VERMONT

State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
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www.dfr.vermont.gov

November 15, 2025

Chair Michael Marcotte
Vice-Chair Edye Graning
Vermont House Committee on Commerce and Economic Development
115 State Street, Room 35
Montpelier, VT 05620

Dear Chair Marcotte and Vice-Chair Graning:

Thank you for reaching out to the Department of Financial Regulation (DFR) to inquire about potential regulation of franchisors. In responding to your questions, DFR relied on publicly available information about the regulation of franchisors and issues reported by franchisees nationwide. This includes media accounts and litigation, public comment on the Federal Trade Commission's 2023-2024 rulemaking on non-compete agreements[1], and comparisons of state regulatory models related to franchisors. DFR also inquired with four other state securities regulators to learn directly about their experiences with franchisor registration.

Please note that as we explored this issue, we encountered very limited information pertaining to Vermonters' experiences as franchisees. Data limitations are not new or specific to Vermont; the US Government Accountability Office (GAO) previously noted data collection concerns for franchises in a 2001 report.[2] Neither DFR nor the Secretary of State (SOS) currently collects any data pertaining to franchisees. In general, as business owners, franchisees today largely operate outside of the consumer protections, including complaint functions, that apply to individual

[1] In 2023, the FTC proposed to ban noncompete agreements for employee-employer relationships. In its proposed rulemaking, the FTC sought public input on whether to also ban noncompete agreements for franchisee-franchisor relationships. While the FTC ultimately decided not to limit noncompete agreements between franchisees and franchisors—and withdrew its final rule on September 5, 2025—the record of public comments received, including dozens representing franchisee and franchisor interests, provides detailed background and arguments for and against regulation of this market. Franchisees also came up in the public comment record regarding two other unrelated issues: whether employees were being misclassified as franchisees (similar to allegations of employees misclassified as independent contractors), and the use of "no-poach" language limiting an employee of one franchise from working at another.

[2] General Accounting Office [now the Government Accountability Office], "Federal Trade Commission: Enforcement of the Franchise Rule," (GAO-01-776), July 2001, https://www.gao.gov/assets/gao-01-776.pdf.

Vermonters as borrowers and investors. To that end, the Committee may wish to consider the need for additional data collection on this topic as part of its deliberations.

If the General Assembly ultimately decides to pursue regulation of franchisors, we would also like to highlight the resource constraints that would apply to DFR. Several states in which franchisors are registered or licensed dedicate at least one or two full-time equivalent staff (FTEs) to franchisor registration and review, with some states having additional dedicated staff or dividing these functions with other types of securities reviews. Given the size of DFR's Securities Division (which currently includes only one Corporate Finance examiner) and current hiring challenges statewide, it may be difficult to provide the level of staffing that would be required for effective regulation. In addition to potential regulation of franchisors by DFR, the legislature may wish to consider the benefits and costs of restricting specific contract terms in franchise agreements that, in its view, are harmful to franchisees. In conversation with the Secretary of State, they have similar concerns about placing a new regulatory program in their scope of authority.

At the federal level, franchises are subject to the Federal Trade Commission's Franchise Rule, which was first promulgated in 1978 and last updated in 2007.[3] The Franchise Rule requires that franchisors provide a pre-sale disclosure to potential franchisees 14 days before signing an agreement or accepting any money. This disclosure, a Franchise Disclosure Document (FDD), includes information on 23 items including background on the franchisor, the franchise being offered, each party's obligations to the other, earnings potential, and fee structures. Violations of these requirements are considered to be an unfair or deceptive act or practice under Section 5 of the FTC Act. Some business arrangements, such as franchises requiring very large opening investments, existing franchisees with high net worth, and franchises being opened by part-owners in the franchisor, are exempt from the rule.[4]

DFR's responses to your specific questions are below.

Should franchisors be required to register with the State and pay a registration fee?
It is up to the General Assembly to decide whether the existing federal requirements on franchisors described above are sufficient or not, and if not, what type of state regulation of franchisors might be appropriate.

States have taken varying approaches to registration and licensing of franchisors. Registration in Vermont would require investments in staff and systems, but would also provide expanded oversight into this market. Some states require the registration of franchisors, in which they pay a fee and file an FDD, with the state, as well as any other required documentation. In some states, as long as the filing and disclosure documents are complete ("pure disclosure" states), the franchisor is then able to market its business to potential in-state franchisees. In other states ("merit" states), the language of the disclosures is closely examined to assess the potential franchise opportunity that is offered, and the regulator may opt not to allow some offerings to go forward. In either case, registrations must also be periodically renewed.

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[3] 16 CFR 436-437. The 2007 final rule and discussion begin at 72 FR 15444.
[4] 16 CFR 436.8.

Among the four states that DFR consulted with, franchisors subject to registration requirements were required to pay an initial fee ranging from $400 to $600, and an annual fee ranging from $100 to $300. Under certain circumstances, a franchisor might be exempt from registration and would face a lower fee and less burdensome filing requirement. Some states report having substantial volume of franchisor filings, in the hundreds or even thousands per year, which highlights the need for additional staff and resources. A merit review for franchise filings increases the administrative burden on staff to review the quality of an offering.

If registration is recommended, where should the registration and oversight of franchisors be housed?

SOS and DFR agree that if the General Assembly were to enact a law providing for the registration and oversight of franchisors, the preferred place to house this function would be the DFR Securities Division. Most of the states that have a registration and/or licensing regime for franchisors house this function within their state securities office which, depending on the state, may be part of a larger financial regulatory office, an attorney general office, a secretary of state, or another entity.

