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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
CONSUMER AFFAIRS COMMITTEE

MAIN CAPITOL BUILDING
ROOM B-31
HARRISBURG, PENNSYLVANIA

PUBLIC HEARING
HOUSE BILL 1620

WEDNESDAY, OCTOBER 21, 2015
9:18 A.M.

BEFORE:

- HONORABLE ROBERT GODSHALL, MAJORITY CHAIRMAN
- HONORABLE WARREN KAMPF
- HONORABLE THOMAS H. KILLION
- HONORABLE KURT A. MASSER
- HONORABLE TINA PICKETT
- HONORABLE MARCY TOEPEL
- HONORABLE PETER J. DALEY, MINORITY CHAIRMAN
- HONORABLE RYAN BIZZARRO
- HONORABLE TINA DAVIS
- HONORABLE MARTY FLYNN
- HONORABLE MARK A. LONGIETTI
- HONORABLE PETER SCHWEYER
- HONORABLE PAM SNYDER

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ALSO PRESENT:

AMANDA RUMSEY, COUNSEL, EXECUTIVE DIRECTOR (R)
STEPHEN BALDWIN, RESEARCH ANALYST (R)
JANE HUGENDUBLER,
LEGISLATIVE ADMINISTRATIVE ASSISTANT (R)
NED SMITH, LEGISLATIVE AIDE (R)
ELIZABETH ROSENTEL, EXECUTIVE DIRECTOR (D)
JAMIE MACON, LEGISLATIVE ASSISTANT (D)
JERRY LIVINGSTON, RESEARCH ANALYST (D)
BRETT BIGGICA, RESEARCH ANALYST (D)

BRENDA J. PARDUN, RPR
REPORTER - NOTARY PUBLIC

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1 P R O C E E D I N G S

2 MAJORITY CHAIRMAN GODSHALL: Good
3 morning. The hour of 9:15 having arrived, I'd like
4 to call the meeting to order. The hearing is being
5 recorded.

6 This is a hearing on House Bill 1620,
7 sponsored by Chairman Daley.

8 At this time I recognize my good
9 colleague, Chairman Daley, for any comments we have
10 on the bill before we start.

11 MINORITY CHAIRMAN DALEY: Thank you,
12 Mr. Chairman. Thank you for giving us an
13 opportunity to have a public hearing on this. We
14 did something last session, and we are trying to
15 move this matter forward.

16 I want to thank Brett Biggica of my
17 staff, who's really organized this thing for today
18 and the hard work that he's put in as well as my
19 executive director and the rest of my staff.

20 And other than that, Mr. Chairman,
21 let's begin.

22 MAJORITY CHAIRMAN GODSHALL: After each
23 presentation, we're going to open the floor for
24 members for questioning.

25 And so our first panel, we'll start

1 right off, testifying represent the franchise made
2 up of Steven Rosen; Jeff Hanscom, the director of
3 state government relations and public policy for
4 International Franchise Association; joined by Lane
5 Fisher, Clint Ehlers -- I hope I get this close to
6 right -- and Charlie Chase.

7 Gentlemen, sit at the table. And when
8 you speak, identify yourself for the recording.

9 Gentlemen, when each -- following each
10 speaker, identify yourself when you speak for the
11 stenographer.

12 Whenever you're ready.

13 MR. HANSCOM: Good morning, Chairman
14 Godshall, members of the committee, my name is Jeff
15 Hanscom. I'm with the International Franchise
16 Association. I promised Brett that I would keep my
17 comments short and defer the majority of my time to
18 the other members of my panel here, so I will do
19 that as quickly as possible.

20 As I mentioned, I'm with the
21 International Franchise Association. We represent
22 all three segments of the industry: the
23 franchisors, the franchisees, and the supplier
24 members who are involved, providing service to the
25 franchise industry.

1 And I know on the agenda we are listed
2 as the franchisor panel, but as I mentioned, we
3 represent all three segments. All three segments
4 of which are represented next to me with folks from
5 this great state of Pennsylvania. And you will
6 hear from all of those folks about our opposition
7 and their opposition to House Bill 1620.

8 Just a little bit about the franchise
9 industry here in Pennsylvania, collectively
10 employing over six hundred sixty thousand people,
11 generating over eighty-two billion dollars in
12 economic activity each year. So, I don't think
13 there's really any argument that the franchise
14 industry is not thriving both across the U.S. and
15 also right here in Pennsylvania.

16 While we -- "we" being IFA -- are a
17 D.C.-based trade association, I think our story is
18 best told from our local Pennsylvania members
19 representing, again, franchisor, franchisee, and
20 the supplier community.

21 So, with that, I will try to hold true
22 to my promise to Brett and keep my time short and
23 defer the rest of my time. Happy to answer any
24 questions at the end, but defer the rest of my time
25 to my fellow panel members.

1 MR. ROSEN: Good morning. I'm Steve
2 Rosen. I'm chairman emeritus of an organization by
3 the name of FranNet, which is an international
4 franchise consulting firm. We work with about a
5 hundred twenty different franchises. We work with
6 individuals interested in starting a business. We
7 help them put together a business model. I've been
8 doing that for more than twenty-five years. And
9 the process we go through, really, as I read the
10 bill, those are the type of things that we seek to
11 address so that people don't make uninformed
12 decisions.

13 Over the years, I've probably helped --
14 my office is outside of Philadelphia -- probably
15 over the years I've helped more than three hundred
16 people start a franchise business. But I'm also a
17 franchisee. I do merger and acquisition work. I
18 do business brokerage work as a franchisee of a
19 franchise by the name of Sunbelt Business Brokers.
20 So, in a sense, I wear a couple different hats.
21 True, I'm here on the -- the panel mainly
22 representing the franchise industry, but I'm also
23 an intermediary, and I'm also a franchisee.

24 So, just in my comments -- and what I
25 don't want to do is replicate some of the testimony

1 that you'll be hearing from other members of the
2 panel -- but let me just start with a comment
3 because, as I read the reason for doing the
4 legislation, namely that there is unequal
5 bargaining power between franchisor and franchisee,
6 and also that the franchisor, in many cases, has
7 been fraudulent in causing somebody to enter into a
8 franchise and that there's no remedy in common law
9 for that.

10 Number one, let me -- and I'm sure
11 that, you know, universally, there's not bargaining
12 going on between the potential franchisee and the
13 franchisor, but let me tell you firsthand, having
14 lost a deal last Thursday because the counsel for
15 the potential franchisee and franchisor couldn't
16 agree. The counsel for the potential franchisee
17 wanted changes in the franchise agreement. Some
18 were agreed to, some were unacceptable to the
19 franchisor. But, as a result of that, the
20 franchisee walked away, much to my chagrin.

21 From the standpoint of fraud, you know,
22 the comment is made that the fraud is not really
23 addressed by the common law. That may or may not
24 be true, but to the extent that there is
25 legislation needed, the legislation doesn't address

1 any of that. It doesn't address a bargaining
2 position between franchisor and franchisee. Rather
3 what it does, it paints with a broad brush all
4 franchisors. And the remedies that are proposed in
5 the legislation, whether or not there's been
6 unequal bargaining power, whether or not there has
7 been fraud, it applies to all franchisors.

8 So, within a franchise system, you can
9 have the top performing franchisee in the system.
10 By definition, there will be some people who will
11 perform at a lower level. It will always be a
12 bell-shaped curve. And, indeed, even in the best
13 franchise systems, there will be failures. That's
14 a fact of life. If it were a certainty, everybody
15 would get into business.

16 There will always be risk involved.
17 There will also be a difference between the people
18 who are going into business, negotiating an
19 agreement as to what they deem to be a good risk.
20 And within -- as I said, with even the best system,
21 you'll get a spectrum of results.

22 What the legislation does, it creates
23 rights for the poorer performing franchisees in the
24 system, even if it's a good system.

25 Another thing that -- and that goes all

1 the way from what happens during termination, what
2 happens in the event there's default. It's one
3 thing to say we can talk about rights to cure. You
4 know, if there were legislation, you know, even
5 though within a franchise agreement that's usually
6 covered, if that were an issue, we can address
7 that. But to say that every franchisee has the
8 right to terminate the agreement if they think that
9 competitively they're not effective in the
10 marketplace, even though there's been a negotiated
11 franchise agreement, really makes no sense to me.

12 One of the remedies proposed in there
13 is the right, in the event of termination, for
14 the -- a requirement that the franchisor pay to the
15 terminated franchisee certain monetary damages,
16 including the franchise, whatever that means, and
17 good will.

18 As a business broker, I have no idea
19 what that means. It's always a matter of
20 valuation. It's a matter, at the end of the day,
21 what somebody will pay for an intangible asset. If
22 you're talking about cups, if you're talking about
23 supplies, that's tangible. But when you put in
24 legislation that part of the remedy is for
25 intangibles, that's -- without a lot of people

1 doing a lot of work and ultimately what somebody
2 will pay for it, you can't determine. That's not a
3 number that's easily determined, and yet that's in
4 the legislation.

5 And one of the final things I will say,
6 before I turn it over to somebody else, there is a
7 section in there as to, from the franchisor, who is
8 included in the act. It includes anybody with a
9 financial interest in the sale. Well, that can be
10 a lender. It can be an Internet portal that's
11 generated a lead and is being paid in the event
12 there's a successful placement. Obviously, what
13 caught my eye, it includes an intermediary. We
14 work on a contingent fee basis. We do our best,
15 before we will work with a franchisor, to vet that
16 franchise. We are not always right. Out of a
17 hundred twenty, most of them are pretty good.
18 They've gone through our process. But it doesn't
19 mean we are always right. Nor does it mean that
20 everybody we place in a franchise is going to be
21 successful. And yet, the bill, as written right
22 now, says that if you have a financial interest in
23 the contract, in the placement of the franchise.
24 You're put in the place of the franchisor for the
25 purposes of damages, for the purposes of

1 performance. And that just doesn't seem right.

2 There is -- I know of nowhere else in
3 the country where there is anything like that,
4 absent there being fraud and misrepresentation on
5 the part of the intermediary. But to say that you
6 have all these remedies and anybody involved at any
7 stage in the process that has a financial interest
8 in the placement -- an attorney, a lender, an
9 accountant, I don't know -- is covered, you know,
10 broad based with that of the franchisor seems wrong
11 and it makes no sense to me.

12 So, with that, let me turn it over
13 to --

14 MR. FISHER: Good morning. My name is
15 Lane Fisher. I'm an attorney at the Fisher Zucker
16 law firm in Philadelphia.

17 Good morning, Chairman Godshall,
18 Representative Daley, and committee members. Thank
19 you for inviting me to offer my comments to this
20 proposed legislation.

21 So, I'm here to, as would suggest at
22 the table I'm sitting at, to offer testimony
23 related to my opposition to House Bill 1620. My
24 law firm is a firm specializing in franchise. And
25 we have about fourteen or fifteen lawyers that do

1 nothing but practice in the area of franchise law.
2 We represent franchisors and large multi-unit
3 franchisees as part of our daily practice.

4 From 2007 to 2013, I had the privilege
5 of serving on the International Franchise
6 Association board of directors. And today, I serve
7 as the chair of the franchise law subcommittee of
8 the Philadelphia Bar Association.

