COMMONWEALTH OF MASSACHUSETTS

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October 15, 2019

Sebastian Korth, Esq.
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Dear Mr. Korth:

The Division of Banks (Division) is in receipt of your correspondence dated May 1, 2019, in which you request an advisory opinion regarding Massachusetts General Laws chapter 255B, governing motor vehicle retail installment contracts. In particular, you have posed two specific questions related to vendor single-interest insurance (VSI).

As you know, a VSI premium is a one-time cost charged to the borrower at the time of the vehicle's purchase as a condition of credit. The premium is then passed on to the lender's insurance company for a blanket policy covering the lender's complete vehicle portfolio. VSI protects the lender, but not the borrower, in the event that the motor vehicle is damaged or destroyed. Your first question asks if the Division's Opinion Letter 96-077 addresses the Division's policy as to whether the cost of VSI premiums may be passed along to borrowers under consumer motor vehicle retail installment contracts, as governed by Massachusetts General Laws chapter 255B. Your second question inquires whether VSI policies obtained in connection with a retail installment contract, and for which an identifiable charge is passed on to the buyer, are an authorized form of insurance pursuant to G. L. c. 255B, §10.

With respect to your first question, Opinion Letter 96-077 considered and addressed the question as to whether VSI premiums may be passed on to borrowers by an automobile sales finance company in a consumer credit transaction. The opening sentence of the opinion letter expressly references that the party seeking to impose the VSI cost on the borrower was an automobile sales finance company. The reasonable inference drawn from the opinion letter is that the Division would not have opined on the required disclosures for VSI in a motor vehicle retail installment sales transaction if the Division believed that VSI charges were prohibited under G. L. c. 255B. Accordingly, in response to your first inquiry, it is the Division's position that Opinion Letter 96-077 addressed and continues to accurately present the Division's position on the permissibility of passing on the costs of VSI premiums to borrowers under a motor vehicle retail installment contract, as governed by G. L. c. 255B.

With respect to your second question, the language of G. L. c. 255B, along with the history of the statute and its amendments, inform the Division's conclusion. General Laws chapter 255B was first enacted in 1958, and thereby predated the Commonwealth's enactment of its Truth in Lending law in 1966. In particular, the original version of G. L. c. 255B, § 9 is informative in the analysis. Specifically, in addition to the language which comprises the current language of section 9, the original statute also listed out twelve separate items that must be included in the retail installment contract, including two different enumerated

items dealing with insurance.[1] The first such insurance provision is aimed at property insurance, as it states "the amount, if any, included for insurance on the motor vehicle" must be included in the contract. The following provision appears aimed at other insurance, such as credit health, life, and disability, as it states that "the amount, if any, included for other insurance and other benefits" must be included in the contract. In conjunction with this review of items expressly required to be included in the retail installment contract pursuant to the original language of section 9, the language of section 14 as originally enacted is also helpful. Section 14 governs the finance charge and its computation. As originally enacted in 1958, the finance charge was expressed as a dollar amount per $100 dollars per year. The original language of section 14 also contained two references to "section 9," which have since been replaced with references to "chapter one hundred and forty D." Specifically, the current language of section 14 states, in part, "[s]uch finance charge shall be computed on the amount financed as determined under chapter one hundred and forty D on contracts payable in successive monthly instalments substantially equal in amount." Additionally, the current language of the final paragraph of section 14 states:

> The finance charge shall be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as provided in this section and in section eleven and section seventeen and for those items expressly provided for in the retail instalment contract as set forth in chapter one hundred and forty D.

In both of the foregoing provisions within section 14, the original reference to "section 9" was replaced with reference to "chapter one hundred and forty D," the Commonwealth's Truth in Lending law. And as previously noted, in the original language of section 9, the list of various items that must be included in the retail installment contract included items that would fall outside of the category of finance charge under the current chapter 140D. This is notable because section 14 contains the authorizing language setting forth the permitted charges and fees that may be included in the motor vehicle retail installment contract by specifically incorporating by reference those items identified in section 9. By explicitly authorizing those items "provided for in the retail instalment contract as set forth in section 9," the legislature, in enacting chapter 255B, section 14, authorized the imposition of property insurance on the motor vehicle. In both of the above-referenced sentences within section 14, the current statutory language is identical to the original

