



August 27th, 2019

California State Legislature
 State Capitol
 Sacramento, CA, 95814

To: Honorable Members of the California State Legislature

Re: Assembly Bill 5

Dear Assembly Members and Senators:

We are writing to request your support of an IFA-proposed amendment to Assembly Bill 5 (A.B. 5). The narrowly tailored and limited amendment will provide an exception for legitimate franchisors and franchisees who are lawfully operating franchises under state and federal franchise law. IFA members are gravely concerned that, if enacted as currently drafted, A.B. 5 could mean the death of the franchise model in California, with devastating economic consequences. In California alone, there are more than 75,000 franchise locations supporting 728,000 jobs.

Specifically, we believe that the “ABC test” for employee status which would be adopted under A.B. 5 fails to recognize the unique nature of the franchise model – a model which the Supreme

Court of California has recognized raises particular policy concerns where liability for a franchise's employees is at issue; the analysis of which must account for contemporary economic realities.

Prong A of the ABC test – which requires a hiring entity to show that a worker is free from its direction and control – fails to account for the fundamental nature of how the franchise model works (and is required to be maintained under state and federal franchise law). To lawfully and successfully maintain franchises, a franchisor is *required* to exert a certain degree of control over the operations and business practices of its franchises. Indeed, the California Commissioner of Corporations has stated that if these controls are not exercised, a business cannot operate as a franchise. We fear that these legally required controls will be used as a basis for imposing liability on franchisors for their franchisee's employees under the ABC test.

With respect to “Prong B” of the ABC test, we are similarly concerned. The reasoning of the California Supreme Court in the *Dynamex* case that adopted the ABC Test (and which forms the basis for A.B. 5) may lead one to conclude that its intent is to ensure a well-structured and managed franchisor in California will be unable to meet Prong B of the test, simply due to the nature of franchising. We maintain there are powerful reasons to believe this should *not be* the case. While franchisors and franchisees share a common brand, they operate in different and distinct industries; own independent companies; and, derive their revenue (their “course of business”) in very different manners. That notwithstanding, given the court's decision, however flawed its reasoning on this point, a failure to address this concern is likely to result in the failure of many small businesses, the loss of jobs, litigation, market confusion and risk to the consumers in California.

For these reasons, we urge you to support amending A.B. 5 to include this limited exclusion for franchised businesses, which excepts:

(x) A franchisee, as defined in Sections [31005-31006](#) of the California Franchise Investment Law, which shall not be deemed an employee of franchisor rather than an independent contractor unless a court of competent jurisdiction determines the franchisor exercises a type or degree of actual control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks, servicemarks, and/or trade dress including but not limited to quality control of products and services.

This language allows courts to ensure that the franchising model is not misused as a tool for worker misclassification, while protecting the interest of franchisors who are required by state and federal franchise law to exercise a certain degree of control over their franchisees' operations. It is a common-sense solution that carefully balances the important interest in ensuring that workers are not misclassified with the unique nature and economic reality of the franchise model as recognized by the California Supreme Court.

We urge you to support IFA's proposed amendment to A.B. 5. Failure to do so threatens the fundamental viability of the franchise model in California. Thank you for your consideration.

Sincerely,

International Franchise Association
1HUDDLE
7-Eleven
Accurate Franchising
Aire Serv
Alliance Franchise Brands
Alta Mere
Always Best Care Senior Services
Amada Senior Care Franchise, Inc.
American Family Care
Arachadeck
Assisting Hands Home Care
At Your Side
Athletic Republic
Auntie Anne's
Aussie Pet Mobile
Ballard Brands
Blue Roof Association
Boardhouse Serious Sandwiches
BrandPoint Services
BrightStar Group Holdings, Inc.
Brightway Insurance
California Closets
California Hotel & Lodging Association
CarePatrol
Carvel
Cash Plus, Inc.
CertaPro
Choice Hotels International
Cinnabon
CITYROW
College Pro
College Pro Window Cleaning
ComForCare
Conserva Irrigation
Coverall
DCV Franchise Group
Deli Delicious
Denny's
Detail Garage
Dr. Nick's Transmissions
East Coast Wings + Grill
Eat Gather Love

Epic Wings
Experimax
Express Employment Professionals
FASTSIGNS International
FirstService Brands
Fitness Machine Technicians
Five Star Painting
FlannelJax's
Floor Coverings International
Focus Brands
Franchise Your Business
FranNet
Franworth
Fully Promoted
Garces
Gaspar Insurance
GetFried
Glass Doctor
Global Franchise Group
Go Mini's Moving & Portable Storage
Golden Corral
Great American Cookies
Great Clips
Hammer & Nails Grooming
Hand & Stone Franchise Corp.
Handyman Connection
Home Helpers Home Care
Home Instead Senior Care
Hot Dog on a Stick
Hotel Association of Los Angeles
i9 Sports Corporation
InXpress
Jamba Juice
Jani-King International, Inc.
Jewelry Repair Enterprises, Inc.
Jon Smith Subs
KFC
Lay Bare Franchising
Live Well Exercise Clinic
Long Beach Hospitality Alliance
Lumberjacks Restaurant
Lynx Franchising, LLC
ManageMowed

Marble Slab Creamery
Marriott International
McAlister's Deli
McDonald's Corporation
Metal Supermarkets
Milex Complete Auto Care
Moe's
Molly Maid
Monster Tree Service
Moran Family of Brands
Mosquito Joe
Mr. Appliance
Mr. Electric
Mr. Handyman
Mr. Rooter
Mr. Transmission
Multistate Transmissions
My Music Workshop
Neighborly
NerdsToGo
Network Lead Exchange
New Orleans Roast
Next Home, Inc.
Nextaff
NTY Franchise Company
Outdoor Lighting Perspectives
Outdoor Living Brands
Painting with a Twist
Paul Davis
PickUp USA Franchise Company, LLC
Pillar to Post Home Inspectors
Pizza Hut
PJ's Coffee of New Orleans
PMTD Restaurants
Pretzelmaker
PROSE Franchising, LLC
PuroClean
Rainbow International
Real Property Management
RedBox +
Renew Crew
Retro Fitness
Round Table Pizza
Salon's by JC
Schlotzsky's

Senior Care Authority
Signarama
SmartView Window Solutions
Sport Clips
SuperGreen Solutions
Surface Experts
Taco Bell
Tapioca Express
The Broken Yolk Café
The Flying Locksmiths
The Great Greek
The Grounds Guys
The Lash Lounge
The Original City Diner
The Spice and Tea Exchange
The Tutoring Center
The UPS Store
TLS
Transworld
Tropical Smoothie Café
United Franchise Group
Venture X
Vitality Bowls
Wanna Play Playcare
WaveMAX
Window Genie
Window World, Inc.
You've Got Maids
Yum! Brands