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To: The Honorable William C. Smith Jr.
Chair, Judicial Proceedings Committee

From: Kira Wilpone-Welborn
Consumer Protection Division

Re: Senate Bill 892 – Real Property – Residential Leases – Fee in Lieu of Security Deposit
(OPPOSE)

The Consumer Protection Division (“Division”) of the Office of the Attorney General **opposes** Senate Bill 892 sponsored by Senators Augustine, Waldstreicher, and Jackson. Senate Bill 892 purports to add a provision to Maryland's Security Deposit law, Md. Code Ann., Real Prop. §8-203, that would provide consumers a reasonable alternative to paying a security deposit or obtaining a surety bond at the time they enter a residential lease with a landlord. Under Senate Bill 892, landlords and tenants can agree to a "a fee in lieu of a security deposit." The landlord could, but would not be obligated, to use the fee to purchase insurance from an admitted carrier licensed by the Maryland Insurance Administration. As a result, a landlord could charge a fee in "any amount" payable "at any interval" that is "partially or wholly nonrefundable." The Division is concerned that Senate Bill 892 could make it easier for landlords to engage in unfair, abusive, or deceptive practices by either misleading or failing to advise prospective tenants of the consequences of choosing to pay a “fee in lieu of security deposit.” Though Senate Bill 892 would expose tenants to abusive practices by landlords, it fails to provide any meaningful benefit to tenants.

Maryland's Security Deposit Law

Maryland's Security Deposit Law defines "security deposit" to mean "any payment of money, including payment of the last month's rent in advance of the time it is due, given to a landlord by a tenant in order to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings." Md. Code Ann., Real Prop. §8-203(a)(3). Maryland's Security Deposit law affords consumers who lease residential properties in Maryland important protections from unscrupulous landlords.

For example, a landlord may not require a tenant to pay a security deposit that exceeds the equivalent of two months' rent per dwelling unit, regardless of the number of tenants. Md. Code Ann., Real Prop. §8-203(b). A landlord must maintain security deposits in an account devoted exclusively to security deposits that bear interest. Md. Code Ann., Real Prop. §8-203(d). At the conclusion of a tenancy, a consumer has the right to be present when the landlord inspects the premises to determine whether any damage was done by the tenant. Md. Code Ann., Real Prop. §8-203(f). A landlord may only withhold a security deposit for unpaid rent, damages due to breach of lease, or for damages caused by the tenant beyond "ordinary wear and tear to the leased premises, common areas, major appliances, and furnishings owned by the landlord" and must provide a tenant a written list of the damages claimed together with a statement of the costs actually incurred. Md. Code Ann., §8-203(f)(1). A landlord must return the security deposit plus the accrued interest minus any authorized deductions with a written list of any damages claimed. Md. Code Ann., Real Prop., §8-203(e) and (g). A security deposit is not liquidated damages and may not be forfeited to the landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach. Md. Code Ann., Real Prop. §8-203(f)(2).

Alternatively, a tenant can purchase a surety bond to protect the landlord against nonpayment of rent, damage due to breach of lease, or damage to the leased premises, common areas, major appliances, and furnishings. As with a traditional security deposit under section 8-203, the amount of the surety bond purchased, and any security deposit paid may not exceed the equivalent of two months' rent per dwelling unit. Md. Code Ann., Real Prop. §8-203(i). Importantly, the tenant rather than the landlord purchases the bond and must be advised in writing of all the tenant's rights and obligations prior to the purchase of the security bond. Md. Code Ann., Real Prop., §8-203(i)(5). Before making a claim to the surety bond, a landlord must provide written notice to the tenant that includes a list of damages to be claimed and costs actually incurred; a tenant has the right to pay any damages directly and has the right to dispute a landlord's claim. Md. Code Ann., Real Prop. §8-203(i)(7), (8), and (9).

Senate Bill 892 Would Harm Consumers

Senate Bill 892 does not include any of the protections afforded by the provisions related to security deposits and surety bonds. The proposed "fee in lieu of security deposit" may appear to benefit and open housing opportunities for low-income households but, in fact, Senate Bill 892 would likely harm consumers.

First, Senate Bill 892 could result in higher out-of-pocket costs paid by consumers over their lease term. Unlike the provisions related to the payment of a security deposit or use of a surety bond, Senate Bill 892 does not cap the total amount a landlord would be permitted to charge as a "fee in lieu of security deposit" and the total fees paid over the course of a multiple year lease could easily exceed the equivalent of two months' rent. Unlike a security deposit, which must be returned to a tenant with interest minus any authorized damages within 45 days of the end of a tenancy, Senate Bill 892 permits a landlord to deem a "fee in lieu of security deposit" wholly nonrefundable. Senate Bill 892 also does not require a landlord to use the fees collected to actually purchase

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insurance. Likewise, Senate Bill 892 does not require a landlord who has purchased insurance to disclose to consumers the landlord's actual costs to obtain the insurance. Thus, Senate Bill 892 would permit landlords to charge tenants fees that exceed their costs to obtain insurance.

Moreover, Senate Bill 892 does not require either the insurer or a landlord to disclose to consumers, who are not parties to the insurance contract, the terms of the insurance policy and the consumers' ability to enforce the policy or obligations under the policy. As a result, consumers are left without the information necessary to evaluate the insurance product. For example, at the termination of a tenancy, Senate Bill 892 does not preclude a landlord from filing a lawsuit against a tenant for any alleged damages in addition to making an insurance claim. Further, because the consumer is not a party to the insurance contract, consumers would not be able to make claims or challenge an insurer's decision to pay or deny a landlord's claim. Likewise, if an insurer sought subrogation against a tenant for a claim paid to a landlord, a tenant may not have sufficient information to defend the claim. The failure of a landlord to disclose material information at the initiation of the offer to lease is an unfair, abusive, and deceptive practice.

For these reasons, the Consumer Protection Division recommends an unfavorable report form the Judicial Proceedings Committee on Senate Bill 892.

cc: The Honorable Malcolm Augustine
The Honorable Jeff Waldstreicher
The Honorable Michael A. Jackson
Members, Judicial Proceedings Committee