9 My firm and I represent more than a
10 hundred twenty franchise systems, approximately
11 twenty of which are headquarters in Pennsylvania.
12 And my partner Joe Dunn and I, who's joined me here
13 today, run our regulatory compliance practice, and
14 I want to share with you at least the -- give you
15 the benefit of our experience.

16 Our basic goal is to protect the
17 party's right to contract, as they can today,
18 freely in Pennsylvania, free from unwarranted
19 government interference, and to protect the current
20 landscape for franchising. We want a world where
21 people know what's expected of them and that their
22 rights and obligations are clearly defined.

23 We think that this law, if passed,
24 would create -- make Pennsylvania an
25 anticompetitive and inhospitable place for

1 franchising, where today it's really a place where
2 parties know very predictably what is required of
3 them based on what their contracts say.

4 Only a small minority of states have
5 enacted laws which override the franchise
6 relationship in the manner that this proposed law
7 does, and this one is, by far, the most intrusive
8 and we think making it undesirable for new
9 franchise and economic growth.

10 We oppose this bill for several
11 reasons. First, it is vague in many respects and
12 we think will fuel spurious litigation, as folks
13 try to interpret undefined terms and test the outer
14 bounds of the measures which are defined in this
15 statute for compliance.

16 It's really important, I think, to
17 understand. We work in this area every day, for
18 twenty-five years. And we don't see the problem.
19 I understand the law's passed to protect a problem,
20 but we don't see this as a high -- we don't see a
21 high incidence of unremedied franchisee disputes or
22 even, for that matter, that many franchisee-
23 franchisor disputes in Pennsylvania. The existing
24 landscape with our breach of contract and our
25 covenant of good faith and fair dealing and how

1 that's implied in every contract and even, in some
2 cases, on termination, apply as a separate cause of
3 action, provide redress for any potential claims in
4 this area.

5 We think that this law, as it overrides
6 the contract, interferes with people's right to
7 contract and creates uncertainty about what's
8 required.

9 So, there's in the -- just to lay the
10 foundation, the existing law that is -- franchising
11 is regulated federally. It's regulated by the
12 Federal Trade Commission, which has what we call
13 the FTC rule or what is referred to as the FTC
14 rule. It is a disclosure statute. It is not one
15 intended to override the parties' contractual
16 choices but requires, rather, that folks disclose
17 information on twenty-three critical points of
18 information, including information about the
19 principals, the terms, the fees, the circumstances
20 under which it can be terminated or renewed. It
21 defines the territory and describes how the
22 territory is laid out, and, we believe, provides a
23 very effective way for franchisees or prospective
24 franchisees to make a decision based on their eyes
25 wide open.

1 This FTC rule was last amended in 2007,
2 and it's telling that in the factual findings in
3 the statement of basis and purpose, they found that
4 there was not a high incidence of these practices.
5 So, the record failed to demonstrate that the acts,
6 the same acts that this law is intended to remedy,
7 are prevalent or injury substantial, as -- the
8 industry overall. So, that's a factual finding
9 made just in 2007 concerning the state of the
10 industry as a whole, and we agree with that
11 ultimate conclusion.

12 I see no evidence of industry-wide bad
13 deeds that would warrant the remedy provided in HB
14 1620. I've seen disputes. And I've seen disputes,
15 mostly very fact specific and contract specific,
16 resolved after notice and hearing in a court or in
17 arbitration, in a means which has evolved very much
18 over time.

19 Only eighteen states have relationship
20 laws which override the terms of the parties'
21 contract in the manner proposed here. If
22 Pennsylvania joins the small minority of states, PA
23 will become a less desirable place to do business,
24 while people wait out for the common law to build
25 out the definition or explanation of these terms.

1 And we think it will really slow things down.

2 So, I also want to talk about specific
3 terms that trouble me. So, we think there's a
4 varying and vague use of the term "good faith."
5 And I'm not asking -- we're not looking to have
6 ability or authority to act in bad faith, but we
7 are looking to understand what acting in good faith
8 means and not having that interpreted after the
9 fact.

10 And so, when Section 5503 defines "good
11 faith" as "honesty in fact and the observance of
12 commercial standards of fair dealing," I don't know
13 what "commercial standards of fair dealing" are,
14 and I suspect that there will be cases that will be
15 brought under a law like this that will go on
16 forever that will first test and then, ultimately,
17 define what those commercial standards are. I
18 don't think that's an objective enough criteria,
19 and I think it creates a lot of ambiguity that can
20 only be resolved through litigation.

21 Similarly, Section 5510 states that
22 "each franchisor shall owe a duty of good faith and
23 fair dealing," which means they'll do nothing,
24 which will have the effect of destroying or
25 injuring the rights of the other party to obtain

1 and receive the expected fruits of the contract.

2 I've never seen a statute which took
3 the interpretation after the fact of the contract
4 based on that parties' subjective intent at some
5 time, either then or at the time they went into the
6 contract. So, in addition to whatever your
7 contract says or whatever nomenclature provides for
8 opening, for what territory you have, for where you
9 might be able to market your business, for where
10 national accounts might be distributed, for where
11 you might otherwise be expected to do business, I
12 now have to consider whether whatever the next
13 proposed change, even if it's permitted under the
14 contract, might frustrate the expected fruits of
15 the contract in the minds of an individual
16 franchisee.

17 I submit that's a very subjective
18 interpretation. It changes from time to time,
19 based on the franchisee in question. And we think
20 that that is way too ambiguous a term to evaluate
21 whether or not somebody has acted in good faith.

22 Franchisors compete with independent
23 competitors. Those independent competitors, like
24 franchisors, do market planning in a way,
25 hopefully, to garner media efficiency and market

1 share and to become more efficient and more
2 profitable. And if it becomes -- if it's not clear
3 where new units can open or if, after the fact,
4 somebody can revisit where they previously, in
5 their contract, permitted the unit to open, we
6 think people will really pull up and slow their
7 development in Pennsylvania and they'll wait to see
8 how this all shakes out.

9 As I said, Pennsylvania has a breach of
10 contract statute with a covenant of good faith and
11 fair dealing that is in every contract and
12 specifically in franchise contracts on termination,
13 and we think that provides an adequate remedy.

14 Next, the next issue or overall issue
15 that troubles me is one that permits a franchisee
16 to terminate unilaterally based on system changes
17 that cause substantial negative impact or
18 substantial financial hardship in the operation of
19 the franchise.

20 Business is -- in order for business to
21 remain competitive, they have to be able to change.
22 They need to be able to counter competitive forces
23 and to change in response to what competitors do,
24 how -- what technology -- what happens with
25 technology and how customers ultimately change.

1 And if you make the imposition of system changes,
2 which today are sort of rolled out through systems
3 on a national basis, more subjective or problematic
4 in Pennsylvania, you're going to take -- make
5 Pennsylvania franchisees far less competitive than
6 their independent counterparts.

7 In addition, another section which
8 troubles me is that a franchisor can -- is
9 prohibited from terminating or substantially
10 changing the competitive circumstances except for
11 good cause. And by defining those terms in terms
12 of the substantial change in the franchisee's
13 business, you've made the whole "good cause"
14 element, which is required, obviously, in many
15 statutes, and a term that is ambiguous and, we
16 think, inappropriate.

17 So, we think that the requirement that
18 franchisors -- that franchise associations are --
19 be permitted to deal -- that franchisors are
20 required to deal with franchisee associations on
21 all matters is way overbroad and injects a third
22 party in a commercial matter where they're not a
23 party. Franchise disputes are very fact specific
24 and often turn on the contract and the person --
25 the factual disputes at issue, and we don't think

1 that injecting a franchisee association will bring
2 any certainty or bring any value.

3 In addition, the act prohibits class
4 action waivers, so to the extent that my original
5 objection as to the interpretation of "good faith"
6 and hindering somebody's personal expectations, if
7 folks are permitted to bring these actions in
8 Pennsylvania, Pennsylvania law applies to the whole
9 agreement and they can bring them as class actions.
10 It puts people in jeopardy to have -- to have a
11 huge liability imposed upon them, and, again, we
12 think makes it less desirable to franchise in
13 Pennsylvania.

14 So, I could go on and on, but those are
15 the highlights of what we think are undesirable in
16 the law and why we think it will make Pennsylvania
17 a less hospitable place for franchising.

18 MR. EHLERS: Good morning, Mr. Chairman
19 and members of the committee. Thank you again for
20 having us testify in opposition of House Bill 1620.

21 My name is Clint Ehlers and I'm a
22 multi-unit FASTSIGNS franchisee here in the state
23 of Pennsylvania. I got my start in franchising in
24 California, when opening my first FASTSIGNS
25 location, Culver City, back in 2007. The business

1 climate in California, as we all hear, can be a
2 little crazy. And there were certain things on the
3 horizon that we didn't like from a policy
4 standpoint, and so we sold our business and moved
5 to Pennsylvania and got back into the FASTSIGNS
6 franchise by buying two locations here.

7 Our reason was that Pennsylvania has
8 always maintained a strong, positive climate for
9 small businesses and franchisees in general and to
10 operate -- for us to operate and succeed. However,
11 this legislation would undo many of the reasons
12 that we chose to own and operate a FASTSIGNS
13 franchise here. While the proposals in this bill
14 may appear favorable to franchisees on the surface,
15 their enactment would lead to a host of unintended
16 consequences for small businesses just like mine,
17 as my colleagues here have talked about.

18 In a nutshell, it's -- things that are
19 favorable to the franchisee are not favorable to
20 the franchisee when you dive deeper into it. This
21 bill's stated purpose is to establish reasonable
22 franchise practices and protect franchisees from
23 unfair practices in the sale and operation of
24 franchised businesses. This bill before you would
25 accomplish the exact opposite of its intended

1 effect. The bill would further complicate and
2 undermine the regulatory system already in place
3 that governs franchise relationships with vague
4 language and unreasonable new regulations.

5 Lane did a great job talking about the
6 vague language, and it's going to open it up to
7 just a number of different lawsuits and legislation
8 and all sorts of other stuff that's just going to
9 bog us down.

10 The bill is flawed in its entirety, and
11 some of the most problematic provisions for
12 franchisees like me include a broad definition of
13 "good faith" and an inarticulate definition of
14 "fair dealing", both of which would undoubtedly
15 lead to significant litigation issues, potentially
16 causing my brand irreparable harm.

17 MAJORITY CHAIRMAN GODSHALL: Could you
18 pull the microphone over?

19 MR. EHLERS: Oh, sure. Sorry.

20 I don't -- I don't want to see my brand
21 in the newspapers for litigation. I don't want to
22 see my brand in the newspaper for unhappy, poor
23 performing stores suing the franchisor. It does no
24 good for me.

25 One of the locations that I bought in

1 Lancaster, just down the road, the guy owned it
2 before me for eight months. He came in, he's a
3 smart guy, decided he didn't like it. He was going
4 to turn the keys in and just shut the door. This
5 was at one point the number two location in the
6 U.S. for FASTSIGNS. That would cause great harm
7 not only to that location but also to the
8 franchisor in general, which would affect my
9 business just down the road -- my other business
10 just down the road.

