HOUSE BILL 1156

I4, I2 4lr1823
CF SB 930

By: **Delegates Stewart and Griffith**
Introduced and read first time: February 7, 2024
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

**Commercial Law – Consumer Wire Transfers – Liability
(Elder Fraud Prevention Act of 2024)**

FOR the purpose of exempting certain transactions from certain provisions of the Maryland Uniform Commercial Code; limiting a consumer's liability for damages resulting from certain consumer wire transfers; requiring certain notice to conform to certain requirements in order to be considered sufficient; requiring certain investigations of certain allegations regarding consumer wire transfers; requiring decisions and materials be provided to a consumer in certain circumstances; subjecting certain financial institutions to treble damages under certain circumstances; subjecting certain financial institutions to certain liability for violation of this Act; prohibiting the waiver of rights conferred on a consumer by this Act; exempting certain wire transfers from this Act; and generally relating to consumer wire transfers.

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 4A–102
Annotated Code of Maryland
(2013 Replacement Volume and 2023 Supplement)

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 4A–108
Annotated Code of Maryland
(2013 Replacement Volume and 2023 Supplement)

BY adding to
Article – Commercial Law
Section 12–1501 through 12–1507 to be under the new subtitle "Subtitle 15. Consumer Wire Transfers"
Annotated Code of Maryland

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(2013 Replacement Volume and 2023 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

4A–102.

Except as otherwise provided in § 4A–108 of this subtitle, this title applies to funds transfers defined in § 4A–104 of this subtitle.

4A–108.

(a) Except as provided in subsection (b) of this section, this title does not apply to a funds transfer **[**any**]:**

(1) THAT IS A WIRE TRANSFER INITIATED BY AN INDIVIDUAL; OR

(2) ANY part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95–630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

(b) This title applies to a funds transfer that is **[**a**]:**

(1) A WIRE TRANSFER INITIATED BY AN INDIVIDUAL, TO THE EXTENT THAT THE PROVISIONS OF THIS TITLE DO NOT CONFLICT WITH THE PROVISIONS OF TITLE 12, SUBTITLE 15 OF THIS ARTICLE; OR

(2) A remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. § 1693o–1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. § 1693a) as amended from time to time.

(c) In a funds transfer to which this title applies, in the event of an inconsistency between an applicable provision of this title and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

SUBTITLE 15. CONSUMER WIRE TRANSFERS.

12–1501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "CONSUMER" MEANS AN INDIVIDUAL.

(C) "CONSUMER WIRE TRANSFER" MEANS A WIRE TRANSFER THAT IS INITIATED BY A CONSUMER.

(D) "CONSUMER'S FINANCIAL INSTITUTION" MEANS A FINANCIAL INSTITUTION THAT PROVIDES A CONSUMER WITH AN ACCOUNT AND A MEANS BY WHICH TO MAKE A CONSUMER WIRE TRANSFER.

(E) (1) "ELECTRONIC TERMINAL" MEANS AN ELECTRONIC DEVICE THAT A CONSUMER MAY USE TO INITIATE A TRANSFER OF FUNDS.

(2) "ELECTRONIC TERMINAL" INCLUDES AN AUTOMATED TELLER MACHINE, A POINT–OF–SALE TERMINAL, AND A CASH–DISPENSING MACHINE.

(F) (1) "ERROR" MEANS AN INACCURACY APPEARING ON A STATEMENT OF A CONSUMER'S ACCOUNT.

(2) "ERROR" INCLUDES:

(I) AN UNAUTHORIZED DEBIT;

(II) AN INCORRECT TRANSFER TO OR FROM THE CONSUMER'S ACCOUNT;

(III) OMISSION OF A TRANSACTION THAT SHOULD HAVE BEEN INCLUDED IN THE STATEMENT;

(IV) A COMPUTATIONAL ERROR BY THE CONSUMER'S FINANCIAL INSTITUTION;

(V) A CONSUMER'S RECEIPT OF AN INCORRECT AMOUNT FROM AN ELECTRONIC TERMINAL; AND

(VI) ANOTHER ERROR IDENTIFIED BY THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU UNDER THE FEDERAL ELECTRONIC FUNDS TRANSFER ACT.

(G) "OVERDRAFT PROTECTION" MEANS AN EXTENSION OF CREDIT BY A CONSUMER'S FINANCIAL INSTITUTION TO COVER ANY LIABILITY INCURRED BY A DEBIT OF THE CONSUMER'S ACCOUNT BY AN AMOUNT IN EXCESS OF THE ACCOUNT BALANCE.

