**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑1‑130 SO AS TO PROVIDE FRANCHISORS ARE NOT CONSIDERED EMPLOYERS OR CO‑EMPLOYERS OF FRANCHISEES OR FRANCHISEE EMPLOYEES UNLESS THE FRANCHISOR AGREES, IN WRITING, TO ASSUME THE ROLE OF AN EMPLOYER OR CO‑EMPLOYER OF THE FRANCHISEE OR THE EMPLOYEE OF A FRANCHISEE; AND TO PROVIDE NECESSARY DEFINITIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 41 of the 1976 Code is amended by adding:

“Section 41‑1‑130. (A) For purposes of this title, a franchisor is not considered to be an employer or co‑employer of a franchisee or an employee of a franchisee unless the franchisor agrees, in writing, to assume the role of an employer or co‑employer of the franchisee or the employee of a franchisee. These provisions apply notwithstanding a voluntary agreement between the United States Department of Labor and a franchisor.

(B) For the purposes of this section:

(1) ‘Franchise’ means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:

(a) the franchisee will obtain the right to operate a business that is identified or associated with the franchisor‘s trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor‘s trademark;

(b) the franchisor will exert or has 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; and

(c) as a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.

(2) ‘Franchisee’ means any person who is granted a franchise.

(3) ‘Franchisor’ means any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, it includes subfranchisors. For purposes of this definition, a ‘subfranchisor’ means a person who functions as a franchisor by engaging in both presale activities and postsale performance.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