April 14, 2021

California Assembly Labor & Employment Committee

RE: Opposition to AB 257

Dear Chairman Kalra, Vice Chair Flora & Members of the Committee:

The International Franchise Association, California Chamber of Commerce & California Restaurant Association, along with our collective members wish to express our **strong opposition to AB 257**, the FAST Recovery Act introduced by Assemblywoman Gonzalez. While the purported purpose of the legislation of providing safe working standards is laudable and something we all support, its method for doing so equates to a dismantling of the franchise business model in California. Franchisee employees are the backbone of the business model and their rights, working conditions and overall protections are of the utmost importance to all involved.

During a time when all small business owners, franchised and non-franchised, are doing everything possible to keep the lights on and the doors open during the COVID-19 pandemic, this legislation is ill-timed and would do more to hurt businesses and their employees then help them.

California has nearly 76,000 franchise units. These independently-owned and operated businesses employ over 728,000 people in a range of jobs – from those just entering the workforce to managers to specialized professionals. Specifically, there are nearly 25,000 franchised quick service restaurants in the state employing more than 373,000 Californians. Recent statistics show growing numbers of women and minorities owning franchise establishments, underscoring the importance of preserving the small business franchise model to promote minority and female entrepreneurship as well as continuing an economic recovery from the pandemic. Over the last five years, minority and women franchise ownership has grown by more than 50% across the country. Nearly 33% of all franchises across the country are owned by minorities, compared to just 18% of non-franchise businesses. Franchising – and franchise ownership – is a path toward increased job creation and economic growth among people from all walks of life and socioeconomic backgrounds.

This potential for continued growth is threatened by a common misconception of the franchise business model. This misconception, which clearly serves as the underpinning of certain provisions proposed to be added by AB 257 is that the owner of the franchise brands – the "franchisors" – actually own and operate the stores and make employment decisions for them. In reality, franchise establishments across the state are locally owned small businesses operating under a national brand or

identity. The local business owners are in charge of all employment decisions, including hiring, firing, wages and benefits. It is the local franchisee who owns and operates the establishment, not the franchisor. **In fact, the national brands have no role whatsoever in determining wages or any other day-to-day operations of a franchisees' employees and/or employment practices of a franchisee.**

With establishment of joint and several liability of franchisors by AB 257, California is making a *per se* determination that franchisors are the joint employers of franchisees. In doing so, California is also making a *per se* determination that these owners and entrepreneurs are not small business owners, but middle managers of large corporations. These small business owners made the decision to get into business for themselves. If AB 257 is signed into law, California would be removing the livelihood of business owners that make the franchise model a melting pot of entrepreneurship.

Making labor decisions for franchisees is not a brand standard franchisors can establish or enforce under any law. AB 257 makes the improper assumption, and reaches the improper conclusion, that the franchisor and franchisee have some collective control over each other's day-to-day business affairs. This is absolutely untrue. Additionally, passage of AB 257 would make California an outlier: no other city, state or federal government has passed or even contemplated a similar law, primarily due to the realization that franchisors do not in fact employ those who work in a franchisee's establishment. **The *per se* liability imposed by AB 257 is unprecedented at any level of government and completely ignores the case-by-case factual analysis that is required and which has been used in this context in the past.**

Franchisees and franchisors are in no way employment partners with each other. No franchisor has any authority over how their franchisees choose to manage their employees on a day to day basis. Independent franchisees are no different than any other independent business owner, and despite what AB 257 is attempting to do, the legal, contractual, operational and economic realities of the relationship will not change. **AB 257 will impose a *per se* liability rule on entities and principals that have no role whatsoever in the issues addressed in the legislation.**

We do not seek special treatment from the California but do ask for the same treatment as any other small business. The IFA respectfully requests California not pick winners and losers among businesses but apply existing law equally. We applaud and agree with your efforts to protect all workers in the state, but we urge you to adopt policies that ensure the viability of the vibrant and diverse franchise community. This can be done in a way to preserve worker rights and protections, and IFA is ready to partner with you in this endeavor. Ensuring a level playing field for all California businesses is paramount and assigning liability only to the responsible party is in the interest of all involved.