The North American Securities Administrators Association (NASAA), of which DFR is a member, has already developed the registration systems and technical expertise that would be necessary to oversee this market. DFR's counterpart securities offices in fourteen states administer and enforce various state franchise registration and disclosure laws. Some states use an existing NASAA system ("Electronic Filing Depository," or EFD) to receive franchisor filings, while others have in-house systems or accept filings by other means. Since franchise offerings are similar to other types of investment opportunities, registration and oversight within DFR would leverage the Department's existing knowledge base. However, as noted above, adding oversight of franchisors to the Securities Division would require additional staff and resources.

Should franchisors be further regulated and if so, in which ways?

DFR does not have a specific recommendation with regard to regulating franchisors. However, in addition to the potential for registration of franchisors, some states have regulated specific aspects of a franchisor-franchisee relationship that they consider to be unfair, deceptive, or otherwise detrimental to franchisees. The General Assembly could consider restricting specific contract terms that are restricted in some other states, such as choice of law provisions, noncompete agreements, confidentiality agreements, and limits on free association (when franchisees are prohibited from associating with one another).[5]

The General Assembly should also consider measures designed to collect a base level of data on franchises operating in the state. Business registrations with SOS do not indicate whether a business is a franchise, or if so, which franchisor it is affiliated with. Adding additional data fields to capture this information in business registrations would assist in monitoring this market, but would also require additional resources and staff time.

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[5] For example: Noncompetes: prohibition to "enforce any unreasonable covenant not to compete after the franchise relationship ceases to exist" (Minnesota Reg. 2860.4400); Free association: prohibition on "restricting or inhibiting the free association among franchisees" (Ibid.).

Review, in consultation with the Office of the Attorney General, complaints lodged by franchisees about their franchisors and determine whether requiring registration or additional regulation would reduce the risk of harm to franchisees.
State agencies are generally limited in their ability to address complaints by franchisees. While the OAG may occasionally receive complaints from a franchisee, it is only able to act upon complaints made by franchisees as consumers (i.e. the products and services they purchase), not the franchisee-franchisor relationship itself. Similarly, it is difficult to track specific concerns of franchisees given that they are not recorded differently from any other business by SOS.

In connection with the preparation of this report, DFR met with one franchisee who expressed concerns about an existing franchise agreement, stating that the arrangement has not met the franchisee's expectations.

In the four states DFR consulted with, all with significantly higher populations, typical complaints by franchisees ranged from roughly one or two per year to about two dozen. In some states, complaints were handled internally by registration review staff; in others, they were directed to agency enforcement staff. The state regulator generally has a process in place for the rescission (cancellation) of a franchise agreement if the appropriate disclosures were not provided or if they were false or misleading. This can be a powerful remedy, but there may be circumstances in which it is unavailable to the franchisee, or the franchisee might wish to seek other relief instead.

Whether there is any additional information that would be relevant to the Committee's decision-making process on regulating the franchisor-franchisee relationship.
As noted above, two additional data sources may provide helpful background to the Committee.

First, the allegations and contract language found in a recent class action lawsuit provide potential insights into concerns that other franchisees may have. Last year, two franchisees, one in Ohio and the other in Idaho, filed a lawsuit in Ohio against their franchisor, Dickey's BBQ Pit.[6] The franchisor successfully compelled arbitration in this suit, meaning that any final outcomes will be resolved confidentially outside of court. While unproven, the allegations and contract language included the following: allegedly false marketing information, including unrealistic cost and revenue projections; a limited ability for the franchisee to transfer the business or terminate the contract early (only within the last year of a 20-year agreement); a noncompete agreement limiting any related activity for two years after the end of the initial contract; and restrictions on the franchisee's legal dispute rights, including an arbitration provision and a choice of law provision specifying where all disputes would be handled.

Second, the FTC's recent rulemaking on non-compete agreements provided an extensive record of public comment with many arguments given for and against. Proponents of restricting non-compete agreements between franchisors and franchisees often focused on the significant personal investments that franchisees make when opening a business, and the ways that noncompete agreements made it difficult to negotiate at the time of contract renewal. Some franchisees reported that broad limitations on operating a related business—even if it is clearly

[6] *See* Unsworth, et al. v. Dickey's Barbecue Restaurants, Inc., No. 5:24-CV-00975, 2025 WL 1256787 (N.D. Ohio Apr. 30, 2025).

distinct from their existing franchise—coerced them into either renewing their contract even at unfavorable terms, or closing the business and pursuing a new opportunity outside of the limitations of their non-compete agreement. They also argued that there are less restrictive means to preserve franchisors' intellectual property, including the use of non-disclosure agreements and protections for trade secrets.

Meanwhile, opponents of restricting non-compete agreements noted that non-competes are an essential part of the franchise business model, and were a long-standing provision of franchise contract law. These provisions protected the investments made by franchisors and franchisees from unfair competition, and maintained the franchise's brand quality and reputation. In their view, non-competes preserved the value of both the franchisor and existing franchisees. They noted that non-compete agreements are already required to be disclosed under the FTC Franchise Rule, and generally stated that they would consider franchisees to be sophisticated investors.

We hope that the information provided in this letter is helpful to the Committee in its deliberations. DFR would be happy to answer any questions you may have, or provide any additional relevant information.

Sincerely,

Kaj Samsom
Commissioner, Department of Financial Regulation