Task Force to Investigate the Challenges of and Opportunities for Minorities in Business

December 14, 2017

Larry Hogan, *Governor*
Boyd K. Rutherford, *Lt. Governor*

MEMBERS

Jimmy Rhee, Special Secretary – Chairman
Governor's Office of Small, Minority & Women Business Affairs

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District 40, Baltimore City

Senator C. Anthony Muse
District 26, Prince George's County

Delegate Benjamin Brooks
District 10, Baltimore County

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EXECUTIVE SUMMARY

On May 10, 2016, Governor Larry Hogan signed House Bill 264, establishing the Task Force to Investigate the Challenges of and Opportunities for Minorities in Business and assigned leadership of the task force to Special Secretary of the Governor's Office of Small, Minority & Women Business Affairs Jimmy Rhee.

The Task Force was given three distinct objectives:

1. Investigate discriminatory practices against minority- and women-owned businesses operating within the franchise arena.
2. Review, examine, and assess issues related to access to working capital for small, minority- and women-owned businesses.
3. Review, examine, and assess incentives for business entities that employ ex-felons[1].

Membership on the task force consists of elected officials, members of the Legislative Black Caucus of Maryland, and representatives from the Maryland Office of the Attorney General, Department of Commerce, and the Department of Labor, Licensing and Regulation.

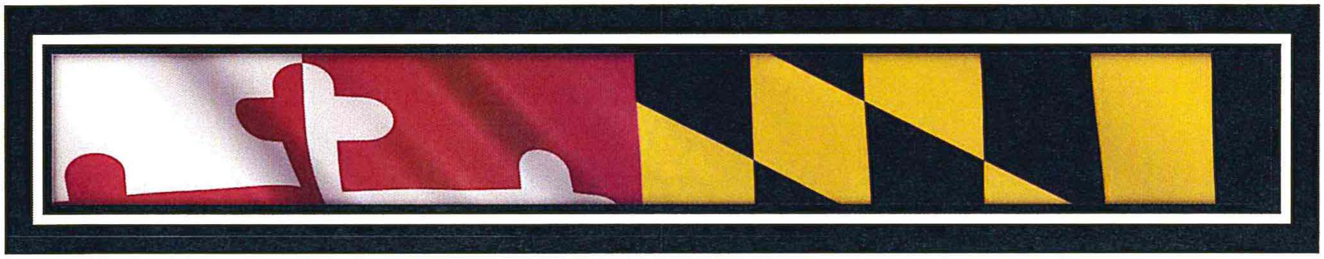
The Task Force also included representatives of professional organizations and the business community at large. Membership for these positions were vetted and approved through the Governor's Appointments Office.

Under the direction of Chairman Rhee, the Task Force met eight times over 12 months. Due to the diverse nature of the objectives, it was divided into three workgroups. Members were assigned to an individual workgroup based on their professional expertise and personal interest. The workgroups met independently, then reported their progress during the full task force meetings.

The task force meetings included two listening sessions wherein members of the impacted groups were asked to share their experiences. The first was attended by former franchise owners, while the second was convened in collaboration with U.S. Congressman Elijah Cummings to coincide with the national convention of the International Franchise Association.

This report is comprised of the Task Force's recommendations, as well as the findings of the individual workgroups.

[1] The term "returning citizens" is commonly accepted to mean "ex-felon" or ex-offender."



RECOMMENDATIONS

Data Collection

- Provide funding and resources to create a state-sponsored repository to house complaints against franchisors which includes information (in searchable fields) around the nature of the complaint.
- Evaluate making more information publically available regarding the reason(s) for termination of failed or closed franchisee units by the franchisor.

Dispute Resolution

- Create a voluntary low-cost mechanism, like mediation, for franchisees and franchisors to use in the event that a dispute arises.

Funding

- Increase funding support for the state's small business resources, with specific emphasis on existing loan guarantee programs.

Resource Directory

- Create a state-sponsored, centralized, online resource directory to help small businesses, particularly those searching for capital resources, navigate existing resources.
- Provide information and education to persons interested in purchasing a franchise.

Financial Education

- Provide financial support to organizations working with minority businesses that are teaching financial education skills for the purpose of positioning small business owners to successfully gain access to capital.

Incentives for Business Entities to Employ Returning Citizens

- Continue to support established programs, resources, and services offered for returning citizens through the State of Maryland, inclusive of earmarking funds for programs that target entrepreneurial development and training.

WORKGROUP 1

Investigate discriminatory practices against minority- and women-owned businesses operating within the franchise industry

Members: Miriam Brewer (leader), Tiffany Harvey, Debra Keller-Greene, Randall Nixon

FINDINGS

Discrimination is a complicated issue. Maryland law has no remedy for generalized discrimination that protects a franchisee. Under current laws, franchisors are required to be "reasonable" and operate in "good faith."

Based on a cursory review of state regulations, there is no state agency currently charged with maintaining data on existing franchises doing business in Maryland. Moreover, there is no single clearinghouse of information by which the public can search for discriminatory behaviors by franchisors. Lastly, this workgroup found no database by which the public can be informed of failed or closed franchisee units by a franchisor.

As a result, Workgroup 1 attempted to gather data through a survey to better understand the scope of the issue. The 16-question survey was sent out to 6,000 franchisees doing business in Maryland. It was distributed via email by the International Franchise Association and included a combination of open and closed-ended questions seeking to identify how prepared franchisees were prior to purchasing their franchise unit(s), how much support they received from the franchisor, and if there were any experiences they believed to be discriminatory in nature. The survey response rate – less than 1 percent – was disappointing in that we failed to receive enough data to make any conclusive findings or derive any recommendations. As a result, the primary source of our findings come from the two public listening sessions.

