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International Franchise Association
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House Commerce and Economic Development Committee
115 State Street
Montpelier, VT 05633

RE: Opposition to House Bill 205 – An Act Relating to Agreements Not to Compete

Dear Chair Marcotte, Vice Chair Graning, and Members of the Committee:

On behalf of the International Franchise Association (IFA), representing franchisors and franchisees operating across hundreds of diverse franchise industries, I am writing to express our **strong opposition to House Bill 205**, legislation that proposes a sweeping ban on agreements not to compete within franchise relationships.

If enacted, H.B. 205 would represent a radical departure from established legal principles and would severely undermine the franchise business model in Vermont, harming both the brands that create opportunities and the local Vermont entrepreneurs who invest in them. Below is a comprehensive outline of our concerns.

- **Overly Broad and Absolute Ban**: H.B. 205 seeks to invalidate all agreements not to compete in franchise agreements, irrespective of reasonable limitations on scope, duration, or geographic reach. This approach ignores the legitimate business interests these clauses protect.
- **Erosion of Franchisor Protections**: The ban directly harms franchisors by removing a critical tool used to safeguard substantial investments in developing unique business systems, confidential operating manuals, specialized training programs, customer data strategies, and other proprietary information and trade secrets shared in good faith with franchisees. This exposure discourages innovation and brand development.
- **Undermine Franchisee Investment**: The bill harms existing Vermont franchisees by eliminating protections against unfair competition. It would allow former franchisees to potentially use the specific, proprietary knowledge and systems gained from the franchise to open competing businesses, often in the same local market, thereby devaluing the significant investment made by current franchisees.
- **Flawed Definitions:** The bill utilizes definitions for "franchise agreement" and "franchisee" that are so broad they could encompass simple licensing arrangements, potentially impacting businesses far beyond the intended scope of franchise law. Furthermore, the definition of "agreement not to compete" is expansive, potentially prohibiting standard operational requirements necessary for brand consistency.
- **Unprecedented Retroactivity:** H.B. 205 applies its ban not only prospectively but also retroactively to all existing franchise agreements, including those terminated or expired where a non-compete term is still in effect. This disrupts settled contracts and ignores the bargained-for exchanges made by parties, often years or decades prior. It also imposes an undue burden by requiring franchisors to notify all current and former franchisees that these clauses are void.

Contradiction with Legal Precedent, Regulatory Considerations, and State Approaches

H.B. 205 disregards decades of established case law across the United States, where courts routinely evaluate the enforceability of non-compete clauses based on a fact-specific analysis of their reasonableness. Courts possess the latitude to enforce, modify, or reject such clauses based on this analysis, balancing the interests of all parties.

Furthermore, this legislation directly contradicts the recent, thorough considerations by federal and state regulatory bodies. Both the Federal Trade Commission (FTC) in its recent Non-Compete Rule and the North American Securities Administrators Association (NASAA) in its Non-Compete Guidance[1] explicitly considered and *declined* to extend a ban on non-competes to the franchise context, recognizing the unique nature and needs of the franchise relationship. NASAA's guidance specifically affirms the enforceability of *reasonable* non-compete clauses in franchise agreements. H.B. 205 inexplicably casts aside this considered judgment and nuanced approach in favor of an absolute prohibition.

HB 205 is also an outlier compared to how other states handle non-compete agreements in the franchise context. While state laws vary, the prevailing standard is one of reasonableness. Even states with statutes generally restricting non-competes often recognize the unique aspects of franchising:

- **California:** Despite a broad statute generally voiding non-competes, recent case law (e.g. *Ixchel Pharma, LLC v. Biogen, Inc.*) applies a reasonableness standard to competition restraints in business contexts, including franchise agreements, moving away from a strict prohibition.
- **Colorado:** While restricting non-competes for general labor, courts have recognized that franchisees often qualify as "executive and management personal," exempting them from the broadest restrictions and allowing reasonable non-competes.
- **Florida & Indiana:** These states have laws specifically addressing franchise non-competes, establishing parameters for reasonableness (Florida) or setting specific limits on duration and geographic scope (Indiana).

H.205 inexplicably casts aside this established legal and regulatory landscape and the nuanced approaches taken by other states, choosing instead an extreme position that disrupts the foundation of the franchise model.

Harm to Existing Franchisees

Crucially, this bill fails to recognize the protective value that reasonable non-compete clauses provide for *existing franchisees*. Franchisees invest significant capital and effort into their local businesses with the expectation that the franchisor will protect the integrity of the brand and the territory, including preventing former franchisees from unfairly leveraging the system's proprietary knowledge and goodwill to compete directly against them. As courts have recognized:

- In *Rita's Water Ice Franchise Corp. v. DBI Investment Corp*., the court noted that failure to enforce such covenants lowers the value of all franchises in the system.
- In *Casey's General Stores, Inc. v. Campbell Oil Co.,* the Iowa Supreme Court highlighted that these agreements protect other franchisees against competitive activities.
- In *Baskin-Robbins Inc. v. Golde*, the court observed that non-competes protect the investments made by other franchisees who rely on the same protections.

H.B. 205 ignores these realities and would permit former franchisees to directly compete using the very system knowledge gained through their franchise relationship, harming the investments of their former peers.

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[1] North American Securities Administrators Association, *Post-Term Non-Compete Provisions in Franchise Agreements Should Be Reasonable,* 2025 (https://www.nasaa.org/wp-content/uploads/2025/01/Post-Term-Non-Compete-Provisions-in-Franchise-Agreements-Should-Be-Reasonable.pdf)

H.B. 205 represents an unwarranted and damaging intrusion into private contracts that ignores legal precedent, recent regulatory consensus, and the fundamental economics of the franchise model. It threatens the viability of franchising in Vermont, jeopardizing the significant economic contributions of over **1,000 franchise establishments** and the over **12,000 jobs they provide.**[2]

We strongly urge you to oppose House Bill 205 and protect the established framework that allows franchising to thrive in Vermont. We welcome the opportunity to discuss these concerns further with you or your staff.

Respectfully,

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[2] International Franchise Association, *2025 Franchising Economic Outlook*, FRANdata, 2025 (https://indd.adobe.com/view/41aaf895-c7f7-43ff-9004-9455305199f3)