

IBA/IFA 27th ANNUAL JOINT CONFERENCE

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NEW APPROACHES AND CHALLENGES IN INTERNATIONAL FRANCHISING

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NEWS FROM AROUND THE WORLD:

PERSPECTIVE FROM THE USA

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1. Introduction

The economic environment in 2011 for franchising will be improved over the previous year, however, challenges remain. At every opportunity, the IFA delivers to policymakers the fundamental message that franchising offers the U.S. economy a strong foundation from which to encourage job growth and recovery. Providing franchised businesses access to capital will ensure that small business entrepreneurs will be positioned to help lead us out of recession.

2. Federal Legislation

No federal franchise relationship measures have been introduced for several years. We are keenly aware, however, of the renewed potential for federal franchise relationship legislation. Therefore, the IFA has been continuously engaged with House and Senate leadership and key committee staff to strengthen relationships. In coordination with IFA's ongoing public awareness campaign, these efforts are focused on educating lawmakers—new and old—about the IFA, its membership and our resources.

The Dodd-Frank law to reform the regulation of Wall Street firms could indirectly impact franchising. During legislative debate last summer, the IFA worked hard to limit attempts to expand the authority of the FTC. We also worked to limit the ability of the new Consumer Financial Protection Bureau to regulate franchise businesses that had nothing to do with the collapse on Wall Street. We remain concerned that new rules to regulate banks and financial institutions could have a negative impact on the demand for credit by franchise businesses. IFA will continue to monitor the new agency and work to ensure that as it develops new regulations, they do not cause unintended harm to small franchise businesses struggling to access financing.

The use of mandatory binding arbitration clauses has been under comprehensive assault in Congress for several years. The centerpiece of these efforts was 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 lost momentum in Congress in the run up to the 2010 elections, and the new Congress has less of an appetite for the measure in 2011.

Finally, the new health care reform law contained 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) has proposed a new rule implementing the language, and the IFA will be commenting during this process to ensure that the FDA understands how franchise businesses operate.

3. 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 2011 state legislative sessions, here is a sampling of the activity in the states that directly affect the franchise business model:

- Following the March 23, 2010 summary judgment decision in *Awuah v Coverall North America, Inc.*, IFA has redoubled its efforts to bring relief to the franchise community in Massachusetts, drafting soon-to-be filed legislation to better define the franchise relationship in that state. The IFA is also carefully monitoring a fair franchising bill, modeled on the Wisconsin Fair Dealership Act, SB 1843 (Joyce).
- New Jersey bills AB 3583 (Cryan) and SB 2679 (Madden) would amend NJ Warn Notification laws specific to franchising.
- In Maryland, legislation to prohibit pre-dispute class action waivers in all existing and future business and consumer contracts began moving late in the legislative session. IFA staff quickly engaged with state lawmakers to highlight the problems for franchising and secured a carve-out for business-to-business contracts. The bill was ultimately defeated on the floor.
- In Montana, a draft proposal to create fair franchising laws, similar to those proposed in Massachusetts, was circulated. IFA engaged in the early stages of the Montana legislative session with local partners and the proposal was never formally introduced as legislation before the 2011 session came to a close in late April.
- In North Carolina, legislation was introduced by Rep. McCormick to conduct a study of current franchise disclosure and relationship laws to determine if they are adequate. IFA will closely monitor the progress of this study bill.
- In Puerto Rico, franchise relationship bills were introduced in the House and Senate. IFA Chairman Jack Earle visited with key Puerto Rico legislative leadership including the bill's sponsors. The group was comprised of IFA members, local franchisees and staff. The bill's chief sponsor, the Senate President, gave assurances that the bill would not move forward in its current form. However, Puerto Rico is currently in the third year of its four year legislative session and the IFA will continue to monitor the situation.

4. 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 240 participants in nearly 40 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.