On September 11, 2017, the Task Force heard from minority-owned former franchisees who alleged they were forced to close their businesses due to unfair and discriminatory practices. (*Exhibit A; Meeting Notes*). These individuals have also previously shared their experiences with members of the Maryland General Assembly during hearings for House Bill 264.

Based on comments from these former franchise owners, the workgroup believes they were treated unfairly by the franchisor. Each of the former franchise owners was self-identified as a member of a racial minority; and they believe race was the basis for the treatment received.

Although the circumstances leading to the closings of each franchise unit were unique, the common thread for the Baltimore-based locations appears to be an independent brand auditor (hired by the franchisor) whose evaluation and scoring methods were inconsistent, and possibly prejudiced, against small unit franchise owners.

Brand updates/upgrades were also an issue for the former franchise owners with whom we met who stated that both the timing and the costs associated with implementation were not applied the same way for all franchisees.

One of the former franchisees is currently involved in legal action against Yum! Brands. The matter is pending.

It should be noted that the former franchisees referenced herein did not give context as to how and whether other similarly-situated franchisees were treated by the franchisor under similar circumstances.

On September 13, 2017, the Task Force heard from attorneys with years of experience in the franchise industry. (*Exhibit B; Meeting Notes*)

Comments from these attorneys suggests the opportunity for unfair treatment among smaller, single unit franchise owners – of which minorities are likely represented – by the franchisor is possible. This was also an issue raised by the former franchisees. The general perception of the persons who met with the Task Force seems to be that small unit franchise owners are not viewed as having the same level of managerial proficiency as large unit franchise owners. Task Force members agree, however, that this is not a fair criterion for determining success.

During a discussion on the process of termination of a franchise contract, the Task Force learned the process is typically standardized, although the franchisor does have some level of discretion. It was agreed, however, that a franchisor is not likely to terminate a franchisee without good cause, primarily due to the economic losses and negative public image associated with closed stores.

The need for a dispute resolution process for these smaller or single unit franchise owners to address concerns about possible unfair treatment and termination of franchise contracts for "good cause" is evident based on the comments brought to the attention of the Task Force.

Additionally, it would be beneficial to put specific guidelines in place to assist smaller franchise owners with the steps they can take when faced with practices perceived to be unfair.

The franchise agreement provides expectations for maintaining brand standards and the franchisor has the right to change/upgrade system standards. This provision is typically outlined in the contract with details on how and under what time frame the changes must be executed by the franchisee.

Miriam Brewer of the International Franchise Association (IFA) stated that contracts allow ample time for franchise owners to receive changes to brand standards and are given ample time to respond. Because these tend to be costly, such changes are typically made every 5-10 years.

One franchise owner from the healthcare sector participated in the second listening session. She stated that owning a franchise does not guarantee success. She acknowledged that branding standards are subject to change, and such changes are challenging, but the strength of the brand balances them out.

Based on information presented to the Task Force, McDonalds appears to set a good example of a franchisor that is committed to the success of African American franchise owners. McDonalds has a franchise owner's group specifically for African American owners which looks at issues in the system that are unique to African Americans and offers a means to address them.

Given the success of a dispute resolution model like McDonalds, it would seem prudent to encourage large franchisors with stores in Maryland to offer a similar model to minority franchise owners.

The Maryland Attorney General has nominal jurisdiction in the area of regulating franchises. Its oversight focuses on registration and pre-sale disclosure and does not extend to the area of dispute resolution. Workgroup members concur that small franchisees are typically negotiating from a position of weakness. As such, a dispute resolution mechanism would go a long way toward leveling the playing field. Dispute resolution would also reduce the potential for abuse when terminating franchisees for "good cause."

WORKGROUP 2

Review, examine, and assess issues related to access to working capital for small, minority- and women-owned businesses

Members: John Lewis (leader), Delegate Benjamin Brooks, Karen Barbour, Celester Hall, Alison Tavik

FINDINGS

It is widely recognized that accessing capital to start, grow, or expand a small business is daunting. Reports published over the past seven years by organizations that focus on the unique challenges of small, minority-, and women-owned businesses, such as the U.S. Small Business Administration[2] and the U.S. Department of Commerce's Minority Business Development Agency[3], cite access to capital as the most important factor limiting the growth and development of minority-owned businesses.

The State of Maryland also recognizes the importance of access to capital and provides small business financing programs within the Department of Commerce and the Department of Housing and Community Development. Several of the programs are administered within the agencies, while others are managed by private, third-party contractors. These financing programs are in place to assist existing mature Maryland firms in several established industry sectors, as well as start-up or early stage small businesses engaged in new and emerging technologies.

Several of Maryland's financing programs target small businesses owned by socially- and economically-disadvantaged individuals, as well as entrepreneurs unable to meet the credit criteria of traditional financial institutions. According to the Department of Commerce's 2016 Annual Report, the department funded 43 projects at a total of $27,913,000 through the Maryland Small Business Development Finance Authority (MSBDFA) and the Maryland Industrial Development Financing Authority (MIDFA).

