MARYLAND STATE BAR ASSOCIATION

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

Re: **MSBA Business Law Section**

House Bill 271 (Limited Liability Companies – Articles of Organization – Required Information) -- **OPPOSED**

Dear Chair Wilson and Fellow Committee Members:

The Business Law Section (the "Business Law Section") of the Maryland State Bar Association (the "MSBA"), through its elected Section Council, annually reviews proposed legislation that may affect Maryland businesses. We are submitting this written testimony with respect to House Bill 271 (Limited Liability Companies – Articles of Organization – Required Information) ("HB 271" or the "Bill"). The Bill would amend Sections 1-203, 4A-204 and 4A-207 of the Corporations and Associations Article of the Maryland Code to require the Articles of Organization for a Maryland limited liability company (or "LLC") to include "the name and home address of each member authorized to act on behalf of the limited liability company," require that if there is any change in the identity or address information of such members with authority the LLC promptly file updated information, and to make it a misdemeanor to file Articles of Organization or subsequent updated information that a person "knows or has reason to know contain incorrect information" regarding names and home addresses of the LLC's authorized members.

The Section Council opposes the Bill. Any business entity formation document (such as an Articles of Incorporation or Organization) that is filed with Maryland's State Department of Assessment and Taxation ("SDAT") is publicly accessible through an Internet search. A minority of U.S. states require the public disclosure of the names of a limited liability company's members with authority to form a limited liability company, and only a few require the disclosure of any such person's address -- let alone their *residential* street address. For example, neither Delaware nor Virginia requires any such disclosure in a document that is publicly accessible. Accordingly, enactment of such an intrusive mandate would make Maryland an outlier and decrease its attractiveness as a destination to launch and grow businesses – to the detriment of Maryland's tax base and its residents.

The Bill also is unlikely to result in full disclosure of the persons authorized to bind an LLC. The addition of such a burdensome requirement for all existing Maryland LLCs is likely to result in many moving their state of formation to neighboring states that do not impose such requirements.

Furthermore, the Bill singles out one form of business entity for unfavorable treatment, without any evident basis. If enacted, Maryland LLCs that do not move their state of formation elsewhere may change to another form of entity, such as a limited partnership or corporation, to avoid the disclosure requirements proposed in the Bill. If the legislature imposes similar reporting requirements for all Maryland limited liability entities, then that would result in a larger abandonment of Maryland as a state of incorporation or formation for all entities, to even greater detriment of Maryland's fiscal health and its workers.

Moreover, while the U.S. Corporate Transparency Act (the "CTA") now requires that many LLCs and other limited liability entities report their beneficial owners and controlling persons to the Financial Crimes Enforcement Network (FinCEN), Congress and the U.S. Treasury Department recognized the privacy concerns inherent in such requirements and the data that must be reported is being held in a non-public database that is only accessible to public law enforcement agencies. Consistent with the federal government, while New York state passed a bill during 2023 requiring LLCs to disclose extensive ownership and control information disclosures to that state's Secretary of State, New York's Democratic governor only agreed to sign the bill on the condition that the personal identifying data collected would not be accessible to the public and only available to public law enforcement agencies. HB 271 contains no such limitation.

The Bill's sponsor, Delegate Grammer, has indicated that his primary purpose for introducing the Bill is to force entities that own real property to disclose the identity of their controlling person(s) publicly so that community associations and other interested parties can communicate with those people to facilitate resolution of problems caused by the property. While that concern is understandable, the Maryland Limited Liability Company Act has been used by entrepreneurs to form companies for a variety of business purposes, and the vast majority of Maryland LLCs do not own real estate, let alone properties that might be a community nuisance. HB 271 would require burdensome new publicly accessible disclosures by all such LLCs without any showing that such a broad-brush requirement is remotely necessary or cost effective.

If the General Assembly determines that a widespread problem exists with the ownership of real property through limited liability entities, the proper method of addressing such perceived problem is through the regulation of property ownership, including rental housing licensing and registration laws. It does not lie with the overly broad and burdensome requirements of this Bill. For the foregoing above reasons, the Business Law Section is opposed to HB 271.

Sincerely,

David L. Cahn

David L. Cahn
Chair
Business Law Section Council

Cc: MSBA Business Law Section Council