



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Paul Luzzi

### Am. H.B. 494

132nd General Assembly

(As Reported by H. Government Accountability and Oversight)

Rep. Antani

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## BILL SUMMARY

- Considers, unless an exception applies, a franchisor not to be an employer of a franchisee or a franchisee's employees for purposes of the minimum wage and overtime laws, the Bimonthly Pay Law, the Workers' Compensation Law, the Unemployment Compensation Law, and the Income Tax Law.
  - Considers a franchisor to be the employer of a franchisee or a franchisee's employees if a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customary in a franchise relationship.
  - Allows a franchisor to agree in writing to assume the role of an employer with respect to a franchisee or a franchisee's employees.
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## CONTENT AND OPERATION

### Franchisor not an employer

Under the bill, unless an exception applies a franchisor (see "**Definition of franchise**," below) is not considered the employer of a franchisee or a franchisee's employees for purposes of the following state laws:

- The Minimum Fair Wage Standards Law<sup>1</sup> (governing overtime and minimum wage (see **COMMENT**));<sup>2</sup>

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<sup>1</sup> R.C. Chapter 4111.; see also Ohio const., art. II, sec. 34a.

<sup>2</sup> R.C. 4111.03(D) and 4111.14(B).

- The Bimonthly Pay Law;<sup>3</sup>
- The Workers' Compensation Law;<sup>4</sup>
- The Unemployment Compensation Law;<sup>5</sup>
- The Income Tax Law.<sup>6</sup>

## Exceptions

Under the bill, a franchisor is considered the employer of a franchisee or a franchisee's employees for purposes of the laws listed above if either of the following applies:

- A court of competent jurisdiction determines that the franchisor exercises a type or degree of 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 trademark, brand, or both;
- The franchisor agrees in writing to assume the role of an employer.<sup>7</sup>

## Definition of franchise

Under the bill, a franchise is a continuing commercial relationship or arrangement in which one individual or entity (the "franchisee") obtains from another individual or entity (the "franchisor") one or both of the following rights through a contract with the franchisor or the franchisor's representative:

(1) The right to operate a business that is identified or associated with the franchisor's trademark;

(2) The right to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark.

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<sup>3</sup> R.C. 4113.15 and 4113.16.

<sup>4</sup> R.C. Chapters 4121., 4123., 4127., and 4131.; R.C. 4121.01(A) and 4123.01(B), with conforming changes in R.C. 1349.61, 4123.30, 4123.38, and 4123.77.

<sup>5</sup> R.C. Chapter 4141.; R.C. 4141.01(A).

<sup>6</sup> R.C. Chapter 5747.; R.C. 5747.01(II).

<sup>7</sup> R.C. 4111.03(D), 4111.14(B), 4113.15(D), 4121.01(A), 4123.01(B), 4141.01(A), and 5747.01(II).



The contract must allow the franchisor to exert (or have the authority to exert) a significant degree of control over the franchisee's method of operation or provide significant assistance in the franchisee's method of operation. As a condition of obtaining or starting operation of the franchise, the franchisee must make a required payment to the franchisor or the franchisor's affiliate, or must promise to make that payment.<sup>8</sup>

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## COMMENT

Ohio's minimum wage was established by an amendment to the Ohio Constitution<sup>9</sup> ("Section 34a"). Section 34a states that "employer" has the same meaning as in the federal Fair Labor Standards Act,<sup>10</sup> except that Section 34a adds that "employer" also includes the state and every political subdivision. Section 34a stipulates that the section must be liberally construed in favor of its purposes. The section specifies that laws "may be passed to implement and create additional remedies, increase the minimum wage rate, and extend the coverage of the section, but in no manner restricting any provision of the section." The bill's exclusion of a franchisor from the definition of employer for purposes of the Minimum Wage Law could potentially be viewed as a restriction on Section 34a.<sup>11</sup>

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## HISTORY

ACTION	DATE
Introduced	02-05-18
Reported, H. Government Accountability & Oversight	03-21-18

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<sup>8</sup> R.C. 4111.03(D)(2), 4111.14(B), 4113.15(D), 4121.01(A), 4123.01(B), 4141.01(A), and 5747.01(II) by reference to 16 Code of Federal Regulations 436.1.

<sup>9</sup> Ohio Const., art. II, sec. 34a.

<sup>10</sup> 29 United States Code 201 *et seq.*

<sup>11</sup> R.C. 4111.14.

