

Testimony of Bonnie Allen-Sailer
Senate Committee on Business and Transportation
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My name is Bonnie Allen-Sailer and I am a staff attorney with the Northwest Workers' Justice Project. NWJP is dedicated to providing high-quality legal support and advocacy to workers and their organizations. We focus on those most marginalized by the current structure of our economy, specifically low-wage immigrant and contingent workers in diverse industries, including construction, janitorial, food service, and landscaping. I am also here on behalf of the Oregon Coalition to Stop Wage Theft, of which NWJP is a member. The Coalition includes over 35 labor, faith, workers' rights, small-business, and community organizations.

NWJP and the Coalition to Stop Wage Theft urge you to **oppose** SB 136. Franchise relationships are hugely varied, but this bill would create a blanket rule that would place these arrangements outside the scope of employment relationships, and beyond the reach of laws that protect workers and communities.

Under current Oregon law, whether a franchisee or a worker is considered to be an employee of a franchisor depends on how the business is actually set up: what the parties' responsibilities are, the level of control the franchisor exerts. SB 136 would change this to a blanket rule that these individuals are not employees. Such a step is simply inappropriate because franchise arrangements are too varied and many are merely yet another way to misclassify workers.

For example, in the janitorial industry, companies operating under a franchise model often charge workers thousands of dollars for the privilege of working long, hard hours cleaning offices or other commercial spaces. The franchisor maintains – and holds itself out to the public as being – a complete business entity, handling the sales, financial arrangements, job assignments, and customer relationships. It dictates the hours and tasks. It may even provide the materials. All the so-called

franchisee is permitted to contribute is the manual labor of the actual cleaning. We at NWJP, and our partners across the country, have seen that the result is often sub-minimum wages and other forms of wage theft. See David Weil, *Market Structure and Compliance: Why Janitorial Franchising Leads to Labor Standards Problems* 3-4, 7-8 (2011), available at http://www.huizenga.nova.edu/ExecEd/ISOF/abstracts/abstracts2011/20_Weil.cfm.

This is not a model that ought to be encouraged. But this bill would sweep up and protect exactly these types of exploitative so-called franchise arrangements that prey on vulnerable low-wage immigrant workers. This bill would mean these types of companies could escape responsibility for ensuring workers are appropriately paid and working conditions are safe. Workers couldn't organize themselves to demand better working conditions. Further, state and local governments would lose out on significant tax revenue and unemployment insurance and workers' compensation systems would be robbed of much need resources. See, e.g., *Employment Dept. v. NMC*, 204 P.3d 151, 226 Or. App. 473 (Or. App., 2009) where the Court of Appeals overturned an administrative decision that a janitorial franchisor need not pay unemployment taxes for its franchisees' earnings.

The state and federal law regulating franchises referred to in the bill do nothing to protect the workers providing services once the franchise is set up. The current test for employer-employee relationships is designed to be nimble enough to distinguish the exploitative relationships I have described above from more traditional franchise arrangements where it may be less appropriate to hold a franchisor liable as an employer. But that careful analysis is essential – otherwise you allow unscrupulous employers to hide behind a franchise label and avoid responsibility for their workers, which is bad for honest businesses, workers, and their communities.

Please oppose SB 136. Thank you!