



Rep. Paul Holvey, Chair
House Business and Labor Committee
Oregon House of Representatives
Salem, Oregon

March 3, 2021

Dear Chair Holvey and members of the committee:

On behalf of our company and franchisees, **we are writing to express concerns with aspects of HB 2946.**

Dutch Bros Coffee is a proud homegrown Oregon business, founded in 1992 by brothers Dane and Travis Boersma. Dutch Bros Coffee was born out of a milk barn in Grants Pass with a single espresso machine and 100 pounds of beans. Today, Dutch Bros Coffee is the largest, privately held drive-through coffee chain in the nation. We have 155 locations in Oregon that employ close to 5,100 full and part-time employees. Our headquarters, still in Grants Pass, has more than 400 employees. We are proud of the company we've built, it's positive impact in communities, and our collaborative partnership with our franchisees.

Importantly, our partnership with franchisees has always been more about culture and alignment, than a pure business calculus. Our business model is based on a shared ethos, consistent operational standards, and a universally positive customer experience. Our ability as franchisor to sustain these core tenets of our business is central to our brand promise and preserving the value of each franchisee's investment.

Provisions of HB 2946, as currently written, will undercut our ability to protect our culture, ensure a uniform customer experience and, as a result, will lessen the value of our brand, to us as a company and to our franchisees.

The following represent our areas of greatest concern:

Section 3: This section conflicts with federal law by forcing franchisors to make a financial performance representation which essentially imposes disclosure obligations that will increase the liability a franchisor has in preparing its annual Franchise Disclosure Document. Coupled with Section 10, it creates a whole new class of liability for franchisors, now compelled, FPRs.

Section 4: Franchising requires the establishing of uniform products, services, hours, and standards. This uniformity is both necessary for the overall strength of a brand and required by federal law. Dutch Bros carefully selects products, equipment, suppliers, and has built a brand that is recognized for having unparalleled service and value to customers. As a result of these efforts, Dutch Bros outlets have some of the strongest average unit volumes (AUVs) in the industry and we maintain excellent relationships with our franchisees. This Section provides numerous new restrictions on how Dutch Bros can establish and manage uniform system standards and will create uncertainty in how Dutch Bros can maintain these going forward. Many of the key terms in this section are undefined, which, when coupled with Section 10 (discussed below) could lead to costly disputes. In short, the many provisions in this section can only lead to a decrease in brand quality and customer satisfaction. Lastly, the restrictions on arbitration in this Section are most certainly a violation of the Federal Arbitration Act. If included in the bill that is ultimately passed, this provision will inevitably lead to costly litigation with the foreseeable result that the provision will be declared invalid.



Section 7: Franchising at Dutch Bros is about relationships. We partner with people who know our brand and care as much as we do about upholding our standards and culture. This section limits our ability to act when this relationship changes by imposing transfer requirements on our system. Forcing a franchisor to accept a new franchisee who it may not have initially agreed to do business with, or even greatly increasing the risk of not accepting a newly proffered franchisee who inherits an existing franchise, as this Section does, will not benefit franchised business, where the overall quality of the system supports all franchisees. When there is a change in the franchise relationship, Dutch Bros needs the ability to react quickly to manage that transition and assure our expectations of quality and customer service are continuously being met. This section impedes that ability.

Section 10: This section creates new causes of action, increases the total damages that might be sought in an action, and seeks to reverse negotiated forum and choice of laws clauses. The standards of “willful” and “knowing” are such low bars that every cause-of-action will assert treble damages. The only winners in this section are the lawyers; certainly not the brands or consumers. This will only serve to increase the cost of doing business without creating any appreciable benefits.

Section 12: Dutch Bros has been in the franchise business for more than 20 years. We have long-standing contractual relationships with our franchisees. This provision would reach back and upend these settled contractual relationships by purporting to impose new contractual requirements retroactively. If the Oregon Legislature chooses to go forward with this bill, this Section needs substantial revision. At a minimum, the legislature should protect settled contractual relationships and expectations by removing the retroactive effect of this bill, and by imposing these new requirements only on new franchise relationships created after the passage of the legislation. It should also explicitly provide for a time period for effectiveness that allows franchisees to amend and update franchise agreements to comply with the many new provisions. As written a franchisee would have a cause of action immediately upon the effective date of this legislation for any requirement in their franchise agreement that does not meet the new requirements.

We appreciate the opportunity to share these perspectives with the committee and stand ready to discuss options and alternatives that both achieve the objectives of protecting franchisee rights while also supporting the role franchisors play in brand alignment, ensuring consistent operational standards and customer experience, and protecting overall value for company and franchisees.

Sincerely,

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