

As Seen In

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'Antiquated' franchise law due for tune up

By JEREMY HARRELL

For anyone who takes a quick drive down Jericho Turnpike or Sunrise Highway, it's hard to believe that franchisers consider New York an unfriendly place to do business.

But lawyers are convinced the state isn't meeting its economic potential because franchising requirements are too strict and haven't kept pace with the ever-changing franchise landscape. In an attempt to boost the market, the New York State Bar Association last week formed a subcommittee to overhaul the state's franchise law, adopted in 1981.

Harold L. Kestenbaum, who, as chairman of the state bar's Franchise, Distribution and Licensing Committee, created the subcommittee, said the law has become "antiquated."

"This law's been on the books for 25 years and has never been touched," said Kestenbaum, an attorney at Farrell Fritz in Uniondale. "We think New York state loses some economic benefit because of the way the law is

drafted."

For instance, if a foreign company wants to establish a franchise in New York, it must register with the state, hire a team of lawyers and generally enter into a cost-prohibitive process, Kestenbaum said.

"If a Canadian company wants to come to the U.S., I tell them to go to any state other than New York," he said.

Likewise, New York companies looking to franchise abroad must enter into a similar process. New Jersey, on the other hand, makes no such requirement.

Kestenbaum acknowledged that a reconfigured franchise law could cost the law profession some work, but he said it would be for the greater economic good of the state.

Franchising is a popular tool for small businesses nationwide, but the New York law and its regulatory costs make the prospect here unappetizing, Kestenbaum said.

Meanwhile, a company with a net worth of more than \$5 million doesn't have to abide by the same stipulations, which might be one reason Long

Island is fast filling up with big national brands, he said.

New York, it turns out, is also missing out on trade-show opportunities since out-of-state companies must also register with the state before they can shop their franchise wares here, Kestenbaum said.

The state bar panel's work could be especially timely since the Federal Trade Commission is set to change its franchising rule in late 2005 or early 2006, Kestenbaum said. The FTC's work is 10 years in the making and could help shape a new law for New York – if the Legislature takes up the bar's recommendations.

The seven-member subcommittee scheduled its first meeting for October and set a May 2006 goal for submitting a proposal to the Franchise, Distribution and Licensing Committee.

Thomas M. Pitegoff, a White Plains lawyer specializing in franchise law, heads up the panel, which also includes David J. Kauffman of New York, who wrote the 1981 act, and Cory J. Covert of Hauppauge, among others.