

HB 517/ SB 1288 – Protectionist, Anti-Business Legislation

According to a 2008 PricewaterhouseCoopers report, Florida has 61,649 franchise establishments, employing 728,200 workers and generating an economic output of \$56 billion.

Background

House Bill 517 (Rep. Robert Schenck, R-Spring Hill) and Senate Bill 1288 (Sen. Mike Bennett, R-Bradenton) would require Florida to be the venue for certain actions brought by franchisors against franchisees. To view the text of this legislation, visit the Florida Legislature's website at www.myflorida.com.

Analysis

- **Federal law requires presale disclosure of requirements to resolve disputes outside Florida.** Existing law provides adequate information to investors, who are well aware of potential obligations to litigate outside Florida. The FTC franchise rule requires prominent display of the provisions related to choice of law and venue on the cover page of the disclosure document.. Investors have complete knowledge of these provisions before freely entering into a franchise relationship.
- **This legislation strips away the freedom and discretion of Florida residents to make independent business decisions.** Instead, this measure would substitute government regulation for an investor's own judgment about the advisability of certain private contract stipulations.
- **This legislation undermines the sanctity of contracts.** Franchise systems develop contracts that work for their industry, product or service and offer those contracts to franchise investors in return for a royalty payment. This legislation alters the terms of the contract in an entirely one-sided way, without any compensation for the franchise system, on which the Florida legislature will have imposed an entirely new deal.
- **This legislation will tarnish Florida's business-friendly reputation.** Legislation that regulates private business relationships sends a clear message to the business community that private contracts, free enterprise, and entrepreneurship are under attack in Florida. This legislation will negatively impact the economic well-being of existing franchised businesses in Florida and act as a disincentive for future franchise growth in the state.
- **This bill will lead to increased litigation.** Alternative dispute resolution, mediation and arbitration programs, designed to avoid litigation, may be voided by this legislation. At a minimum, this bill is vague about its application to these programs and only a court of law could determine its scope.

- **The real winners will be local trial lawyers.** They would now be hired by out of state franchisors to pursue and defend cases. The franchisee's local lawyer will remain his primary counsel, because the franchise relationship is only a modest aspect of the representation. While few franchise relationships ever result in litigation, this legislation will harm all franchise businesses in the state.
- **This is NOT a local issue.** Many franchise systems operate nationally. Government mandated restrictions on the terms of franchise agreements will undermine the ability of franchisors to uniformly enforce system standards, which will damage the value of existing Florida franchises as well as franchises in other states.