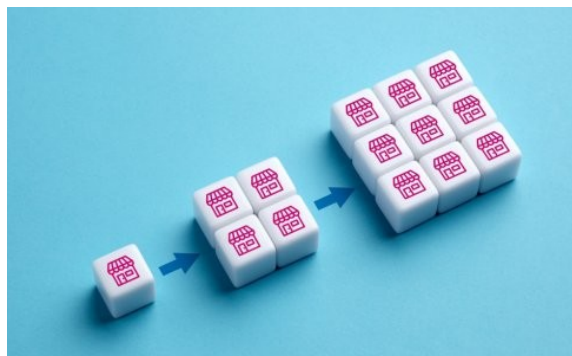


Maryland Franchise Reform Act Introduced

February 14, 2025

By David Cahn



On January 31, 2025, Delegate Marc Korman of Montgomery County introduced Maryland House of Delegates Bill 992, entitled the Franchise Reform Act, which would make the first significant changes to the Maryland Franchise Registration & Disclosure Law (the “Maryland Franchise Law”) since its enactment in 1981. Delegate Korman told me that he introduced the bill because several of his constituents had raised concerns about the franchising process in Maryland. He told me that, in preparing the bill over the past year, he did a deep dive into this law, consulting with the franchise regulators in the Maryland Attorney General’s Office, with me and with others who are familiar with this law.

The Maryland Franchise Law is designed to protect people considering the purchase of a franchise from being misled or under-informed when deciding whether to buy. The law requires franchisors to prepare a prospectus (called a “Franchise Disclosure Document” or an “FDD”) detailing a wide variety of information and submit it to the Securities Commissioner, who is an officer with the Maryland Office of the Attorney General (the “OAG”) and obtain that agency’s approval to sell franchises in Maryland. That approval, called registration, must be renewed each year in which the franchisor continues to sell franchises to Maryland residents or for operation of the franchised business in Maryland (collectively, “Maryland Franchises”). The current law mostly addresses the franchise sales process rather than the ongoing relationship between the franchisor and the franchisee. The bill would do the following:

For the Benefit of Franchisors Generally:

The bill would establish a pilot program, to be run by the Securities Commissioner, that is intended to expedite franchise registration renewals. Maryland registration renewal delays have frustrated many franchisors from throughout the United States.

For the Benefit of Maryland Franchisors:

Based on the author’s communications with Delegate Korman since the bill’s introduction, he will submit an amendment to the bill that will limit the private parties who can sue a franchisor for violation of the Maryland Franchise Law solely to Maryland Franchisees. This will eliminate the ability of out-of-state franchisees to use the statute as a weapon in disputes with franchisors that are or were headquartered in Maryland – which was a deterrent to franchising from Maryland as compared to nearby states. This expected amendment is a key to making this a balanced and fair bill.

For the Benefit of Franchisees:

Given the Maryland Franchise Law’s purpose, parts of the bill will benefit franchisees. Specifically:

- For the first time, the Maryland Franchise Law will address the imbalance of power between franchisees and franchisors

within the ongoing relationship, by prohibiting a franchisor from restricting or inhibiting Maryland Franchisees from associating with other franchisees within their brand for the franchisees' common benefit "for any lawful purpose" – which could include collectively raising grievances with the franchisor for the franchisees' mutual benefit. Maryland Franchisees will have a right to sue for injunctive relief and damages, in Maryland, if the franchisor violates this prohibition. This provision is similar to "free association" laws passed in several other states, including California and Illinois.

- The time period in which a franchisee may bring a private claim for violation of the law will be extended until the later of five years from buying the franchise rights or two years after the date of the initial commencement of operations of the franchise. This is a significant relaxation of the time restriction, which had been three years from the date the franchise rights were purchased (regardless of when the franchised business opened). This seems to be an overaggressive change for private rights of action, as we would prefer to see the time period be the later of three years from buying the franchise rights or three years after commencing operations.
- The Securities Commissioner will be directed to increase the dollar amount of the exemption from full registration review that exists for franchisors with significant "net equity" to account for inflation since that exemption was established in the 1990s. This will allow the Securities Commissioner to substantively review many more FDDs, which may increase compliance by medium-sized franchisors with the disclosure requirements.
- The time period for the Securities Commissioner to bring claims for violation of the Maryland Franchise Law also will be extended to five years from a violation, giving that office greater ability to protect franchisees who were misled into buying a franchise. (Of note, the amendments concerning private rights of action will not inhibit the Securities Commissioner's enforcement ability, including the potential that it could sue a Maryland-based franchisor whose misrepresentations harm a substantial number of franchisees outside of Maryland.)

The bill will be heard by the House of Delegates Economic Matters Committee in Annapolis on the afternoon of February 19, 2025, and the author has been invited to testify on the bill and plans to do so favorably, with the amendments discussed above. We plan to keep a close watch on the activity surrounding the bill and provide additional information.