



March 5, 2024

Senator William C. Smith, Jr.
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, MD 21401

Re: MSBA Business Law Section Council
Testimony in **Opposition** of Senate Bill 954 (Corporations and Associations – Transparency – Beneficial Ownership)

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 Senate Bill 954 (the “Bill” or “SB 954”), which we oppose for the reasons explained below.

However, before identifying our opposition to the Bill, we acknowledge the concerns of numerous parties that limited liability entities have been used by certain residential real estate investors to avoid accountability as lessors, or as enablers of community hazards or nuisances through neglect. For that reason, the Section Council has not opposed Senate Bill 779, or its companion cross-file House Bill 826, each entitled “Real Property – Taxation of Vacant Property, Certification of Company Representatives, and Short-Term Rentals.” (The Senate version was heard in the Budget and Taxation Committee on February 21, 2024.) That bill would require each legal entity to identify to the Maryland State Department of Assessments and Taxation (the “SDAT”) whether it owns residential real estate and, if so, to identify under oath the “correct contact information for a representative of the entity who has the authority to communicate with the public about the entity.” Thus, that bill is narrowly tailored to solve a specific problem perceived to have arisen from the use of limited liability entities.

By contrast, SB 954 would require nearly all Maryland chartered entities to make and update filings with the SDAT that are duplicative of, and more intrusive than, the information being collected at the Federal level, as required by the Corporate Transparency Act (31 U.S.C. § 5336) (the “Federal CTA”), which became effective on January 1, 2024. In summary, the Federal CTA requires entities formed or registered to do business in the United States (including in Maryland), unless exempt, to disclose beneficial ownership information (“BOI”) about its owners, officers, and control persons with the Financial Crimes Enforcement Network of the U.S. Department of Treasury (“FinCEN”). The Section Council is opposed to the Bill for several reasons.

First, SB 954 would mandate filings by nearly all Maryland chartered entities. There is no reasonable basis to require such disclosures for all Maryland chartered limited liability entities, including those formed for non-profit and community purposes, as opposed to those that are involved in specific business endeavors.

Second, under its final rule FinCEN is authorized to disclose BOI under certain circumstances to six categories of recipients, including U.S. State, local and Tribal law enforcement agencies.¹ As the CTA provides a way for our state to obtain Maryland entities' BOI from FinCEN, we don't believe that it makes sense for Maryland to enact a similar requirement now that would require the expenditure of substantial state funds to duplicate a database that the Federal Government has already begun to establish.²

Third, the cost of compliance with the Bill for Maryland businesses would be substantial. New York is the only state that has a statute like the Federal CTA.³ The New York statute generally conforms to the Federal CTA, including its exemptions from coverage, while the Bill does not. The National Small Business Association, a nonpartisan small-business advocacy group based in Washington, D.C., conducted a survey in late 2023 and estimated that the cost of compliance with the Federal CTA will be about \$8,000 on average for each business. Because the Bill does not mirror the Federal CTA in all respects, Maryland businesses can expect a similar cost in complying with the Maryland requirements, to the detriment of Maryland businesses.

Fourth, the Bill would require Maryland businesses to file a copy of an "acceptable identification document" (defined as a passport, State driver's license or identification document) for its beneficial owners with the SDAT in connection with the BOI filing report. ***The filing of such documents containing personally identifiable information about individuals presents substantial data privacy risks.*** The SDAT will need to spend substantial funds to create security systems to avoid security breaches. FinCEN spent years and substantial funds to create what it describes as a *secure, non-public database using rigorous information security methods and controls typically used in the Federal government to protect non-classified yet sensitive information systems at the highest security level.* We question the ability of the SDAT, as currently constructed and with already limited staffing and resources, to create a similarly secure database. There will not only be initial expenditures, but ongoing software development and maintenance costs to maintain such a secure database. Diverting funds, resources, and staff away from the SDAT's current functions would have a negative impact on Maryland businesses and the SDAT.

Fifth, there are over 20 categories of exemptions from the Federal CTA, while the Bill includes only a sole exemption for banking institutions, as defined in § 1-101 of the Financial Institutions Article. This means that a Maryland entity that is exempt from the BOI reporting requirements under the Federal legislation will nonetheless be required to comply with the Maryland statutory requirement. Examples of other exempt entities under the Federal CTA include (a) publicly-traded companies, (b) companies that operate in highly-regulated industries (*e.g.*, insurance companies, investment advisers and investment companies, brokers or dealers, and public accounting firms), (c) IRS-recognized tax-exempt entities, and (d) "large operating companies" (*i.e.*, employs more than 20 employees on a full-time basis in the U.S.,

¹ See: [FinCEN fact-sheet-beneficial-ownership-information-access-and-safeguards](#)

² We acknowledge that a U.S. district judge in Alabama ruled that the CTA is unconstitutional on March 1, 2024. That ruling took an aggressive approach towards challenging the authority of the U.S. Congress and will be appealed by the United States. A [FinCEN Press Release on March 4, 2024](#) said that as a result of the case, the government is not currently enforcing the CTA against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner, and the members of the National Small Business Association as of March 1, 2024. Thus, the ruling does not prevent the Department of Treasury from fining or prosecuting Maryland chartered entities and their owners who do not file the required reports.

³ The District of Columbia requires limited liability entities to identify all individuals who own 10% or more of the entity but does not require filing of personal identity document such as a passport or a driver's license, which is a major concern about the CTA as addressed below.

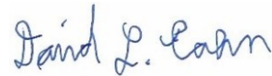
filed a federal income tax return in the previous year demonstrating more than \$5 million in gross receipts or sales in the aggregate, and has an operating presence at a physical office within the U.S.). If Maryland were to adopt the Bill (which we do not think would be in the best interest of Maryland businesses for the reasons set forth in this letter), we believe that the exemptions should be the same as the Federal exemptions so that Maryland businesses would not have to incur an added cost to comply with the Maryland requirements. In addition, Maryland should strongly consider exempting condominium and homeowner associations that are exempt from taxation under Internal Revenue Code Section 528, and perhaps for all non-stock corporations, as they do not have shareholders and do not have any members who exercise substantial control in the sense typical of a beneficial or *de facto* controller of a limited liability entity.

Finally, with New York being the only state to enact such a statute, we believe that the Bill will likely cause potential businesses to choose to organize in a state other than Maryland (such as Delaware) and to have existing Maryland businesses redomicile to another state. We have earned the reputation of a pro-business state in many respects, and passing the Bill would be a step backwards in our progress.

In conclusion, it is the Section Council's strong opinion that Maryland should not become an outlier by adopting the Bill and imposing a state-level corporate transparency statute. It is probable that the state will be able to obtain the same information from FinCEN. If that does not prove to be correct, at that time Maryland then can consider whether it needs to expend substantial state resources to collect such information directly in a secure manner. In the meantime, if the General Assembly believes that some additional information on real estate holding companies must be collected, then Senate Bill 779/House Bill 826 prescribes a more measured and easily implemented requirement for that purpose.

Thank you for your time and consideration of our testimony opposing SB 954.

Sincerely,



David L. Cahn
Chair
Business Law Section Council

cc: Business Law Section Council