

**Testimony of Mark J. Burzych
Fahey Schultz Burzych Rhodes, PLC
4151 Okemos Road
Okemos, Michigan 48864
(517) 381-0100**

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HB 5465
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Good Morning Chairman Crawford and members of the House Committee on Regulatory Reform.

My name is Mark Burzych and I am one of the founding members of the law firm of Fahey Schultz Burzych Rhodes, PLC in Okemos. I have practiced franchise law for over 20 years, primarily representing franchisors, but have represented scores of franchisees over the years as well. I am a member of the International Franchise Association and the American Bar Association's Forum on Franchising, the bar association's franchise lawyer group. I represent some outstanding Michigan franchised businesses, such as Bagger Dave's Legendary Burger Tavern, El Azteco, Goldfish Swim School, Auto-Lab, Menna's Joint, National Coney Island, Appletree Christian Learning Centers, Gilden Woods Academies, and various other brands at varying stages of their development. Although I represent many different franchise brands, I am not here testifying on any of their behalf. I am here as an interested individual with over 20 years experience in franchise law.

I am here today to testify in opposition to HB 5465. In particular, the proposed Section J seeks to prohibit a franchisor from refusing to allow a franchisee to obtain equipment, fixtures, supplies or services used in the establishment from the franchisee's own sources, if those sources meet the franchisor's standards. Based upon my 20 years of representing the franchise industry, this provision is problematic.

A common misunderstanding is that franchisees pay good money to be told what to do by the franchisor ... the "System." But franchising is a popular and growing method of brand development in part because most franchisees want the franchisor to research suppliers and vendors and use the power of the System to bargain for better pricing. Most franchisees want the franchisor to do the product development, menu development, and System development to make the business profitable. The franchisor's efforts in developing the system allow the franchisee to focus its attention on operating their business in the manner that was proven by the franchise system. The franchisees are buying a proven system and benefiting from the franchisor's efforts over the years. If someone wants complete freedom to create their own business, that person should not buy a franchise.

Franchisors develop their systems to provide uniformity throughout the system. Franchisors want the consumer to be able to walk into one of their stores in Lansing, Michigan and have the customer feel like they are visiting any other store throughout the country. One store should

look, feel, operate and taste like every other store. Inconsistency from store to store will eventually lead to the death of the franchisor and the System because the customer will be confused by the inconsistency and will eventually stop frequenting that system because the customer will not know what to expect.

Some things are so important to the franchise system that they should be required to be purchased from a designated supplier. For example, the system may negotiate an advantageous price for Coke® products to be served in the system restaurants, but one of the conditions is that Coke® is exclusive to the system. If one franchisee finds a “better price” from another soft drink supplier, the rest of the system may lose the benefits from the Coke® supplier contract and be on its own to shop, negotiate and contract with another soft drink supplier. Even if the other soft drink supplier had a better price for that one unit, the other franchisees lose their benefits and the system suffers. The franchisor could have taken that information and used it in the next rounds of negotiations for soft drink suppliers for the system when next the system bid out its soft drink contract. As it is, the tail ends up wagging the dog. Another example is the computer point of sale system used by the system. Each unit will generally have a designated point of sale computer system that is required by the franchisor so that the franchisor and franchisee can easily communicate financial information and reporting. If one franchisee finds a new point of sale system that performs the same functions as the designated point of sale system, it may “meet the franchisor’s standards,” but will cause difficulties on the back end to get the new system to communicate with the franchisor’s established computer network system. Is the franchisor then required to pay for a new computer system or the programming necessary for the new point of sale system to communicate with the franchisor’s network? Or should the franchisor require all existing franchisees to move to this new, “cheaper” point of sale system at a cost to each of the existing units? These are not reasonable consequences of the proposed legislation.

There are other types of products and services in the franchise system that should come from approved suppliers and although the products and services are required to be used in the operation of the franchise, the source of the products and services is not exclusive. Most franchise agreements have a process that a franchisee can follow if the franchisee wants to use a supplier that has not already been approved by the franchisor. So a franchisee's interests should be protected in the franchise agreement. Although there may be systems that do not provide for a process for the approval of an alternative supplier of approved products and supplies (as opposed to designated products or supplies that need to be single sourced for that system), the solution to that franchisor-franchisee conflict is not overbroad legislation that does not recognize the interests of franchisors, franchisees and the franchise system.

In summary, the proposed legislation is very broad and does not recognize that there may be some things in a system that are so important that they should be single-sourced. The legislation will have many unintended consequences that will be damaging to many existing franchise systems and systems yet to be formed.

Thank you.