



December 8, 2013

The Honorable Eileen Donoghue
Senate Chairwoman
Joint Committee on Community
Development and Small Businesses
State House, Room 112
Boston, MA 02133

The Honorable Tackey Chan
House Vice Chairman
Joint Committee on Community
Development and Small Businesses
State House, Room 26
Boston, MA 02133

RE: Senate Bill 73, "An Act Protecting Small Business Investments"

Dear Madam Chairwoman and Mr. Vice Chairman:

The undersigned companies and organizations are writing in opposition to Senate Bill 73, sponsored by Senator Brian Joyce, "An Act Protecting Small Business Investments," pending before your committee and scheduled for a public hearing on December 12, 2013. Massachusetts has approximately 13,500 franchise establishments, employing 149,000 workers and generating economic output of \$15 billion annually.

While the title of this bill suggests this legislation is written to protect small businesses, S 73 would accomplish the exact opposite of its stated goal. The legislation would dramatically increase state regulation of the franchisor/franchisee relationship, causing unnecessary harm to the franchise industry that has thrived in Massachusetts under the current regulatory structure. Further, the existing Federal Trade Commission Franchise Rule and Disclosures already govern the franchise industry and protect all parties by providing full and transparent disclosure requirements before the relationship even starts. Franchisees and franchisors are acutely aware of the terms of the contracts they are entering into *before* they begin their relationship and the FTC has reaffirmed the pre-sale disclosure requirements as recently as 2007.

This bill does not benefit one party to a franchise agreement over another. Rather, the legislation hurts both franchisors and franchisees alike since it will undermine the ability of a franchise system to enforce uniform standards of quality and integrity, thereby hurting a brand's value and reputation and having the disastrous result of diminishing the equity that franchisees have in their businesses. The bill would make it extremely difficult to end a relationship with a particular operator even when there are serious violations, such as safety and health code problems, or violations of state or local laws. Franchisees, franchisors and the consuming public would all suffer the consequences.

Although the bill is seriously flawed in its entirety, we would like to take this opportunity to highlight the most egregious provisions. The bill:

- Requires “good cause” in all terminations and non-renewals without truly defining the term.
- Includes other subjective and amorphous terms such as “good faith,” which would likely require judicial intervention to resolve. The concept of "good faith" was created in the Uniform Commercial Code to fill in the blanks on short form contracts for the sale of goods. However, it provides no benefit in the context of detailed franchise contracts which govern complex and ongoing business relationships.
- Essentially makes all franchise agreements contracts in perpetuity by instituting highly-restrictive non-renewal provisions.
- Purports to prohibit discrimination by franchisors in relation to the treatment of franchisees. This “non-discrimination clause” will limit franchisors' flexibility in assisting franchisees. Franchisors will be reluctant to grant any type of waiver to franchisees due to fear of being sued by other franchisees for showing favoritism. Consider the situation where a franchisor agrees to give a franchisee more time to make a forbearance of a royalty fee payment. Another franchisee may claim this is preferential treatment and then sue.

Franchise agreements are contracts that should mean something. Overregulating the relationship and termination procedures between franchisors and franchisees will only hurt Massachusetts' economy. S 73's vague definitions and far-reaching provisions will create confusion and unnecessary burdens for franchise small business owners, while increasing the amount of franchise litigation. As such, the bill will only serve to limit franchise growth in the Commonwealth. For all the reasons set forth above, the undersigned respectfully request that the Committee oppose S 73.

Sincerely,

Stephen J. Caldeira
President & CEO
International Franchise Association

Robert K. Sawyer, Jr.
Senior Vice President, General Counsel
Friendly's Ice Cream, LLC

Michael Rozman
Co-President & Chief Strategy Officer
Boefly LLC

Melanie Bergeron
Chair of the Board
Two Men And A Truck International

Kenneth S. Kaplan
General Counsel
Fantastic Sams International

Dave Tourville
Owner
Mr. Rooter, Holyoke, Hampden & Hampshire Counties

Shelly Sun
CEO
BrightStar Care

Kevin Dubois
President & CEO
Lapels Dry Cleaning

Jon B. Hurst
President
Retailers Association of Massachusetts