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January 29, 2021

The Honorable William C. Smith, Jr., Chairman  
Senate Judicial Proceedings Committee  
Miller Senate Office Building  
Annapolis, Maryland 21401

RE: Senate Bill 327 - Civil Actions - Financial Exploitation of Vulnerable Adults – Informational Letter

Dear Chairman Smith and Members of the Senate Judicial Proceedings Committee:

The National Association of Insurance and Financial Advisors of Maryland (NAIFA Maryland) is a trade association of businesses and individuals who serve the insurance and financial services needs of Maryland citizens throughout the state.

We are pleased to provide this informational letter to assist the Committee in its consideration of this bill. In doing so, we also endorse the comments you have received from our colleagues, the Insurance Agents and Brokers (IA&B).

NAIFA Maryland applauds the intent of the bill, and commends Senator Waldstreicher for its introduction. Our members provide financial services and products to Maryland citizens every day, and we fully appreciate that some of those citizens, particularly our elderly citizens, may be subject to the wrongful acts of insurance and financial services providers. Our Association has members who specialize in serving the needs of elderly adults, utilizing products such as long-term care insurance and other financial products appropriate for that stage of life. We also have always required adherence to a code of ethics by our members.

Like IA&B, our comments are focused on possible unintended consequences if this legislation should be enacted. Insurance producers are required to be licensed under Maryland law, and their conduct is regulated by the Maryland Insurance Commissioner. Many of our members also have other licenses for other services, with other regulators, both state and federal. Included in this statutory and regulatory framework is a subset of compliance requirements, together with ample (and serious) remedies when violations by these regulated individuals and entities occur. We note that the primary purpose of this new subtitle, set forth on page 6, at lines 5 and 6 of the bill, is to create a new cause of action for harm caused to vulnerable adults. Furthermore, on page 7, at lines 16-18, this new cause of action is “in addition to and cumulative with” other claims, causes of action or remedies that may be available.

While we do not object to the cumulative nature of available remedies, we respectfully suggest that the bill should observe longstanding precedent in the law and the Committee should consider requiring the exhaustion of administrative remedies before this new cause of action is pursued. It is worth noting that the Commissioner’s office receives thousands of consumer complaints each year, and that the Insurance Article alone addresses a broad range of insurance producer activities. The Commissioner has ample authority to impose serious penalties on insurance producers who violate the law.

The doctrine of exhaustion of remedies is one that is found in many different areas of the law where private conduct is subject to standards established by law and regulation. NAIFA Maryland is not suggesting that the effect of SB 327 be diminished by the application of this doctrine; however, we hope the Committee agrees that a sensible approach to this important subject should include, as a necessary first step, the opportunity for compliance enforcement actions by the appropriate public agencies charged with that responsibility.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Willie D. Franklin".

Willie D. Franklin  
Legislative Chair – NAIFA Maryland