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# What Is Massachusetts S. 73? And Why Should You Oppose This Legislation?

## Background

In 2011, State Senator Brian A. Joyce (D – Norfolk, Bristol and Plymouth) introduced Massachusetts Senate Bill 01843, known as the "Fair Franchising Act." This bill was intended to further regulate franchising, the relationship between franchisor and franchisee, in Massachusetts.

On February 15, 2013 Senator Joyce introduced an updated initiative titled Senate Bill 73, to the legislature with the statute titled the "Massachusetts Fair Franchise Act." This bill is similar to other legislation that has been rejected in several states already this year.

On December 12, 2013 the Massachusetts Joint Committee on Community Development and Small Businesses will hear the arguments for and against S. 73.

## Negative Consequences of S. 73 for the Franchise Business Model & Franchisees

- **Vague Language.** With vague legal language and discretion in pricing and hour standards, this bill will hurt franchisors and franchisees by raising costs, reducing standards and brand reputation, and blocking growth opportunities for franchisees and franchisors. This bill will create uncertainty as to the rights and obligations of the parties.
- **Increased litigation.** S. 73 would prohibit a franchisor from terminating or cancelling a franchise, or from substantially changing the competitive circumstances of a franchise agreement without "good cause," but then very narrowly defines "good cause". In addition, the bill's definition of good faith is very loose and opens the door to frivolous lawsuits. While a franchisor and franchisee ordinarily would work out their differences privately, franchise relationship legislation creates incentives to move disputes into the courts.
- **Weakened Equity.** Passage of franchise relations legislation could have a serious impact on the equity franchisees have built in their investment, lowering the value of their businesses and ultimately reducing the ability for franchisees to grow their business and create more jobs in their regions.
- **Damaged Brands.** Franchisees invest in standard operating procedures which a franchise system develops over time to ensure the quality of their products and services. Giving substandard franchisees the right to unilaterally amend proven procedures weakens the brand for franchisees that rigorously adhere to them.

## Other Harmful Provisions

- Under S. 73, franchisors are unable to maintain the national standard requirements of their brand:
    1. Blocks franchisors from helping distressed franchisees because it might be viewed as "discrimination",
    2. Includes other subjective terms which would likely require judicial intervention to resolve
    3. Essentially makes all franchise agreements contracts in perpetuity s by highly restrictive non-renewal provisions,
    4. Even if the franchisee commits a serious default or even a crime, the franchisor must buy back the franchise.