THE MARYLAND CONSUMERS BEST INTEREST COALITION

191 Main Street, Suite 200, Annapolis MD 21401 – 410-268-6871

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March 13, 2019

The Honorable Dereck E. Davis
Chairman, House Economic Matters Committee
Room 231
House Office Building
Annapolis, MD 21401

RE: House Bill 1127 – Financial Consumer Protection Act of 2019 - Opposed

Dear Chairman Davis and Members of the House Economic Matters Committee,

We write as Co-Chairs of the Maryland Consumers Best Interest Coalition, an organization formed in response to the introduction of this legislation, and for the purpose of removing language that would create a Maryland-specific fiduciary duty on individuals who deliver insurance and financial services to Maryland citizens. Our Coalition opposes the bill.

We note, for your consideration, that the U.S. Securities and Exchange Commission (SEC) is far advanced in the process of adopting regulations that will provide additional and uniform consumer protections in this area. These "best interest" regulations will not only offer additional consumer protections, they will also provide a needed, uniform national standard.

House Bill 1127, by contrast, introduces a completely different approach by creating a "fiduciary duty" on practitioners that will apply only in Maryland. This could lead to a patchwork of state regulation that will be confusing for practitioners and consumers alike, and will create enormous enforcement problems for Maryland regulators.

Even the term "fiduciary duty" is not defined in House Bill 1127, and its ultimate contours can only be developed through a Maryland regulatory process. This will add to the confusion attendant on the adoption of a fiduciary duty standard. For example, a fiduciary duty under the Federal Investment Advisers Act of 1940 is quite different from a fiduciary duty under the Federal ERISA law, or the fiduciary duty owed to a client by a lawyer.

Obvious practical problems are also presented. For example, a fiduciary duty may be inconsistent with a client's wishes. A client nearing retirement, already settled on a financial plan, may not wish to hire a fee-based financial planner as contemplated under the bill. Instead, that client may prefer to obtain and maintain their accounts in a less expensive, commission-based account over which they have greater control.

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The inclusion of insurance producers in the bill presents a host of additional problems. The Maryland Insurance Commissioner, by statute, has exclusive jurisdiction over insurance producers. The Maryland Attorney General and the Commissioner of Securities are the state officials responsible for enforcing the provisions of House Bill 1127. This would subject insurance producers to three different state officials, which is sure to cause confusion and significantly implementation issues.

Life insurance companies and the financial professionals who distribute their products all support rules requiring all financial professionals, when making a recommendation, to act in the consumer's best interest. We also support requirements to avoid or reasonably manage conflicts of interest through increased transparency. This is consistent with the National Association of Insurance Commissioners (NAIC) initiatives underway. The NAIC effort is important to bring uniformity on this subject to states considering appropriate regulations for insurance producers.

Uniformity is best achieved by imposing equivalent standards on investment advisers and broker- dealers rather than imposing identical standards that fail to account for the unique nature of this relationships and, similarly, fail to account for the different regulatory frameworks governing those financial professionals. SEC proposed Regulation Best Interest Rule accomplishes that goal.

Finally, Maryland would have to navigate a host of legal issues arising from the imposition of a state-specific fiduciary duty on broker-dealers and investment advisors. Several federal laws already govern the activities of these professionals. Litigation over preemption of any Maryland law on the subject is a likely outcome if House Bill 1127 were to be enacted.

For these reasons, and on behalf of our Coalition, we respectfully request an unfavorable report on House Bill 1127.

Very truly yours,

Michelle Carroll Foster

Leah J. Walters

Michelle Carroll Foster
Co-Chair

Leah Walters
Co-Chair

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