11 We invest in standard operating
12 procedures. The reason I bought into this system,
13 I bought a business plan. It's their ball, their
14 game. I bought into it because I believed in it.
15 I did my research. I looked at the franchise
16 agreement. I hired a lawyer. I did all those
17 things that I needed to do as a responsible
18 business person. I made that decision.

19 I don't necessarily always agree with
20 some of the decisions that come down from FASTSIGNS
21 corporate, but I have a voice in helping to carve
22 those decision out as well.

23 House Bill 1620 attempts to rewrite
24 existing contracts by inserting non-negotiated
25 terms and conditions in relation to termination of

1 existing franchise agreements. Sections 5505 and
2 5509, termination is governed by each individual
3 franchise agreement, which is freely negotiated by
4 each party at the time of signing. House Bill 1620
5 attempts to insert governmental regulation with
6 contractual negotiations between two private
7 parties and could devalue my investment by making
8 it much more difficult for a franchisor to
9 terminate bad actor franchisees.

10 We have another side franchise system
11 out there that it's a lot easier to buy. It's a
12 lot easier to turn your keys in. They have a high
13 turnover of owners.

14 My franchise, which does the exact same
15 things that they do, is worth more because it's a
16 lot harder to get into; it's a lot harder to fail
17 in a lot of ways. Their brand, lots of turnover.
18 They don't care. Lots of turnover. And I promise
19 you, it affects their brand and the consumers
20 behavior with that brand.

21 Investing in a highly reputable
22 franchise like FASTSIGNS gives me and my fellow
23 franchise small business owners a leg up in
24 marketing, quality, and standards as compared to
25 non-franchised businesses. This bill could erode

1 the advantage of being a strong franchise business
2 like FASTSIGNS and, in the end, devalue my
3 business, which would result in future losses when
4 the day comes that I retire and sell.

5 I bought the business so I could sell
6 it one day for a profit. I bought the business so
7 I could sell it and pay for my daughter's college
8 education and my other daughter's private school
9 education, which -- my wife -- I -- I know. She
10 already knows how I feel. I know. It's not the
11 first time.

12 The last thing that we, as franchise
13 small business owners in the state of Pennsylvania,
14 need are burdensome regulations placed on a
15 successful business model. You guys have the facts
16 and figures. Franchising in Pennsylvania is
17 successful. It generates a ton of jobs. That's my
18 goal as a business owner, is to generate jobs
19 within my company, to give my employees the ability
20 to invest in themselves, invest back in the
21 community, to buy the groceries, to buy houses, all
22 those things. I can't do that if I'm not operating
23 a successful franchise. And if I'm spending most
24 of my time speaking in opposition to this or going
25 to Washington and speaking against the NLRB and all

1 the other hurdles that the administration wants to
2 throw out there for us, it keeps me away from
3 operating my business successfully and building of
4 my employees.

5 I just did a couple math. I give
6 out -- I give out? I pay my employees close to a
7 million dollars a year. That's a lot back in the
8 community from a very small business like me.

9 So, I came to Pennsylvania in the hope
10 that I could run an even more successful business
11 than I did in California, and we had a good one.
12 That bill would erase all those hopes as I begin to
13 build my franchise small business.

14 Thank you for your time.

15 MR. CHASE: Good morning. My name is
16 Charlie Chase. And thank you for inviting us,
17 Chairman Godshall and Chairman Daley and all the
18 other representatives. Thank you for your time.

19 As I look at the clock and as people
20 are leaving, I don't have much to add to the legal
21 arguments and the personal plea from a franchisee.
22 My story is I have been a franchisee. I have had
23 an original idea in the state of Pennsylvania that
24 has been franchised across the country. And I will
25 say that Pennsylvania has been a great state to

1 work in.

2 The grand bargain of this country, the
3 one that was formed in the city of Philadelphia, it
4 lives here in Pennsylvania. And this legislation
5 is a solution to a problem that doesn't exist here.
6 And that, I think, is something that has to weigh
7 pretty heavily when you think about all the other
8 work that your committee has to do.

9 I think of the challenges that we face
10 from the federal level, from the disclosures that
11 Lane articulated, from all the hurdles that we have
12 to jump through as franchisors. I have nineteen
13 franchises across eight systems. One of them is
14 called California Closets. You want to guess where
15 that started? But we are not very big in the state
16 of California. In fact, we are bigger in all other
17 states than California. Every one of our systems
18 has retreated from the state of California in the
19 past five years.

20 We do not want to retreat from
21 Pennsylvania. I've been operating franchise
22 systems for thirty-two years. Yes, we have had
23 conflict. Yes, there are remedies. This state is
24 one of the best for us to operate because the grand
25 bargain plays the right set of hands -- cards.

1 The invisible hand in business in the
2 old days was unseen. Today, a lot of these issues
3 are surfaced well before a legislator gets to see
4 them. Social media, the television, anywhere you
5 want to look, anything that's that really a
6 screaming problem, like Comcast, like the electric
7 bills, like Uber, it's all out there to see.

8 We have over thirty thousand --
9 MAJORITY CHAIRMAN GODSHALL: In our
10 committee.

11 MR. CHASE: I'm sorry?

12 MAJORITY CHAIRMAN GODSHALL: In our
13 committee.

14 MR. CHASE: In your committee.

15 And of all of them, this one of over
16 thirty thousand franchises in this state. I know
17 that there are sensitivities around this issue, and
18 I recognize them, and I'm sorry that this ever came
19 to fruition, but in this state, business is good.
20 When I talk to people about where to incubate a
21 business, this is a great state to incubate a
22 business.

23 I operate a very large business from
24 this state, and I love it here. But when I think
25 about the opportunities that some of the

1 regulations in other commonwealths and states have
2 that make people think twice about making an
3 investment, it is one of those things that there
4 are so many items on a list that make you want to
5 not do something. We need a state that provides
6 opportunities to do something.

7 So, when I think about the invisible
8 hand, it works pretty well. When I think about
9 this legislation and the franchisees that I work
10 with in this commonwealth, maybe we're good
11 franchisors. We're not great. I mean, we have
12 conflict. But there is -- there are ways of
13 handling the conflicts that are reasonable, and
14 they're in place.

15 I don't see, in thirty-two years in
16 this industry, in this service sector, a problem
17 that this legislation would solve. I see that it's
18 a lot of time, a lot of machinations about
19 something that essentially this legislation is a
20 lot of ideas that are very complex from a lot of
21 states that have been thrown into the blender and
22 the button's been pushed, and what we have is
23 something that's totally unpalatable.

24 Thank you.

25 MAJORITY CHAIRMAN GODSHALL: Mr. Rosen,

1 you had -- okay, the first presenter, I will put
2 it, you had mentioned that maybe you want to come
3 back, you want to hear what the other people have
4 to say before you, so I'm opening the floor to you.
5 And I apologize for the wrong name.

6 MR. HANSCOM: No, no. It's okay.

7 I appreciate that Chairman Godshall.
8 And I think the panel here --

9 MAJORITY CHAIRMAN GODSHALL: Identify
10 yourself again for the record.

11 MR. HANSCOM: Jeff Hanscom, with the
12 International Franchise Association.

13 No, I think the panel here has really
14 articulated all of the points that we wanted to and
15 that I wanted to convey and I think that we wanted
16 to convey, and I think, fundamentally, what it
17 comes back to is that the view of the franchisors,
18 the franchisees, and the supplier community, all
19 three segments of the franchise industry,
20 fundamentally, this bill addresses a problem that
21 simply doesn't exist. It's a solution looking for
22 a problem. And I think that we've articulated
23 that.

24 And happy to answer any questions that
25 the committee may have.

1 MAJORITY CHAIRMAN GODSHALL: At this
2 time, we will throw it open for questions from the
3 committee. We'll start off with Representative
4 Daley.

5 MINORITY CHAIRMAN DALEY: First of all,
6 I absolutely do not buy the conjecture that it's a
7 problem that's looking for a solution or it's a
8 problem that doesn't exist.

9 If eighteen other states, in their
10 infinite wisdom, have addressed this issue, then
11 there's something going on out there that there are
12 problems that are being addressed. If no states
13 would address it, I'd absolutely agree with all of
14 you, that there's no problem. But there are
15 problems, regardless of you marching out here and
16 you pontificating about the legal problems. Those
17 are being addressed everywhere. We know that. As
18 attorneys, we know that. And you know that.

19 And none of you can tell me that
20 there's no problems in Pennsylvania. We're forty-
21 sixth in job creation, and you're trying to tell
22 this committee and PCN and three million viewers
23 that watch this program that adding this
24 legislation is going to make it more onerous for
25 people to have franchises in Pennsylvania. I don't

1 buy it.

2 You don't have McDonald's up here. You
3 don't have the Wendy's up here. You don't have the
4 Dollar Generals up here, the people that are
5 working within the system and working well.

6 And I'm sure you're doing well, sir.
7 And I'm happy for you. But you left California
8 because California was changing its franchise law,
9 and that's why you came to Pennsylvania.

10 This bill, fundamentally, is very
11 similar to Massachusetts.

12 And I know you, sir, you deal with
13 companies in Massachusetts all the time. And do
14 you have problems in Massachusetts?

15 MR. FISHER: I mean, there are disputes
16 that are worked out, just thought -- like they are
17 anywhere they else. There's not more in
18 Massachusetts I would single out as any worse
19 place. I would say actions are not prevalent,
20 which I agree with the FTC.

21 MINORITY CHAIRMAN DALEY: And I agree
22 with you. And I know there's federal law on good
23 faith and fair dealing. It runs the gamut through
24 every circuit in the United States.

25 And you, sir, independent franchise all

1 over the country. Is Massachusetts law working or
2 is it not working?

3 MR. HANSCOM: I don't think I can speak
4 to what everyone would think about Massachusetts
5 law. I think if you -- you stated that
6 Pennsylvania is, what, forty-sixth in job creation?
7 I believe one of my colleagues was recently in
8 Massachusetts on not this issue but other
9 legislative issues. I believe Massachusetts'
10 economy is relatively close to the bottom in terms
11 of its economic output right now and its business
12 hospitability.

13 MINORITY CHAIRMAN DALEY: In your
14 business, as independent franchise associations
15 all over the United States and Massachusetts, what
16 problems are you having with your members in
17 Massachusetts? Can you tell us?

18 MR. HANSCOM: Certainly we represent
19 hundreds, thousands of brands. I can't tell you
20 specifically --

21 MINORITY CHAIRMAN DALEY: Because you
22 don't have an answer, do you? Not right now.

23 PANEL MEMBER: I don't think --

24 MINORITY CHAIRMAN DALEY: I'm not
25 asking you to comment, sir. I'm asking him to

1 comment.

2 MR. HANSCOM: That's not what I'm
3 saying. What I'm saying is I cannot sit here and
4 speak to every single issue that may arise in any
5 given state, whether it's Massachusetts or anywhere
6 else.

7 MINORITY CHAIRMAN DALEY: I don't
8 believe the sky's falling if this bill passes,
9 because it didn't fall in Massachusetts. It hasn't
10 fallen in seventeen other states. Unless someone
11 can tell me somewhere -- and you're the most
12 learned people that I know on this issue -- can you
13 tell me somewhere that it's not working in other
14 states when they changed the franchise law and
15 franchise order.

