



June 29, 2011

Hon. Sal N. DiDomenico, Senate Chair  
Joint Committee on Community Development and Small Business  
State House, Room 218  
Boston, MA 02133

RE: Senate Bill 1843

Dear Chairman DiDomenico,

On behalf of the International Franchise Association (IFA), I would like to thank you for the opportunity to raise a few matters worth your consideration relative to Senate Bill 1843, *An Act Relative to Franchise Agreements*.

As the largest and oldest franchising trade group, the IFA's mission is to safeguard the business environment for franchising worldwide. The IFA represents over 90 different industries, including more than 11,000 franchisee, 1,100 franchisor, and 575 supplier members nationwide. According to a study conducted by PwC, there are over 825,000 franchised establishments in the U.S. that are responsible for creating nearly 18 million direct and indirect American jobs and generating \$2.1 trillion in economic output. In the state of Massachusetts, there are over 13,500 franchise establishments employing over 149,000 individuals and generating \$15 billion in economic output annually.

The proposed language is not new. It has been proposed, considered, and passed over in Massachusetts many times. Likewise, it has been proposed in states beyond Massachusetts and turned away by the vast majority of states. To understand why the IFA has some concerns with the proposed legislation, one only needs to look at the effect similar proposals have had on franchising in states that have opted to pass such legislation.

Iowa is an illustrative example. In 1992, the state of Iowa enacted legislation comparable to S1843. In the years following, growth of the franchising business model ground to a halt. By 1995, 133 franchise systems had ceased all expansion in Iowa and an estimated 430 new business locations were canceled. In the intervening years, franchising in Iowa was constrained to a growth rate of approximately 3%, yet expansion in surrounding states was strong – Illinois 15%, Minnesota 14%, Nebraska 28%, South Dakota 27%, and Wisconsin 19%. Since its passage, parts of the Iowa law have been declared unconstitutional and the law has been amended twice to make it less burdensome. Iowa is not a lone example; we have witnessed like patterns in other states that have enacted such legislation (Michigan, Wisconsin). In 1994, the Governor of Maine vetoed similar legislation proclaiming that it would “likely diminish opportunities for job creation offered by franchise development.”

It is important to note that franchising is already highly regulated at the federal level. The Federal Trade Commission (FTC) requires a comprehensive disclosure of all information relating to a franchise company in order to ensure potential franchisees have the knowledge necessary to make an informed investment *before* making the decision to become part of a particular franchise system.

Franchisors must, prior to the sale of a franchise, provide detailed information to a potential franchisee that explains the rights and financial obligations of the parties - including rights to terminate or take other adverse action, the cost and any fees a franchisee is required to pay, and comprehensive information regarding virtually every aspect of the franchised business. Potential franchisees are even given a list of phone numbers of existing franchisees so that they can discuss the existing franchisee's experiences in the franchise system. To absolutely ensure an investor does not rush their decision-making, the FTC requires a 14-day wait period between initial contact and the time a contract can be signed. It is in this time that potential franchisees can fully vet and investigate the franchise opportunity. It would not be out of line to suggest that investors in a franchise system are provided with more information to make their decision upon than any other investor in the market. With well over a thousand franchise systems operating in approximately 300 different business lines, there is a wide range of investment options from which investors can choose.

The underlying implication of S1843 is that franchisors and franchisees are on opposite sides competing against one another. This could not be further from the truth. At the heart of franchising is a mutually dependent relationship requiring the franchisor and the franchisee work together to achieve shared success, since neither will be successful without the other. To strengthen and support this relationship, the IFA provides in-person and online educational seminars to share best practices across the franchising spectrum. The IFA has also created a program to assist in the avoidance and resolution of franchise disputes. The IFA Ombudsman Program was established to provide franchisees and franchisors with an independent, confidential, and objective resource to assist in resolving conflict. Participation in the IFA Ombudsman program is strictly voluntary, but many franchisees and franchisors have used the Ombudsman to avoid prolonged, costly, and divisive litigation. Most importantly, the IFA has a strong Code of Ethics dedicated to creating and sustaining a franchise industry that is based on solid business practices that allow franchisors and franchisees to meet the highest standards of business activity. To do that, the Code recognizes that consistent communications and mutual respect between franchisors and franchisees are critically important components to creating and sustaining a successful relationship. The Code of Ethics stands today as our industry's gold standard and we think it is serving our members, both franchisees and franchisors, well.

At a time with national unemployment still hovering above 9%, it makes little sense for states to create more regulations that will ultimately stifle small franchised business growth. Once a decision is made to buy a franchise, the negotiated franchise contract is, and should remain, a business agreement between two private parties. Instead of enacting legislation purporting to help franchisees, which historically has been shown to impede franchise growth, the IFA believes strongly that state governments should focus on initiatives to grow the economy and help put Americans back to work.

The number one issue for most franchisors and franchisees is access to credit. Without available credit franchisors cannot sell new franchises and franchisees cannot buy new units or invest in their existing operations. Recognizing this need, the IFA hosted a Small Business Lending Summit in Washington with close to 200 lenders, franchisors, franchisees, policymakers, and regulatory leaders. We identified ways to move forward together. We are working to educate more lenders about the value proposition of franchising; why it's a good investment due to its structured, scalable, and proven business model.

As part of this Credit Access Campaign, we have recently launched a web-based Lending Tool Kit that includes a video, a credit access report, and an in-depth presentation to enable local and regional

franchising and lending groups to better understand the potential of small business franchise lending. Coming soon, the IFA will also offer technical assistance in the form of a web-based lending resource hub that will train and connect lenders and borrowers. We understand that the nation's economy will not fully recover until we can replace the jobs that were lost as part of this recession and we also understand that the best opportunity to grow jobs in America is in small business. This is our major priority and this is where we are putting our resources.

Thank you in advance for your consideration of this testimony. If I can provide any additional information that would aid in the Committee's consideration of this legislation, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Judith Thorman". The signature is written in a cursive, flowing style.

*Judith Thorman*

*Senior Vice-President of Government Affairs and Public Policy*