Maryland's Video Lottery Terminal (VLT) Fund, housed within the Department of Commerce, utilizes proceeds from video lottery terminals (slots) to provide loans to the small business community. At least 50% of the funds are allocated to minority- and women-owned businesses located in targeted areas surrounding casinos. The remaining funds are available to small, minority- and women-owned firms throughout the state. During the 2017 Session of the Maryland General Assembly, the FY2018 funds designated for this program were transferred to the General Fund. In FY2019 and FY2020, the VLT Fund appropriations will be transferred to the Education Trust Fund.

It should be noted that although the fund will not receive additional dollars through FY2020, funds already deployed will remain available to small, minority- and women-owned firms. As existing loans are repaid, those funds will be re-deployed as new loans through the program.

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[2] https://www.sba.gov/content/access-capital-among-young-firms-minority-owned-firms-women-owned-firms-and-high-tech-firms

[3] https://www.mbda.gov/news/blog/2010/07/access-capital-still-challenge-minority-business-enterprises

At the federal level, the Small Business Administration offers a variety of programs including loans, investment capital, disaster assistance, and even grants (for scientific research and development). The programs are administered through participating banks and are also offered as alternatives to traditional lending programs that prove to be too rigid for small business to meet.

Access to capital among minority-owned small businesses is not a new topic by any means, and workgroup members had access to a wide range of research materials. In particular, the group looked at the following sources:

- *Small Business Credit Survey* conducted by the Federal Reserve Bank
- *Financing Baltimore's Growth* conducted by Johns Hopkins' 21st Century Cities Initiative
- *Partnership for Lending in Underserved Market*s by the Milken Institute & the U.S. Small Business Administration

Workgroup 2 also designed a survey which was distributed directly to Maryland's Minority Business Enterprise (MBE) community. In addition, workgroup members routed it to their professional and personal networks as well.

We received responses from 230 individuals. Eight-seven percent of the respondents identified themselves as a minority. A synopsis of the survey identifies:

- Working capital is the #1 reason most participants (72%) would seek a loan in the future.
- Just over 50% of the respondents said they were able to obtain a business loan in the past.
- Overwhelmingly, these loans were provided by small community banks and credit card companies.
- The primary channels used to find capital are (1) online searches and (2) referrals.
- The top reasons for being denied a loan were (1) credit history, (2) age of the firm, (3) lack of profitability, and (4) lack of collateral.

Workgroup members strongly believe the lack of having a good financial education is the most common barrier to accessing capital. Many entrepreneurs simply don't know how to demonstrate that their business is ready to receive and productively utilize capital. This is largely due to the fact that they don't understand how the lender will evaluate their ability to repay the funds, and therefore, are ill prepared throughout the application process.

At the state level, the Governor's Office of Small, Minority & Women Business Affairs is working to address this important issue. Through its Ready, Set, GROW! statewide workshop series, two sessions focus on the topic of access to capital annually. Each event draws about 100 participants to hear from a panel of experts representing both the public and private sector lenders/programs. The common theme from both the panelists as well as the audience relates to preparing for the credit evaluation. Panelists focus a great deal of effort on helping the business owners understand what lenders are looking for so applicants can be well-prepared throughout the loan process.

A number of organizations, such as the U.S. Small Business Administration, the Maryland Small Business Development Centers, the Small Business Resource Center, SCORE (formerly known as the

Service Corps of Retired Executives), and chambers of commerce, along with private business consulting firms, also offer training classes, workshops, and mentoring services that provide an insightful understanding of the loan process. These organizations have experience in working with small businesses owned by minorities. They understand the unique challenges these small businesses face and have a deep understanding of the resources available to position them for success. Greater access to financial education through these kind of programs would be beneficial to small, minority- and women-owned businesses.

WORKGROUP 3

Review, examine, and assess incentives for business entities that employ ex-felons

Members: Brindisi Chan (leader), Linda Gilmore, James King

FINDINGS

According to the U.S. Department of Justice, 650,000 individuals are released from our nation's jails and prisons each year. These men and women return to their communities, and too often, to a life of crime. One of the main deterrents to re-incarceration is regular and legal long-term employment.

A criminal record is usually not the kind of qualification most employers have in mind when looking for new hires. Some employers, however, have found benefits to giving these workers a chance. Mark Peters, CEO of Butterball Farms, Inc., a national supplier of specialty butters, regularly hires returning citizens and encourages other companies to do the same.

Journalist Mike Green, in a 2015 special to the AFRO Newspaper, cited the following five reasons why hiring returning citizens can have a positive impact on a company's bottom line:

1. Gratitude typically equals dedication and loyalty
2. Limited employment options result in lower employee turnover rate
3. Mandated parole guidelines (which typically include drug testing) decreases overall risk
4. Employment has a positive economic impact on the overall community
5. Employer may be eligible for substantial tax credits

Unfortunately, jobs are not abundant and may be difficult to find on traditional job boards like monster.com or idealist.com. Additionally, business owners are not inclined to give high paying, high responsibility jobs to a person who has betrayed the trust of the public. Instead, many of the jobs are menial, low paying, and sometimes lead to prejudices and suspicions among workers who are not justice-involved. However, there are programs to help minimize the concerns of employers and help promote employment opportunities for ex-felons. The Federal Work Opportunity Tax Credit and the Federal Bonding Program, sponsored by the U.S, Department of Labor, incentivize employers to take on the additional risk of hiring returning citizens. Coverage can apply to any job at any employer in the State of Maryland.

