

Senate Commerce Committee

Angela Leach 271-3077

SB 89, relative to the relationship between a franchisor and a franchisee.

Hearing Date: January 31, 2017

Members of the Committee Present: Senators Innis, French and Lasky

Members of the Committee Absent : Senators Sanborn and Soucy

Bill Analysis: This bill clarifies when a franchisor is an employer of a franchisee.

Sponsors:

Sen. Innis

Sen. Bradley

Sen. Gannon

Sen. Reagan

Sen. French

Sen. Carson

Rep. Chandler

Rep. Hinch

Rep. Packard

Who supports the bill: Sponsors, Dean Heyl- International Franchise Association, Jim Hatem-Planet Fitness, Larry Preston-Mr. Appliance, Bonnie Roberts-Homehelpers

Who opposes the bill: None

Summary of testimony presented:

Senator Innis (PRIME)- this bill is in regards to franchise operations in our state. A franchisor is the big company that sells rights to the franchise. A local Dunkin Donuts owner is franchise. Dunkin Corporation is the franchisor. 3000 franchise establishments in our state. 27,000 jobs and a payroll of a billion dollars and a GDP of \$1.6 billion. The purpose of this bill is properly classify the relationship between a franchise and franchisor. This legislation is in regards to the National Labor Relations Board Browning and Farish decision, a 3-2 decision, the board created what they called a new joint employer standard. Created an ambiguous standard for determining a joint employer relationship between a franchise and franchisor. Every franchise and franchisor relationship is based on a contractual agreement and the new joint employer standard is based on direct and indirect control. Creates fuzziness on who employees the employee. Is it the franchise or the franchisor or a combination, no clarity. 130 joint employer complaints and charges against franchises across the country. None have been resolved. This bill will send a message to the NH franchise industry that their employees are their employees. These are people that have invested in their businesses themselves and it can be very expensive. They have to follow the franchisors procedures but they hire the individual that work for them, they pay them, they pay the property taxes, all the business taxes, this bill is designed to ensure that their employees are their employees.

Senator Lasky—aren't there other contractual agreements.

Senator Innis – if there are other contractual agreement it is my understanding this would not get in the way of that.

Senator Lasky- why does this need to be in statute.

Senator Innis- need to it put it in statute because of the confusion. Because of the NRLB, 130 joint employer complaints, trying to simplify it at our level.

Senator Lasky- Are they still in litigation.

Senator Innis- Yes, don't know if any have been resolved.

Senator Lasky- if we were to pass this, it would moot the number of cases in NH.

Senator Innis – Correct.

Senator Lasky- Could we have the name of the case, could you provide us with the link.

Senator Innis- Sure.

Dean Heyl, International Franchise Association- represents both the franchisor and the franchise. From the franchisor perspective, the reason they support this is because they could potentially have unlimited liability due to the actions of the franchise. From the franchise perspective, they bought a business and did not buy a mid-level management position. Joint employee standard has caused a lot of concern between the franchise and franchisor. Browning-Farish decision came down, went from a direct and immediate control standard to direct/indirect or even potential control. The potential control is the most confusing. Seeking litigation and have filed amicus brief to overturn the decision, are also seeking federal legislation, and state legislation. 9 different states have enacted very similar legislation and more than a dozen states that are currently working on legislation.

Senator Innis- supported by both sides of the franchising equation.

Dean Heyl-Yes.

Larry Preston -Mr. Appliance NH – Owns a business with 9 employees. Owned franchise for last 10 years. After what has happened on a national level, which directly impacts business, decides who to hire and what to pay those employees. They are the businesses employees and not the franchisors. Had an opportunity to take advantage of a great deal on health insurance, franchisor was able to put together on a national level for its 1500 franchises. Currently the software that is provided by the franchisor, a section calculates payroll but fear of being called the employer and having to assume the liability of being named an employer, the portion of the software was deleted. More people should understand the relationship between the franchises and the franchisor, which are the ones that lease the brand, the franchise makes all business decisions. Not managers for a large corporation, own, run and hire employees for small businesses.

Senator French- If this passed and I hired you to fix my appliance, and it caused my house to burn down, could come after you, couldn't come after the franchisor.

Larry Preston- Has liability insurance for business. Is sure someone has tried to sue the franchisor, but franchise is an individual LLC registered in NH. They only have some control of issues over the brand.

Bonnie Roberts- President of Home Helpers of Londonderry Independent business owner. Serves all of southern NH. 8 years ago purchased a brand that allows her to run her business and manage her employees as she see fit. Chose Homehelpers for a number of reason but also because they offer a veteran discount. Homehelpers national support center supports have a high brand standard. They wouldn't direct in the day to day operation of the business nor do they manage the 50 employees. She understand the NH community, the NH business environment, the employee community, and client base, it is concerning that there is a potential risk and liability for another business owner in another state. NH is best served by local employers who work within NH laws and regulations. NH employees are best served by local employers who understood their unique needs. But most importantly, clients are best served by an agency that understand NH regulation.

Senator Lasky- Could your franchisor pull the plug on you.

Bonnie Roberts- No, if I was corporate, many home health care agencies are franchised. Not as many privately held homecare agencies. Last week, Personal Touch, which is a home health care agency, are a corporate based out of New York, pulling the plug on NH.

Senator Lasky- That was the result of this court decision

Bonnie Roberts- Don't know if it had anything to do with, if Homehelpers support center went out of business then I don't have a brand anymore. Home care agency was managed by someone out of state.

Senator Lasky-One of the reason you opened a franchise was to protect yourself.

Bonnie Roberts- I wanted the protection, purchasing the resources but not purchasing someone to micro manage my business.

Senator Innis- profit lost is all on you, truly your business.