(H) (1) "VERIFICATION MECHANISM" MEANS A MEANS BY WHICH AN INDIVIDUAL'S AUTHORITY TO INITIATE A CONSUMER WIRE TRANSFER MAY BE CONFIRMED.

(2) "VERIFICATION MECHANISM" INCLUDES VERIFICATION BY SIGNATURE, FINGERPRINT, OR A PERSONAL IDENTIFICATION NUMBER.

12–1502.

THIS SUBTITLE DOES NOT APPLY TO A WIRE TRANSFER OF WHICH ANY PART IS GOVERNED BY THE FEDERAL ELECTRONIC FUND TRANSFER ACT.

12–1503.

(A) EXCEPT AS PROVIDED IN THIS SECTION, A CONSUMER IS NOT LIABLE FOR DAMAGES RESULTING FROM AN UNAUTHORIZED CONSUMER WIRE TRANSFER.

(B) A CONSUMER IS LIABLE FOR DAMAGES RESULTING FROM AN UNAUTHORIZED CONSUMER WIRE TRANSFER AS DETERMINED UNDER THIS SECTION IF:

(1) THE CONSUMER WIRE TRANSFER WAS INITIATED BY MEANS AUTHORIZED BY THE CONSUMER; AND

(2) THE MEANS USED TO INITIATE THE CONSUMER WIRE TRANSFER WAS ENABLED USING A VERIFICATION MECHANISM AT THE TIME THE CONSUMER WIRE TRANSFER WAS INITIATED.

(C) IF A CONSUMER NOTIFIES THE CONSUMER'S FINANCIAL INSTITUTION:

(1) OF AN UNAUTHORIZED CONSUMER WIRE TRANSFER WITHIN 60 DAYS AFTER THE TRANSMITTAL OF AN ACCOUNT STATEMENT THAT INCLUDES AN ALLEGEDLY UNAUTHORIZED CONSUMER WIRE TRANSFER, THE CONSUMER IS LIABLE FOR DAMAGES RESULTING FROM THE UNAUTHORIZED CONSUMER WIRE TRANSFER THAT ARE THE LESSER OF:

(I) $50; OR

(II) THE AMOUNT OF THE UNAUTHORIZED CONSUMER WIRE TRANSFER; OR

(2) OF THE LOSS OR THEFT OF A MEANS BY WHICH A CONSUMER WIRE TRANSFER MAY BE INITIATED WITHIN 2 BUSINESS DAYS AFTER THE DISCOVERY OF

THE LOSS OR THEFT, THE CONSUMER IS LIABLE FOR DAMAGES RESULTING FROM THE LOSS OR THEFT THAT ARE THE LESSER OF:

(I) $500; OR

(II) THE AMOUNT OF AN UNAUTHORIZED CONSUMER WIRE TRANSFER RESULTING FROM THE LOSS OR THEFT OF THE MEANS BY WHICH A CONSUMER WIRE TRANSFER MAY BE INITIATED.

(D) IF A CONSUMER FAILS TO PROVIDE THE CONSUMER'S FINANCIAL INSTITUTION SUFFICIENT NOTICE, THE CONSUMER IS NOT ENTITLED TO REIMBURSEMENT FOR DAMAGES RESULTING FROM AN UNAUTHORIZED CONSUMER WIRE TRANSFER.

(E) A CONSUMER'S LIABILITY FOR UNAUTHORIZED TRANSACTIONS THAT TRIGGER OVERDRAFT PROTECTION SHALL BE DETERMINED EXCLUSIVELY IN ACCORDANCE WITH THIS SECTION.

(F) THIS SECTION MAY NOT BE CONSTRUED TO IMPOSE LIABILITY IN EXCESS OF THE AMOUNTS IDENTIFIED IN THIS SECTION.

12–1504.

