AARP Maryland

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SB 930 – Commercial Law – Consumer Wire Transfers – Liability (Elder Fraud Prevention Act of 2024)
FAVORABLE
Senate Finance Committee
March 6, 2024

Good afternoon, Chairman Beidle, and Members of the Senate Finance Committee. I am Karen Morgan, a member of the Executive Council for AARP Maryland. As you may know, AARP Maryland is one of the largest membership-based organizations in the Free State, encompassing almost 850,000 members. We thank Senator Rosapepe for sponsoring this legislation.

AARP is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities, and fights for the issues that matter most to families such as health care, employment and income security, retirement planning, affordable utilities, and protection from financial abuse.

SB 930 brings to the forefront a very serious problem regarding the security of financial transactions. We are here in support of HB 1156 because state laws need to be improved to help protect consumers from fraud when they use wire transfers for financial transactions.

Federal law and financial institution policies create significant protections for debit cards, checking accounts, savings accounts, and credit cards. If a person finds a charge for $100 on their credit card that they did not make, they most likely will get every penny of the bogus charge credited back to their account. A person who finds a charge against their debit card that they did not make will likely get all of that amount restored – maybe minus $50, depending on the notification to the financial institution. However, the reality is that even if federal law authorizes financial institutions to refund all but $50, that person will likely get all of their money back. A consumer has the right to expect that using banks and other financial institutions in the United States is much safer than carrying around bags of cash.

But is it? How is it that there are more protections around transactions of relatively modest amounts – a hundred dollars, for example, but when that same person initiates a critically important wire transfer for hundreds of thousands of dollars because they want to buy a house, all the protections supposedly afforded by these financial institutions suddenly fall away?

SB 930 highlights a significant issue: what *is* an "authorized" transaction? If a consumer who is trying to complete a financial transaction has been deceived with false information, despite taking reasonable precautions, has that consumer truly "authorized" the transaction? Can a person really give informed consent to a transaction if the essential information has been altered and hidden – especially if the person would never authorize such a transaction if they had all the relevant, necessary information? Financial institutions may claim that even if deceived, consumers should still be held responsible for those transactions. But in the Information Age, persuasion and deception have become potent weapons. It has become extraordinarily difficult for consumers to believe that people and institutions are who they say they are. Consumers are being held hostage by the misdirection, the deception, and the resulting crime that occurs in this weaponized environment.

In other areas of the law, enforceability of agreements or contracts is at least called into question if the person was tricked, deceived, or was intentionally given misleading information. But if a consumer reasonably thinks that the hundreds of thousands of dollars that they are sending by wire transfer to buy a house is going to the correct settlement agent or company, and all that money ends up somewhere else – not through negligence on the part of the prospective homebuyer, but because they were deceived into believing that the money was going to the correct party – why is that consumer then told that nothing can be done? This, even though the person is earnestly trying to do the right thing by engaging with a complex, confusing, financial system where adherence to deadlines and attention to detail are paramount. This, when the deception can be truly life changing and devastating.

In March 2023, AARP published a story about a New Jersey couple in their sixties, who had nearly $100,000 (their life savings) stolen by a fraudulent wire transfer. They wanted to downsize their house and move nearer to family. They found the perfect smaller house and wired $91,500 to the account as directed by their real estate attorney. They had proof of the wire transfer. They were very, very careful because after all, their life savings were at stake, and they were also planning on retirement. They arrived at the settlement table, proof of the wire transfer in hand, only to hear their real estate attorney say that the funds were never deposited into the settlement account. The attorney asked them where they got the account information. The couple told the attorney that they got the instructions by email from the attorney, only to learn that the attorney never sent that email. Their bank was unable to reverse the wire transfer. The couple had taken a second mortgage to buy their new house because the seller wanted an all-cash transaction. This happened in 2017.

At the time AARP published this story – six years later – the couple was still trying to recover. The husband could not retire from his job and his wife was only recently able to leave her job. Not surprisingly, they lost the house. And they are still trying to repay thousands of dollars, while the real estate agent, the real estate attorney, and the title company have all absolved themselves of responsibility. The couple was told to expect an email with wire transfer instructions a couple of days before the closing date. They got an email with wire transfer instructions a couple of days before the closing date. They were told to follow those instructions within the deadlines, and they did, because time is of the essence when completing a home sale. Now, instead of enjoying retirement, this couple has had their lives upended. One of them must now continue working. Instead of spending time with their family, this couple is spending their precious time with more lawyers to try to hold the legal and financial professionals accountable in some way for the devastation that they have been left with.

These criminals don't have to hack a consumer's email or cell phone account. For example, scammers can hack the accounts of title companies, real estate agents, and real estate attorneys to spread their devastation. They can find a treasure-trove of information in public records. A listing of a property for sale is public information. A contract that has been put down on a house is also public information. Scammers find it relatively easy to interfere in the chain of communications to misdirect a wire transfer. There are even wire fraud "as-a-service" software kits that scammers can buy on the Dark Web. So, the scammer doesn't even have to be a computer expert to perpetrate this crime.

What is a consumer supposed to do against this onslaught? From the initial intrusion, these criminals move with lightning speed to escape detection by transferring money to other financial accounts that may be overseas. And when the financial institution says, "there is nothing we can do," the criminals can literally laugh all the way to their offshore, international banks, hundreds of thousands of dollars richer *per transaction.* No wonder wire transfer fraud has reached epidemic proportions!

SB 930 would establish protections for consumers who complete financial transactions by wire transfer. It is not acceptable for the financial professionals involved in these complex transactions to just disengage and say that outside of a few feeble attempts to claw back a transfer, nothing can be done. *More must be done*. Consumers are at an unacceptable disadvantage as they are whipsawed back and forth between financial institutions, attorneys, agents, and all kinds of other professionals, trying to make sense of confusing, complex information. The consequences from deceptively misdirected wire transfers are all too real and can be life-changing, even devastating for consumers – especially those who are planning for retirement and are ages 50 and older – the core AARP constituency.

AARP supports SB 930 and respectfully requests the Senate Finance Committee to issue a favorable report. For questions, please contact Tammy Bresnahan, Director of Advocacy for AARP Maryland at tbresnahan@aarp.org or by calling 410-302-8451.