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February 17, 2025

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

Re: MSBA Business Law Section Council -- House Bill 992 – Favorable with Amendments

Dear Chair Wilson and Fellow Committee Members:

The Business Law Section Council (the “Section Council”) of the Maryland State Bar Association (the “MSBA”) annually reviews proposed legislation that may affect Maryland businesses. We do so as volunteers generally concerned and interested in the advancement of business regulatory law in Maryland.

The Section Council has reviewed House Bill 0992 “Business Regulation – Maryland Franchise Registration and Disclosure Law – Alterations” (“HB 992”), colloquially titled the Franchise Reform Act. Because I have primarily represented clients concerning the franchisor and franchisee relationship for over 25 years, mainly in Maryland, the Section Council’s current Chair Gregory T. Lawrence asked me to submit this letter on the Section Council’s behalf.

The Section Council generally supports HB 992, but only if certain amendments are made so that the bill benefits franchisors as well as franchisees based in Maryland. I have consulted with the sponsor, Delegate Marc Korman, and he intends to submit a sponsor amendment that will limit the class of franchisees that may file a private lawsuit for violation of the Maryland Franchise Registration and Disclosure Law (the “Franchise Law”) to Maryland residents or people who purchase franchise rights to operate a franchise in the state (the “Maryland Franchisees”). This is important because the statute currently permits a franchisee located anywhere in the world to sue a Maryland-based franchisor alleging violations of the Franchise Law. Many states that have comparable laws limit the class of private claimants to their own state’s residents and businesses, and this aspect of Maryland’s Franchise Law has placed Maryland-based franchisors at a disadvantage.

There is no reason why far away franchisees should be able to sue for alleged violations of our state’s Franchise Law, merely because the franchisor was based in Maryland when it sold the franchise. Such claims, which are usually brought in Maryland federal or state courts, use precious judicial resources that should be available to Maryland residents and businesses. This legal quirk has led some businesses developed in Maryland to locate their franchising headquarters in other states, depriving Maryland of tax revenue. It also is a risk factor limiting the attractiveness of Maryland-based franchisors as acquisition candidates, which again makes it more likely that early-stage franchisors will move from Maryland to boost their attractiveness to potential buyers. Therefore, Maryland’s economy will be enhanced by the sponsor’s amendment as described above.

On the other hand, the bill as drafted has some commendable features. For the first time, the Franchise Law will address the imbalance of power between franchisees and franchisors within the

ongoing relationship, by prohibiting a franchisor from restricting or inhibiting franchisees from associating together for their common benefit “for any lawful purpose” – which could include collectively raising grievances with the franchisor for the franchisees’ mutual benefit. Franchisees will have a right to sue for injunctive relief and damages, in Maryland, if the franchisor violates this prohibition. This provision is like “free association” laws passed in several other states, including California and Illinois. Franchisee associations have often been a valuable resource for franchisees to curb franchisor initiatives to profit at the franchisees’ expense, and to allow franchisees to exercise their collective purchasing power through cooperatives.

Importantly, the sponsor’s amendment that Delegate Korman has promised to submit would limit the right to association to Maryland Franchisees – which is also important to prevent putting Maryland-based franchisors at a competitive disadvantage, as opposed to those franchising from all the surrounding states where no such right of association has been recognized to date.

The law as currently constructed is focused on requiring franchisors to provide certain disclosures to franchisees, in the form of an offering prospectus or franchise disclosure document (“FDD”), and requiring that, before selling a franchise to a Maryland Franchisee, a franchisor submit the FDD to the Maryland Securities Commissioner for its review for compliance with FDD preparation guidelines, which is called registration. (The Securities Commissioner is an officer within the Office of the Attorney General.) The reforms would make a pair of changes, one that could benefit franchisees and another that should benefit franchisors and the other that should be of benefit to both the Securities Commissioner’s office and the franchisors that it regulates.

The bill would direct the Maryland Securities Commissioner to increase the dollar amount of the exemption from FDD registration review that exists for franchisors with significant “net equity,” to account for inflation since that exemption was established in the 1990’s. This will allow the Securities Commissioner’s staff to review many more FDDs, which may increase compliance by medium sized franchisors with the disclosure requirements.

The bill also would direct the Securities Commissioner to establish a pilot program to incentivize existing franchisors to submit their registration renewal applications in the fourth quarter of their fiscal year, typically in the fall, as opposed to filing within 120 days of the end of their fiscal year, typically in the spring. The reason why most franchisors file in the spring is that is when they need to update their FDD to comply with the Federal Trade Commission’s Franchise Sales Rule, and they prefer to keep their FDD uniform among all states that require registration. However, that has resulted in a crush of registration renewal applications that the agency must review each spring, frequently resulting in delays in renewal completions – to the heavy annoyance of franchisors nationally, and their prospective franchisees in Maryland.

Maryland registrations are issued for a 12-month period and are not tied to the franchisor’s fiscal year end date. So, a franchisor whose current registration ends in May or June could “renew early” in the fall and maintain a separate FDD for Maryland. Since not all franchisors will take advantage of the pilot program, it should result in the Securities Division’s FDD review workload being spread out more equally during the year, which will improve its efficiency and responsiveness to renewal filings.

We do note that franchisors who sell franchises nationally may be reluctant to use the pilot program due to a concern that it will need to file a registration amendment with the Securities Division after the end of their fiscal year so that their Maryland-registered FDD will comply with the annual

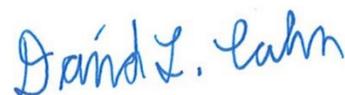
update requirements of the Federal Trade Commission Franchise Sales Rule (the “FTC Rule”), and so that the Maryland FDD is consistent with their FDD issued for other states. So, we recommend that the Securities Commissioner clarify in writing, through a policy statement or otherwise, the circumstances in which a franchisor that registers under the pilot program will be required to file a post-effective amendment due to annual updates required under the FTC Rule. If the Securities Commissioner takes the position that post-effective amendment filings generally will be required following such annual update, then the division should establish policies to streamline review of the amendment filings.

Finally, the bill will benefit Maryland Franchisees to more easily enforce their rights under the Franchise Law through private litigation, by expanding the time in which they can file claims. Currently, a private claim must be brought within 3 years of when the franchisee bought the franchise rights. That limitation has occasionally led to unfairness, particularly for substantial investment franchises for which it sometimes takes 2 or more years to find and develop a location and open for business. However, for smaller investment services franchises, which typically open within 1 year of purchase, the current limitations period is sufficient to permit the franchisee to determine whether it was misled into buying and pursue justice.

The bill will allow the franchisee claimant to file suit by the later of 5 years from when they purchase the franchise rights, or 2 years after the franchised business opened. ***In our opinion, that is too large of a change.*** The limitations period for private civil claims should be the later of 3 years from buying the franchise, or 2 years after opening the franchised business. That would allow sufficient time for franchisees who needed more time to get open to determine whether they have a claim, while not unduly incentivizing other franchisees from delaying pursuit of their claims. So, we support some liberalization of the limitations period, but with an amendment as specified.

Overall, the bill, as modified by the sponsor’s amendments, addresses several important deficiencies in the Franchise Law and will provide important benefits to both Maryland Franchisees and Maryland-based franchisors. We commend Delegate Korman for introducing it, and we urge your Committee to report it favorably, with amendments, so that it can advance to become law.

Sincerely,



David L. Cahn
Immediate Past Chair
Business Law Section Council

cc: Delegate Korman
Gregory T. Lawrence