NOTICE REQUIRED UNDER THIS SUBTITLE IS NOT SUFFICIENT UNLESS:

(1) THE CONSUMER TAKES STEPS TO NOTIFY THE CONSUMER'S FINANCIAL INSTITUTION THAT ARE REASONABLE IN THE ORDINARY COURSE OF BUSINESS;

(2) THE NOTICE ENABLES THE CONSUMER'S FINANCIAL INSTITUTION TO IDENTIFY THE NAME AND ACCOUNT NUMBER OF THE CONSUMER;

(3) THE NOTICE INDICATES THAT THE CONSUMER BELIEVES THAT THERE IS AN ERROR IN THE ACCOUNT STATEMENT DESCRIBED UNDER § 12–1503(C)(1) OF THIS SUBTITLE; AND

(4) THE NOTICE IS GIVEN ORALLY AND IF THE CONSUMER'S FINANCIAL INSTITUTION REQUESTS WRITTEN NOTICE:

(I) THE CONSUMER'S FINANCIAL INSTITUTION PROVIDES AN ADDRESS WHERE THE WRITTEN NOTICE MAY BE SENT; AND

(II) THE WRITTEN NOTICE IS RECEIVED BY THE CONSUMER'S FINANCIAL INSTITUTION WITHIN 10 BUSINESS DAYS AFTER THE NOTICE IS REQUESTED.

12–1505.

(A) IF A CONSUMER'S FINANCIAL INSTITUTION RECEIVES SUFFICIENT NOTICE OF AN ERROR WITHIN 60 DAYS AFTER TRANSMITTAL OF AN ACCOUNT STATEMENT THAT CONTAINS THE ALLEGED ERROR, THE CONSUMER'S FINANCIAL INSTITUTION SHALL INITIATE AN INVESTIGATION OF ANY ALLEGED ERROR.

(B) (1) THE CONSUMER'S FINANCIAL INSTITUTION SHALL TRANSMIT A DECISION RESULTING FROM AN INVESTIGATION INITIATED UNDER THIS SECTION:

(I) WITHIN 10 BUSINESS DAYS AFTER THE INVESTIGATION WAS INITIATED; AND

(II) IF THE CONSUMER'S FINANCIAL INSTITUTION ELECTS TO PROVISIONALLY CREDIT THE CONSUMER'S ACCOUNT IN THE AMOUNT OF THE ERROR ALLEGED, WITHIN 45 BUSINESS DAYS AFTER THE INVESTIGATION WAS INITIATED.

(2) IF A CONSUMER'S FINANCIAL INSTITUTION ELECTS TO PROVISIONALLY CREDIT THE CONSUMER'S ACCOUNT UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, THE CONSUMER MAY USE ANY FUNDS CREDITED AT ANY TIME FOR ANY PURPOSE.

(C) IF AN INVESTIGATION UNDER THIS SECTION RESULTS IN A DECISION THAT NO ERROR OCCURRED:

(1) THE DECISION SHALL BE TRANSMITTED TO THE CONSUMER WITHIN 3 BUSINESS DAYS AFTER THE DECISION IS MADE;

(2) ON REQUEST BY THE CONSUMER, THE CONSUMER'S FINANCIAL INSTITUTION SHALL TRANSMIT TO THE CONSUMER COPIES OF ALL RECORDS THE CONSUMER'S FINANCIAL INSTITUTION USED TO MAKE THE DECISION; AND

(3) THE DECISION SHALL CONTAIN A NOTICE REASONABLY CALCULATED TO BE UNDERSTANDABLE BY THE CONSUMER THAT THE CONSUMER MAY REQUEST RECORDS IN ACCORDANCE WITH ITEM (2) OF THIS SUBSECTION.

(D) IF AN INVESTIGATION UNDER THIS SECTION RESULTS IN A DECISION THAT AN ERROR OCCURRED:

(1) THE DECISION SHALL BE TRANSMITTED TO THE CONSUMER WITHIN 1 BUSINESS DAY AFTER THE DECISION IS MADE; AND

(2) THE CONSUMER'S FINANCIAL INSTITUTION SHALL CORRECT THE ERROR IN ACCORDANCE WITH LIABILITY DETERMINED UNDER § 12–1503 OF THIS SUBTITLE, INCLUDING ANY INTEREST THAT WOULD HAVE ACCRUED IF THE FUNDS HAD NOT BEEN ERRONEOUSLY DEBITED FROM THE CONSUMER'S ACCOUNT.

