



**Franchising**<sup>®</sup>  
Building local businesses,  
one opportunity at a time.

October 4<sup>th</sup>, 2013

The Honorable Peter J. Daley, II  
202 Irvis Office Building  
PO Box 202049  
Harrisburg, PA 17120-2049

Dear Representative Daley,

Thank you for taking the time out of your busy schedule to meet with us and discuss our concerns with House Bill 1620. As you know, the International Franchise Association (IFA) is an organization that protects, promotes and enhances franchising, including the interests of franchisees, franchisors and the franchise business model. In a report based on the 2007 Economic Census, conducted by PwC for the IFA, franchise businesses provide jobs for 662,500 workers in Pennsylvania, comprising over 10.5% of all nonfarm employment. Furthermore, franchise businesses generate \$28.4 billion in economic output annually, or 9.2% of total economic output in the state. More than thirty IFA member company franchisors are headquartered in Pennsylvania, including AAMCO, Auntie Anne's, Inc., FirstService Brands, General Nutrition Centers (GNC), Griswold Home Care, Philly Pretzel Factory, Rita's, Swiss Farm Stores and Visiting Angels.

As we discussed in our meeting, IFA is opposed to HB 1620 in its entirety because of the substantial negative impact this bill would have on existing franchise operations in Pennsylvania and on future franchise growth, including economic development and job creation for the state. Franchising is already significantly regulated and has thrived within the current regulatory environment. Our most notable concerns with HB 1620 are:

- The bill broadens the definition of good faith beyond that used in any other statute. Specifically, it states that a franchisor cannot prevent "enjoyment" by the franchisee.
- The definition of fair dealing is vague and ambiguous.
- The duty of due care creates an unrealistic and immeasurable requirement that each franchisor have the same skills and knowledge as similar franchisors.
- The provision on sourcing severely impedes the ability to realize economies of scale. This negatively affects both franchisees' and franchisors' bottom line. Also, the provision mandating an annual report is far too intrusive and requires more than even a public company must report.
- The encroachment provision applies if there is any reduction in sales at an existing location. This limits the ability of franchised businesses to expand, and denies opportunities to entrepreneurs.
- The non-compete provision allows the theft of trade secrets and proprietary systems.



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- Evergreen franchise renewal is unnecessary. Both parties are aware of the end date of a contract and should be allowed to make their own decisions on renewal.
- Franchisors are not allowed to sell without prior notice to franchisees and any buyer must renegotiate with franchisees. This is an unnecessary burden that doesn't exist for any other business.
- The bill goes far beyond any other franchise law and provides for both civil penalties and criminal penalties. It also encourages frivolous litigation by permitting attorneys' fees.

This bill has the potential to cause significant problems for franchisors and franchisees in Pennsylvania. It ventures into new areas of regulation to an extent not previously seen in any other state. Beyond the aforementioned examples, the overall bill takes aim at a business model that has been remarkably successful for entrepreneurs across the country. HB 1620's vague definitions will create confusion and be harmful to franchise operations, our legal system, and the economy in general.

In lieu of far-reaching and harmful legislation such as HB 1620, IFA favors a free market system that aims for resolution of the infrequent disputes between franchisors and franchisees without legislation. To that end, IFA's Franchise Relations Best Practices Task Force, which we mentioned in our meeting, has just completed a historic project and has adopted recommendations that aim to improve franchise relations, with a particular focus on better education of prospective franchisees and ways to improve franchise disclosure and clarifying terms in franchise agreements. The IFA Board of Directors adopted a "Statement of Guiding Principles" and a "Summary of Franchise Offering Information/Profile" to provide more clarity and transparency regarding the terms in franchise agreements and the Franchise Disclosure Document (FDD). The leaders of this Task Force, comprised of both franchisees and franchisors, would be happy to discuss these efforts with you. The enclosed documents provide additional information on the work of the Task Force and its participants.

Thank you again for your time and your consideration of our concerns. Please do not hesitate to reach out to us should you require clarification or have additional questions or concerns.

Sincerely,

Matthew A. Haller  
Vice President, Public Affairs & Chief of Staff  
International Franchise Association