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February 17, 2021

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

From: Steven M. Sakamoto-Wengel
Consumer Protection Division

Re: House Bill 664 – Financial Institutions – Consumer Credit – Sales Based Financing
Transactions (INFORMATIONAL LETTER)-

The Consumer Protection Division of the Office of the Attorney General submits the following letter of information with regard to House Bill 664, sponsored by Delegate Howard. HB 664 would require businesses that make “Sales Based Financing Transactions” to be licensed by the Commissioner of Financial Regulation. “Sales-based financing transaction” is defined as a financing transaction that is repaid over time as a percentage of sales or revenue where the payment amount may increase or decrease depending on the volume of sales made or revenue received by the recipient, i.e., a commercial loan. However, HB 664 would make such transactions violations of the Consumer Protection Act (page 3, lines 26-30 and page 25 lines 11-13 and 18-19). Further, 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. However, HB 664 provides on page 7, lines 23-25, that the statute would *not apply to* a financing transaction in which the recipient *does not* intend to use the proceeds primarily for personal, family, or household purposes. In other words, HB 664 would only apply to consumer, not commercial, loans.

Even if House Bill 664 were amended to clarify that it is intended to apply only to commercial loans, with limited exceptions, violations of the Consumer Protection Act are limited to consumer transactions 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.

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Second, while HB 664 appropriately recognizes that regulation of lending in Maryland has primarily been the responsibility of the Commissioner of Financial Regulation, the bill, on page 25, lines 21-25, provides that:

- (A) THE COMMISSIONER SHALL HAVE SOLE AUTHORITY TO ENFORCE COMPLIANCE WITH THIS SUBTITLE.
- (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO CREATE OR AUTHORIZE A PRIVATE RIGHT OF ACTION AGAINST A PERSON BASED ON COMPLIANCE OR NONCOMPLIANCE WITH THIS SUBTITLE.

These provisions conflict with the provisions cited above that also make a violation of the statute a violation of the Consumer Protection Act, which both provides for enforcement by the Consumer Protection Division as well as a private right of action under section 13-408 of the Act. Since HB 664 was intended to apply to commercial loans, the Division believes this conflict should be resolved by removing all provisions making a violation of the statute a violation of the Consumer Protection Act.

Accordingly, the Consumer Protection Division respectfully requests that the Economic Matters Committee take the points discussed above into consideration with respect to House Bill 664.

cc: The Honorable Seth Howard
Members, Economic Matters Committee