial advisors and financial services firms under financial services law, regulation and authority, and remedies are available under a well-established system that has evolved over decades to ensure investor protection. For this reason, the conduct of financial advisors and financial services firms should continue to be governed under current state and federal law, and they can be excluded from the remedies provided by S.B. 327 without undermining the intent or effect of the bill.

Two elements of S.B. 327 lead FSI to be concerned about how private litigants could exploit the protections provided by the bill in a way that is unintended. First, as referenced above, Maryland has empowered financial advisors and financial services firms to place a temporary hold on disbursements if they have a reasonable suspicion of financial exploitation of a senior or vulnerable investor. We are concerned that under proposed section 13-601(E)(I) and (III), such a hold could be considered obtaining or using funds to “temporarily...deprive the vulnerable adult of the use” of the funds. It would certainly be unintended and unwanted for financial advisors and financial services firms to be put at risk of litigation for protecting

seniors and vulnerable investors, in compliance with Maryland law.

Second, proposed section 13-601(E)(2)(iv) establishes that "Financial Exploitation" includes: "Intentional failure to effectively use a vulnerable adult's income and assets for the necessities required for the vulnerable adult's support and maintenance." We are concerned that this provision could be misapplied to financial advisors and financial services firms. Because of their position as trusted advisors, financial professionals are often well-positioned to identify potential exploitation. Financial firms' rigorous compliance oversight can flag unusual activity that may be indicative of fraud or exploitation. For these reasons, Maryland's vulnerable investor law allowing financial services firms to place a temporary hold on disbursements and notify authorities is an important and effective tool in combatting exploitation. However, financial advisors and financial services firms are not typically in a position to know about a client's day-to-day tasks as delineated in S.B. 327, nor do they have legal authority to unilaterally use a client's assets to provide for the necessities. In sum, we are concerned that financial advisors and financial services firms could be held liable for harms for which they have no knowledge, nor any ability to address.

FSI appreciates and supports legislation that help protect seniors and vulnerable investors. We believe some aspects of S.B. 327 could lead to unintended, and counterproductive, consequences, especially as it concerns financial advisors and financial services firms. We believe our concerns could be addressed without undermining the intent or effectiveness of the bill. We are fully committed to protecting those, and indeed all, investors. We are confident that the changes we seek will in no way diminish those protections. FSI members work with state regulators and other state authorities to combat financial exploitation of seniors. The victims of financial exploitation are their clients, and they can feel victimized, too, when the client is exploited. We believe the long-standing laws that govern the conduct of financial advisors and financial services firms provide strong protections against exploitation while empowering them to identify, report and mitigate fraud and abuse.

We would be happy to work with the Committee on amendments that will achieve this goal.

Please feel free to contact my colleague, Dan Barry, Director of State Legislative Affairs, at (202) 517-6464 or dan.barry@financialservices.org if you have questions or concerns about this or other matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" and a smaller "Bellaire" following.

David T. Bellaire, Esq.
Executive Vice President & General Counsel

cc: The Honorable Jeff Waldstreicher
Bryson F. Popham, Esq.