



Pennsylvania House Consumer Affairs Committee

Hearing on HB-1620

Fair Franchise Act

October 21, 2015

Testimony of Keith R. Miller

Chairman

Coalition of Franchisee Associations



Good morning Chairman Godshall, Democratic Chair Daley, and members of the Committee. Thank you for the opportunity to discuss this important piece of legislation. My name is Keith Miller and I'm a Subway franchisee in California. I'm also Chairman of the Coalition of Franchisee Associations, which is the largest franchisee only organization in the country. I'm here to speak on behalf of many of our members from Pennsylvania who won't speak out in public for fear of retribution.

Our association is supporting this legislation to strengthen franchising, not harm or limit it. We all make our living in franchising; damaging it would actually diminish the value of our investments. However, we see an industry that has tilted out of balance, and needs correction, otherwise our investments are not protected, and long term the industry may fail. We understand that there are many franchisors that operate good brands, and are fair partners with their franchisees. I'm sure you will hear from some of those today, and we applaud them, as they are what is great about franchising. But ignoring, even a minority of the franchises, that are bad actors, is not acceptable. It's like saying, I don't drink and drive, most of you don't drive drunk, and therefore, we don't need drunk driving laws. And that's what this is about. It's about protecting the investment and property rights of your local community investors from the drunk drivers in franchising.

It is the franchisees that invest in and pay taxes in Pennsylvania. It is the franchisees that support their communities. And it is the franchisees that create jobs in Pennsylvania.

Franchisees work hard to build a profitable business, and expect if they play by the rules, they will be allowed to operate unhindered. But that is not what always happens today. This legislation is needed as franchisees are increasingly concerned that they will not be able to realize the fruits of their labor. Without



these protections, all may be lost including their life savings and source of income. Many franchisees only want to get to the point of passing their business to their children, and in that way, realize the American Dream.

What HB-1620 is really about is protecting franchise owners in the state first. Making sure the franchise company does not act as prosecutor, judge, jury, and executioner. Franchise owners in the state deserve basic protection rights. After all, they do own their businesses. And protecting those who are doing the investing will give them incentive to invest more.

You will hear that franchising creates opportunity, which it can. But do you really think the franchise companies are creating this opportunity out of the goodness of their heart? Of course not, they franchise because the asset-light model gives them the best return on their investment. Don't be scared into believing the threats that they will no longer franchise here.

We hear that the Franchise Disclosure Document, required by the Federal Trade Commission, already provides ample transparency. I beg to differ, and will use Quizno's as an example. Quizno's set up an affiliated company to distribute and sell products to its franchisees. Under the FTC rules, only total revenues are required to be disclosed in the FDD, not profits made on markups to franchisees. As Quizno's franchisees failed at an alarming rate, income to Quizno's was increased to about 2/3 from this affiliated company, with the 7% royalty only accounting for 1/3.

Since we are on the subject of Quizno's, let's look at the impact in Pennsylvania. In 2007, there were 136 stores in the state. On January 1, 2015, there were only 20 stores left. If you look at an average buildout cost of \$300,000 and an estimated average operating loss prior to closing of \$175,000, you have around \$55 million of Pennsylvania investor loss.



We've all heard the claims in franchise advertising. Be your own boss, proven business model, no experience necessary. But this doesn't always work, does it? In 2013, the Government Accountability Office released a report on SBA franchise lending. The report stated that "From fiscal years 2003-2012, the SBA guaranteed 32,323 franchise loans under its 7(a) program totaling around \$10.6 billion. SBA made payments to honor its guaranty on approximately 28 percent of these franchise loans". Payments only occur when all assets or collateral have been exhausted. This means over 9000 franchisees lost everything, and I mean everything. These were not poor people to start with, and they represent local citizens in your communities. Their risk is much more than an investment in a security, yet the oversight is nothing in comparison.

I'm sure many of you have heard about the recently passed and signed into law franchise legislation in California. Just for clarification, this new bill updated already in place franchise law in effect since the 1980s. It was a long process, but one that while neither side was completely satisfied, we came to a significant compromise that better protects franchisees while maintaining the integrity of the franchisor to protect the brand. Just over a year ago, Governor Brown vetoed a bill we moved through both houses by the narrowest of margins. At the time, the IFA, in a plea to the Governor asking him to veto the bill, stated exiting law had "proven successful for the franchise industry". After we made the joint agreement with the IFA, they removed their opposition to this year's bill. Soon after, the legislation passed both the Senate and Assembly unanimously. And on October 11, the Governor signed it into law. This bill sets a new benchmark in franchising, which I'll state again, was unopposed and passed unanimously.

Key provisions were as follows. In relation to terminations of the franchise, franchisees can only be terminated if they fail to substantially comply with the lawful requirements of the franchise agreement, and they will have at least 60 days to cure defaults. Of course there are protections for immediate health and safety issues. On transfers, franchisors must provide transferring franchisees with



the applicable approval standards, have a limited time to make the approval decision, and if unapproved, the reason must be given. On terminations and non-renewals, franchisors must purchase the usable inventory, fixtures, and equipment upon taking possession, protecting the property rights of franchisees. And if a franchisee is found to be terminated or non-renewed improperly, the franchisor will be liable for the fair market value of the business.

Lastly, let's talk about the risk of franchisees publicly supporting a bill like this. Each franchisee is at risk by speaking out against what their franchisor would want. In this industry, franchisee advocates tend to have a short lifespan in their industry. This is why one provision of this proposed law would protect the right to association.

In the end, the question is simple, are you going to support the large corporations outside of your state, or the small businesses owners that have invested in your districts? The Coalition of Franchisee Associations stands ready to work with the sponsor and all interested parties in seeing local franchise owners are protected while maintaining the integrity of the franchise brands.

I respectfully ask the committee to support HB-1620. Protect those that invest in, and create jobs in Pennsylvania.