Still, returning citizens often face the challenges associated with re-building, including low wages and even lower work satisfaction. Pressures after prison release may draw them back in with the community they are most familiar, a structure they may still believe in despite promises to "go straight." While threats of continued sentences and longer probation are designed to deter a return to criminal activity, individuals who do not have a strong, every day and immediate structure for lawful behavior, including viable employment, are at greater risk for returning to former behaviors.

Despite the challenges, there is an opportunity to disrupt the cycle and minimize recidivism. Maryland has a number of programs aimed at connecting returning citizens to resources that help promote sustainable employment. Real advantages exist in hiring Maryland's transitioning ex-offenders as many have skills running the gamut from entry-level through professional. The Department of Labor, Licensing and Regulation (DLLR) and its partner networks, have developed training programs and services to help transitioning ex-offenders become a part of the qualified pool of citizens who are ready and eager to work.

Pilot Program for Small Business Development by Ex-Offenders

In 2015, legislation (Senate Bill 582) was enacted requiring the Department of Labor, Licensing, and Regulation (DLLR), in consultation with the Department of Public Safety and Correctional Services (DPSCS) and the Maryland Small Business Development Financing Authority (MSBDFA), to establish a pilot program for small business development by ex-offenders, subject to the availability of funds. The program is to assist individuals exiting the correctional system by providing training in how to establish a small business. DLLR must report to the General Assembly by December 31, 2020, on the effectiveness of the pilot program. The bill became effective July 1, 2015, and terminates December 31, 2020. After hearing about the legislation, Stanley Tucker, the president and CEO of Meridan Management Group, which manages a mix of economic development and private equity funds, agreed to run what would serve as a de facto five-year pilot program that could serve as a guide for more permanent programs.

Maryland Re-Entry Initiative

Maryland Re-Entry Initiative (MRI) is a statewide initiative designed to increase the employability of Maryland citizens with criminal backgrounds, and to provide them with equal opportunity and access to services and gainful employment. In 2018, DLLR will add five Re-entry Navigators to the Office of Workforce Development. The Navigators will facilitate outreach to the business community, helping to connect returning citizens to receptive employers with jobs. Overall the MRI provides:

- Employment assistance and referral services to job seekers
- Technical assistance and professional development to workforce development, correctional, and community based program staff
- Information and incentives to employers
- Resources in conjunction with the American Job Centers (AJC) services

MRI oversees the Maryland Offender Workforce Development Specialist (OWDS) Partnership and coordinates the training offered under the partnership to include:

- OWDS National Certification
- Offender Employment Retention Specialist (OERS)
- Re-entry Employment Specialist (RES)

Overall, Maryland has 181 certified OWDS, 169 trained under the Partnership. Another 364 Maryland re-entry staff have been trained by the partnership as Offender Employment Specialist (OES) also known as Re-entry Employment Specialist (RES). In addition, MRI develops and coordinates training offered to the AJC staff and their partners to increase their knowledge and skill in providing effective services and applying evidence-based best practices in re-entry and professional career development. All the training adheres to the Code of Ethics of the Global Career Development Facilitator, the National Association of

Career Development, the Maryland Career Development Association, and the Center for Credentialing & Education, Inc. The initiative provides support, coaching, and technical assistance to re-entry staff at the local level, including faith-based and community-based organizations, as well as at AJCs across the state. Assistance includes access to expungement information, employment training, resume and interviewing assistance, referrals to community resources, plus federal bonding.

Federal Bonding Program

MRI administers the Federal Bonding Program through the state's AJCs. The Federal Bonding Program is a partnership between the United States Department of Labor and The Union Insurance Group (an agency for Travelers Casualty and Surety Company of America). It provides fidelity bonds to employers who hire individuals with criminal records and other high-risk applicants. It is not a guarantee that the applicant will be hired, but an incentive to encourage employers to hire qualified job seekers who also have "risk factors" that might otherwise cause an employer to hesitate hiring them. MRI and DLLR Business Solutions staff partner to provide communication and outreach to Maryland businesses on the benefits of hiring transitioning ex-offenders and the reassurance the Federal Bonding Program can offer.

Correctional Education Transitional Programs

Within DLLR's Workforce Development and Adult Learning Program, MRI and Correctional Education Transition Services successfully collaborated to bring evidence-based best practices in re-entry to corrections, workforce development, and community/faith-based staff throughout the state. As part of the collaboration, they have designed and implemented workforce development programs to serve individuals with criminal histories. The AJCs throughout the state serve incarcerated individuals and individuals living in the community who have criminal backgrounds in varying capacities. Services to ex-offenders in AJCs include core services such as orientation, assessment, job development, job search, job referral, and job placement. Intensive services are also available, including:

- Educational programs
- Workforce training
- Case management and referral to support services
- Follow up services

DLLR is also engaged in additional federal programs and correctional education and jobs skills training programs that benefit citizen re-entry efforts. (*Exhibit C; Workforce Development Resources and Programs*)

Exhibit A

HB 264 - Task Force to Investigate the Challenges of and Opportunities for Minorities in Business

5th Meeting – September 11, 2017 from 2-4 p.m.
1st Floor Training Room, Side B
100 Community Place, Crownsville, MD 21032

Task Force Members:

