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MEMORANDUM IN OPPOSITION

February 8, 2010

S1055B Maziarz (ON SENATE BANKS COMMITTEE AGENDA)

AN ACT to amend the banking law, in relation to preauthorized electronic fund transfers

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

This legislation would prohibit any agreement for electronic bill-paying or electronic transfer from a consumer's bank account to permit or require any transfer of funds as a penalty or final payment after the consumer has provided a written or oral stop payment order. This provision would be applicable only to State-chartered financial institutions, could result in significant disputes between consumers and their creditors with banks being placed in the middle, is likely to be preempted by Regulation E, which already offers consumers greater protection with regard to stop payments, and is unnecessary.

The federal Electronic Funds Transfer Act, implemented by the Board of Governors of the Federal Reserve System as Regulation E, 12 CFR Part 205, sets forth detailed procedures for consumers to stop payment on preauthorized electronic funds transfers. Section 205.10 provides that: "A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer." The financial institution may require the consumer to confirm an oral stop payment order within 14 days, but, provided the notice is timely given, the consumer will not ordinarily be liable for payments over the stop payment order. Because this provision is more protective of the consumer than is this legislation, this legislation would be preempted by Regulation E.

In addition, the time limits in Regulation E, governed by federal regulation, preempt the lack of time limits in this legislation. Passage of this legislation would lead to customer confusion and, potentially, disputes between bank customers and the parties to whom payments are due. These disputes could draw banks as account holders into the middle.

Finally, federally chartered institutions would not be subject to these limitations.

For these reasons, the New York Bankers Association *opposes* this legislation and urges that it be held.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP