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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To preserve the franchise business model.

IN THE HOUSE OF REPRESENTATIVES

Mr. HERN of Oklahoma introduced the following bill; which was referred to
the Committee on _____

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-

1 tributes goods or services using a franchisor's sys-
2 tem of operations, which typically includes the
3 franchisor's business system and marketing plan,
4 and its service mark, trademark, trade dress, or
5 trade name.

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

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

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

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

6 (5) Inconsistent and expansive views of what
7 constitutes a “joint employer” have impacted the vi-
8 ability of franchising by creating joint employer li-
9 ability based on the franchisor’s exercise of control
10 that is inherent in franchise relationships.

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

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

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

18 “(a) DEFINITIONS.—In this section:

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

23 “(A) WAGES.—A franchisor exercises di-
24 rect and immediate control over wages if it ac-
25 tually determines the wage rates, salary, or

1 other rate of pay that is paid to individual em-
2 ployees of a franchisee or job classifications of
3 employees of a franchisee.

4 “(B) BENEFITS.—A franchisor exercises
5 direct and immediate control over benefits if it
6 actually determines the fringe benefits to be
7 provided or offered to a franchisee’s employees.
8 Such direct and immediate control—

9 “(i) includes selecting the benefit
10 plans (such as health insurance plans and
11 pension plans) or level of benefits provided
12 to a franchisee’s employees; and

13 “(ii) does not include permitting a
14 franchisee, under an arm’s-length contract,
15 to participate in a benefits plan of the
16 franchisor.

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

23 “(i) establishing a franchisee’s oper-
24 ating hours; or

1 “(ii) establishing minimum staffing
2 levels to satisfy the franchise’s service
3 standards.

4 “(D) HIRING.—A franchisor exercises di-
5 rect and immediate control over hiring if it ac-
6 tually determines which particular employees
7 will be hired or which employees will not be
8 hired. Such direct and immediate control does
9 not include—

10 “(i) encouraging, recommending, or
11 requesting changes in staffing levels to ac-
12 complish tasks; or

13 “(ii) setting minimal recruiting and
14 hiring standards, such as those required by
15 law, for consumer or employee safety, or
16 for brand protection.

17 “(E) DISCHARGE.—A franchisor exercises
18 direct and immediate control over discharge if
19 it actually decides to terminate the employment
20 of an employee of a franchisee. Such direct and
21 immediate control does not include—

22 “(i) bringing misconduct or poor per-
23 formance to the attention of a franchisee
24 that makes the actual discharge decision;

1 “(ii) expressing a negative opinion of
2 a franchisee’s employee; or

3 “(iii) setting minimal standards of
4 performance or conduct, such as those re-
5 quired by law, for consumer or employee
6 safety, or for brand protection.

7 “(F) DISCIPLINE.—A franchisor exercises
8 direct and immediate control over discipline if it
9 actually decides to suspend or otherwise dis-
10 cipline a franchisee’s employee. Such direct and
11 immediate control does not include—

12 “(i) bringing misconduct or poor per-
13 formance to the attention of a franchisee
14 that makes the actual disciplinary decision;

15 “(ii) expressing a negative opinion of
16 a franchisee’s employee;

17 “(iii) refusing to allow a franchisee’s
18 employee to perform work under a fran-
19 chise offer or contract; or

20 “(iv) 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 “(G) SUPERVISION.—A franchisor exer-
25 cises direct and immediate control over super-

1 vision by consistently and directly instructing a
2 franchisee's employees how to perform their
3 work or by actually issuing employee perform-
4 ance appraisals. Such direct and immediate
5 control does not include—

6 “(i) providing instructions to a
7 franchisee's employees that—

8 “(I) are limited and routine; and

9 “(II) consist primarily of telling
10 a franchisee's employees what work to
11 perform, or where and when to per-
12 form the work, but not how to per-
13 form the work;

14 “(ii) setting brand standards for the
15 performance of the work;

16 “(iii) offering training materials (in-
17 cluding training demonstrations) for a
18 franchisee to use to train the employees of
19 the franchisee; or

20 “(iv) establishing minimum training
21 requirements for the employees of a
22 franchisee.

23 “(H) DIRECTION.—A franchisor exercises
24 direct and immediate control over direction by
25 assigning particular employees of a franchisee

1 their individual work schedules, positions, and
2 tasks. Such direct and immediate control does
3 not include offering resources and tools for a
4 franchisee to consider using to direct the work
5 schedules, positions, and tasks of the employees
6 of the franchisee.

7 “(2) ESSENTIAL TERMS AND CONDITIONS OF
8 EMPLOYMENT.—The term ‘essential terms and con-
9 ditions of employment’ means wages, benefits, hours
10 of work, hiring, discharge, discipline, supervision,
11 and direction.

12 “(3) FRANCHISE; FRANCHISEE; FRANCHISOR.—
13 The terms ‘franchise’, ‘franchisee’, and ‘franchisor’
14 have the meanings given such terms in section 436.1
15 of title 16, Code of Federal Regulations, as in effect
16 on the date of enactment of this section.

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

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

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

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

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

13 **“SEC. 20. CLARIFICATION OF JOINT EMPLOYMENT FOR**
14 **FRANCHISING.**

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

1 “(b) DEFINITIONS.—In this section, the terms
2 ‘franchisor’ and ‘franchisee’ have the meanings given such
3 terms in section 20(a) of the National Labor Relations
4 Act.”.

5 **SEC. 4. APPLICABILITY.**

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