Elected Officials

Honorable Benjamin Brooks*	Maryland House of Delegates
Honorable C. Anthony Muse	Maryland Senate
Honorable Edith Patterson	Maryland House of Delegates
Honorable Barbara Robinson*	Maryland Senate
Agency Representatives	
Celester Hall*	Department of Commerce
Tiffany Harvey	Office of the Attorney General
Linda Gordon Gilmore*	Department of Labor, Licensing and Regulation
Professional Association Representatives	
Miriam Brewer*	International Franchise Association
John Lewis	The Harbor Bank of Maryland
Small Business Representatives	
Karen Barbour	The Barbour Group
Brindisi Chan	Disily, LLC
Debra Keller-Green*	Keller Professional Services, Inc.
Chairman	
Jimmy Rhee	Special Secretary Governor's Office of Small, Minority & Women Business Affairs (GOSBA)

Task Force Staffing (GOSBA)

Herb Jordan
James King*
Randall Nixon*
Lisa Sennaar*
Alison Tavik*

Guests

Trudy Perkins*	Cong. Elijah Cummings office
Roger Campos *	Asst. Sec. DHCD
Marcie Castaneda*	DHCD
Brian Stepp*	Former KFC franchise owner
Nabil Gazaha*	Former KFC franchise owner
Geneva Thomas*	Former KFC franchise owner
Tavon Payne*	Grandson of Geneva Thomas

* - In Attendance

Welcome

James King, Director of Policy and Legislative Affairs for the Governor's Office of Small Minority & Women Business Affairs (GOSBA), welcomed everyone and opened the meeting at 2:10 pm. Mr. King explained that the task force was created to look at challenges of and opportunities for minorities in franchising. Mr. King also acknowledged the 16th Anniversary of 911. Remembering those who were on the ground and first responders.

All task force members, staff and guests present introduced themselves. James King explained that the task force would hear from franchise owners today that inspired HB 264 and be able to ask questions.

Former franchise owner Brian Stepp, spoke first. He purchased his KFC franchises in 2008 with Yum Restaurants. Mr. Stepp's deal included four stores in Massachusetts and two in New Hampshire. These were established restaurants and he hired established lawyers. When Mr. Stepp determined that he needed to sell his franchises, he was given six months to do so. Yum Restaurants would not allow him to sell to who he wanted to, which cost him financially.

During Mr. Stepp's four years as a franchisee, he made various requests to structure his business differently, i.e. due to location, he wanted to operate a seasonal store to cut costs and increase profit. All of his requests were denied.

Mr. Stepp asked to change from KFC to Taco Bell in a suburb of Massachusetts and was denied. He observed that black owners were not allowed to transfer their franchises. He and his wife were successful working in corporate America prior to purchasing these franchises.

Geneva Thomas was a KFC franchise owner from 1984 to 2016. Ms. Thomas said she was shut down all of a sudden. One piece of chicken did not meet the correct temperature. She ran a good and profitable business. She had three stores, two in Essex and one on North Avenue and St. Paul Street in Baltimore, MD. She was ordered by Yum to do remodeling which was cost prohibitive. Ms. Thomas said that a series of events on the part of Yum undermined her business.

Former franchise owner, Nabil Gazaha spoke third. Mr. Gazaha's business was on Perring Parkway in Baltimore from 2006-2014. He was the last to be shut down. He met Ms. Geneva Thomas to get a better understanding of the business. Yum Brand owns KFC, Taco Bell and Pizza Hut. Mr. Gazaha passed the Baltimore City health inspection. The health department workers even came in to eat in his store. He said KFC hired an outside inspection company. His store was recognized nationally for great customer service and was very profitable. He was shut down in three months. He said things were made up by the 24-year-old private health inspector hired by KFC.

Mr. Gazaha said that according to KFC guidelines, a franchise is supposed to have three inspections. Mr. Gazaha was told that he the failed his first inspection. After 30 days, the same inspector came back and found new problems. The third time, they failed him again. He was the only franchisee to sue KFC. He wanted to sell his store was not allowed to. KFC sued in Virginia Federal Court, because he had a sign up in his business that stated that said that KFC was unfair. The judge asked if the store was shut down due to health issues. Mr. Gazaha said after the first hearing, he was threatened by the KFC lawyer. The second hearing the judge refused to make him take down his sign. One of the KFC lawyers quit. KFC hired a bigger law firm. The president of KFC asked him to take down signs stating that KFC was unfair and offered to let him sell to other franchise owners, from other states, one of whom offered a dollar.

Mr. Gazaha stated:

- There are approximately 7500 KFC locations in the country.
- Out of 400 franchisees, six are black-owned.
- Ms. Geneva Thomas was the first African American to own a KFC franchise in Baltimore.
- Out of 12,500 Taco Bell locations, two are black-owned franchisees.
- Out of 14,000 Pizza Hut locations, none are owned by African Americans.
- KFC plans to open 25,000 stores in Africa; one every three days.
- William Eubank, the largest African American franchise owner for KFC, was forced to renovate at prices that were not affordable.

Senator Barbara Robinson affirmed that she filed HB 264, in large part because of these three franchise owners. She stated that this is not just a regional (Baltimore) problem. It is occurring in other states.

James King opened the floor to questions and comments. He stated that Yum Brands is based in Louisville, Kentucky. Yum grew out of Tricon Global Restaurants.

Randall Nixon recalled his experience with the Attorney General's (AG) office and speculated about courses of action.

Alison Tavik asked if the owners had spoken to other franchise owners. Mr. Gazaha said that he had spoken with other franchisees who had similar stories that have not come forward.

Tavon Payne (grandson of Geneva Thomas) has battled KFC's unfair treated alongside his grandmother. He is scheduled to graduate with his degree in Public Policy from the University of Baltimore. He stated that in Ms. Thomas' case, a violation from one store caused her to lose her three KFC locations.

