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**Little agreement as state considers franchise rules**

June 29, 2011 | By Katie Johnston, Globe Staff

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The state's franchise industry is coming under scrutiny on Beacon Hill as lawmakers consider two bills that would further regulate franchise agreements and more clearly define the relationship between local franchise owners and their parent companies.

The bills, which will be the subject of legislative hearings today, have implications for the state's nearly 14,000 franchise businesses and the 150,000 people who work at them. A franchise is an independently owned business that has been granted a license to market a company's goods or services.

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One bill would clarify the employment status of franchise owners and protect parent corporations from having to pay them overtime and the costs of certain benefits. The legislation follows recent rulings by the Massachusetts Supreme Judicial Court, which found that cleaning franchise owners were essentially working as employees of the corporate parent, Coverall North America Inc., and entitled to overtime pay, worker's compensation insurance, and unemployment insurance.

The other bill would give local franchise owners greater legal protections in their dealings with parent companies. It would require parent firms to prove there is a legitimate business reason for terminating or failing to renew a contract. It would ensure that franchise owners are paid for the value of businesses upon termination; grant them monetary damages if a new outlet opened nearby hurts sales; and give them the right to take corporate parents to court, instead of arbitration, to which many contracts limit them.

In Massachusetts, a local owner could lose all the investment in the store if a franchise company ended the contract, said Robert Zarco, a Miami lawyer who represents franchise owners around the country. "These franchise agreements are extremely one-sided," said Zarco. "You are left on the street with nothing."

That's what former Dunkin' Donuts franchisee Irwin Barkan said happened to him. In 2005 Dunkin' Donuts gave him seven days to repay his \$1.8 million debt to the company. When he couldn't, he said, Dunkin' terminated the contract for his Rhode Island stores and refused to compensate him for the \$3 million he had invested.

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Barkan filed a lawsuit against Dunkinâ€™ Donuts, which was thrown out by a federal judge last year. At the time, Dunkinâ€™ officials praised the decision, saying there was no breach of contract and that Barkanâ€™s franchises flourished under new management. Rhode Island subsequently passed a law similar to the one under consideration in Massachusetts, which includes a requirement that franchise owners get 90 daysâ€™ notice before an agreement is terminated.

But franchising companies argue the proposed regulations impose burdensome government oversight on private contracts.

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â€œIt unwrites a mutually agreed upon contract and could undermine the franchisorsâ€™ ability to protect the integrity of the franchise system,â€ said Kenneth Kaplan, general counsel for Fantastic Sams International, a hair salon franchise based in Beverly.

The International Franchise Association, a trade group in Washington, opposes more regulation of contracts, but favors the bill that would prevent franchise owners from being classified as employees. A strict interpretation of existing law could mean that owners would be treated as workers, instead of independent business people, the group said.

But this bill would allow unscrupulous cleaning companies who classify workers as franchise owners to avoid state wage, overtime, and benefit laws, said lawyer Shannon Liss-Riordan. She cited the case of Pius Awuah as an example.

In 2005, Awuah, a Lowell resident originally from Ghana, scraped together \$8,500 and borrowed \$5,500 more from the company to become a franchisee of Coverall. Coverall allegedly guaranteed him \$3,000 a month of work, but he earned as little as \$5 an hour and never made the monthly amount promised.

Awuah won his case against Coverall, which denied it had used deceptive practices. If the proposed law passes, said Liss-Riordan, workers like Awuah wonâ€™t have any recourse to get fair treatment. â€œWeâ€™re concerned that this law would allow anyone to slap the word franchise on their organization and be exempted from the wage laws,â€ said Liss-Riordan.

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