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**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

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March 4, 2020

To: The Honorable Dereck E. Davis  
Chair, Economic Matters Committee

From: Steven M. Sakamoto-Wengel   
Consumer Protection Division

Re: House Bill 1478 – Commercial Law – Merchant Cash Advance – Prohibition  
(INFORMATIONAL LETTER)

The Consumer Protection Division of the Office of the Attorney General submits the following letter of information with regard to House Bill 1478, sponsored by Delegates Howard, Hornberger, McComas and Saab. HB 1478 would prohibit “merchant cash advance transactions” in Maryland, which are defined as “an arrangement between a buyer and a seller in which the buyer agrees to purchase an agreed-on percentage of future credit card revenues or debit card revenues that are due to a seller for a predetermined purchase price.” HB 1478 would make such transactions violations of the Consumer Protection Act. As explained to the Division, the bill is aimed to address deceptive offers to businesses that purport to be loans but are instead transactions in which the lender takes a percentage of the business’ receivables as repayment.

First, the bill would give the Division authority over business-to-business transactions. However, with limited exceptions, violations of the Consumer Protection Act are limited to transactions that are for “personal, family, household or agricultural” purposes and expanding the CPA to cover business-to-business transactions would open a door that could lead to a significant increase in the number of complaints received by the Division, requiring the Division to add corresponding resources.

Second, regulation of lending in Maryland has primarily been the responsibility of the Commissioner of Financial Regulation. Although the Commissioner similarly only has authority over consumer lending and not business-to-business lending, to the extent that the General Assembly believes these transactions should be regulated, primary responsibility for regulating these transactions may be more appropriately placed under the Commissioner’s jurisdiction.

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The Honorable Dereck E. Davis  
House Bill 1478  
March 4, 2020  
Page Two

Third, although there are reports that these transactions are made on unfavorable terms that the small business owners do not understand, the Division questions whether a prohibition of “merchant cash advance transactions” would be appropriate. To the extent that “merchant cash advance transactions” are regulated, the regulation should address situations in which deception is involved or the transactions exceed a set usury cap.

Accordingly, the Consumer Protection Division respectfully requests that the Economic Matters Committee take the points discussed above into consideration with respect to House Bill 1478.

cc: The Honorable Seth Howard  
The Honorable Kevin Hornberger  
The Honorable Susan McComas  
The Honorable Sid Saab