Les Hall asked what went wrong. Bria Stepp said that his attorney did not catch the remodel part of his contract. He sued his attorney, and settled out of court with them. He then went after Taco Bell, questioning their disclosure agreement and sued the franchisee who sold him the business. He decided to move on because of the stress. He had two viable businesses that he was not allowed to sell.

Les Hall asked Nabil Gazaha what his lawyer felt about his case. Mr. Gazaha said his lawyer saw disparate treatment of franchise owners. He spoke of a KFC franchise in Virginia that failed private inspections 15 times, but was able to stay in business.

Deborah Keller Green asked how many black franchise owners are left. Mr. Gazaha said there are no black-owned KFC franchises left in Baltimore City. He recounted negative stories of other black KFC franchise owners.

Mr. Payne helped to prepare the statements for his grandmother's business. Mr. Payne was able to show equipment malfunctioning, not neglect. They were not able to continue their legal fight because they ran out if money.

Karen Barbour talked about professional liability insurance. Ms. Barbour said their attorneys should have told them about liability insurance. She recommended the three former franchisees get together to form a class action suit. She added that the more successful you are, you must prepare to be knocked down.

Delegate Brooks asserted that there appeared to be a concerted effort to suppress black businesses from remaining as KFC franchise owners.

Mr. Gazaha gave the example of a more positive experience with McDonald's. When he lost his KFC franchises, he was approached by a McDonald's.

Linda Gordon Gilmore asked Ms. Thomas how she survived for so long before she started experiencing problems with the franchisor. Ms. Thomas said she started experiencing problems after the structure of the company changed, from Tricon to Yum. Then, the growth strategy changed. Randall Nixon asked if Ms. Thomas was asked to make changes in her franchise agreement. She said she was not asked to make any changes to the original franchise agreement.

Mr. Gazaha said there were different rules applied to black franchisees. He also said they were only allowed to use franchisor approved vendors for renovation and these vendors were unfairly priced.

Miriam Brewer disputed some of the demographic information that was stated.

Mr. Stepp discussed documents that came back that affected four of his seven stores. He never failed local health department inspections, only Taco Bell's private inspectors.
Linda Gordon Gilmore asked the basis for the fail. Mr. Stepp said there were issues as minor as gum on the floor. He recalled that a customer ordered 20 pieces breasts, and the inspector failed him because he did not the order immediately available.

Mr. Stepp was recognized as the highest performer in the Boston area. Randall was seeking clarity as to whether any codicils were attached to the original contract. Mr. Stepp sued the law firm and the franchisor. After Mr. Stepp sued KFC, they started putting the thumb on him.

Debra Keller Green asked if auditing was standard. Mr. Gazaha said that his colleagues got a heads-up when an audit was coming.

James King asked two questions related to corporate culture vs state rule: what can Senator Robinson and the Governor's office put in place or can the state do? Remediate?

Mr. Gazaha appreciated our listening. He said there should be a system or a way to ask a simple questions. What is the process of how you approve franchisees? How long have they been in the system? Is everyone following the same standards?

Karen Barbour recommended a franchise board to establish standards and practices. There are review boards such as the Contract Board of Appeals. That kind of board could be put in place based on possible violation of labor laws. How does a KFC inspector override state and local? Shouldn't the state have jurisdiction?

Mr. Gazaha explained that his renovation person was turned down by KFC to give the opportunity for locals to get the work.

Brian Stepp said the black franchisees need a ground swell of support. Others want to see what happens in MD, before they are willing to speak up about the disparate treatment. Asking KFC about complaints by former franchisees having a standard that is different that State Health Department would need to involve the Health Department.

Les Hall asked if this was brought to the Attorney General of MD. Mr. Gazaha said that it was with no result. Mr. Gazaha also attempted to form a Black Franchisee Association and he and the others franchisees were told by KFC that they could not.

Mr. Stepp interjected that some owners have been intimidated from speaking. He would not want someone else to lose what they have lost. Senator Robinson said that she could see why people are afraid to come forward. She lost over $500,000 and ran for office to be in a position to defend herself.

James King asked to try to determine where the balls are being dropped. Mr. Gazaha added that Dunkin Donuts are like KFC's. Out 15,000 stores, only 2 are owned by black franchisees. Domino's Pizza has 25,000 stores, and not too many black.
James King asked if corporate consolidation was a factor, since Ms. Thomas stores were closed and not sold to someone else.

Les Hall asked if this was occurring nationwide. Mr. Payne was compiling documents for the EEOC. He found it challenging to find laws that would apply.

Twelve states, including California, Florida, Connecticut, Hawaii and Ohio, stipulate what good cause for termination are. Were these terms consistent throughout, the black franchise owners might still be whole. In 2011, the CFF, FSC inspections were put in place. Mr. Payne was hoping there would have been a policy in the law for acceptable circumstances for terminating an agreement. The AG's office told Mr. Gazaha that there was nothing they could do.

James King announced that Congressman Elijah Cummings was hosting a listening session at the Rayburn House Office Building (HOB) in room 2203 from 1-2 pm on Wednesday, September 13.

Miriam Brewer announced the Franchise Action Network will be coming from across the country and on Wednesday, they are scheduled to meet with their elected officials. She hoped to have franchisees and franchise attorneys at the listening session.