(E) A CONSUMER SHALL BE ENTITLED TO TREBLE DAMAGES IF THE CONSUMER SHOWS THAT THE CONSUMER'S FINANCIAL INSTITUTION:

(1) DID NOT MAKE A GOOD FAITH INVESTIGATION OF AN ALLEGED ERROR;

(2) DID NOT HAVE A REASONABLE BASIS TO BELIEVE THAT THERE WAS NO ERROR AND DID NOT PROVISIONALLY CREDIT THE CONSUMER'S ACCOUNT WITHIN 10 DAYS AFTER RECEIPT OF NOTICE OF THE ALLEGED ERROR; OR

(3) KNOWINGLY AND WILLFULLY CONCLUDED THAT THE CONSUMER'S ACCOUNT WAS NOT IN ERROR AND THE CONCLUSION WAS UNREASONABLE CONSIDERING THE EVIDENCE AVAILABLE.

12–1506.

(A) IF A CONSUMER'S FINANCIAL INSTITUTION FAILS TO COMPLY WITH THIS SUBTITLE WITH RESPECT TO A CONSUMER OR GROUP OF CONSUMERS:

(1) (I) FOR AN INDIVIDUAL ACTION, THE CONSUMER'S FINANCIAL INSTITUTION SHALL BE LIABLE IN THE AMOUNT:

1. EXCEPT AS PROVIDED IN ITEM 2 OF THIS ITEM, OF ANY DAMAGES SUSTAINED BY THE CONSUMER; AND

2. OF NOT LESS THAN $100 AND NOT MORE THAN $1,000; AND

(II) FOR A CLASS ACTION:

1. NO MINIMUM RECOVERY PER CLAIMANT MAY APPLY;

2. EXCEPT AS PROVIDED IN ITEM 3 OF THIS ITEM, THE CONSUMER'S FINANCIAL INSTITUTION SHALL BE LIABLE IN THE AMOUNT THE COURT MAY ALLOW; AND

3. THE TOTAL LIABILITY OF THE CONSUMER'S FINANCIAL INSTITUTION MAY NOT BE IN EXCESS OF THE GREATER OF $500,000 OR 1% OF THE CONSUMER'S FINANCIAL INSTITUTION'S NET WORTH;

(2) IF A VIOLATION IS FOUND BY A COURT, THE CONSUMER'S FINANCIAL INSTITUTION SHALL BE LIABLE FOR REASONABLE ATTORNEY'S FEES ASSOCIATED WITH THE ACTION; AND

(3) AN AFFIRMATIVE DEFENSE SHALL BE AVAILABLE TO A CONSUMER'S FINANCIAL INSTITUTION WITH RESPECT TO AN ALLEGED ERROR IF THE CONSUMER'S FINANCIAL INSTITUTION SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE ERROR:

(I) WAS A GOOD FAITH ERROR REGARDLESS OF ANY REASONABLE PROCEDURES IN PLACE DESIGNED TO AVOID SUCH AN ERROR; AND

(II) WAS NOT INTENTIONAL.

(B) IN DETERMINING LIABILITY FOR A VIOLATION OF THIS SUBTITLE, A COURT SHALL CONSIDER:

(1) THE FREQUENCY AND PERSISTENCE OF THE VIOLATION;

(2) THE NATURE OF THE VIOLATION;

(3) THE RESOURCES AVAILABLE TO THE DEFENDANT;

(4) THE NUMBER OF INDIVIDUALS ADVERSELY AFFECTED BY THE ALLEGED ERROR; AND

(5) THE EXTENT TO WHICH THE VIOLATION WAS INTENTIONAL.

(C) IN AN ACTION TO DETERMINE A CONSUMER'S LIABILITY FOR A CONSUMER WIRE TRANSFER:

(1) THE CONSUMER'S FINANCIAL INSTITUTION SHALL HAVE THE BURDEN OF PROOF TO SHOW THAT THE CONSUMER WIRE TRANSFER WAS AUTHORIZED; AND

(2) IF THE CONSUMER WIRE TRANSFER WAS UNAUTHORIZED, THE CONSUMER'S FINANCIAL INSTITUTION SHALL HAVE THE BURDEN OF PROOF TO SHOW THAT THE CONDITIONS FOR THE CONSUMER'S LIABILITY UNDER § 12–1503 OF THIS SUBTITLE WERE MET.

12–1507.

(A) A CONSUMER MAY NOT WAIVE THE RIGHTS CONFERRED UNDER THIS SUBTITLE THROUGH ANY MEANS, INCLUDING THROUGH A CONTRACT.

(B) THIS SUBTITLE MAY NOT BE CONSTRUED TO LIMIT ANY OTHER RIGHTS OF A CONSUMER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.