

**February 15, 2021**

**I wish today to submit information regarding HB 2946. I believe that this is legislation that is needed for all Oregonian citizens as well as small business in the state.**

**Frist I would like to give some background on myself and why I feel qualified to comment on this proposed legislation.**

**I have and an Associate of Arts degree in Labor Management and a Bachelor Degree in Human resource management, a Master's Certificate in Business Management.**

**I owned and operated numerous businesses in Oregon for 26 years. I opened my first Franchise business in 1995, a Subway Sandwich business located in Tillamook, Oregon. Over the next few years I opened 6 more Subway Sandwich locations, all on the Oregon coast, from Tillamook, south to Brookings, Oregon.**

**I was also part of the local Advertising Board for the area as well as being a Board member of the North American Association of Subway Franchisee's (NAASF).**

**I have owned other restaurants which were not Subway Franchise's, but small independent owner-operator.**

**My specific message for the committee today, is regarding my expectances with Subway Franchising and why I believe that action is needed.**

**Subway Headquarters is located in Milford, Connecticut. Their corporate operating name is Doctor's Associates and the primary ownership is between the Deluca family and the Buck family. The parent company then creates sub-contractors call Development Agents. These Sub contractors are not actual employees of the corporate entity, but are then licensed to conduct business for Parent Corporation. These development agents work on commission based on the gross sales of all Subway stores within their Development area. So, what this means is that the more Subway Stores that are opened and operating in a Development agents area, the more money they make.**

**One of the major challenges to this type of set up, is that Development agents, can, and have in the past, set up Subway locations in the same area with little or no regard for individual franchise profit. There have been cases in some**

states where Subway's are located directly across the street from each other, with two different Franchisees.

The other major issue is that Subway has store inspection each month in all locations. While this sounds benign, or even perhaps a good way to go, these inspections are done by staff the Development Agents, not from Corporate Subway. So, depending on how a Franchisee interacts with the Development agency inspector, he/she, can pass or fail at the whim, of this inspector. What happens often within this dysfunctional system is that Franchisees, who disagree with any programs of the Development Agent, are often targeted and given poor performance inspection to force them to comply, or to sell their store or be forced out. There have been many documented situations where Aggressive development agents decide that they want an existing Subway location, and then work to force the Franchisee out so that they can take the location for themselves or one of their members or junior associates.

<https://www.nytimes.com/2019/06/28/business/subway-franchisees.html> is an article from the New York Time which give details of this type of activity.

Another major tool that is used against Franchisee's within the Subway system, is the mandatory access to each Franchisee business banking account.

When I first started with Subway as a franchisee in 1995, each week you would notify Subway of what your previous weekly sales had been, and they would then bill you for 8% royalty and 4.5% Advertising fee, to 12.5% of your gross sales that week. The original Advertising fee was 2.5% for both national advertising and regional.

Subway national now demands that each franchisee give permission for automatic deductions from their business bank account each week. This is 12.5% of the gross of each store, which in some cases leaves no profit for the Franchisee. I would probably think that this committees first reaction, would probably be, that the franchisee should probably just close that store and move on. What that does not address is the lease that they have been required to sign which makes them responsible for lease payments even if the store is closed. It also does not address the loss of the total investment in opening a location, which can run between \$115,000.00 to \$150,000.00 for equipment and décor.

But let me get back to some of my personal experience's in dealing with this "carnivorous" Subway Franchise business.

**I as indicated earlier in this presentation, I stated that I was invested in 7 Subway locations in Oregon.**

**As Subway became more aggressive, thorough its sub-contractor Development agents, Each time that I spoke out, either on a national level, or a local level, my monthly inspections were registered as worse and worse. My choices were to shut up or cave in.**

**The final situation that occurred in my experience with Subway, was when I changed banks, but refused to allow them to directly debit my account.**

**I informed them that I would send them a check each week if they would send me a statement of what I owed. This continued for several weeks and finally the Development office (sub-contractor) took the unusual step of informing the Food Supply company to no longer deliver product to any of my stores. Not only did they forbid the independent food company from delivering food to my Subway's, they also illegally instructed the Food Supplier to not deliver food to another of my independent restaurants that had nothing to do with Subway.**

**Because this food supplier's largest customer in the region was Subway restaurants, they chose to not confront Subway about this illegal activity.**

**At this point, I could not have product to feed Subway customers, but also could not have food for my independent restaurant located within the same building. This forced the closure of stores. The Tillamook Subway was one of the highest volume locations in Pacific Northwest. At the time of this occurrence in 2017, this location was grossing over \$800,000.00 per year.**

**Also, a part of the Subway dispute resolution process is for mandatory arbitration. The largest challenge, it that the arbitration must take place in Milford, Connecticut not within the confines of the state in which the dispute arose. Also, Doctors Associates, retained onto itself the sole choice of an arbiter. They have been using the same arbitration process, so that they will never lose arbitration. And since they started that process they have not lost arbitration.**

**I had to hire an attorney to represent me, but Subway refused to acknowledge this individual since he was a practicing attorney in Oregon.**

**In the process of trying to negotiate some form on process, Subway went forward and proceeded to arbitration without myself or my attorney being**

able to be part of the process.

The arbitrator stated that since I did not chose to be part of the process they ruled against me. What a surprise.

In the final part of the process, the Development office (sub-contractor) offered to purchase my two remaining Subway location for 12.5 % of the actual value. \$100,000.00

With this amount, I was able to payoff outstanding billing but all my restaurants were forced to close, even the non Subway locations.

My final appeal to the committee is that they continue to ask many questions but also take a very long look for what might be best for Oregon small business and Oregon citizens.

Respectfully

Keith Lawhorn