16 MR. FISHER: When they changed the
17 franchise law, that presumes that one existed
18 already, so I will say that one -- if it's tweaking
19 an existing law is a completely different animal
20 than taking a state that is not regulated and
21 enacting a legislation.

22 I can tell you that there are elements
23 of this law which I don't see anywhere, and as
24 Charlie said, it's a bunch of stuff that are bits
25 of and pieces of other laws --

1 MINORITY CHAIRMAN DALEY: Then meet
2 with us and tell us which ones, because this law,
3 this legislation -- and that was a good legal
4 argument, because I miscouched the argument to you.

5 Can you tell me specifically -- you
6 don't have to do it today, you don't have to do it
7 now -- but can you sit down with us and tell us
8 exactly where we are sort of creating a whole new
9 concept, legal concept?

10 MR. FISHER: I can give you an example
11 right now, and I'd love the opportunity to sit with
12 you and go through each and every element --

13 MINORITY CHAIRMAN DALEY: Talking about
14 good faith and fair dealing?

15 MR. FISHER: I'm saying that when you
16 make good faith one function of one contracting
17 party's subjective intent, and there's no measuring
18 stick of when -- even though I'm not sure a
19 measuring stick would help -- but that is different
20 than everywhere else. Everywhere else people can
21 rely on their contracts and when folks have
22 specific territories or specific undertakings with
23 respect to impact -- because these laws have
24 evolved over tens of years, I wouldn't say
25 hundreds -- and the interpretation of the

1 contracts. When you say, okay, that existing
2 rubric that's defined either by zip codes, where
3 people are buying population, buying the exclusive
4 right to trade somewhere, is somehow no longer
5 reliable, that I can no longer put one outside that
6 territory because I have to now consider how I
7 would evaluate a franchisee's subjective intent and
8 whether this would be inconsistent with -- anything
9 that's -- anything that could potentially affect a
10 franchisor's business could frustrate their
11 subjective intent. And I don't know how to
12 interpret that.

13 MINORITY CHAIRMAN DALEY: Well, in
14 Massachusetts -- and I want to ask you this
15 question because you deal with companies in
16 Massachusetts also.

17 MR. FISHER: But I had nothing to do
18 with passing the law in Massachusetts, but go
19 ahead.

20 MINORITY CHAIRMAN DALEY: But right
21 now, that law's been passed and it's running and
22 it's functioning and people have filed suit in
23 Massachusetts, both federal court in Massachusetts
24 and state court, on good faith and fair dealing.
25 And do you see anywhere that that's really not

1 working? Because this language is Massachusetts'
2 language.

3 MR. FISHER: I'm going to -- that's
4 going to play out over time as people go to try to
5 put teeth on --

6 MINORITY CHAIRMAN DALEY: I understand.
7 But could you tell me specifically -- I don't want
8 to interrupt you. And I really respect that. We
9 know it's not a courtroom, and this is how we talk.
10 Right?

11 MR. FISHER: Exactly.

12 MINORITY CHAIRMAN DALEY: That's how we
13 talk. I mean, I apologize, but that's how you
14 talk. And he knows I respect him, and hopefully he
15 sort of respects me.

16 MR. FISHER: Of course. Of course.

17 MINORITY CHAIRMAN DALEY: But,
18 specifically, if you have a case, give it to us.
19 And if that law's not working and that specific --
20 because good faith and fair dealing is a major
21 litigant -- litigable action that we all know that
22 the only reason why someone brings action against
23 one or the other, the good faith and fair dealing
24 is the major issue.

25 MR. FISHER: Okay. So, I think that

1 the answer is exactly what we're saying here. That
2 the terms are going to be interpreted over time.
3 And when they're ambiguous, you're not going to
4 interpret them -- I'm sorry -- resolve them on
5 summary judgement. They're going to play out. It
6 will be years before we know how people -- what the
7 effect is on economic growth in Massachusetts,
8 because I would expect it to go down, but I can't
9 today point to if the needle moved. It doesn't
10 move that quickly.

11 MINORITY CHAIRMAN DALEY: I understand.

12 MR. FISHER: But I think -- I can
13 almost guarantee that it will, and the fact that
14 it's at the bottom doesn't surprise me. I think
15 that enacting a law like this where you make it
16 totally subjective is going to be anti-economic
17 development in Pennsylvania because they're going
18 to come to me and say, Lane, can I put it outside
19 the five zip codes with all the -- and can I put
20 one in the train station, and can I do the things
21 that we do everywhere else, that we do to get
22 market share, that we do to get media efficiency,
23 can I do it here? And my partner and I are going
24 to look at each other, as we did in the car this
25 morning, and say, How are we going to advise these

1 people? Because the answer is, until teeth get put
2 on that, on what it means to frustrate somebody's
3 intent, and I don't know what that will ever mean.
4 I mean, we can guess at what it means. And we
5 have, like, a list of things it might mean. But
6 the fact is it might mean anything that causes any
7 kind of economic --

8 MINORITY CHAIRMAN DALEY: I'm not going
9 to beat this dog to a pulp here, but I know
10 California, Illinois, Massachusetts, and other
11 major industrial states have this language in there
12 that are doing very well, and franchises are going
13 very well, and they still grow. They --

14 MR. FISHER: Those laws are -- have
15 been enacted way too quickly for you to be able to
16 say, with due respect, that it's -- that it's
17 business as usual, because I believe it won't be.
18 I'm only one man's opinions, probably one firm's
19 opinion or one group's opinion, but I believe it
20 will not be.

21 MINORITY CHAIRMAN DALEY: Well, we can
22 sit down and we can talk about this. And I'd love
23 to do that, because I think --

24 MR. FISHER: And I just want to say --
25 I'm sorry to interrupt you. You're the boss.

1 MINORITY CHAIRMAN DALEY: I'm not the
2 boss. He's the boss. And he's getting very antsy,
3 so I know that I'm at the end of the question.

4 MR. FISHER: There's at least -- let me
5 just finish my answer. There's at least six
6 substantive bases that I think are different here
7 than anywhere else. And I think that if you put
8 all six of those together, you have Pennsylvania
9 from what I would describe as the most desirable
10 state -- I'm with Charlie, I encourage people to
11 form here -- to one of the least desirable. And
12 when you take somebody, when you also look at
13 franchisors generally and corporate, the law of
14 jurisdiction that they're in -- Charlie has
15 eighteen hundred units or however many billion of
16 units that all sit and are adopting Pennsylvania
17 law, that this change could completely change the
18 interpretation of a system that's been around for
19 twenty years.

20 MINORITY CHAIRMAN DALEY: I understand.
21 And if we are the most desirable, I still can't
22 weigh that against being forty-sixth in new
23 business development, because there're other
24 reasons why Pennsylvania -- our tax structure, we
25 all know that, trying to take care of that in terms

1 of corporate taxes. We're horrible. I mean, we've
2 been -- I've been in business, and the tax
3 structure in Pennsylvania really sucks for
4 businesses to survive. I mean, it really does. I
5 don't know how any business survives in
6 Pennsylvania with the onerous taxes we have.

7 MAJORITY CHAIRMAN GODSHALL: We have
8 some other questions. Representative Longietti.

9 REPRESENTATIVE LONGIETTI: I want to
10 thank you all. New to this issue, so I'm learning,
11 and I don't have a view at this point. But I do
12 want to try to dig just a little bit deeper.

13 So, my understanding from the testimony
14 is that currently there's an implied covenant of
15 good faith and fair dealing that's been established
16 in Pennsylvania. I'm assuming then that those
17 terms have been fleshed out by a body of case law.
18 Is that essentially --

19 MR. FISHER: Exactly. A well evolved
20 body of common law defines what that means.

21 REPRESENTATIVE LONGIETTI: Okay.
22 Insofar as there's a desire to -- well, I guess,
23 let me ask this. So, is the definitions in the
24 bill as it's currently written, does it deviate
25 from what the case law tells us in terms of that

1 implied --

2 MR. FISHER: The case law's -- I'm
3 sorry. The case law's black and white and defines
4 what you can and can't do. This requires you to
5 interpret what somebody else's subjective intent
6 is. As I'm not good at it at home, I'm not good at
7 it anywhere else, I try not to decide or know what
8 somebody else is thinking or wanting out of a
9 relationship. So, I think it makes it impossible
10 to tell how to comply, as opposed to easy to follow
11 how to comply, as people have for years.

12 REPRESENTATIVE LONGIETTI: Does it make
13 any sense -- I know the panel's basically saying
14 leave things as they are. Does it make any sense
15 to have language in the statute that requires, in
16 certain circumstances perhaps beyond what we have,
17 good faith and fair dealing but leaves those terms
18 undefined and incorporates what the courts have
19 already told us what those terms mean?

20 MR. FISHER: That sounds like exactly
21 what exists presently, right, if you define the law
22 by saying that it essentially encapsulates the
23 commonwealth. And it's the same -- it's exactly
24 the system that exists today. So -- and I think
25 that's appropriate. And I think that's the way the

1 common law has evolved.

2 REPRESENTATIVE LONGIETTI: Okay. So,
3 your point is that it's unnecessary to have those
4 provisions -- first of all, that they're vague and
5 they're going to result in interpretations over
6 time and that the law already provides good faith
7 and fair dealing requirements that work.

8 MR. FISHER: That are inconsistent with
9 the current definitions or interpretations of the
10 implied covenant and the actual written contract.
11 Yeah.

12 REPRESENTATIVE LONGIETTI: I heard, I
13 think, a number of people talk about a small
14 minority of states, but then eighteen states, so
15 that's about 36 percent. I don't necessarily want
16 to say that that's a small minority. But why do
17 you believe that -- I guess every state is
18 different. But why do you believe that states have
19 tackled this issue? And have also heard repeatedly
20 that this is a solution in search of a problem.
21 But we're going to hear the next panel say that
22 there is a real problem that needs to be solved.
23 So, I want to hear a little bit more about that.

24 MR. CHASE: I want to comment on two
25 things. I think that, in all due respect, there's

1 a lot of legislation that's been created that,
2 because of cycle time, it takes years to flesh out
3 what the true meaning or the outcomes are. And I
4 think we're facing that right now in California.

5 Our organization is not pursuing more
6 economic activity in California nor Illinois, and
7 we are very careful in other areas. And it's not
8 because we're a bad franchisor or it's not because
9 of our franchise systems. It's actually because
10 we're not being successful in selling our franchise
11 systems in those states. And, more importantly,
12 there's so much uncertainty around it, it makes us
13 focus on other places. Are we growing in the
14 commonwealth? Absolutely.

15 Last, but not least, why states do this
16 is because there have been bad actors. And the
17 marketplace has pounced on those bad actors, and
18 the bad actors have paid dearly. And I think that
19 the existing case law is a great set of guidelines
20 for our behavior, conduct, and future franchising.

21 I know, because I advise a lot of
22 start-up franchisors, that it's tough. It's a very
23 tough thing to do. If you're an entrepreneur and
24 you have an idea -- Auntie Anne's had a great idea
25 for pretzels. And Auntie Anne's now is across the

1 world with pretzels, out of good old Lancaster,
2 Pennsylvania. Formed here, started here, birthed
3 here, leveraged from the commonwealth.

4 That wouldn't have happened with this
5 legislation in ten years if it plays out the way we
6 see it playing out in California. The long tale of
7 California is going to be -- it's going to hurt us.
8 It's going to hurt a lot of people.