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[1] As originally enacted, section 9 included a lengthy third paragraph that read as follows:

> The contract shall also contain the following items: — (1) the cash sale price of the motor vehicle which is the subject matter of the retail instalment sale; (2) the amount of the buyer's down payment, itemizing the amounts paid in money and in goods containing a brief description of the goods, if any, traded in; (3) the difference between items (1) and (2); (4) the amount, if any, included for insurance on the motor vehicle, specifying the types of coverage and coverage periods; (5) the amount, if any, included for other insurance and other benefits specifying the types of coverage and the coverage periods and separately stating each insurance premium; (6) the amount of recording charges; (7) the principal balance, which is the sum of items (3), (4), and (5); (8) the amount of the finance charge; (9) the time balance, which is the sum of items seven and eight, payable in instalments by the buyer to the seller, the number of instalments required, the amount of each instalment, expressed in dollars, and the due date or period thereof; (10) the total time price; (11) a statement of delinquency charges, if any; and (12) a statement that in the case of repossession and sale of such personal property for default in payment of any part of the total time price, all sums paid on account of such price and any sum remaining from the proceeds of a sale of such repossessed personal property after deducting the reasonable expenses of such repossession and sale shall be applied in reduction of such price, and that, if the net proceeds of such sale exceed the balance due on such price, the sum remaining shall be paid to the buyer. Said items need not be stated in the sequence or order set forth above. Additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

language, with the exception of the noted substitution of the reference to "chapter one hundred and forty D" in place of the existing reference to "section 9." Indeed, the deletion of the list of items from section 9 and the insertion of the reference to chapter 140D occurred as part of a substantial legislative enactment in 1981 entitled "An Act Further Regulating the Disclosure of Consumer Credit Costs and Terms," which, in addition to moving the Truth in Lending Law to chapter 140D (and repealing the existing law located in chapter 140C), amended provisions of chapters 255B, 255C, and 255D to expressly reference chapter 140D.[2] As noted in the preamble, the purpose of the Act is to "regulate the disclosure of consumer credit costs and terms and to insure the continued conformity of the consumer credit laws of the commonwealth with federal law and regulations." Accordingly, by adopting the cross-reference to the entirety of Massachusetts' Truth in Lending law within section 14, the legislature intended only to ensure consistency in consumer *disclosures* across the consumer credit statutes, and there is no indication that the legislature intended to effect a substantive change in what was authorized to be included in a motor vehicle retail installment contract under chapter 255B. *See also* Opinion Letter 03-133 (stating that "chapter 255B makes clear that charges that were not finance charges or authorized charges under sections 11, 17 or set forth in then section 9, were not permissible for inclusion in a retail installment contract"). Amending section 14 of chapter 255B to reference the chapter containing the Commonwealth's Truth in Lending law obviated the need to include the specified items listed in the then-existing version of section 9. In addition, these amendments are logical, given the desire for uniform application of the Truth in Lending law to all types of consumer credit transactions, and also that it would be impractical for the legislature to be forced to amend G. L. c. 255B every time the definition of finance charge was amended under the Commonwealth's Truth in Lending law. This is also consistent with chapter 140D's express inclusion of provisions regarding the proper disclosure of insurance in consumer credit transactions. *See* G. L. c. 140D, §4.

Taken together, the foregoing demonstrate that VSI is both authorized under Massachusetts law and that a VSI fee may be passed on to the borrower. Please note, however, the disclosure requirements as set forth in 12 CFR 1026.4(d) (as adopted by 209 CMR 32.04) must be satisfied in order to properly exclude VSI from the finance charge, as set forth in the Division's prior advisory legal opinion. Furthermore, licensees may not retain any portion of a VSI fee paid by the purchaser of a motor vehicle. The Division's conclusion is consistent with both its past interpretation as set forth in Opinion Letter 96-077, as well as case law considering the issue of VSI. *See Ritter v. Durand Chevrolet*, 945 F. Supp. 381 (D. Mass. 1996). Accordingly, with respect to your second question, it is the position of the Division that VSI policies obtained in connection with a retail installment contract and for which an identifiable charge is passed on to the borrower are authorized by G. L. c. 255B.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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[2] *See* Chapter 733 of the Acts of 1981.