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February 17, 2022

TO: The Honorable C.T. Wilson, Chair
Economic Matters Committee

FROM: Philip D. Ziperman, Deputy Chief,
Consumer Protection Division

RE: House Bill 587 – Motor Vehicle Financial Protection Product Agreements Act
(OPPOSE)

The Office of the Attorney General (“OAG”) opposes House Bill 587, sponsored by Delegate Carey, which would authorize the sale of “Motor Vehicle Financial Protection Products” to Maryland consumers in connection with the sale of an automobile that are of questionable value. Further, HB 587 would provide that products that resemble insurance products are not, in fact, insurance products that would be regulated by the Maryland Insurance Administration (“MIA”). The OAG is concerned about the prospect of new add-on products that are of dubious value being sold to Maryland automobile consumers. If the sale of the products were to be allowed to be sold in Maryland they should only be sold by an insurer licensed by MIA to ensure that both the cost of the product and the sales process are subject to oversight by an agency with the expertise to ensure that the products are not being misrepresented to consumers and provide consumers with value.

The OAG’s Consumer Protection Division regularly receives complaints about add-on products sold in connection with the sale of automobiles, including that the add-on product was added to the contract without the consumer’s knowledge; the cost or nature of the product was misrepresented; or that the consumer was misled into believing that they were required to buy the product. The Division also gets complaints from consumers that similar products, such as GAP insurance, which is sold by MIA-licensed auto insurers and is intended to cover the difference between the value of the consumer’s vehicle and the amount remaining on the consumer’s car loan, or Debt Cancellation Agreements, which are offered by lenders licensed by Office of the Commissioner of Financial Regulation and are intended to forgive the balance of the consumer’s loan in the event the car is totaled or other triggering events occur, do not pay the full amount they are intended to cover. The OAG is concerned that the products that House Bill 587 would authorize will generate similar complaints but will not have the oversight of a regulator to address complaints.

Maryland's Credit Grantor Closed End Credit law ("CLEC"), Commercial Law Article, §§ 12-1001, *et seq.*, defines a Debt Cancellation Agreement as "an agreement between a credit grantor and a borrower which provides for cancellation of the remaining loan balance in the event of theft or total destruction of the collateral for the loan minus the proceeds of any insurance maintained on the collateral for the loan or, if the borrower does not have insurance, the actual cash value of the collateral at the time of loss, determined as provided in the agreement." CLEC § 12-1001(h). Section 12-1005(c) provides that a loan made pursuant to CLEC may include "[t]he cost to the borrower of an optional debt cancellation agreement, provided that the cost of the debt cancellation agreement is separately itemized in the financing agreement." However, House Bill 587 only requires that the amount charged or financed for a "Debt Waiver Agreement," which includes a Debt Cancellation Agreement as well as a new product called an "Excess Wear and Use Agreement" applicable to automobile leases, be "disclosed" in the financing agreement. The same applies to the undefined "separately stated consideration" for a Debt Waiver Agreement. The Division is concerned that requiring less disclosure than what is required by CLEC will add to the confusion consumers already experience when these types of add-on products are sold.

Similarly, the Retail Installment Sales Act ("RISA"), Commercial Law Article §§ 12-601, *et seq.*, provides that "[a] service or other charge not specifically provided for in this section may not be included in a retail installment sale of a motor vehicle." RISA § 12-609(b)(1) (Emphasis added). That section allows the seller of a Retail Installment Sales Contract to "contract for, charge for, receive, and finance the cost to the buyer of an optional debt cancellation agreement sold in connection with a motor vehicle, provided that the cost of the debt cancellation agreement is separately itemized in the financing agreement." RISA § 12-609(b)(4) (Emphasis added). The new financial products that would be authorized by House Bill 587 are not specifically provided for in RISA and could not be sold in connection with a Retail Installment Sales Contract.

If the Committee is inclined to allow these products to be sold in Maryland, the OAG strongly believes that they should be subject to licensing and regulation by the MIA, which would be able to review whether the products are being priced reasonably and are not just creating profit for the sellers without providing meaningful value for consumers. However, House Bill 587 provides the MIA with enforcement authority but inexplicably provides that the products "are not insurance." Licensing would provide MIA with the tools necessary to make sure that the products authorized by the bill are not being sold in an abusive or deceptive manner. If new automobile add-on products are going to be sold, protections at least as strong if not stronger than those provided in connection with GAP insurance contracts and Debt Cancellation Agreements should also be considered given the volume of complaints the Division receives from consumers concerning these products.

Accordingly, the Office of the Attorney General respectfully requests that the Economic Matters Committee give House Bill 587 an unfavorable report. However, the Office has had and is continuing to have discussions with Delegate Carey and the bill's Proponents and we appreciate their willingness to consider our concerns.

cc: The Honorable Ned Carey
Members, Economic Matters Committee