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February 10, 2023

Delegate C.T. Wilson, Chair  
House Economic Matters Committee  
Room 231  
House Office Building  
Annapolis, Maryland 21401

Re: **MSBA Business Law Section Council**  
House Bill 349 (Maryland Fair Scheduling Act) - Unfavorable Position

Dear Chair Wilson and Fellow Committee Members:

The Business Law Section Council (the “Section Council”) of the Maryland State Bar Association annually reviews proposed legislation that may have an effect on Maryland businesses. Our review of House Bill 349 (Maryland Fair Scheduling Act) (the “Bill”) has generated a few concerns. For the reasons listed below, the Section Council opposes HB 349 as introduced and currently constructed.

The Section Council is concerned that HB 349 discriminates against Food Service Facility franchisees that are actual small business owners and who, therefore, should be treated the same as owners of non-franchised restaurants that are not part of a substantial enterprise<sup>1</sup>. Many restaurant franchisees are in fact small businesses, while a significant number of many non-franchised restaurants are part of an affiliated group of companies with hundreds or even thousands of employees.

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<sup>1</sup> Also, there is significant ambiguity in the proposed language of § 3-1801(d)(2)(ii): “...where the franchisor and the franchisee own or operate at least 10 establishments in the aggregate nationally.” One natural reading is that this language contemplates joint ownership of 10 establishments. Another natural reading is that the law aggregates the franchisor’s and franchisee’s separately-owned establishments. This second reading is particularly oppressive, as it would force a single-establishment franchisee to meet the same requirements imposed on a nationwide franchisor, despite the fact that their financial wherewithal and sophistication are likely entirely disparate.

For example, Seasons Pizza,<sup>2</sup> a restaurant franchise, has approximately 25 locations in Maryland, Delaware, and the Philadelphia area, mostly owned by different franchisees. The franchisees are not sophisticated or well-capitalized and employ no more than a total of 30 people at any time, many on a part-time basis. Moreover, because Seasons Pizza Franchisor, Inc. is itself a relatively small business, it does not have sophisticated scheduling software or other such guidance or resources as do large franchise systems like McDonald's, Burger King and Pizza Hut. Yet Seasons Pizza franchisees, who are true small business owners operating with tight margins in a highly-competitive field, would be required to comply with this proposed law.

By contrast, the Atlas Restaurant Group<sup>3</sup>, which is based in Baltimore, owns 25 full-service, high-end restaurants, mainly in Maryland, most of which operate under different brand names. Atlas Restaurant Group's family of restaurants, which we believe to be owned by different legal entities under common ownership and management control, likely employ more than 500 people in the aggregate. Yet because Atlas Restaurant Group is not a "chain" operating under a common trademark, it would not be required to comply with the provisions of this proposed law.

It appears that the Bill's intention is to require substantial food service and retail operators to comply with the proposed scheduling requirements. If so, then we believe that the Bill should be amended to require compliance by those food service facilities that employ more than a certain number of employees in an affiliated group, similar to how the U.S. Small Business Administration determines whether a company is a small business that is eligible to participate in its programs. SBA requires all applicants seeking to access its programs to disclose all entities under common control, through equity ownership or common management, with the applicant; such companies under common control are an "affiliated group." If the affiliated group has over a certain number of employees, then none are eligible for participation in SBA's programs.<sup>4</sup>

We believe that the Bill should be amended to similarly apply only to "large employer" Food Service Facilities that either employ more than a certain number of people directly or are part of an affiliated group that employs more than such number of people. In that way, employers that have the financial and management resources to comply with the Bill's requirements will be required to do so, while those that do not (whether or not affiliated with a franchise) will be exempt.

It should be noted that many, if not most, of the franchised locations of the best known quick-service restaurant franchises (such as McDonald's, Burger King and Pizza Hut) would be required to comply with the requirements of the Bill, as most are owned by multi-unit franchisee companies whose owners often own other businesses with employees. For example, Janjer Enterprises, Inc., headquartered in Silver Spring, has owned dozens of Popeyes and IHOP locations. Flynn Restaurant Group, based in California, has owned hundreds of franchised restaurants in the Applebee's, Taco Bell, Panera Bread and Wendy's systems. But those people

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<sup>2</sup> Information with respect to Seasons Pizza is based on publicly available information and information from a Section Council Member who represents Seasons Pizza.

<sup>3</sup> Information with respect to Atlas Restaurant Group is based on publicly available information.

<sup>4</sup> For further information about SBA's size standards, see U.S. SBA, SMALL BUSINESS COMPLIANCE GUIDE: A GUIDE TO THE SBA'S SIZE PROGRAM AND AFFILIATION RULES (July 2020), [https://www.sba.gov/sites/default/files/2020-10/AFFILIATION%20GUIDE\\_Updated%20%28004%29-508.pdf](https://www.sba.gov/sites/default/files/2020-10/AFFILIATION%20GUIDE_Updated%20%28004%29-508.pdf).

who are pursuing the American Dream by owning one or a few restaurants should not be burdened by the requirement of this proposed legislation, regardless of whether they operate their restaurant under a franchise brand.

We therefore respectfully suggest that, in lieu of the Bill as currently proposed, the House Economic Matters Committee consider revising the Bill to address the concerns listed in this letter. Members of the Section Council would be willing to assist with this effort if requested.

The Hearing on HB349 is scheduled for Tuesday, February 14, 2023.

Very truly yours,



Penny Somer-Greif, Chair  
MSBA Business Law Section Council



David L. Cahn, Vice Chair  
MSBA Business Law Section Council

cc: Ms. Shaoli Katana, MSBA Director of Advocacy Initiatives  
Mr. Jordan Halle, Chair, MSBA Franchise, Distribution & Antitrust Committee