9 So, that's the uncertainty of the
10 future, because nobody knows what this language
11 means, because it hasn't played out anywhere fully.
12 But when it does play out, we've seen bits of
13 pieces of it, and it makes us pull back. And I'm
14 speaking as somebody who has been a franchisee,
15 started a franchise system, purchased franchise
16 systems, and is still very active in franchising.

17 MINORITY CHAIRMAN DALEY: What's your
18 franchise?

19 MR. CHASE: We have eight of them.

20 MINORITY CHAIRMAN DALEY: What are
21 they?

22 MR. CHASE: You ever heard of
23 California Closets?

24 MINORITY CHAIRMAN DALEY: No. Yeah,
25 yeah.

1 MR. CHASE: Okay. CertaPro Painters,
2 I started CertaPro Painters. College Pro Painters.
3 We have seven hundred college students that have
4 franchises across North America. Paul Davis
5 Restoration. We're the third largest restoration
6 contractor in North America.

7 Everything that I do is in property
8 services. It's not food, doesn't require real
9 estate, and we've had a lot of fun doing it. And
10 it requires -- and in our distribution model,
11 franchising is the right way to do it, and what we
12 do is we create an economic opportunity for people
13 to keep the economic success in their community
14 instead of company owning and having it come back
15 to our head office.

16 And I've been thrilled with it, and
17 I've made a career of it. And I have to tell you,
18 we, as an organization, have had so many
19 franchisees who, Representative Daley, that it's my
20 life's work, just to put it bluntly.

21 MR. FISHER: May I respond to
22 Representative Longietti's question?

23 MINORITY CHAIRMAN DALEY: Okay. Yes.

24 MR. FISHER: Okay. Let me grab this
25 thing.

1 So, while there are eighteen states
2 that have some sort of relationship law, they are
3 by no means the same. That is just a kind of law
4 that may have a provision that implicates or
5 affects a party's contract. So, none are as
6 onerous as this one. The one -- many, many of them
7 have specific public policies that override any
8 contrary public policy, so that state law governs
9 for just that element of the contract or just
10 trying to enforce that kind of provision, but it
11 doesn't override and apply Pennsylvania law to that
12 entire contract. And to do so would make it
13 different than forty-nine other states who are
14 interpreted under a different state law.

15 And so, many deal with termination and
16 the circumstances under which you exit. I can't --
17 there are none that require you to know what
18 somebody else is thinking, which is the fruits of
19 the contract.

20 So, Representative Daley was engaging
21 me on how similar or different they are, based on
22 Mr. Chase's comment that this is alphabet soup of a
23 little bit of everything. And I'm on Mr. Chase's
24 side on this because it really is. I mean, we know
25 these laws. We interpret them every day. And

1 there is ones you can interpret around. So, it
2 will say there's a waiting period before you can
3 terminate somebody.

4 MINORITY CHAIRMAN DALEY: Which one of
5 the eighteen do you think is a good one overall?

6 MR. FISHER: I mean, you -- I can't
7 answer that question without pointing out --
8 without making a more thorough analysis. Sitting
9 here, there's -- I'm against state relationship
10 laws. I don't --

11 MINORITY CHAIRMAN DALEY: Actually it's
12 your belief that none of them really are that good.

13 MR. FISHER: That's your words, not
14 mine.

15 MINORITY CHAIRMAN DALEY: What are your
16 words?

17 MR. FISHER: I came here prepared to
18 talk about Pennsylvania, the recent legislation
19 activity. But I don't have one that I love.

20 MINORITY CHAIRMAN DALEY: You don't
21 want to answer.

22 MR. FISHER: I don't have one that I
23 love.

24 MAJORITY CHAIRMAN GODSHALL: Okay.
25 We've got to keep going here. We're going to run

1 out of time, and we've got another panel. And one
2 more.

3 MR. HANSCOM: Appreciate it, Chairman
4 Godshall and Chairman Daley.

5 There's been a number of questions
6 about that the sky isn't falling or assertions that
7 if this law were to pass that all of a sudden
8 franchising would not collapse in Pennsylvania.
9 And I believe I have spoken with a number of you
10 folks throughout the course of this year, and I
11 don't remember exactly which meeting it was,
12 sometime back in the winter because I know it was a
13 lot colder here --

14 MINORITY CHAIRMAN DALEY: It's
15 always --

16 MR. HANSCOM: I went to Penn State, so
17 I get the central Pennsylvania thing.

18 But what I will say is that one state
19 that does come to mind with regards to where some
20 of this has fleshed out is, I believe, Iowa, and
21 that's something that we -- I believe when I met
22 with some of you all earlier this year, we talked
23 about. And we have statistical data that shows the
24 decline in the franchise industry in Iowa over the
25 course of time after a law like this was passed.

1 And I'm happy to provide it to you. You can take a
2 look at it. You're asking about that and we have
3 that data.

4 MAJORITY CHAIRMAN GODSHALL: We've got
5 to keep on going. I have Representative Kampf yet
6 on here, and then -- but I would really encourage,
7 you know, some of you people to sit down, you know,
8 with Representative Daley and rather -- but we've
9 got to keep going at this public hearing, and I
10 don't -- it's -- this is probably the loosest
11 public hearing I think I've had since I've been
12 here, and --

13 MINORITY CHAIRMAN DALEY: Mr. Chairman.

14 MAJORITY CHAIRMAN GODSHALL: So,
15 Representative Kampf.

16 REPRESENTATIVE KAMPF: Thank you,
17 Mr. Chairman. Just a comment and then a question.

18 You know, from where I sit, honestly,
19 emulating California, Illinois, or Massachusetts,
20 anything related to their economies and how they
21 regulate businesses, you know, is something that I
22 sort of, I guess, have prima facie bias against.
23 That's a legal term, at least prima facie. And I'm
24 interested in the fact that it sounds like we have
25 a lot of homegrown franchises here in Pennsylvania.

1 And we seem to have, from what I'm hearing from the
2 panel, a flourishing franchise market. And I don't
3 want to do something that makes it a lot harder for
4 that to grow and could cause it to actually
5 retrench.

6 Could the panel give me some idea -- I
7 mean, we talked about McDonald's. We talked about
8 College Pro, which is actually a local franchise
9 from down where I am. It started actually in my
10 area. Can you give us some sense of what other
11 franchises there are out there? Are realtors
12 franchises? Or, you know -- I just open that up to
13 the panel. How broad are we talking about?

14 MR. HANSCOM: As broad as you can --
15 basically every segment of the economy. I mean,
16 I'm with the International Franchise Association.
17 We represent 1300-plus members. We have
18 franchisors and franchisees involved in over one
19 hundred different lines of business. We -- hotels,
20 food, property services, home health care. The
21 list -- car care. I mean, the list goes on and on
22 and on. And I think you would be hard pressed to
23 identify a segment of the economy, a segment of the
24 service economy that doesn't have a franchise
25 industry or a franchise player in it.

1 MR. ROSEN: Let me just add to that, we
2 represent about a hundred twenty systems, a very
3 small percentage of the total systems. And we try
4 and do it from a category standpoint, so that there
5 is an opportunity, depending on the interest and
6 the skill set of the person we're working for. And
7 that's the right answer. Food, to us, is a
8 category. It's one of six. Automotive is a
9 category. B to B services is a category.
10 Education is a category. Personal services is a
11 category. And with all -- within all those
12 categories, we will have a number of franchises
13 that fit within the category, but that's a small
14 smattering of the total franchises out there.

15 We try to be selective in the companies
16 that we represent. We do a lot of the due
17 diligence that we urge our franchise candidates to
18 do. But the interest of the -- and the skill set
19 and the risk tolerance of our candidate determines
20 what they're going to look at and what we're going
21 to show them. But there's opportunity for
22 everyone.

23 If I have somebody who has a small
24 amount of money, I can't show them probably a food
25 franchise. It's more expensive to get into that

1 kind of business. But there's some very good
2 opportunities within what that person can afford.
3 So, that's part of the positioning that we do in
4 introducing a franchise. But there's a lot of
5 opportunities.

6 We turn down companies that want to
7 work with us because they don't meet our criteria,
8 but we do the investigation, but the investigation
9 is public information. The investigation not only
10 is in the documents, but one of the things these
11 people have access to are all the franchisees in
12 the system to say, contact them, call them, find
13 out what it's like being in the system. And,
14 ultimately, that's how people come to a decision.
15 So --

16 REPRESENTATIVE KAMPF: And that's
17 mandated by the FTC.

18 MR. ROSEN: And that's mandated by the
19 FTC, yes.

20 MR. CHASE: And if I could add one
21 thing. The question is, where does franchising
22 show up? Franchising shows up everywhere. Of
23 course the most notorious is NFL. That's a
24 franchise. But then that's high visibility, and of
25 course, the person running that can't suspend a

1 player. No different -- in our world we have high-
2 performing franchises. We have low-performing
3 franchises. But franchising is everywhere. Blue
4 Cross Blue Shield. You have -- it touches every
5 piece of the economy.

6 And what blows my mind is every time we
7 get deeper into the thing I've been at for thirty-
8 two years, I realize that things are franchises
9 that I never knew were franchises. And it's a neat
10 thing. And if you consider, Christopher Columbus
11 had the franchise for the New World. And I'll
12 leave it at that.

13 MAJORITY CHAIRMAN GODSHALL: Okay. I
14 just want to thank you, and I would urge, you know,
15 to have further discussion, you know, directly, you
16 know, but we're going to be running out of time,
17 and we do have another panel. So, thank you very
18 much.

19 At this point, the second panel is
20 Keith Miller, chairman, Coalition of Franchise
21 Associates; and Edwin Shanahan, executive director,
22 of Dunkin Donuts. And I had one of your donuts
23 this morning. So, I don't know what it did to my
24 waistline, but --

25 MR. SHANAHAN: You look good on account

1 of it, Mr. Chairman. I can assure you.

2 MR. MILLER: He didn't bring me a
3 donut.

4 MAJORITY CHAIRMAN GODSHALL: It was my
5 secretary that thought of --

6 MR. MILLER: Not you. He didn't bring
7 me --

8 MR. SHANAHAN: His wife asked me not
9 to, Mr. Chairman. You know that.

10 MR. MILLER: It's a tough world.

11 Good morning, Chairman Godshall and
12 Democratic Chair Daley, members of the committee.
13 Thank you for this opportunity to talk about an
14 important piece of legislation.

15 My name is Keith Miller. I am a Subway
16 franchisee in California, which, by definition,
17 means I'm not a lawyer, so, you know, I won't --
18 I'd usually be up at 7 o'clock in the west coast,
19 opening one of my stores, making sandwiches instead
20 of legal discussions, I guess.

21 I'm also chairman of the Coalition of
22 Franchisee Association, which is the largest
23 franchisee-only organization in the country. And
24 I'm here to speak on behalf of many of our members
25 from Pennsylvania who won't speak out in public for

1 fear of retribution.

2 Our association supports this
3 legislation to strengthen franchising, not harm or
4 limit it. I mean, after all, I make my living in
5 franchising. All of our members are invested in
6 franchising. Why would we want to harm something
7 which, in effect, would harm our own industry?

