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February 3, 2022

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

From: Wilson M. Meeks - Consumer Protection Division

Re: Senate Bill 156 – Civil Actions – Specialties – Statute of Limitations (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 156, sponsored by Senator Sydnor. Senate Bill 156 would expand the application of the twelve-year statute of limitations period for actions on specialties (specialties are, to provide some examples, judgments, bonds, and certain promissory notes and contracts under seal).¹ The statutory twelve-year limitations period currently applies only to actions “on” specialties. The bill would amend the statute so that it also applies the twelve-year limitations period to all actions “related to, or concerning” specialties.

The intent of Senate Bill 156 is to address the interpretation of Section 5-102 of the Judicial Proceedings Article in a recent Maryland Court of Appeals decision, *Cain v. Midland Funding, LLC*, 475 Md. 4, 256 A.3d 765 (2021), holding that the statute, as currently written, applies the twelve year limitations period only to actions seeking to “enforce rights granted by a specialty.”² The unfair result of this holding is that, while actions filed by judgment creditors to enforce judgments can be filed within twelve years, actions by the judgment debtor seeking damages from the enforcement of an unlawfully obtained judgment are subject to Maryland’s default three-year statute of limitations.³

The Division is particularly concerned with this imbalance as it pertains to judgments against consumers, including consumer debtors like credit card users or auto loan borrowers. The reality is that Maryland courts are flooded with lawsuits by debt collectors against consumer debtors, the vast majority of which are resolved via default judgment without the active participation of the debtors. Reports indicate that such default judgments are often against the poor, that default often

¹ See Md. Code Ann., Cts. & Jud. Proc. § 5-102.

² *Cain v. Midland Funding, LLC*, 475 Md. 4, 256 A.3d 765, 787 (2021).

³ See Md. Code Ann., Cts. & Jud. Proc. § 5-101.

occurs because debtors are unaware of or do not understand the proceedings, do not know their rights, or do not have time or resources to mount a defense, and that the judgments can have a disastrous impact on debtors' lives.⁴ It is also reportedly common for default judgments to be based on lawsuits rife with errors and compliance issues that can go undiscovered until "long after the debt buyers have already won court judgments against alleged debtors," issues that likely result from the typical process under which debt collectors purchase debt from original creditors in bulk, for pennies on the dollar, then make mass legal filings based on incomplete or erroneous information.⁵ As a result, many consumers may be unaware of the judgments entered against them until they are enforced. Yet, under the statute of limitations as interpreted by the Court's majority, debt collectors have twelve years to enforce judgments against debtors, while debtors unfairly lose the ability to recover damages from potentially problematic and unlawful judgments if they don't file a claim within three years.

The facts of *Cain v. Midland* provide a concrete example of how this imbalanced system can be inequitable. There, Midland Funding LLC obtained judgments against thousands of Maryland debtors, even though it had no legal right to file any of the underlying lawsuits because it was not licensed as debt collector in Maryland.⁶ Under the Court of Appeals' decision, Midland has twelve years to enforce those thousands of unlawfully obtained judgments, while consumers are prevented from seeking return of their payments on, or any other damages from the judgments unless they filed claims within three years of the judgment or when the consumers first made a payment on the judgment.⁷ (Exacerbating this unfairness, the Court of Appeals also rejected the argument that the limitations period reset each time the consumer was obligated to pay on Midland's unlawfully obtained judgments).⁸

The Division supports Senate Bill 156 because it would remedy this kind of unfair one sidedness, allowing an equal twelve years for filing causes of action enforcing or challenging specialties, including ones seeking to recover damages on specialties, placing debt collectors and judgment debtors on more equal footing, and respectfully requests that the Judicial Proceedings Committee issue a favorable report.

cc: The Honorable Charles Sydnor
Members, Judicial Proceedings Committee

⁴ See The Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts*, at 16 (May 6, 2020); Peter A. Holland, "Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers," *Loyola Consumer Law Review* 26, 186 (2014).

⁵ See Human rights Watch, *Rubber Stamp Justice, US Courts, Debt Buying Corporations, and the Poor*, at 32-50 (January 20, 2016) (www.hrw.org/sites/default/files/report_pdf/us0116_web.pdf); Consumer Financial Protection Bureau, press release, *CFPB Settles Lawsuit with Debt Collectors and Debt Buyers Encore Capital Group, Midland Funding, Midland Credit Management, and Asset Acceptance Capital Corp.* (Oct. 15, 2020) (announcing settlement of claims against national debt collectors and buyers for, among other things, "suing consumers without possessing" account documentation and for time-barred debts) (www.consumerfinance.gov/about-us/newsroom/cfpb-sues-debt-collectors-and-debt-buyers-encore-capital-group-et-al/).

⁶ See *Cain v. Midland*, 256 A.3d at 776-77.

⁷ See *Cain v. Midland*, 256 A.3d at 783, 791.

⁸ See *Cain v. Midland*, 256 A.3d at 792.