Delegate Brooks thanked the franchise owners for speaking to the task force and committed to trying to come up with legislative solutions.

James King announced the next task force meeting of October 16. The first draft recommendations are due. The second draft is due on November 13 and a final meeting has been added of December 11. Minutes and a reminder will be sent out.

Senator Robinson thanked the business people for coming to share their stories. She especially wanted to thank Tavon Payne and encouraged him to stay involved so that when the final product is completed those who are closest to the problem will be involved.

Meeting adjourned at 4:20 p.m.

Exhibit B

HB264 Task Force Listening Session Notes

September 13, 2017
Rayburn House Office Building, Washington, DC

Trudy Perkins, Deputy Chief of Staff and Communications Director for Congressman Elijah E. Cummings welcomed everyone on behalf of the congressman and expressed his desire to learn from franchise owners and offered assistance whenever necessary. She introduced two additional staff members:

Todd Phillips
Amy Stratton

James King, Legislative and Policy Director of the Governor's Office of Small, Minority & Women Business Affairs provided an overview of the Task Force to Investigate the Challenges of and Opportunities for Minorities in Business. A component of the task force relates specifically to the franchise arena. Mr. King asked the task force members who were present to introduce themselves:

Miriam Brewer with the International Franchise Association
Senator Barbara Robinson
Randall Nixon, Business Ombudsman
Alison Tavik, Communications Director with the Office of Small, Minority & Women Business Affairs

Senator Barbara Robinson presented a brief history of the task force as it pertains to the franchise industry.

The floor was opened for comments.

Mark Kirsh (Law firm of Gray, Plant & Moot)

- 30+ years of franchise law experience
- Can't speak on behalf of KFC
- Franchising is represented by a wide range of industries and size of investments
- 3,500 franchise brands; 70% of which have less than 100 units nationally; 45% of all franchise units are single-owner units
- Branding standards are applied uniformly across most systems
- When a problem occurs, franchisees don't typically go to the contract first; they go to the franchise system to define the issue and identify remedies
- Franchisors don't want to terminate franchisees – it's bad business, bad PR and leads the franchisor to have to refranchise that unit which costs money
- Most franchisors spend lots of time determining what is needed to run a successful franchise and that is what is outlined through the franchise agreement, particularly in the area of maintaining brand standards

- Any actions taken by the franchisor on the franchisees are typically not personal

Suppose it could happen that a change in field staff alters the relationship

- He has never heard of a situation where a specific franchise was targeted in order to get rid of them
- Franchisors have the right to change system standards; this provision is typically outlined in the contract with further details on how and under what time frame the changes would be executed

David Cahn (Law office of Whiteford, Taylor & Preston)

- Private practice attorney in Baltimore
- 20 years in franchising
- Federal law - Franchise Disclosure Documents (FDD) must be provided before paying any money
- State law – Franchise Registration & Disclosure Law
- Office of the Attorney General, Securities Division (Dale Cantone)
- Ensures all documents required are in place before any documents can be signed Rigorous process; some early stage franchisors don't come to Maryland because it is so challenging
- Large franchisors can file for a waiver of this document review process if they have a large number of units in Maryland and strong finances
- For those with waivers, nobody is looking at their docs, which can be a problem
- If docs are not reviewed and the material is misleading, the franchisee can take action against the AG's office
- AG has limited resources; do not go after the big guys usually
- Difficult for a franchisee to win in a dispute
- Can't recall any adverse action related to discrimination during his professional career Personality conflicts – yes
- Has seen circumstances where a franchisor systems rewards large unit owners over small unit owners
- Is not aware of franchises being closed in minority neighborhoods
- Can't terminate a franchise license only because the store is not profitable; it requires some form of "good cause"
- Terminations are usually very standardized, but the process does allow for some discretion which can be abused
- He has no knowledge of a franchise system engaging in those practices

Nabil Gazaha (Former owner of a KFC location on Perring Parkway)

- His store was recognized for its outstanding customer service and profitability
- He was shut down by Yum brands after failing internal inspections
- When given the mandate to remove the KFC sign from the building, he refused to comply lost his store after being forced out by Yum Brands for minor brand violations that were not resolved after three inspections
- He has taken legal action against them and won on several fronts; litigation continues

- Yum Brand used to have a franchise association group, but the CEO closed it down on the first day he was named to serve as the president
- Yum brand has unfair practices against African Americans

Lane Fisher (Franchise law firm of Fisher Zucker)

- 20+ years as a franchise lawyer
- In context of looking at legal solutions vs. and contractual solutions within the franchise industry:
    - Participation is predicated on a voluntary choice; it is a restrictive relationship, but the franchisees choose to be participants
    - Disclosures cover the system standards
- Franchisees take on the obligation of maintaining the brand
- The law sets up an "eyes wide open" scenario
- Lawyers, in general, are champions of small business
- Nefarious people in one organization does not mean the fix needs to be legislative
- Legislation often adds barriers and doesn't necessary add value to the franchisee
- There is no real legal solution for things that are not widespread
- He is not hearing anyone speak about problems with any other brand
- Can pursue bad actors
- If systemic discrimination exists, legislation is the way to attack it
- In Maryland, there is not a remedy for generalized discrimination that protects any franchisee

Senator Barbara Robinson (Task Force member)

- Expect to be treated fairly if I become a franchisee
- She knows what it feels like to experience discrimination
- Support legislation that ensures the same treatment for all franchise owners regardless if spending $500,000 or $5,000,000 or having one store or 100 stores
- Legislation can be a recourse
- Regulations can be a better solution when it is too expensive to go after a large franchisor

