American Franchisee Association
Susan P. Kezios, President

Assembly Bill 2305
Good for California Business

Opponents Claim:
"Assembly Bill 2305 will hurt consumers. Franchisors impose standards and expectations on all franchisees to protect the brand's reputation, other franchise owners nearby, and, ultimately, the general public – their collective customer. This bill will allow sub-standard franchise outlets to continue offering inferior products and services to consumers."

The Facts Are:
Assembly Bill 2305 simply says that franchisors may not terminate a franchise prior to its expiration except for good cause. Good cause means a substantial and material breach of the franchise agreement. Endangering public health or safety is substantial and material. A light bulb that burns out while the franchisor field manager is inspecting the franchise is *not*.

AB 2305 also gives franchisees an ample amount of time (60 days) to be in accordance with the current standards and terms equally applicable to all franchisees before termination. This amount of time is not uncommon in all manner of commercial transactions, including leases. When a franchisee gets terminated arbitrarily or without good cause, it is not only the franchisee who is hurt, the lenders, consumers and communities suffer also.

Franchisees are the first line of defense when it comes to protecting the brand's reputation because franchisees are the franchisors' 'first' customer (i.e., as the purchaser of the franchise). They have invested their own financial and human resources to expand the franchisor's brand. They don't want sub-standard franchise outlets in their systems either.

Opponents Claim:
"Assembly Bill 2305 will hurt both franchisees and franchisors. It limits the ability of the franchisor to freely develop its business by interfering in a contract between two consenting parties, and would create the most limiting constraints on franchise growth in the country. The encroachment provisions of the bill would limit a company's ability to add additional locations and freeze economic development through franchising in California. Such protectionist language would limit franchise opportunities for women and minorities and inhibit a franchisor's ability to receive infusions of new capital, vital to sustaining and expanding a brand."

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The Facts Are: Nothing in AB 2305 limits the ability of two parties to agree to a contract. AB 2305 simply determines a baseline--a floor beneath which no franchisor can sink--when it comes to drafting the contract. By definition there will always be unequal bargaining power between franchisor and franchisee. Most franchises are operated fairly with an adequate amount of communication and minimum disagreement between the parties. However, situations often arise in which the franchisor can take advantage of the unequal bargaining power to the detriment of the franchisees.

AB 2305 does not dictate to whom franchisors can offer a new franchise. The limited number of minority and women franchisees existed long before AB 2305. Opponents are trying to blame the lack of minority and women franchisees on legislation that has not even been passed yet! To the contrary, AB 2305 will make franchising safer for those individuals who can least afford to lose their life savings.

Opponents Claim:
"Assembly Bill 2305 will inhibit job growth. During a period of stagnant growth globally, franchisors, like many other businesses, are being extremely judicious with their investment capital. Adopting such burdensome legislation would undoubtedly force franchisors to look to other states to expand their brand – taking jobs and new businesses with them. After Iowa passed similar legislation in the early 1990s, franchise system growth, and subsequent job growth, virtually ceased until the legislation was amended twice in subsequent years."

The Facts Are:
Franchisors threatened Iowa with similar claims in 1992. The reality is that since 1992 Iowa franchise growth and job creation has continued unabated to this day. In fact, in the mid-1990's, the United States Small Business Administration (SBA) reported the number of franchise loans guaranteed by the SBA actually *increased* after Iowa's legislation. Lenders felt Iowa provided a climate of stability (i.e., a greater likelihood that franchises would be around to pay off their loans!).

California has the 10th largest economy in the world. California has the largest number of small businesses in the entire country. California is the #1 state for venture capital, foreign direct investment and agricultural revenues. *No* franchise corporation is going to leave California after enactment of AB 2305.

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Opponents Claim:
"Assembly Bill 2305 will add considerable legal expense. This bill will increase the cost of operating a franchise business in California. The bill is replete with legally actionable terms such as "good faith" and "duty of competence." These terms, either broadly defined or undefined, would require judicial involvement to resolve minor disputes, at great expense to both franchisors and franchisees. Franchisors would be forced to recognize franchisee associations and collectively bargain as though they were labor unions. The cost must be passed on to consumers and franchisees in the form of higher prices."

The Facts Are:
The United States Congress has apparently determined that the words 'good faith' are not so amorphous as to be excluded from the US Code where they appear 918 times including in the Internal Revenue Code. It would not be the franchise agreement terms that would be examined for validity under the good faith standards of AB 2305; rather it would be the conduct of either party to the franchise agreement. Washington State's franchise relationship statute requires both parties to a franchise 'to deal with each other in good faith.' The opposition doesn't seem to have any problems selling franchises in the State of Washington. Then why would it be problematic in California?

AB 2305 does *not* require collective bargaining with independent franchisee associations as if they were labor unions. This argument is designed to inflame the opposition and obfuscate the truth. In fact, the Federal Trade Commission's 'franchise rule' (FTC Rule 436) (16 CFR Part 436) *already* requires franchisors to identify the existence of independent franchisee associations in Franchise Disclosure Documents (FDD). AB 2305 is not requiring anything new here.

Finally, a 'duty of competence' does not handicap honest franchisors that do not mislead franchisees in order to make their systems grow. Many franchisors promise during the sales process a proven business, mass purchasing power and other tools to give franchisees a greater chance for success. Why would any fair-minded franchisor wish to make those kinds of claims and then be insulated from responsibility if they were not true?