8 And we understand that there's many
9 franchisors that operate good brands and are fair
10 partners with their franchisees. We've heard from
11 some of them this morning, and we applaud those.
12 That's what's great about franchising. There --
13 I'm an advocate of franchising. And there's many
14 good players out there. But ignoring even a
15 minority of the franchises that are bad actors is
16 not acceptable. It's like saying, I don't drink
17 and drive, and I hope most of you don't drive
18 drunk; therefore, we don't need any drunk driving
19 laws. And that's what this really is about. It's
20 about protecting the investment and property rights
21 of your local community investors from the drunk
22 drivers in franchising.

23 It's the franchisees in general --
24 there are some franchisors who are based in
25 Pennsylvania -- but like the state I'm from,

1 California, tax laws preclude many of them being
2 based in those states. So, in general, most of the
3 money in franchising that's invested in
4 Pennsylvania is invested by franchisees. They
5 support their local communities. And they are the
6 ones that create the jobs in Pennsylvania.

7 Franchisees work hard to build a
8 profitable business and expect, if they play by the
9 rules, they will be allowed to operate unhindered.
10 But that's not always what's happening today. This
11 legislation is needed, as franchisees are
12 increasingly concerned they will not be able to
13 realize the fruits of their labor. Without these
14 protections, all may be lost, including their life
15 savings and source of income.

16 Many franchisees only want to get to
17 the point of passing their business on to their
18 children and, in that way, realize the American
19 dream.

20 It's really about protecting the
21 franchise owners in this state who have invested in
22 this state first. We want to make sure that even
23 bad franchisees, in a sense, have their day in
24 court. We don't want the franchise company to act
25 as prosecutor, judge, jury, and executioner.

1 That's just not how the American system works. And
2 the reality is, providing protection to the people
3 who are doing the investing in this state will
4 actually create an environment where they want to
5 invest more.

6 In fact, I was interested in many of
7 the comments of the eighteen states which, yes, as
8 you calculate, isn't a small minority of states,
9 but if you look at -- the IFA has published an
10 economic impact report over the years. If you look
11 at the economic impact report of the whole country,
12 segment out those eighteen states, their own
13 numbers show that those eighteen states actually
14 created a slightly higher economic impact in the
15 eighteen states that have franchise laws than
16 don't.

17 Iowa, for the early '90s, was the
18 anomaly, but that was because there was a very
19 concerted effort by the industry to boycott Iowa in
20 retaliation of them passing a law. But that was
21 Iowa. Good luck on boycotting Pennsylvania or
22 California, where a law just passed. There's too
23 many consumers there.

24 You'll hear that franchising creates
25 opportunity, which it can, but do you really think

1 these franchise companies are creating this
2 opportunity out of the goodness of their heart?
3 Well, of course not. There's nothing wrong with
4 that. But they franchise because the asset-light
5 business model gives them the best return on their
6 investment. And in reality, they don't have the
7 money to build out all the McDonald's in
8 Pennsylvania or the Subways in Pennsylvania. The
9 companies don't have the money to do that. They're
10 using other people's money, and that's fine, but
11 it's an asset-light business model that has a much
12 higher return on investment. So, don't be scared
13 into believing the threats that they will no longer
14 franchise here.

15 We heard again about the franchise rule
16 this morning and the disclosure document required
17 in franchising provides ample transparency. Well,
18 I beg to differ, and I will use Quiznos as an
19 example. Quiznos set up an affiliated company to
20 do its distribution and sale of products to
21 franchise owners. Under FTC rules, that affiliated
22 company only had to report revenues received in
23 that company, not mark-ups or actual profit that
24 that company made, only the total revenues. As
25 Quiznos franchises failed, as we know, at an

1 alarming rate, income to Quiznos corporate was
2 actually about two-thirds coming from their
3 distribution channel. Two-thirds of their income
4 was coming from this affiliated company that
5 basically had no disclosure, where only one-third
6 of its income was coming from the 7 percent
7 royalties that they were charging and was fully
8 disclosed.

9 And, of course, since we're on the
10 subject of Quiznos, let's look the impact in
11 Pennsylvania. In 2007, there was a hundred thirty-
12 six Quiznos in this state. On January 1 of this
13 year, there's only twenty left. If you look at an
14 average build-out cost of about three hundred
15 thousand dollars, and those stores with lost income
16 prior to closing of probably an average of about
17 one hundred seventy-five thousand, you have over
18 fifty-five million of Pennsylvania investor loss in
19 Quiznos alone. So, don't tell me there is not any
20 problems anywhere.

21 We've all heard the claims in
22 franchising, of course: Be your own boss, proven
23 business model, no experience necessary. But this
24 doesn't always work. In 2013, the government
25 accountability office report released a report on

1 SBA lending that showed, during the prior ten
2 years, 28 percent of loans to franchises required a
3 government guaranteed bailout -- or payment. Now,
4 for that to happen, that is not just a failed
5 business. That's a failed business where there
6 were no assets left by the franchisees who started
7 that business. And I'm talking their house
8 included.

9 You have to make a personal guarantee
10 to get that loan. You become homeless. And these
11 weren't poor people who became homeless. This 28
12 percent was over -- and this is just SBA loans --
13 was nine thousand families in the U.S. who
14 basically lost everything and became homeless.
15 Actual business failures and default rates are much
16 higher than that, because if you had a house that
17 satisfied the guarantee portion of the loan, there
18 would be no guaranteed payment.

19 We heard about the recently passed law
20 in California. Of course, me being from California
21 as chair of the CFA, we were the sponsor of that
22 legislation. Just for some clarification, that law
23 did update an existing law that has been in place
24 since the 1980s. And it was a long process to get
25 that law passed. And, of course, neither side was

1 completely satisfied, but I think we came to a
2 significant compromise that better protected
3 franchisees while maintaining the integrity of the
4 franchisor to protect the brand.

5 Remember, we're franchisees, too. We
6 don't want bad actors in our own system. And there
7 has to be ways to deal with them. But they still
8 have rights, and they still own their business.

9 Well, if you follow the news, just over
10 a year ago, Governor Brown actually vetoed a
11 measure that we had in California that we passed
12 both the houses very narrowly. At the time,
13 though, the IFA, in a plea to the governor to veto
14 the bill, stated that existing law had proven
15 successful for the franchise industry. So, the
16 IFA's own words as the law before it was updated
17 was that the existing law in California -- which,
18 of course, Pennsylvania has none -- has proven
19 successful. And California, of course, is one of
20 the highest franchise states in the country. About
21 10 percent of the franchises of the country are in
22 California.

23 After we made a joint agreement with
24 the IFA on this bill, their opposition was removed.
25 Soon after, the legislation passed both houses

1 unanimously, which people still can't believe.
2 Does anything pass any house unanimously, except
3 for maybe naming a street or something?

4 MINORITY CHAIRMAN DALEY: That
5 sometimes, too.

6 MR. MILLER: Have an argument on that.

7 On October 11th, so just recently, the
8 government signed the bill into law. I'm pretty
9 sure no franchise companies are going to pull back
10 from California because of the size of the
11 population, but this sets a new benchmark in
12 franchising, which I'll, again, state was passed
13 unanimously, without opposition.

14 Key provisions in that law, which
15 mirror some of the items we're trying to pass here,
16 are that franchisees can only be terminated if they
17 fail to substantially comply with the lawful
18 requirements of the franchise agreement, and they
19 will have sixty days to cure. There are
20 protections for health and safety that you don't
21 get the sixty days.

22 On transfers, they must be provided --
23 franchisees must be provided with the applicable
24 approval standards and a limited time to make the
25 approval decision. And if unapproved, the reason

1 must be given for unapproving. Part of that is in
2 this law.

3 On terminations and non-renewals,
4 franchisors must purchase the usable inventory,
5 fixtures, and equipment on taking possession of
6 that business. Right now in Pennsylvania, you can
7 have a franchisee get terminated, and the franchise
8 company can come in and take possession of that
9 property as if it's theirs, including the fixtures
10 and equipment. And, quite frankly, it unAmerican,
11 because, I think, we are a society based on
12 property rights. It's one of the biggest tenants
13 of our law.

14 And if a franchisee is found terminated
15 or non-renewed improperly, the franchisor will be
16 liable for the fair market value of the business.

17 I'll just end it here and let other
18 people go. But, in the end, it's really about
19 protecting the franchise small business owners in
20 this state, not the big franchise companies that
21 are largely outside the state. The CFA stands
22 ready to work with the sponsor and all interested
23 parties, like we did in California, in seeing local
24 franchisees are protected while maintaining the
25 integrity of the brand. And I respectfully ask

1 this committee to move this bill forward. Protect
2 those that invest in and create jobs in
3 Pennsylvania.

4 MR. SHANAHAN: Mr. Chairman, thank you,
5 again, for the opportunity to testify here today.

6 For the record, my name is Ed Shanahan.
7 I'm the executive director of the Dunkin Donuts
8 Independent Franchise Owners association.

9 I've submitted written testimony to the
10 committee, Mr. Chairman, so, in the interest of
11 time, I won't really refer much to my testimony.
12 I'd rather just respond to some of what's been
13 presented.

14 We heard, first and foremost, from the
15 IFA, the international franchising association,
16 which, parenthetically, described themselves as
17 representing three components: franchisors,
18 franchisees, and suppliers. Now, if I'm not
19 mistaken, that can be analogous to one organization
20 representing management, representing organized
21 labor, and representing third parties. I don't
22 know, quite frankly, how any organization can do
23 that. And I would dare say the Taft-Hartley law
24 seems to indicate that nobody can really do that.
25 So, we've got an organization that is representing

1 all facets of a complex situation.

2 We also heard that there are little
3 problems out there. And I would submit,
4 Mr. Chairman and members of the committee, that
5 little problems are little until you're the one who
6 has the problem.

7 We also heard Keith reference a hundred
8 thirty-five Quiznos some number of years ago, now
9 twenty. If math serves me correctly, then that
10 means there's a hundred fifteen little Quiznos
11 problems out there in the commonwealth of
12 Pennsylvania. I would dare submit that's analogous
13 to a small minority of states, Representative,
14 being eighteen. That is not a little problem, when
15 you have that kind of depth and breadth to a
16 situation that is as egregious as some of those
17 situations have been.

18 We've also heard that the case law is
19 black and white, that there's no need for further
20 clarification. They know what to do.

21 If that's the case, then, I submit, I
22 don't know where all the litigation comes from
23 today.

24 So, good faith, fair dealing, if it's
25 not clear, Mr. Chairman, in HB 1620, then I would

1 hope that those with the wherewithal to clarify it
2 would step forward and help you and this committee
3 clarify it, to address those little problems that
4 put a hundred fifteen Quiznos businesses out of
5 business.

6 Auntie Anne's is worldwide. We heard
7 that today. Why isn't Auntie Anne's having the
8 problem? They're a good franchise. And that,
9 therein, is the bottom line. There's good
10 franchises.

11 We heard -- I believe Charlie mentioned
12 that there's been bad actors out there, and we
13 would agree. There have been bad actors out there.
14 Unfortunately, at the time, Dunkin Donuts was a bad
15 actor some twelve, fourteen years ago. They've got
16 a new executive team now. They are not a bad actor
17 now. They've got a good relationship with their
18 franchise community.

