

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To preserve the franchise business model.

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IN THE SENATE OF THE UNITED STATES

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Mr. MARSHALL (for himself, Mr. KING, Mr. LANKFORD, Mr. SHEEHY, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To preserve the franchise business model.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Franchise  
5       Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) A franchise is a commercial relationship  
9       under which a franchisee acquires the right to oper-  
10      ate an independent business that offers, sells, or dis-  
11      tributes goods or services using a franchisor’s sys-

1       tem of operations, which typically includes the  
2       franchisor's business system and marketing plan,  
3       and its service mark, trademark, trade dress, or  
4       trade name.

5           (2) To protect the integrity of its system of op-  
6       erations, a franchisor must set and enforce uniform  
7       quality, marketing, and operational standards that  
8       govern its use. Doing so helps maintain consistency  
9       and uniformity in the nature and quality of the  
10      goods and services distributed under the franchisor's  
11      trademarks. That consistency and uniformity, in  
12      turn, help ensure that consumer expectations are  
13      satisfied, increase the value of the franchisor's  
14      brand, and enhance the recognition and profitability  
15      of individual franchises.

16          (3) Although franchisees must comply with  
17      these standards, franchisees are independent busi-  
18      ness owners. It is the franchisee who determines how  
19      to implement the franchisor's standards, controlling  
20      on a day-to-day basis the operations of its franchise  
21      and its labor relations.

22          (4) The economic impact of this business model  
23      has been profound. According to a September 2023  
24      report from Oxford Economics, in 2022, the eco-  
25      nomic output of franchise establishments in the

1 United States was approximately \$825,000,000,000.  
2 During that year, franchises employed approximately  
3 5 percent of all workers in the United States, which  
4 was approximately 8,400,000 workers.

5 (5) Inconsistent views of what constitutes a  
6 “joint employer” have impacted the viability of fran-  
7 chising by creating joint employer liability based on  
8 the franchisor’s exercise of appropriate levels of con-  
9 trol that is inherent in franchise relationships.

10 **SEC. 3. CLARIFICATION OF JOINT EMPLOYMENT FOR**  
11 **FRANCHISING.**

12 (a) NATIONAL LABOR RELATIONS ACT.—The Na-  
13 tional Labor Relations Act (29 U.S.C. 151 et seq.) is  
14 amended by adding at the end the following:

15 **“SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR**  
16 **FRANCHISING.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) DIRECT AND IMMEDIATE CONTROL.—The  
19 term ‘direct and immediate control’ means the fol-  
20 lowing with respect to each respective essential term  
21 and condition of employment:

22 “(A) WAGES.—A franchisor exercises di-  
23 rect and immediate control over wages if it ac-  
24 tually determines the wage rates, salary, or  
25 other rate of pay that is paid to individual em-

1            ployees of a franchisee or job classifications of  
2            employees of a franchisee.

3            “(B) BENEFITS.—A franchisor exercises  
4            direct and immediate control over benefits if it  
5            actually determines the fringe benefits to be  
6            provided or offered to a franchisee’s employees.  
7            Such direct and immediate control does not in-  
8            clude permitting a franchisee, under an arm’s-  
9            length contract, to participate in a benefits plan  
10           of the franchisor (such as a health insurance  
11           plan, pension plan, or tuition assistance).

12           “(C) HOURS OF WORK.—A franchisor ex-  
13           ercises direct and immediate control over hours  
14           of work if it actually determines work schedules  
15           or the work hours, including overtime, of a  
16           franchisee’s employees. Such direct and imme-  
17           diate control does not include—

18           “(i) establishing a franchisee’s oper-  
19           ating hours; or

20           “(ii) establishing minimum staffing  
21           levels to satisfy the franchise’s service  
22           standards.

23           “(D) HIRING.—A franchisor exercises di-  
24           rect and immediate control over hiring if it ac-  
25           tually determines which particular employees

1 will be hired or which employees will not be  
2 hired. Such direct and immediate control does  
3 not include—

4 “(i) encouraging or recommending  
5 changes in staffing levels; or

6 “(ii) setting minimal recruiting and  
7 hiring standards, such as those required by  
8 law, for consumer or employee safety, or  
9 for brand protection.

10 “(E) DISCHARGE.—A franchisor exercises  
11 direct and immediate control over discharge if  
12 it actually decides to terminate the employment  
13 of an employee of a franchisee. Such direct and  
14 immediate control does not include—

15 “(i) bringing misconduct or poor per-  
16 formance to the attention of a franchisee  
17 that makes the actual discharge decision;

18 “(ii) expressing a negative opinion of  
19 a franchisee’s employee; or

20 “(iii) setting minimal standards of  
21 performance or conduct, such as those re-  
22 quired by law, for consumer or employee  
23 safety, or for brand protection.

