

## HB 4152 STAFF MEASURE SUMMARY

### House Committee On Business and Labor

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**Prepared By:** Tyler Larson, LPRO Analyst

**Meeting Dates:** 2/7

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#### WHAT THE MEASURE DOES:

Establishes new rights for franchisees operating in this state and requirements for franchisors. Section 2: Applies provisions of measure to all franchises located in this state and all franchise agreements related to a franchise located in this state. Clarifies that competing provisions relating to motor vehicle dealership, motor fuel, and recreational vehicle franchises control when conflict exists between the measure and those provisions. Section 3: Requires person that offers, negotiates, accepts, or enters into a franchise agreement to deal in good faith and in a commercially reasonable manner. Prohibits person in advertising or offering franchise from misrepresenting or failing to disclose business prospects or chances of success of the franchise; financial performance or forecasted financial performance of the franchise; the total investment required to establish a business based on the franchise; the number of existing franchise establishments or geographic area within which existing franchise establishments operate; or any other material fact a reasonable person would consider in determining whether to enter into a franchise agreement. Section 4: Prohibits franchise agreement from: limiting or conditioning a franchisee's right to associate with another franchise; requiring a franchisee to purchase or lease goods or services unless franchisor certifies the requirement is reasonably necessary to further the business purpose of the franchise and does not sustainably impact competition for the goods or services; requiring a franchisee to pay prices or charges for goods or services that differ materially from the prices or charges paid by another franchisee for similar goods or services; charging a franchisee more than a fair and reasonable market price for goods or services from a franchisor or approved supplier; requiring a franchisee to sell goods or services at a loss or at a price that is not reasonably acceptable to the franchisee; requiring a franchisee to resolve a dispute through binding arbitration, limit or waive the franchisee's ability to bring an action or claim, or bring an action or claim in a forum outside this state; permitting a franchisor to have direct or indirect control of a franchisee's employees or the day-to-day operation of the franchisee's business; requiring or prohibiting changes in a franchisee's management without specifying good cause in writing; requiring hours of operation for the franchisee's business that the franchisee deems unprofitable or unsafe or that requires the franchisee to operate on a religious holiday; imposing commercially unreasonable standards of performance on the franchisee; or including other collateral agreements that conflict with the provisions of the franchise agreement. Establishes that noncompliant term or condition is void and unenforceable. Section 5: Limits conditions under which franchisor may terminate franchise agreement before term of agreement expires or refuse to renew a franchise agreement. Requires franchisor to provide written notice of termination or refusal to renew a franchise agreement to the franchisee that includes reasons for terminating or refusing to renew and specifying the effective date the agreement will terminate or expire. Section 6: Requires franchisor that lawfully terminates or refuses to renew contract to purchase all covered property from the former franchisee at the price paid by the franchisee. Allows purchase price of covered property to be offset by the amount owed by a franchisee to the franchisor as determined in a final adjudication or as otherwise agreed to by the franchisee. Establishes exemptions to covered property purchase requirement. Section 7: Requires franchisor to permit a franchisee to sell, assign, or transfer to another person a franchise if the person meets the qualifications required by the franchisor for a new franchise or to renew a franchise. Requires franchisor to disclose in writing the current qualifications the franchisor requires of a new franchisee or a franchisee that renews. Requires finder of fact in action to contest franchisor's disapproval of a sale, assignment, or transfer to consider all existing circumstances in determining whether franchisor's disapproval was reasonable

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and allows parties to agree to binding arbitration. Requires franchisor to permit surviving spouse, heir, or estate of franchisee or majority shareholder to operate and participate in ownership of the franchise for a reasonable period of time after the franchisee or majority shareholder has died and allow surviving party to either enter into franchise agreement or sell, assign, or transfer the franchise to another person that satisfies the franchisor's qualifications. Requires franchisor to make available without charge true, accurate, and complete copies of marketing and advertising funds and fees paid by franchisees and other entities to or on behalf of the franchisor and rebates, rewards, or incentive programs and other payments paid by the franchisor on behalf of franchisees and other entities. Prohibits franchisor from restricting a franchise from the sale or transfer of stock or other ownership interest to an employee, heir, or other successor interest if franchisee otherwise complies with franchisor's qualifications for solvency and franchisee retains at least 50 percent interest in the franchise. Allows franchisor to exercise contractual right of first refusal to purchase franchise under specified circumstances.

Section 8: Makes franchisor liable to franchisee for actual damages if franchisor establishes competing business in close geographic proximity to the franchisee that results in decrease of 10 percent or more of franchisee's gross revenue. Establishes conditions under which franchisor may establish business within close geographic proximity of franchisee. Section 9: Prohibits franchisor from: obtaining money, goods, services, benefit, or item of value from another person with which franchisee transacts business if related to a business relationship or transaction between the other person and the franchisee without written disclosure in advance to the franchisee; violating or causing an agent of the franchisor to violate federal law prohibiting unfair or deceptive trade practices; and requiring a franchisee to agree to waive liability under this act or employ a checklist or other device as method for avoiding liability. Section 10: Allows franchisee to seek seek civil and equitable relief against franchisor who violates requirements of the measure. Allows court to award franchisee at least double and not more than triple damages if franchisee proves that franchisor knowingly or willfully violated requirements of the measure. Allows franchisor to offset damages against amounts owed to franchisor by the prevailing franchisee. Establishes that state law governs the interpretation of a franchise agreement and performance of the parties if the franchisee is located in or transacting business in this state, notwithstanding any provision of the franchise agreement. Grants state circuit courts and federal courts with exclusive jurisdiction over actions brought under this act. Section 11: Amendments definitions and defines terms. Section 12: Applies provisions to franchisees operating and to franchise agreements that a franchisee enters into, amends, or renews on or after effective date of measure.

### ISSUES DISCUSSED:

#### EFFECT OF AMENDMENT:

No amendment.

#### BACKGROUND:

The Federal Trade Commission's Franchise Rule requires a franchise seller to make certain pre-sale disclosures to a franchisee buyer. At least 13 states, including California and Washington, also require franchisees to register with the state before offering and selling franchises.

Oregon law requires franchise sellers to maintain a complete set of books, records, and accounts of franchise sales; makes franchise sellers liable for fraud; authorizes the Department of Consumer and Business Services to verify compliance; and requires franchisors to deliver the pre-sale disclosure required under the Franchise Rule to a prospective franchisee at least 14 days before executing a franchise sale agreement.

House Bill 4152 creates a franchisee bill of rights that applies to all franchises, and their related franchise agreements, operating in this state. The measure establishes requirements for franchisors advertising or offering a franchise for sale; limits the terms that may be included in a franchise agreement; limits the conditions under which a franchisor may terminate or refuse to renew a franchise agreement and requires the franchisor to purchase the covered property of the franchisee; grants franchisees the right to sell or transfer ownership of the

*This Summary has not been adopted or officially endorsed by action of the committee.*

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franchise and permits surviving heirs to continue operation of the franchise; protects franchisees from competing against their franchisor; prohibits franchisors from self-dealing; and allows franchisees to seek civil and equitable relief against a franchisor for violations of the measure. It requires all franchise agreements and performance under those agreements to be interpreted under state law and grants state and federal courts exclusive jurisdiction for claims arising from the measure, regardless of the terms of the franchise agreement. The measure applies to all franchises operating in the state and all franchise agreements entered into, amended, or renewed on or after January 1, 2023.

PRELIMINARY