19 They were -- to paraphrase Keith's
20 metaphor, they were a serial drunk driver. They
21 were a serial drunk driver, but they've been sober
22 for a dozen years. Just as easily as an alcoholic
23 ordering a drink, Dunkin Donuts could drink in a
24 new executive team and wash away a dozen years of
25 the sobriety of good franchise relations. The only

1 thing stopping is the executive team. That
2 executive team can go. At some point, they'll
3 retire. At some point, they'll take other
4 opportunities. And we don't know who the next
5 executive team will be.

6 This bill, HB 1620, is a protection
7 against whoever comes in being another one, as
8 Charlie said, of those bad actors. That's all this
9 is. If one is a good franchisor, then one has
10 nothing to worry about, because this doesn't
11 address anything that a good franchisor is doing
12 and doing well. It seeks to prevent those
13 egregious actions that those bad actors that we
14 heard referred to tend to perpetrate on their
15 franchisees.

16 And, again, Mr. Chairman, in the
17 interest of time, I don't want to drone on, as I am
18 normally wont to do as a good Irishman, and, so I'd
19 be happy to take any -- how come I got some
20 chuckles on that one? Was it the "good Irishman"
21 part or what? Well, I'm not sure. But I'd be
22 happy to take any questions, Mr. Chairman. I'd be
23 happy to delve further into my written testimony or
24 into any areas that the committee may wish to
25 delve.

1 And this is Gary Robbins, who is also a
2 franchise owner and a franchisee association exec.

3 MR. ROBBINS: Thank you, Mr. Chairman.

4 My name is Gary Robbins. I've been a
5 Pennsylvania franchisee for twenty-eight years. I
6 have forty-five locations, employing close to four
7 hundred people in the state of Pennsylvania. I'm
8 also a franchisor, owning an interest in a
9 franchise company.

10 Franchising is a great place for people
11 to start an entrepreneurial career, helping to
12 create a path to a secure and greater future for
13 themselves, their families, and their employees. I
14 want to protect that.

15 Certain aspects of franchise agreements
16 and contracts, when in the hands of less than
17 honorable franchisors, can be used unfairly and be
18 devastating to the welfare of franchisees and their
19 families and their businesses, for which, in many
20 cases, they have risked their homes and their
21 futures on.

22 I can protect myself, but most
23 franchisees who are starting out or struggling for
24 many years cannot protect themselves.

25 I believe in a bigger future for

1 franchising, and I believe that balanced
2 legislation protections are in order and that they
3 will not harm franchise and job growth in
4 Pennsylvania, but, in many cases, make it more
5 attractive for people to invest in a franchise
6 business.

7 While a franchisor's success is based
8 off the success of its franchisees, legislation
9 will only be difficult or harmful to those
10 franchisors who have only their self-interest and
11 not the best interest of the franchisees in mind.

12 Thank you.

13 MAJORITY CHAIRMAN GODSHALL:
14 Representative Daley.

15 MINORITY CHAIRMAN DALEY: Thank you.

16 MAJORITY CHAIRMAN GODSHALL: We are
17 getting a little bit short on time.

18 MINORITY CHAIRMAN DALEY: Thank you,
19 Mr. Speaker -- I mean, Mr. Chairman.

20 My enthusiasm for this legislation,
21 gentlemen, and I think you know, was that I was a
22 franchisee. I was a Quiznos owner among those one
23 hundred thirty people. Me and my partners lost a
24 half a million dollars on two Quiznos. But that's
25 not the reason why I introduced the legislation,

1 because we kissed and ended the battle in court in
2 Colorado, we were stuck to, because jurisdiction
3 was in Colorado. But, as an attorney, I'm very
4 lucky to be able to represent myself, and, of
5 course, the judge told me in court in Colorado, You
6 know, you have a fool for a client. And I said,
7 Your Honor, I can handle this case very well, and I
8 did.

9 But, nevertheless, I brought a class-
10 action suit in the western district of Pennsylvania
11 representing thirty-eight Quiznos, and I'll tell my
12 members of the committee and I'll tell anyone in
13 the world this, because when I went bankrupt, I
14 made national attention because I was a public
15 official, and people contact me all over the
16 county. It wasn't just me that went bankrupt. It
17 was probably about seven thousand people that went
18 bankrupt all over the country. There was a
19 national class-action suit.

20 And I had franchisees calling me all
21 over the county saying, Help me. And I said, I
22 can't help you. I'm up to my neck in alligators.
23 Because we found out very quickly in my action,
24 when we brought the federal case, we referred to
25 federal law, good faith and fair dealing is covered

1 there. It's well established. But Pennsylvania
2 lacks, because we also referred to Pennsylvania
3 law, because we didn't have it here.

4 It's not because of Quiznos and me
5 losing the money. It's because one of my
6 franchisees hanged himself in the basement of his
7 business after he begged Quiznos to help him, but
8 it was such an unlevel playing field. And it's
9 because one of my franchisees, he put a pipe in his
10 trunk of his car and he gassed himself because of
11 the situation. I promised both of their wives that
12 I would lead on the battle here because this was
13 not fair to these franchisees.

14 Gentlemen, you know exactly what I'm
15 talking about.

16 And most of all, I got a call from a
17 gentleman in San Diego, became national attention,
18 that he was -- he had three or four Quiznos in San
19 Diego, and he called me and begged me to help him.
20 And I said, I can't help you because I'm up to my
21 neck in alligators. But this guy, the next day,
22 went into Quiznos in San Diego and shot himself and
23 made national news because he left a suicide note
24 saying that Quiznos had just absolutely destroyed
25 his life. And I was interviewed by the New York

1 Times about this particular incident, because they
2 knew that he had contacted me. And I promised that
3 man's wife that I would not let his death go
4 unanswered, not let his death go unresponded to.
5 And all those people.

6 This is more than losing money, because
7 money you can make back. I know people who lost
8 their house. I didn't. I didn't lose my pension,
9 because I was smart. I knew how to protect myself.
10 But a lot of people didn't.

11 All I'm saying, gentlemen, and your
12 testimony is -- and I believe it's very good --
13 that we want to level the playing field. We don't
14 want to put anyone at a competitive disadvantage.
15 Subway is a great franchise. I've litigated
16 against Subway. They're great. They work with
17 their people.

18 Dunkin Donuts is the new kid on the
19 block. They're doing a good job.

20 MAJORITY CHAIRMAN GODSHALL: Well, they
21 also increase your waistline, I mean, and that's
22 maybe not a good job for some people.

23 MINORITY CHAIRMAN DALEY: That's why
24 you need to join Planet Fitness.

25 But I want to thank you for your

1 testimony.

2 MAJORITY CHAIRMAN GODSHALL:

3 Representative Davis.

4 REPRESENTATIVE DAVIS: Right. I hate
5 to ask questions after Mr. Chairman's testimony
6 like that, but I have a few questions for Keith.

7 You mentioned seven thousand -- was it
8 seven or nine thousand --

9 MR. MILLER: Nine thousand.

10 REPRESENTATIVE DAVIS: Nine thousand
11 franchisees went under. Do you know the number for
12 Pennsylvania?

13 I have three questions, so I'll be
14 quick.

15 MR. MILLER: Of that, no. That was an
16 SBA report for the whole country. And that was
17 just SBA loans, so there's more franchise failures
18 than that. There was just nine thousand families
19 where the government required a guaranteed payout.
20 I know many families who lost their houses, and as
21 one described to me, she goes, I've been a lifelong
22 conservative, and now I'm dependent on the
23 government program I always shunned. She didn't --
24 but she had a house, at least, that covered the
25 guarantee portion, so she is not even part of that

1 statistic.

2 REPRESENTATIVE DAVIS: So, you -- can
3 you get that number?

4 MR. MILLER: I don't know. I can try.

5 REPRESENTATIVE DAVIS: Okay. Under
6 what conditions -- you mentioned that a franchisor
7 is allowed to take over a business. What are the
8 conditions that allow them to do that? What burden
9 of proof?

10 MR. MILLER: It's usually set in the
11 contract. And, for example -- and, unfortunately,
12 I'm better at California law because I've been,
13 like, hearing it for four years. The current
14 law -- the law in California used to be you could
15 be terminated for any, any default of the franchise
16 agreement. So, technically, most -- again, good
17 franchise companies don't do this, but we do have
18 the bad actors out there. I mean, 7-11's kind of
19 one that's been in the press a lot, nationwide and
20 actually in Pennsylvania, as being a bad actor of
21 finding ways to terminate people quickly.

22 Part of it --

23 MAJORITY CHAIRMAN GODSHALL: I want to
24 avoid, you know, 7-11, they don't have a right -- I
25 mean, to come back here and come back. I mean,

1 it's not fair.

2 MR. MILLER: I understand. I
3 understand it's not fair.

4 And usually people want to go, Well,
5 give me an example. So, I agree. That's fine,
6 sir.

7 But especially profitable stores, there
8 are chains out there that find any default to be
9 able to terminate someone, and usually the fault
10 can be something in the operations manual, because
11 every franchise agreement says you must follow the
12 then current operations manual.

13 REPRESENTATIVE DAVIS: But I, as a
14 franchisee, have the right to negotiate a contract
15 in the beginning? Or is it all standard?

16 MR. MILLER: There's very little
17 negotiation. It's usually a take-it-or-leave-it.
18 A few big people have it, but many of these terms
19 are really negative terms.

20 For example, I just saw a new contract
21 that somebody was being asked to sign as a
22 renewal -- the contracts can be five, ten, fifteen
23 years. Many of these conditions are put in on
24 renewals, where you may have just done a remodel
25 two years ago, taken on fifty thousand dollars

1 debt. You come to the end of your term, and the
2 renewal contract is very negative, but you can't
3 walk away from that business with nothing, so
4 you're really forced to sign it.

5 One of the contract terms that we're
6 now seeing pop up is: If you take legal action
7 against us and do not prevail, we have the right to
8 terminate you. Think about that. So, we have your
9 day in court, so if I have a store that's worth a
10 quarter of a million dollars, and, again, I'm a
11 Subway franchisee, if they -- they wouldn't do
12 this, but if they did -- took ten thousand dollars
13 out of my bank account for no reason. Now, would
14 I really want to go to court for that ten thousand
15 dollars when I knew if I didn't prevail, for
16 whatever reason, I was risking my quarter-million-
17 dollar business.

18 REPRESENTATIVE DAVIS: Why would I sign
19 that in the beginning? I don't --

20 MR. MILLER: Well, but a lot of this
21 happens on renewals, where you're coming to the end
22 of your term. You've made a living out of this
23 business. And, again, you may have debt on that
24 business because of required remodels. Do you
25 really have a choice?

1 REPRESENTATIVE DAVIS: Would it be wise
2 to address the renewals part of it maybe? I don't
3 know. I just want to bring that out.

4 And the third question, you talked
5 about being the prosecutor, judge, jury, and
6 executioner. Does that mean I have no rights if I
7 want to go after my --

8 MR. MILLER: You have very little legal
9 rights. First of all, you don't have the
10 resources. I mean, how many -- we talk about big
11 franchise owners. But the reality is, over about
12 70 percent of the franchise owners in this country
13 are single-unit operators. Now, if you're a hotel
14 industry, I grant it, that's a big business, but we
15 forget that a large majority of the individuals are
16 very small businesses. Do they have the resources,
17 even if they had the legal right, to go fight that
18 point in court?

