

“News from Around the World”
Perspective from the United States
IFA/IBA Joint Conference
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Introduction

The economic environment for franchising in 2010 is improving, but it will continue to be a challenge as long as credit is tight. In response to the ongoing crisis, IFA is pressing for concerted federal government action to ease frozen credit markets, delivering the message that franchising offers the U.S. economy a strong foundation for economic growth.

Federal Legislation

No federal franchise relationship measures have been introduced for several years. There is legislation indirectly related to franchising, however, under consideration as part of the financial services regulatory reform bill. This bill proposes to reorganize major elements of the federal consumer protection scheme with the creation of a new Consumer Financial Protection Bureau with unprecedented powers to regulate almost any activity related to the offering of credit. The House-passed version of this legislation contains a provision that will enhance the ability of the Federal Trade Commission to create new regulations on an expedited basis. While the recent revisions to the FTC’s Franchise Rule likely mean that new franchise regulations are not imminent, the potential expansion of the Commission’s ability to write new rules is a concern. The outcome of the financial services legislation is unclear at this date, but it remains a top priority for the Obama Administration.

The use of mandatory binding arbitration clauses has been under comprehensive assault in Congress for several years. No fewer than six measures have been introduced in Congress this year to bar the use of pre-dispute arbitration clauses in contracts. The centerpiece of these efforts is the Arbitration Fairness Act (H.R. 1020) which would amend the Federal Arbitration Act (FAA) to establish that agreements to arbitrate employment, consumer, or franchise disputes will not be enforceable if they are entered before the actual dispute arises. The Arbitration Fairness Act has lost some momentum, and it appears likely that this measure will remain stalled in committee throughout the remainder of the year.

Finally, the new health care reform law also contains IFA-supported language to create a national standard for restaurant menu labeling. This important language will halt the spread of confusing state and local laws. The Food and Drug Administration (FDA) is crafting rules, and we will be commenting during this process to ensure that the FDA understands how franchise businesses operate.

Franchising Developments in the States

There are several issues in the states that IFA has taken action on or currently monitoring. At this point in the 2010 state legislative sessions, here is a sampling of the activity in the states that directly affect the franchise business model:

- Legislation in the Massachusetts House of Representatives (HB 1844) would address a flaw in the commonwealth's independent contractor law, as amended in 2004, and which has created a hostile regulatory and judicial environment for franchising. Following the March 23 summary judgment decision in *Awuah v Coverall North America, Inc.*, IFA has redoubled its efforts to bring relief to the franchise community in Massachusetts.
- A ballot initiative will be before Georgia voters in November to reform the state's burdensome rules for in-term and post-term non-compete clauses in franchise agreements.
- Identical New Jersey bills AB 2491 (Cryan) and SB 1539 (Smith) would have brought non-fixed geographic location franchises under the current regulatory scheme for other business format franchises. IFA succeeded in having the bills amended to exclude business format franchises from the scope of the legislation and the legislation was signed into law in January.
- Legislation has been enacted in Maryland with the support of IFA to bring the state into coordination with the FTC's fourteen calendar days disclosure standard.

Conclusion

The International Franchise Association remains committed to our mission of protecting, enhancing and promoting franchising. Our government relations efforts are just one piece of a comprehensive strategy to inform the policy debates in Washington and around the country. Together with our ongoing awareness campaign, "Franchising: Building local businesses one opportunity at a time" to help educate policymakers about the role of franchising in their communities, we continue to ramp up our elite advocacy program Franchise Congress. The program currently boasts over 180 participants in over 35 states. Through these tools and through aggressive engagement on important public policy matters, we can assure that franchising remains a viable and important business model in the American economy.