Bret Lowell (DLA Piper Global Law Firm)

- Member of IFA's Franchise Education & Research Foundation
- Franchising is generally out for the good of both the franchisee and the franchisor
- Attractive business model for vets and young people
- The Diversity Institute encourages women and minorities to get into franchises
- Discrimination is always a complicated topic; hard to get your arms around it
- You're hearing all five lawyers say no more legislation is needed; we already have enough
- Franchising is not a guarantee of success it is rough and competitive
- There will be failures
- Franchisors care about things to; most operate very reasonably

- Existing protections under current legislation require franchisors to be "reasonable," operate in "good faith," and conduct "fair dealing"
- A franchisor would never terminate a franchisee without good cause
- As for brand standards, they cannot be defined for the foreseeable future; they change as necessary and typically following a lot of research and analysis by the franchisor

Lynn Berbrich (Franchisee with Bright Star Healthcare)

- Chose the franchise model for the support offered from the franchisor, yet she is still her own boss
- Happy with her decision
- As a CEO, she recognizes that there are other owners who lack the skill set; as a result they were not successful
- Owning a franchise does not guarantee success
- When other franchisee owners are not compliant with brand standards, she suffers; it paints a negative image of her operation
- She has no issue when a franchisor identifies franchisees who are not playing fairly
- To her knowledge, violators are given an appropriate amount of time to cure the problem
- Her agreement requires that she comply with the manual; it is subject to change and sometimes she is not happy with the changes, but she accepts that because it is balanced by the strength of the brand
- She personally knows a Burger King franchisee who started as a fry cook then became the owner of two Burger King locations
- She mentioned Join Employer – some kind of a HR product – what's this about
- She called it a "small business issue" that affects small unit franchise owners

General comments

- Defaults, under the law, cannot be done arbitrarily; there must be grounds
- Small unit franchise owners are not as sophisticated as large unit franchise owners McDonalds has a franchise owner's group specifically for African American owners which looks at issues in the system that are unique to African Americans and offers a means to address them
- The number of franchise owners who seek legal counsel generally depends on the size of the investment; less than $100,000 probably don't seek any

Exhibit C

CHANGING
Maryland
for the Better

WORKFORCE DEVELOPMENT
RESOURCES AND PROGRAMS

Work Opportunity Tax Credit (WOTC) https://www.dllr.state.md.us/employment/wotc.shtml
The Work Opportunity Tax Credit (WOTC) is a Federal tax credit available to employers for hiring from certain target groups who have consistently faced significant barriers to employment. WOTC joins other workforce programs that incentivize workplace diversity and facilitate access to career pathways for American workers. The maximum tax credit ranges from $1,200 to $9,600, depending on the employee hired. Ex-felons new hire meets the target group criteria if the individual has been convicted of a felony; and has a hiring date that is not more than one (1) year after the conviction of release from prison.

Maryland's Apprenticeship Innovation Fund (AIF)
https://www.dllr.state.md.us/employment/appr/
Through the Apprenticeship Innovation Fund (AIF), in accordance with the ApprenticeshipUSA State Expansion Grant, the Maryland Department of Labor, Licensing and Regulation (DLLR) invests in sustainable programs that support and engage in Registered Apprenticeship expansion strategies. The AIF is a competitive grant fund intended to seed the implementation of new and promising ideas, or to adapt proven strategies at the systems or service delivery level, to expand the reach of Registered Apprenticeship programs in Maryland. DLLR's commitment to innovative practices includes funds for expanded Pre-Apprenticeship and Registered Apprenticeship activities. DLLR funds the AIF in an effort to reach the following outcomes, where applicable:

- New businesses engaged;
- New non-traditional Registered Apprenticeship programs in the State;
- New Registered Apprenticeship programs in the State;
- Existing Registered Apprenticeship programs expanded;
- Registered Apprenticeship programs that engage traditionally underrepresented populations;
- Number of services provided to participants, such as pre-apprenticeship and other types of work-readiness training;
- Increase in Registered Apprentices;

- Increase in woman who are Registered Apprentices;
- Increase in youth (16-24 year olds) who are Registered Apprentices;
- Number of connections to Maryland WIOA workforce system.

In an effort to align Registered Apprenticeship with Maryland's workforce system, priority is given to projects that work to expand opportunities to non-traditional Registered Apprenticeship industry sectors and/or Maryland's Workforce Innovation Opportunity Act (WIOA) Target Populations like ex-offenders.

Correctional Education Occupational Training Programs https://www.dllr.state.md.us/ce/
DLLR also offers the Correctional Education (CE) Program to promote and advocate for education and workforce skills training opportunities in correctional institutions. The Correctional Education program provides academic, library, occupational, and transitional services to incarcerated students in State correctional institutions. The academic program includes Adult Basic Education, GED Preparation, Special Education, English for Speakers of Other Languages, and a Postsecondary Education Program. CE prepares incarcerated students to become responsible members of their communities.

Correctional Education Joint Skills Training Partnership *(JSTP)*
The JSTP Program purpose is to document the skills that inmates, working in various jobs, master "on the job." JSTP is unique in that Correctional Education collaborates with Department of Public Safety and Correctional Services (DPSCS) staff to specify skills inmates learn on the job and reflect the skills in resumes. Inmates work in these various jobs and learn significant job skills as well as gaining employability skills that will translate to employment once released.