19 The other thing is, almost all -- I
20 won't say almost all -- a majority of franchise
21 agreements at this point have arbitration
22 clauses in the home jurisdiction of that franchise.
23 So, if you're forced to go to arbitration, the
24 franchisor actually pays that arbitrator, even
25 though they take the money out of your bank

1 account. We know arbitration isn't really a true
2 legal process. It's a private business. And it
3 puts you at a severe disadvantage of really seeing
4 your rights.

5 I might also point out that we did do a
6 study, and I forget the numbers on it. We talk
7 about lawsuits and how all these laws would create
8 more litigation. The far majority of lawsuits
9 filed in franchising are, by far, from franchisors,
10 not from franchisees, because franchisees know that
11 the deck's stacked against them. There's really
12 not much of a point in doing that.

13 MAJORITY CHAIRMAN GODSHALL: Okay.
14 We're running out of time very quickly. We're due
15 on the house floor at 11 o'clock, and that's a ways
16 up.

17 MR. SHANAHAN: Too many donuts now,
18 Mr. Chairman.

19 MAJORITY CHAIRMAN GODSHALL:
20 Representative Kampf.

21 REPRESENTATIVE KAMPF: I think the
22 panel's done a very nice job.

23 Mr. Shanahan, I was certainly
24 captivated by your testimony.

25 The comment, Mr. Miller, about

1 arbitration being something that's bad, you know,
2 I'm a lawyer. Almost all litigation ends in
3 settlement or in arbitration or mediation. The
4 court system is where you spend all your money.
5 And arbitrations are generally conducted by
6 arbitrators, lawyers, former judges.

7 They often, to use a biblical term,
8 split the baby, because they want to be hired again
9 as arbitrators. So, it's not an inherently bad
10 system. And it's kind of where our legal system is
11 going, because the costs on both sides are enormous
12 in the court system.

13 The analogy you used, Mr. Miller, I
14 just want to comment on for a second, and then I
15 will have a quick question. The analogy of the
16 drunk driving law, so I view something like that as
17 where the government and the legislature should be
18 involved, because we're talking about safety of
19 individuals and, you know, we want to make sure our
20 roads are safe and children and people can drive
21 safely and walk across the street.

22 But when we start to talk about laws
23 that affect the economy, we begin to erode the
24 whole basis of what capitalism is all about.
25 Capitalism is about fundamentally destructive

1 creation. Right? Out of difficulties, out of
2 adversity, out of the desire to get ahead, out of
3 the desire to make money, something good happens.
4 But in doing that, something bad happens. Quiznos
5 is an example of something bad that happened. The
6 Dunkin Donuts bad actor idea, something bad
7 happened.

8 My guess is that Dunkin Donuts didn't
9 get sober because of the law. My guess is that
10 Dunkin Donuts got sober because it's a bad business
11 model. You can't make money when a hundred and
12 sixty franchisees suddenly tank, at least not for
13 very long.

14 So, the concern I have is when we
15 introduce comprehensive laws like this that allow
16 plaintiffs' lawyers to assemble a whole lot of
17 franchisees to become a class and to go after a big
18 guy and make some money and take 30 or 40 percent
19 of that judgment, or we say something like, If you
20 don't feel like you're getting the fruits of your
21 contract, you get to sue, we're giving tools to
22 individuals, to groups, to manipulate the economic
23 process.

24 And so I just throw that out there and
25 then essentially ask for a reaction to that.

1 MR. SHANAHAN: If I might,
2 Representative, as to the Dunkin Donuts during
3 those bad days, they were making plenty of money,
4 because they were prepping for an IPO. And it was
5 private equity groups that were doing that, turning
6 those over, and then pocketing an additional
7 quarter of a million for a new royalty. Taking it
8 back from you, selling that then to Brett, and then
9 collecting that two hundred fifty thousand dollars.
10 So, that's one reaction.

11 If I might also, Representative, when
12 we talk about laws relative to the safety of
13 individuals, there's two kinds of safety, I think,
14 that we can talk about. Yes, the safety of one who
15 may be struck down by a car driven by a drunk
16 driver or any driver for that matter. But there's
17 also the safety, if you will, of somebody who
18 hasn't lost everything that they've worked their
19 entire life for. The safety of those individuals
20 who chose to end their life rather than try and
21 fight an insurmountable opponent. That gets to the
22 question of safety as well.

23 It may not be as crystal clear a safety
24 issue as somebody crossing the street and getting
25 hit by a car, but it is every bit as much of a

1 safety issue when we look at it that way.

2 The one other thing that I would say,
3 and I agree with you wholeheartedly, capitalism is
4 such a fertile ground for -- I forget the wording
5 you used, Representative, but I would say
6 disruptive innovation. Disruptive innovation. I
7 mean, it's phenomenal. We've got a Shave-of-the-
8 Month Club now, so you don't have to buy razors,
9 you know, that you pay through the nose seven
10 dollars a blade. You can -- you know, you can get
11 it. And, Representative, some of us have to worry
12 about other things other than how much the cost of
13 razors are.

14 But -- so, disruptive innovation is
15 something absolutely we want to -- we want to see
16 that happen. I would dare say, I would go so far
17 as to say the very franchising business model is
18 disruptive innovation from years ago. When John
19 and Sally said they wanted to open a hardware
20 store, they talked to the suppliers, they got the
21 corner store, store, and they opened it. They
22 didn't always have the screws and the nails and
23 whatnot that you needed, but they wanted a
24 hardware. They opened a hardware store.

25 Disruptive innovation allows them to

1 contact any number of the franchise hardware stores
2 out there now. I'm sorry, Mr. Chairman. I should
3 have picked something that didn't have an "A" and
4 an "R" in it for purposes of linguistic
5 understanding. But, you know, they call Ace
6 Hardware now, and they can open a hardware store
7 like that.

8 So, it is, in fact, disruptive
9 innovation that brought forth the very franchise
10 business model that we're talking about. We just
11 want to disruptively innovate so that it stays as
12 healthy as it has been, Representative.

13 MR. MILLER: And two quick comments.
14 The arbitration, the problem I have is the
15 mandatory binding arbitration clauses that tend to
16 be in it, because you have no right to appeal, and
17 it's very limited. Because arbitration can be an
18 excellent part of the process.

19 The other thing is, we are looking
20 at -- if you look at this as an investment, which
21 is what many people are doing, I mean, I think we
22 would all say that the securities industry is
23 pretty well regulated, yet you can only lose your
24 investment. In franchising, you can lose your
25 investment, lose income, your house, every asset

1 you have, and yet we have almost no protections
2 around it.

3 MAJORITY CHAIRMAN GODSHALL: Okay. We
4 have one more testifier. We have about three
5 minutes or maybe two minutes left. Representative
6 Longietti.

7 And, real quickly, I have a letter that
8 I promised I was also going to read, and we're
9 desperately running out of time.

10 REPRESENTATIVE LONGIETTI: I'm going to
11 essentially waive off, because Representative Kampf
12 covered most of my ground. But the only point that
13 I would make is, I'm not so sure that there's not a
14 problem but we've got to be careful that the
15 solution doesn't become more problematic than the
16 problem.

17 MAJORITY CHAIRMAN GODSHALL: Okay. But
18 I've got to read this letter yet.

19 MINORITY CHAIRMAN DALEY: Okay. You
20 read that letter. I'm sure you will.

21 All I'm saying is, gentlemen, and to be
22 heard, that most franchisors are outside
23 Pennsylvania. They're large corporations.
24 Franchisees are small business people, usually
25 within Pennsylvania, that's here in Pennsylvania.

1 And what we're simply saying and what I'm trying to
2 say is, we want to give those people a break, give
3 them a chance, because you're right.

4 Your question back there concerning
5 these contracts. You go to a meeting, they throw
6 the contract. This is the contract. This is the
7 franchise agreement. You have to sign this.
8 There's really no waivers. You have to abide by
9 the terms and conditions of that franchise
10 agreement or you don't sign it.

11 I do not know anybody that have been
12 able to negotiate terms about mediation,
13 litigation, changing franchise fees, royalty fees,
14 and termination fees and default provisions. It
15 just doesn't happen. And it doesn't happen
16 anywhere in American. And it's not going to happen
17 in Pennsylvania.

18 MAJORITY CHAIRMAN GODSHALL: Thank you.

19 I do want to read this letter into the
20 record, which I promised I was going to do. And
21 it's from the Pennsylvania Retailers.

22 (Reading) We're writing to express
23 concerns with House Bill 1620, which has been
24 referred to the House Committee on Consumer
25 Affairs. The bill's stated purpose is to establish

1 a responsible franchise practice and protect
2 franchisees from unfair practices in the sale and
3 operation of franchise businesses. However, the
4 bill before you would accomplish the exact opposite
5 in its intended effect. The bill would further
6 complicate and undermine the regulatory system
7 already in place that governs franchise
8 relationship with vague language and unreasonable
9 new regulations.

10 If the measure were to pass, it would
11 result in significant harm to the thirty thousand
12 franchise small businesses in Pennsylvania, which
13 generate over twenty-eight million in economic
14 output and employ over three hundred eighteen
15 thousand workers.

16 House Bill 1620 takes unnecessary aim
17 at an already heavily regulated business model that
18 has proven to be extremely successful for all
19 parties involved. It seems like a solution in
20 search of a problem -- that's what we heard
21 before -- that fundamentally does not exist in
22 Pennsylvania or elsewhere.

23 While the proposals in this bill may
24 appear favorable to franchisees on the surface,
25 their enactment would lead to a host of unintended

1 consequences for small businesses across the state.

2 Pennsylvania Retailers Association
3 respects Chairman Daley's intent but asks that you
4 consider our concerns.

5 Thank you for your continued support of
6 the retail industry. Sincerely, Brian Rider.

7 So, I --

8 MINORITY CHAIRMAN DALEY: Mr. Chairman,
9 I just want --

10 MAJORITY CHAIRMAN GODSHALL:

11 Seriously --

12 MINORITY CHAIRMAN DALEY: I just think
13 it's a cheap way to get hearsay evidence before the
14 committee without us having a right to cross-
15 examine. I do respect your right to read it
16 because you gave -- you said you're going to, but I
17 think it's really a cheap way to get hearsay
18 argument.

19 MAJORITY CHAIRMAN GODSHALL: I -- they
20 were going to testify. I did not know that I
21 had -- anyway, regardless of that, I do want to say
22 that California may be doing something right,
23 because you got a little rain out there, I
24 understand, over the last few days. So --

25 MR. MILLER: Yes, we did. Some places

1 too much.

2 MAJORITY CHAIRMAN GODSHALL: Comments
3 were submitted by the Pennsylvania Brewers
4 Association.

5 And with that, I'd like to send a thank
6 you for the presenters for taking the time, and the
7 meeting's adjourned.

8 (Whereupon, the hearing concluded at
9 10:57 a.m.)

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the foregoing is
a true and accurate transcript, to the best of my
ability, produced from audio on the said
proceedings.

BRENDA J. PARDUN, RPR
Court Reporter
Notary Public