



May 23, 2022

TO: Members, Senate Labor and Employment Committee

RE: AB 257, as amended (Holden): COUNTER-SERVICE RESTAURANTS: DELEGATION OF LEGISLATIVE AUTHORITY;
 JOINT-EMPLOYER LIABILITY: OPPOSE

The California Restaurant Association, International Franchise Association, and the California Chamber of Commerce, along with our collective members and coalition partners wish to express our **strong opposition to AB 257, as amended.**

AB 257 has two main focal points:

- 1) Transferring legislative powers to an unelected body to set wage, workplace, and health and safety policy for a subsection of California's restaurant industry (counter-service restaurants where customers pay first then eat); and,
- 2) Dismantling the restaurant franchise model in California by forcing corporate ownership of all counter service restaurants.

This legislation, and this sector council, applies to a large and incredibly diverse industry. The language in the bill details inclusion of all counter service restaurants with 30 or more locations nationwide. Tens of thousands of restaurants, including coffee shops, ice cream parlors, salad bars, taquerias, delis, pizzerias, bakeries, burger houses and other fast food and quick service restaurants, which employ hundreds of thousands of workers and serve millions of California customers daily, will be impacted.

To be clear, many of the aforementioned restaurants are franchises. The franchise business model allows individuals to be in business for themselves but not by themselves through leveraging a known brand. Women, minorities and veterans are increasingly building their own small businesses through franchising and are often single-unit owners.

This is especially the case in California's restaurant industry, where franchisees own and operate establishments in the neighborhoods where they live. Franchisees are small business owners, local job creators and valued members of their communities. They maintain all control in determining the day-to-day operations of the establishment, including hiring, wages and employment practices in accordance with state law.

And yet, AB 257 singles out the restaurant industry for the creation of a sectoral council that will raise the cost to operate a counter service restaurant in California. The state maintains the strongest labor laws and highest minimum wage in the country, all of which the restaurant industry must follow. The counter service restaurant industry does not flout existing law and does not have disproportional violations compared to other industries that necessitate the creation of a sectoral council.

Workplace violations in the restaurant industry do not happen at a higher rate than other sectors. California's Department of Industrial Relations (DIR) 2020 annual report cites investigating 474 cases, out of which only 46 had merit.¹ This data is across all industries and consistent with other years.

Limited Service Restaurants (NAICS 722513) have a total of 36 violations from August 2020 through February 2022. During the year 2021, there were only 16 citations given out for Limited Service Restaurants, which given the thousands of restaurants in this NAICS code is below 1% of the industry. However, there are other industries (some of which are unionized) that have double or triple the number of citations during this time period and sector councils are not being proposed for those industries.²

It's important to note that Cal OSHA began enforcing entirely new COVID-19 workplace requirements through the Injury, Illness, and Prevention Program (IIPP), prior to the COVID-19 Emergency Temporary Standard (ETS) being approved by the Standards Board and going into place on November 30, 2020. Prior to the ETS, restaurants were following CDPH COVID-19 guidance as well as COVID-19 Public Health Orders at the local levels. The Governor and the Legislature have appropriated additional funding to Cal OSHA to increase enforcement.

Amendments: Undermining Legislative Authority

¹ 2020 Retaliation Compliant Report: <https://www.dir.ca.gov/dlse/RCILegReport2020.pdf>

² Citations for COVID-19 Related Violations: <https://www.dir.ca.gov/dosh/COVID19citations.html>

January 2022 amendments to AB 257 are perfunctory and do not adequately address the serious legal and policy issues in the bill which remain unchanged. While the amendments remove the council's subpoena powers and state that AB 257 is not "intended to usurp the legislative authority of the legislature", elsewhere in the bill the language still exists that directly erodes full legislative authority.

It is also important to note that the language of the bill targets counter-service restaurants with 30 or more locations nationwide. This includes many popular medium-sized brands in your district.

The amendments require the Fast Food Sector Council to submit a report to the Assembly and Senate Labor Committee that contains their proposed lawmaking, repeal or amendment that the Council promulgates and gives the legislative committees 60 days to review the report after which the Council's proposed laws will take effect- **automatically**.

The amendments give the Assembly and Senate Labor Committees no authority over the Council's regulatory process other than reviewing a report. In addition to undermining full legislative authority, the Council will have full authority to engage in emergency rulemaking without having to submit a report to the Assembly and Senate Labor Committees. Even with the amendments, AB 257 still delegates the legislature's authority to an unelected Council.

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) 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 counter-service restaurants.
 - i. These standards would supersede those established by the legislature.
 - ii. Amendments to require the Council to submit a report to the Assembly and Senate Labor Committee 60 days before a new law is issued do not diminish the Council's authority.
 - iii. The Council does not have the ability to issue less stringent standards, which means it can't adapt to changing regulatory conditions.
 - iv. This would duplicate the role of existing state agencies.
 - 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.

- 2) 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.

- 3) 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.

- 4) 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.

Simply put, AB 257 is a response to a false narrative and is an indictment on California's robust and appropriately aggressive enforcement entities. Funding these enforcement entities adequately and maintaining the legislature's existing-and full- authority to legislate in this area of law is the solution. For these reasons, we are opposed to AB 257 and respectfully request that you oppose this bill.

Sincerely,

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California Restaurant Association

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International Franchise Association

Ashley Hoffman
Policy Advocate
California Chamber of Commerce

7 Eleven
American Petroleum and Convenience Store Association
Anago Cleaning Systems
Beverly Hills Chamber of Commerce
Brea Chamber
California Attractions and Parks Association
California Chamber of Commerce
California Restaurant Association
California Retailers Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Church's Chicken/Texas Chicken
Civil Justice Association of California
Commerce San Jose
Family Business Association of California
FISH Window Cleaning
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gilroy Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chamber of Commerce
HOA Brands
Hollywood Chamber of Commerce
International Franchise Association
InExpress
Laguna Niguel Chamber of Commerce
Lodging Industry Association
Long Beach Area Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber
Oceanside Chamber of Commerce
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber
Simi Valley Chamber
South Bay Association of Chambers of Commerce

Southwestern California Legislative Council
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce