



June 4, 2024

Before the Ohio House Ways and Means Committee
Opponent Testimony House Bill 451

Chair Roemer, Vice Chair Lorenz, Ranking Member Troy, and members of the Ohio House Ways and Means Committee, thank you for the opportunity to provide opposition testimony for House Bill 451 my name is Tony Long, General Counsel and Director of Energy & Environmental Policy for the Ohio Chamber of Commerce.

As you may know, for 131 years, the Ohio Chamber has served as the state's leading business advocate, and we represent over 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness, and growth for the benefit of all Ohioans. As part of our mission, we seek to make Ohio the best place in the country for businesses to operate and grow.

HB 451 has potential constitutional infirmities and the fee increases sought by the legislation to address unsafe or unsound remittance practices may be better addressed through enforcement of current laws and regulations found in Title 13 of the Ohio Revised Code.

The first hint of a constitutional infirmity can be found in the analysis of the bill. In the last paragraph LSC raises the issue of the US Constitution's Foreign Commerce Clause – Article 1, Section 8, Clause 3. That clause grants Congress authority over foreign commerce and limits the power of states to discriminate against foreign commerce. In *Emerson Electric v. Tracy*, the Ohio Supreme Court ruled a provision of the old franchise tax was unconstitutional because it treated foreign dividends less favorably than domestic dividends. The vagueness of which companies may be subject to the new remittance tax deflect equal protection arguments, but this creates business uncertainty for a host of businesses not named or currently contemplated by the legislation as drafted. And a *Baltimore Law Review* article in 2014 raised a dormant commerce clause concern with remittance taxes pending at the time.

Finally, if the remittance fee/tax is aimed at businesses regulated under Section 1315.01 of the Ohio Revised Code, Chapter 1315 contains provisions to deal with businesses using unsafe or unsound business practices. The Superintendent of Financial Institutions has several tools in that chapter of the Ohio Revised Code to regulate and enforce the business of remittance.

Thank you for the opportunity to testify on House Bill 451. I will now try to answer any questions you may have for me.