MARYLAND STATE BAR ASSOCIATION

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March 21, 2025

Senator Pamela Beidle, Chair
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

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

Dear Senator Beidle 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 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, including the third reading of that bill unanimously approved by the House of Delegates on March 17, 2025. 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 supports HB 992 for the reasons explained below.

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 registration to sell franchises must be renewed annually.

The bill would direct the Securities Commissioner to establish a pilot program to incentivize existing franchisors to submit their registration renewal applications during the first 30 days of their fiscal year, typically by January 30, as opposed to filing within 30 days of their registration's expiration date – which is typically during the spring. The spring filing rush, which is related to compliance with the Federal Trade Commission's Franchise Sales Rule, has resulted in a crush of renewal applications that the Securities Commissioner's staff must review each spring, frequently resulting in delays in renewal completions. This has caused many complaints about the agency by franchisors nationally, and by their prospective franchisees in Maryland.

The pilot program will permit the franchisors to submit their renewal application after making most updates that are required annually, but before completion of their annual financial statement audit (which, under the FTC Franchise Rule, must be completed within 120 days of the end of the franchisor's fiscal year). The Securities Commissioner's staff will review the changes, including those proposed to the standard franchise agreement, and provide comments that will facilitate prompt completion of the registration process by the end of the first quarter of that fiscal year if the franchisor is responsive to the Commissioner's requests and completes its audit efficiently. However, 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 for the benefit of all.

The bill also will make changes for the benefit of franchisees. 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 mirrors "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.

Finally, the bill will provide parties with claims for violation of the Franchise Act with more time to enforce their rights under the Franchise Law, 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 3 years from when they purchase the franchise rights, or 2 years after the franchised business opened, but not more than 5 years after the franchise sale. This should be 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. The bill also will establish a 5-year limitations period for the Attorney General to pursue claims for violation of the Franchise Law, providing greater certainty to the agency and to franchisors accused of violating the law.

Overall, the bill unanimously passed by the House of Delegates addresses important deficiencies in the Franchise Law and will benefit Maryland franchisees and may approve administrative efficiency for the benefit of all participants in franchising. We commend Delegate Korman for introducing it, and we urge your Committee to report it favorably, without delay, so that it can advance to become law.

Sincerely,

David L. Cahn

David L. Cahn
Immediate Past Chair
Business Law Section Council

cc: Delegate Korman