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To: Maryland Senate – Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: February 21, 2023

Subject: **SB 657**– Commercial Law – Maryland Antitrust Act – Premerger Notification Requirement and Remedies

Position: **Oppose**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **opposes Senate Bill 657 – Commercial Law – Maryland Antitrust Act – Premerger Notification Requirement and Remedies**

Description of SB 657

Senate Bill 657 would require notice to the Attorney General sixty days prior to any person’s acquisition of voting stock or assets of another person greater than \$8 million, with certain limited exceptions.

Application of SB 657 to Estate Planning Transactions

SB 657 casts a wide net, and in doing so, appears to capture transactions done for estate planning as well as transfers at death, even though such transactions do not appear to be of interest to the Attorney General.

With limited exceptions, SB 657 covers “any person acquiring, directly or indirectly, any voting securities or assets, if...as a result of the acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person in excess of \$8,000,000.”

In the Commercial Law Article, “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental



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subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity. Thus, individuals, trusts and estates are specifically included in the concept of a Person.

A gift by a parent to a child of voting stock of a family business, if the value exceeded \$8 million, would seem to require notification to the Attorney General. Although describing the parent as “acquired person” does not seem to fit, “acquired person” is not defined, and, therefore, we are left to assume that each party to a transfer of assets is either an acquiring person or an acquired person.

Indeed, even an individual receiving a gift or bequest of \$8.1 million in cash from parent would be a Person acquiring assets in excess of \$8 million of another Person.

The exceptions provided are so narrowly drawn, that even gifts and bequests to charity appear to be captured. As written, a charity could also be a Person acquiring property of another Person.

An exception for gifts and bequests, if added to the bill, would be insufficient to exclude many family transactions, as consideration is often part of the transaction. Sometimes, a child, or a trust for a child, will purchase stock in the family business in exchange for a promissory note with favorable terms, for example.

It would also not be unusual for a client to transfer property to a limited liability company with the same ownership structure as the initial company for estate planning reasons. This would do little to change the ownership of assets, but this, too, does not fall within any exception.

SB 657 gives the Attorney General latitude to offer additional exceptions, but given the large number of transactions that would have to be excepted in order to allow estate planning transactions to occur without notice, we cannot assume that sufficient exceptions will be made.

To allow Maryland residents the freedom to complete estate planning transactions without notifying the Attorney General, the Estate and Trust Law Section of the MSBA **opposes SB 657 and urges an unfavorable committee report.**



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