

February 23, 2024

The Honorable Delegate C.T. Wilson, Esq.
Chair of the Maryland Economic Matters Committee
241 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: MSBA Business Law Section

Testimony in **Opposition** of House Bill 1156 (Commercial Law – Consumer Wire Transfers – Liability (Elder Fraud Prevention Act of 2024))

Dear Chair Smith and Fellow Committee Members:

The Business Law Section Council (the “**Section Council**”) of the Maryland State Bar Association (the “**MSBA**”) annually reviews proposed legislation that may affect Maryland businesses. We are submitting this written testimony concerning House Bill 1156 (the “**Bill**” or “**HB 1156**”).

While the Section Council understands that elders are prime targets for financial scams and exploitation and the goal of the legislature to take action to try to protect and prevent some of that exploitation, we believe HB 1156 will instead create more confusion for Marylanders, including individuals, businesses and financial institutions located in the State of Maryland.

HB 1156 proposes to alter long-standing provisions of the Uniform Commercial Code governing wire transfers under Article 4A by carving out consumer wire transfers, not hold consumers liable for instructions that they provide to the financial institutions and to then leave the financial institutions with the sole risk for any funds allegedly sent to a person that defrauded an elder, even when it the financial institution takes all reasonable steps to verify wire transfer requests.

HB1156’s carveout of consumer wire transfers from Article 4A of the Uniform Commercial Code automatically takes Maryland out of step with other jurisdictions. Many jurisdictions are looking at ways to protect elders, as can be identified by going to [Elderly Financial Exploitation 2023 Legislation \(ncsl.org\)](https://ncsl.org). Nevada and Wyoming appear to have enacted statutes that protect elders against banking fraud. However, based on our research no jurisdictions have enacted or proposed amendments to Uniform Commercial Code to enact needed protections. The provisions under Article 4A adequately provide procedures and guardrails for all parties for proper wire transfers. Article 4A establishes the rights and responsibilities of the parties to a funds transfer, including the parties’ payment obligations and allocation of risk of loss for unauthorized or improperly executed payment orders.

The attempted carveout of consumer wire transfers misaligns the current allocation of risks which hold banks and financial institutions liable for not having and/or following proper procedures to receive authority to initiate both consumer and commercial wires. The bifurcation created by HB1156 will lead to confusion as to which transactions should be considered consumer wire transfers vs commercial wire transfers. It creates an incentive for Marylanders to not be as careful with initiating a

wire if they believe it will be considered a consumer wire transfer and to litigate whether the wire transfer qualifies as a consumer wire transfer or commercial wire transfer.

Additionally, the risk shifting provisions under the Bill will likely have the unintended consequences of making it much harder and costlier for Marylanders to initiate wires. Financial institutions will likely take steps to address the additional costs and risks included in the Bill. These steps could include (i) less competition as a result of fewer banks wanting to do business in Maryland and be subject to these additional risks and having to follow two different schemes for wire transfers under Article 4A and now the new Article 15 of the Maryland Uniform Commercial Code created by HB1156; (ii) higher costs to consumers to send wire transfers; and (iii) more complex procedures that are harder for elders to navigate.

The Section Council understands that the Committee is seeking ways to protect Marylanders, especially elders, from bad actors but HB 1156 will create more problems that it will solve and will be another bill that says Maryland is not good for business.

Thank you for your time and consideration of our testimony opposing HB 1156.

Sincerely,

David L. Cahn
Chair
Business Law Section Council

Jacqueline A. Brooks
Chair, Uniform Commercial Law Committee
of the MSBA Business Law Section

cc: Business Law Section Council