Testimony on Senate Bill 136 - Franchise Clarification legislation
International Franchise Association
Senate Business & Transportation Committee
February 4, 2015

Chair Beyer, and members of the committee. My name is Jeff Hanscom and on behalf of the International Franchise Association (IFA), I want to express support for Senate Bill 136 introduced by this committee. This franchise clarification legislation will go a long way in securing Oregon's friendly business climate to franchising, a vital part of Oregon's and the nation's economy.

Celebrating 55 years of excellence, education and advocacy, the International Franchise Association is the world's oldest and largest organization representing franchising worldwide. IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising and the more than 780,000 franchise establishments that support nearly 8.9 million direct jobs, $890 billion of economic output for the U.S. economy and 3 percent of the Gross Domestic Product.

Right here in Oregon, franchising accounts for over 114,000 jobs across more than 10,000 franchise establishments contributing over $9.5 billion in economic activity each year. IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law, technology, and business development.

What is franchising?

At its core, franchising is a local small business with the backing of a national name. The franchise establishments throughout Oregon are owned and operated by small business people contributing jobs, tax revenue and a positive consumer experience to Oregon residents. While the names are national, and at times international brands, franchising remains a local small business, with the franchisor/franchisee relationship as its foundation.

Franchising is not just an industry, but is also a business strategy. There are two types of franchises, "product-distribution" franchise and a 'business-format' franchise. Product-distribution franchisees simply sell the franchisor's products. In product-distribution franchising, the franchisor licenses its trademark and logo to the franchisee, but typically does not provide the franchisee with a system for running its business. Product-distribution franchising is most often found in the soft-drink distribution, automobile dealership, and gas-station industries.

On the other hand, business-format franchisees not only use a franchisor's products, services, and trademarks, but also the franchisor's complete method for conducting the business itself, such as a marketing plan and operations manuals. Café Yumm, Oil Can Henry's and Marriott hotels examples of business-format franchises.

In a business-format franchise, the franchisor licenses to the franchisee the right to use its trademarks, intellectual property, and business and operating plans in exchange for a fee, usually a royalty payment. In return for the royalty payment, franchisees gain the advantage of operating a business with a recognized trademark, as well as an operating plan and the on-going support and training provided by the franchisor. The result is a relationship in which both the franchisor, who is able to develop new units more effectively than through corporate ownership, and the franchisee, who is able to operate an independent business backed by the power of a recognized brand and proven operating system, win. This mutually dependent relationship requires the franchisor and the franchisee to collaborate to achieve mutual success, since neither will be successful without the other.

No matter which format a particular franchise uses, the key to a successful franchise is the protection of the business format itself and the franchisor/franchisee relationship between the two entities which represents the foundation upon which it is built.

Why Senate Bill 136 is necessary

We are seeking to clarify Oregon law to ensure the franchise industry has business certainty in the future, as well as to give state agencies better direction on how to apply two statutes that arguably conflict with one another.

Oregon has a statute, ORS Chapter 650, that governs the franchise industry. That statute says, among other things, that a franchisee is granted to engage in business "under marketing plan or system prescribed in substantial part by a franchisor." For this right, the franchisee is required to give the franchisor "sizable consideration for right to transact business pursuant to plan or system."

In our view, the statute makes it clear that a franchisee must follow an operational plan or system prescribed by the franchisor to ensure among other things that a franchisors' brand is protected and that consumers have consistent experiences from a retailer, restaurant or other franchisee operation. Consistent customer experience and product uniformity is foundational to the business-franchise concept.

Oregon also has a separate independent contractor statute that says an independent contractor must be “free from direction and control over the manner and means of providing services.”

As you can see, applying this “free from direction and control” requirement to a franchise relationship that requires a franchisee to follow a marketing plan or system creates uncertainly for franchise businesses operating in Oregon and for state agencies that regulate commerce.

Our franchise clarification legislation seeks to make clear that the legislature does not intend to apply the independent contractor statute to franchise relationships.

Senate Bill 136 simply says that state agencies cannot deem legitimate franchisees “employees” of franchisors if certain criteria are met. Those criteria are:

- Franchise relationship is set up under federal or state law.
- Franchisee is legitimate business entity, such as corporation, LLC, partnership, sole proprietor, etc.
- Franchisee has all necessary federal, state & local licenses to operate as a franchise business.

We believe this clarification is necessary for franchise businesses operating now in Oregon, or for those that want to come to the state, so these small businesses have certainly moving forward. But we also think that state agencies would benefit by more clear direction from the legislature regarding how to oversee the franchise industry.

Franchising is a vital driver of jobs and economic activity in Oregon and across the United States and contributes to a vibrant array of consumer choices. Everyday Oregon residents take advantage of the franchise industry, whether through their patronage at one of the more than 10,000 establishments in the state or by going to work and supporting their family. In order to cement the continued growth and expansion of the industry in Oregon, it is vital local business people as well as franchisors have the confidence their relationships are and will continue to be properly classified, which this bill will accomplish.

On behalf of IFA, and the franchise business operation in Oregon, we ask that you pass Senate Bill 136.

Thank you for your time and I will be happy to answer any questions the Committee may have.