Detailed Opposition to AB 257:

The law makes a number of changes to existing law that would be detrimental to California businesses and, ultimately, California consumers:

1) **Creation of Fast-Food Sector Council**

2) **Elimination of autonomy for franchisees**

3) **Establishment of strict liability for franchisors**

4) **Creation of claim allowing franchisees to reform franchise agreement**

These changes are unwarranted and would harm California businesses and consumers for the following reasons:

1) The entire reason for the creation of this council is based on an unsubstantiated premise—that workers in chain restaurants have worse working conditions than other employees.
    a. The legislation offers no evidence whatsoever for the proposition that the existing regulatory and legal framework has failed to protect workers in restaurant chains in California, during the pandemic or otherwise.
    b. The legislation similarly offers no evidence whatsoever for the proposition that the franchising relationship has somehow contributed to mistreatment of workers.
    c. In fact, the prominent news stories involving restaurants operating in direct contravention to public health orders primarily involved local, independent restaurants and bars—not the chains consisting of 30 or more establishments nationwide that are targeted by this bill.
    d. To the contrary, national brands are better positioned to use their scale and size to offer franchisees and their employees access to PPE, hand sanitizer, and other needed supplies to ensure safe working conditions.
2) This bill delegates the authority that is reserved to the California legislature to a council of 11 unelected persons.
    a. The authority the bill provides to this council is the role of the legislature.
    b. The Council would have the authority to issue entirely new and different labor, employment, wage and hour, and health and safety standards that apply exclusively to fast food chains.
        i. These standards would supersede those established by the legislature.

   c. The fact that the legislature currently takes it upon itself to issue standards covering the same topics for every other sector demonstrates that the authority being delegated is legislative.

3) The bill strips thousands of local business owners of their independence and reduces them to corporate middle managers.
   a. Franchisees go through years of hard work and training and invest significant personal resources to realize the dream of owning their own business.
   b. They choose a particular franchising system because the brand excites them and it provides them the opportunity to own and operate their own business while providing them access to a recognized brand and business model so that they are not entirely on their own.
   c. These franchisees take pride in recruiting and hiring their own employees, training their employees, and providing opportunities for advancement to those employees.
   d. By requiring franchisors to ensure that their franchisees comply with every aspect of California law relating to wages, benefits, hours, working conditions, and worker safety, this bill would require franchisors to strip franchisees of the autonomy that they have over these areas, reducing franchisees from independent business owners to corporate middle managers.
4) The bill imposes strict liability on franchisors divorced from any finding of control or wrongdoing on the part of those franchisors.
   a. Under existing law, franchisors are liable for a franchisee's violation of these same labor, employment, wage and hour and worker safety laws where either: 1) the franchisor directly commits or participates in the illegal act; or 2) the franchisor exercises control over the essential terms and conditions of employment such that it is a joint employer.
      i. This comports with the foundational principles of our legal system—that liability should be imposed based on fault.
   b. This bill imposes liability based only on the finding that the franchisor has licensed a trademark to a franchisee who is found to have violated the law.
   c. The bill's author provides no evidence, anecdotal or otherwise, that would justify imposing such strict liability on an entire class of business enterprises.
5) The bill allows courts to rewrite the economic terms of contracts between franchisors and franchisees without any finding that those terms are substantively or procedurally unconscionable or are subject to any other defense recognized under contract law.
   a. Particularly in cases where a franchisee underperforms or financially mismanages their business, it would be easy for that franchisee to demonstrate that the fees charged by the franchisor present a "substantial barrier" to complying with California law as contemplated by this bill
   b. Moreover, the presumption that any increased cost imposed by a franchisor creates such a "substantial barrier" will chill franchisors to improve operations or offer

enhancements in their California franchises, placing those businesses at a disadvantage, ultimately to the detriment of California consumers.

For these reasons, we ask for a "No" vote on AB 257.

Thank You,

International Franchise Association

California Chamber of Commerce

California Restaurant Association