24 “(F) DISCIPLINE.—A franchisor exercises  
25 direct and immediate control over discipline if it

1 actually decides to suspend or otherwise dis-  
2 cipline a franchisee's employee. Such direct and  
3 immediate control does not include—

4 “(i) bringing misconduct or poor per-  
5 formance to the attention of a franchisee  
6 that makes the actual disciplinary decision;

7 “(ii) expressing a negative opinion of  
8 a franchisee's employee; or

9 “(iii) setting minimal standards of  
10 performance or conduct, such as those re-  
11 quired by law, for consumer or employee  
12 safety or for brand protection.

13 “(G) SUPERVISION.—A franchisor exer-  
14 cises direct and immediate control over super-  
15 vision by consistently and directly instructing a  
16 franchisee's employees how to perform their  
17 work or by actually issuing employee perform-  
18 ance appraisals. Such direct and immediate  
19 control does not include—

20 “(i) providing instructions to a  
21 franchisee's employees that are limited and  
22 routine;

23 “(ii) setting brand standards for the  
24 performance of the work;

1 “(iii) offering training materials (in-  
2 cluding training demonstrations) for a  
3 franchisee to use to train the employees of  
4 the franchisee;

5 “(iv) establishing minimum training  
6 requirements for the employees of a  
7 franchisee; or

8 “(v) providing operational support,  
9 guidance, and assistance to the franchisee  
10 to promote and protect the brand’s good-  
11 will and quality of products and services  
12 provided to the consumer.

13 “(H) DIRECTION.—A franchisor exercises  
14 direct and immediate control over direction by  
15 assigning particular employees of a franchisee  
16 their individual work schedules, positions, and  
17 tasks. Such direct and immediate control does  
18 not include offering resources and tools for a  
19 franchisee to consider using to direct the work  
20 schedules, positions, and tasks of the employees  
21 of the franchisee.

22 “(2) ESSENTIAL TERMS AND CONDITIONS OF  
23 EMPLOYMENT.—The term ‘essential terms and con-  
24 ditions of employment’ means wages, benefits, hours

1 of work, hiring, discharge, discipline, supervision,  
2 and direction.

3 “(3) FRANCHISE; FRANCHISEE; FRANCHISOR.—  
4 The terms ‘franchise’, ‘franchisee’, and  
5 ‘franchisor’—

6 “(A) have the meanings given such terms  
7 in section 436.1 of title 16, Code of Federal  
8 Regulations, as in effect on the date of enact-  
9 ment of this section; and

10 “(B) notwithstanding subparagraph (A),  
11 include a franchise, franchisee, and franchisor,  
12 respectively, as defined in section 101 of the  
13 Petroleum Marketing Practices Act (15 U.S.C.  
14 2801).

15 “(4) SUBSTANTIAL DIRECT AND IMMEDIATE  
16 CONTROL.—The term ‘substantial direct and imme-  
17 diate control’—

18 “(A) means direct and immediate control  
19 that has a regular or continuous consequential  
20 effect on an essential term and condition of em-  
21 ployment of a franchisee’s employees; and

22 “(B) does not include direct and imme-  
23 diate control that is only exercised on a spo-  
24 radic, isolated, or de minimis basis.



1       “(b) JOINT EMPLOYMENT.—For the purposes of this  
2 Act, a franchisor may be considered a joint employer of  
3 the employees of a franchisee only if the franchisor pos-  
4 sesses and exercises substantial direct and immediate con-  
5 trol over one or more essential terms and conditions of  
6 employment of the employees of the franchisee.”.

7       (b) FAIR LABOR STANDARDS ACT OF 1938.—The  
8 Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)  
9 is amended by adding at the end of the following:

10 **“SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR**  
11 **FRANCHISING.**

12       “(a) IN GENERAL.—For purposes of this Act, a  
13 franchisor may be considered a joint employer of the em-  
14 ployees of a franchisee only if the franchisor meets the  
15 criteria for a joint employer with a franchisee under sec-  
16 tion 20 of the National Labor Relations Act, except that,  
17 for purposes of determining joint-employer status under  
18 this Act, the terms ‘employee’ and ‘employer’ referenced  
19 in section 20 of the National Labor Relations Act shall  
20 have the meanings given such terms in section 3 of this  
21 Act.”.

22       “(b) DEFINITIONS.—In this section, the terms  
23 ‘franchisor’ and ‘franchisee’ have the meanings given such  
24 terms in section 20(a) of the National Labor Relations  
25 Act.”.

1 **SEC. 4. APPLICABILITY.**

2       This Act, and the amendments made by this Act,  
3 shall not apply to any proceeding that is commenced be-  
4 fore the date of enactment of this Act.