Please Vote NO on HB 4152

Protect Franchising in Oregon

- While **HB 4152** purports to take on abuse by so-called “bad actors” in franchising, the bill as currently drafted is overly broad, vague, and creates inconsistent obligations for nationwide franchisors.
    - The tremendous success of franchising in generating revenue and jobs has been in its flexibility to adapt to various business models and brands. **HB 4152** assumes that franchising is a “one-size-fits-all” legal arrangement and, in doing so, does not track with how most franchisees and franchisors actually do business. Moreover, it substitutes the judgment of legislators for the experience of franchisors and franchisees in crafting complex commercial relationships.

- **Section 3** of the bill would require franchisors to disclose certain information to prospective franchisees in a way that is inconsistent with the disclosures that franchisors must already make pursuant to rules promulgated by the Federal Trade Commission.
    - In particular, the FTC rules make certain financial performance representations (“FPRs”) optional for franchisors, requiring that a franchisor rigorously substantiate such representations before making them. The FTC wants to make sure that franchisees are not duped into entering into a franchise agreement based on promises of financial gain that are not adequately substantiated. For this reason, many franchisors elect not to make FPRs, instead expecting that prospective franchisees, along with their financial advisors and lenders will conduct appropriate due diligence. **HB 4152** would make these representations mandatory, increasing the burden and expense on franchisors.
    - In addition, the language in **HB 4152** is vague, and could be read to require that the franchisor tailor each disclosure to the specific franchise location being offered. The result is that franchisors would likely be required to provide franchisees in Oregon with the FTC-mandated franchise disclosure document and then a separate set of disclosures for Oregon any time a franchise is entered into or amended in any way. The extra costs for complying with this requirement would ultimately be borne by consumers in the state of Oregon.

- By weakening franchisors’ ability to enforce brand standards, **Section 4** of the bill is inconsistent with franchisors’ obligations under the federal Lanham Act to maintain the consistency of their trademarks.
    - A consistent set of products, services, or experiences is the foundation of all franchise systems, and trademark protection can be stripped away from a franchisor who does not take adequate steps to ensure that their licensees conform to those standards.
    - Further, this section is riddled with ambiguous terms and standards (e.g., “reasonably necessary,” “substantially affect competition,” and “reasonably acceptable to the franchisee”). No other state or federal law affecting franchising includes standards like these, meaning that Oregon courts would be required to interpret all of them in the first instance, increasing both the likelihood and expense of litigation for franchisors and franchisees.
    - The Federal Arbitration Act would preempt the bill’s prohibition on franchisor’s requiring arbitration as part of a franchise agreement.
- Impairing franchisors’ ability to enforce brand standards also serves to dilute the value of the brands that franchisees have invested in. Franchisees want franchisors to take swift action with respect to brand standards because consumers frequently do not differentiate between franchisees—when an

operator of one outlet performs poorly, it reflects poorly on all outlets in that market, even those owned by a different franchisee.

- **Section 5** seeks to impose upon all franchise systems a uniform and inflexible list of reasons for which a franchisor may terminate a franchise.
    - This "one-size-fits-all" mentality ignores the multiplicity of franchising—a medical services franchise is not the same as a quick service restaurant franchise, which in turn is not the same as a hotel franchise.
    - While including several reasons which would not fit some of these systems, this section omits several reasons for immediate termination of a franchise which should easily apply across all formats, such as:
        - Operation by the franchisee of a competing concept;
        - Misuse of trademarks; and
        - Publication or disclosure of the franchisor's confidential information.

- Many successful franchisors attribute a large share of their success to the care with which they choose their franchisees, often going through an extensive vetting process before offering a franchise to a new franchisee. As currently drafted, **Section 7** fails to account for this reality entirely, creating pressure on franchisors to accept any prospective franchisee who meets the franchisor's current qualifications, whether that is the spouse or heir of a franchisee or an unknown third party.

- **Section 10** creates a poorly-defined cause of action and serves to multiply litigation, which will only help the plaintiff's bar in Oregon. It will ultimately hurt franchisors, franchisees, and consumers.
    - By nullifying negotiated choice of law and choice of forum clauses, the bill will make out-of-state franchisors think twice about doing business in Oregon.

- Like most other complex relationships, franchise agreements are the product of experience. **Section 12** ignores the wisdom of that experience and substitutes the judgment of the legislature for carefully structured commercial relationships, which in many cases go back decades.
    - Any legislation should apply prospectively only—to new franchise relationships entered into after the effective date of the bill.
    - Moreover, franchisors should be given a period between when any bill is enacted and when it becomes effective to make necessary changes to their franchise agreements.

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