

February 18, 2025

The Honorable Senator Pamela Beidle
Chair of the Maryland Senate Finance Committee
3 East Miller Senate Office Building
11 Bladen St.
Annapolis, MD 21401

Re: MSBA Business Law Section

Testimony in **Opposition** of Senate Bill 659 (**Commercial Protection – Electronic Funds Transfers – Regulations (Elder Fraud Prevention Act of 2025)**)

Dear Chair Beidle 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 659 (the “Bill”).

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 the Bill will instead create more confusion for Marylanders, including individuals, businesses, and financial institutions located in the State of Maryland.

The Bill directs that the Commissioner of Financial Regulation (the “Commissioner”) adopt “consumer protection regulations for financial institutions that initiate a domestic electronic funds transfer under [Article 4A of the Uniform Commercial Code] ...” to “provide consumers with protections that are consistent with those afforded to consumers who initiate an electronic funds transfer [under the federal Electronic Funds Transfer Act].” The proposed regulatory directive would have the Commissioner afford consumer wire transfers (initiated under Article 4A of the Uniform Commercial Code) with the same consumer protections afforded electronic funds transfers (“EFTs”) under the federal Electronic Funds Transfer Act (“EFTA”) and its implementing regulation, Regulation E (“Reg. E”). Such a change would alter long-standing provisions of federal law, as federal Reg. E explicitly exempts wire transfers from the “EFT” definition under Reg. E. The change would ostensibly prohibit financial institutions from holding consumers liable when such consumers provide instructions to initiate a consumer wire transfer to a third party and then later learn that the third party duped the sender of the funds. This change would then leave financial institutions with the sole risk for any funds allegedly sent by wire transfer to a person that defrauded a consumer, even when the financial institution took reasonable steps to verify the wire transfer request and acted solely on a consumer’s explicit instructions.

The Bill would take Maryland out of step with other jurisdictions and be in direct conflict with existing federal law. The provisions under existing 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.

Any regulatory directive stemming from the Bill would misalign 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 the Bill 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 transfer 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 wire transfers. Financial institutions will likely take steps to address the additional costs and risks included in the Bills. 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; (ii) higher costs to consumers to send wire transfers; and (iii) more complex procedures that are harder for consumers to navigate.

The Section Council understands that the Committee is seeking ways to protect Marylanders, especially elders, from bad actors but the Bill will create more problems than they will solve and will be another legislative enactment that says Maryland is not good for business.

Thank you for your time and consideration of our testimony opposing the Bill.

Sincerely,



Gregory T. Lawrence, Chair
MSBA Business Law Section



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

cc: Business Law Section Council