

# Oppose HB 1620

**SUPPORT  
PENNSYLVANIA  
SMALL BUSINESS**

## About the IFA:

The International Franchise Association is an organization that protects, promotes and enhances franchising, including the interests of franchisees, franchisors and the franchise business model. In a report conducted by PwC for the IFA, nearly 30,000 franchise businesses in Pennsylvania employ 318,600 workers in franchised restaurants, hotels, retail outlets and service franchises such as business, personal, commercial and residential and automotive. Additionally, 662,200 people were employed because of franchise business in Pennsylvania, comprising over 10.5% of all nonfarm employment. Pennsylvania's franchise businesses generate \$28.4 billion in economic output annually, or 9.2% of total economic output. 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.

## About House Bill 1620:

HB 1620, which amends Title 12, (Commerce and Trade) of the Pennsylvania Consolidated Statutes, was introduced July 24th of 2013. The bill seeks to establish 'responsible franchise practices' and "protect franchisees from unfair practices in the sale and operation of franchised businesses." The bill creates penalties and remedies, and would confer powers and duties upon the Department of Community and Economic Development.

## About the Issue:

Franchises are already significantly regulated and they have thrived within the current environment. The International Franchise Association has a number of serious concerns with HB 1620. Some of the most problematic examples have been highlighted below. However, the bill in its entirety is flawed. The regulatory overreach of this bill would lead to strong negative effects on franchise operations across the economy.

- The bill provides a broad definition of good faith. Specifically, in Section 905 of the bill, it states that "an action which prevents enjoyment, even if not prohibited by the express terms of the contract, is prohibited." Any action which prevents enjoyment is a vague definition which would undoubtedly lead to significant litigation issues, among others, for both sides of any dispute.
- HB 1620 provides an inarticulate definition of what is considered "fair dealing." Section 905 of the bill states "Franchisors and franchisees shall act in a fair equitable manner towards each other so as to guarantee freedom from wrongfulness, arbitrariness, coercion and duress by other parties." Once again, in its current form the wording is vague and will create significant litigation issues if made into law.
- The bill has a "due care" clause (section 907) requiring franchisors to be competent. The IFA is proud that our members operate under some of the highest standards and want to see franchisors and franchisees run strong businesses. Franchises operate in a very competitive market. To that end, it is unnecessary and intrusive to legislate competency in any free market. Furthermore, franchises operate in more than 300 different lines of business (industry categories), and a one shoe fits all approach simply is not practical.
- In section 908 of HB 1620, the freedom of franchisors is severely limited. The franchise model works in large part because of the ability of franchisors to require franchisees to purchase from specific suppliers. Both parties benefit in the long run from large bulk purchases and the realization of economies of scale. The bill however prohibits this action. This goes to the heart of the way franchises do business. Regulations like this are unprecedented.
- Section 909 deals with encroachment protection. It creates regulations that severely limit the ability of a new franchisee to open their business in a region with other franchisees if services or goods are similar to existing franchises, or if the new business results in a reduction of sales to existing franchises. Franchisees are small business owners. They are entrepreneurs who are creating jobs and investing in their communities. It is inappropriate to tell a franchisor that they cannot permit an entrepreneur to open a new business because they would create competition.
- Section 915 requires franchisors to provide a half a year's notice to franchisees if they do not intend to renew a contract. Both parties should be left to negotiate renewals of business agreements towards the end of an existing contract. They should not be automatically renewed through government regulation.