To: Senator Beyer and Members Senate Business and Transportation Committee

Re: Senate Bill 136

Position: Oppose

Testimony of Matt Swanson
Executive Director, SEIU Oregon State Council

The Service Employees International Union represents over 60,000 workers in the state of Oregon, many in subcontracted employment like janitorial and other property services. These workers are often some of the lowest paid and most exploited workers in our communities. Workers in these industries are also often the victims of misclassification.

We are concerned that this bill would create a presumption that franchisees or sub franchisees who enter into arrangements with a franchisor are not employees regardless of other tests available in state or federal law. The state and federal law regulating franchises referred to in the bill provide important protections in the sale of new franchises. But they do nothing to protect the workers providing services once the franchise is set up. Our experience has shown that there are franchise arrangements that should be reviewed in order to preserve basic state and federal standards. This also creates a confusing standard between state and federal law. Even though a franchise would not be an employee under state law, that same franchise would still be an employee for purposes of federal law and the Fair Labor Standards Act.

Misclassification by another name

Typically misclassification occurs when an employee is hired as an independent contractor when they should be considered an employee. In fact, this type of misclassification has been hotly debated here in the state of Oregon. In a report authored by the National Employment Law Project (NELP), the practice is described as, “This misclassification often occurs at the bottom of an outsourcing chain involving multiple layers of contractors between the workers and the lead company setting the terms of the arrangements.”

I have included an article describing this practice in the Janitorial industry with this testimony (“Rogue of the Week, National Maintenance Contractors, Willamette Week, 3/31/2004). In this case after franchise fees, supply charges and other deductions were taken from the janitors their weekly wage amounted to “$2.78 per hour before taxes.”

More recently this practice has drawn the attention of courts in Massachusetts, where the judge found in favor of janitors working for Coverall (Awuah v. Coverall North America, Inc.”, 554 F.3d 7 (1st Cir. 2009)). In this case the janitors were found to be employees rather than franchises or independent contractors after reviewing the nature of the franchisee’s relationship with the franchisor. In this case the janitors were found to be employees because the company’s arrangement failed the state’s test.

Changes to Franchise Law Should Allow for Protections Against Abuse

We believe that rather than exempt franchise relationships from scrutiny under employment or independent contractor standards, that we should examine other options to increase the transparency and clarity of these relationships. If proponents are willing to examine the standards that are used in these contracts we would be willing to further that discussion. This bill, however, would open up the floodgates of misclassification at the lower rungs of the supply chain and harm a vulnerable group of workers undermining standards for low-wage workers.