

January 24, 2023

Senator William C. Smith, Jr., Chair
Judicial Proceedings Committee
Maryland State Senate
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401 - 1991

Re: **MSBA Business Law Section Council**
Senate Bill 12 (Corporations and Associations – Annual Report Filing Fees –
Electronic Filing Exemption)

Dear Chair Smith and Fellow Committee Members:

The Business Law Section Council of the Maryland State Bar Association annually reviews proposed legislation that may have an effect on Maryland businesses. Our review of Senate Bill 12 (Corporations and Associations – Annual Report Filing Fees – Electronic Filing Exemption) (the “Bill”) has generated a few concerns. The Bill would waive the filing fee for entities that (1) file their annual report electronically with the Maryland State Department of Assessments and Taxation (“SDAT”) if (2) they are not a “covered employer” as defined in Section 12-101(d) of the Maryland Labor and Employment Article.

First, we believe that the Bill would make the annual report filing process unnecessary complex. We believe that the cross-reference to the “covered employer” definition does not make it clear which companies would and would not qualify for the fee waiver and instead requires a convoluted and complex analysis to determine if the entity in question is eligible for the waiver.

Related to this concern, we believe that the administrative aspects of the Bill, that is, determining which business entities qualify for the fee waiver if they file electronically, would be an unnecessary burden on the entities themselves as well as the state agency that is designated to make and/or confirm these designations; while the Bill does not specify who would be responsible for making this determination, we are concerned that the burden would fall to SDAT, and that the time and resources that SDAT, which is already understaffed, would have to dedicate to making

these determinations would decrease its existing customer service levels with respect to the functions it is already required to perform in connection with Maryland business entities.

If the goal of the Bill is to lower fees to help Maryland businesses and/or to encourage the electronic filing of annual reports, as appears to be the case based on the language of the Bill, it would be much more efficient to do this in a uniform manner, that is, by waiving the annual report filing fee for all entities that file their annual report electronically.

Further, we believe that, absent compelling and clear reasons, like companies should be treated alike under Maryland law, and it is unclear from the face of the Bill why some companies would be eligible for the annual fee waiver and others not based on their use of a “payroll system or service” to pay their “covered employees.” It appears from the current text of the Bill that the legislature is picking winners and losers with respect to an annual fee waiver for reasons that are not discernable in the Bill, and we are concerned about the ramifications of this apparent unfairness with respect to the business climate in Maryland.

We therefore respectfully suggest that, in lieu of the Bill as currently proposed, the Committee consider revising the Bill to provide the proposed fee waiver in connection with electronic filing in a straightforward and equitable manner. In that regard, we note that HB 171, introduced in the Maryland House on January 18, 2023, would eliminate the annual report filing fee for any business entity that files its annual report electronically in accordance with procedures established by SDAT.

Very truly yours,

A handwritten signature in cursive script that reads "Penny Somer-Greif".

Penny Somer-Greif, Chair
MSBA Business Law Section Council

cc: MSBA Business Law Section Council