

# Lawyer Insights

## Understanding California's Proposed Bill on Joint Liability for Franchisors

It would likely impose a significant burden on franchisors who do business in the state.

By Kevin White and Andrew Quigley  
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A new bill winding its way through the California legislature would require franchisors of fast-food restaurants to share civil liability for their franchisees' violations of California's employment laws. AB 1228 was introduced by Democratic Assembly Member Chris Holden, who a year earlier proposed the FAST Recovery Act, which, among other actions, would create a controversial Fast Food Council to establish working conditions for fast food workers. Like The FAST Recovery Act, AB 1228 has drawn the ire of franchisors in California.

### What's In the Bill?

AB 1228 concerns franchisors and franchisees of "fast-food restaurants," a term broadly defined to include restaurants with 100 or more locations nationwide that serve food for immediate consumption with limited or no table service.

The bill has four key provisions. First, it requires fast-food franchisors to share civil liability for its franchisees' violations of a long list of laws, including many of California's employment laws, such as those governing harassment, discrimination, and retaliation; overtime, minimum wages, and timely payment of wages; and workplace safety. The proposed law would also require franchisors to share liability with its franchisees for penalties imposed under the Private Attorneys General Act of 2004, commonly known as PAGA.

Second, AB 1228 prevents franchisees and franchisors from contracting around the proposed law. Specifically, AB 1228 makes void and unenforceable any agreement requiring a fast-food franchisee to indemnify the franchisor for liability resulting from the franchisee's violations of laws the bill addresses.

Third, the proposed law allows franchisees to sue their franchisors for monetary or injunctive relief if the terms of the franchise agreement "prevent or create a substantial barrier for a fast-food restaurant franchisee's compliance with the laws and orders" addressed by the bill, including "because the franchise does not provide for funds sufficient to allow the fast food franchisee to comply with the laws, orders, rules, and regulations."

Finally, the bill requires written notice of an alleged violation and allows a franchisor 30 days to "cure" the violation, which may be extended to 60 days upon the franchisor's written request. A franchisor "cures" the violation, and presumably avoids a legal action, only by abating each violation, confirming that the

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franchisee is in compliance with the underlying laws, and ensuring that any worker who experienced an alleged violation is made "whole."

### **Has the Bill Become Law in California?**

The bill passed the California State Assembly on May 31, 2023, and has been ordered to the Senate. If passed by the Senate, it will head to Governor Gavin Newsom's desk to be signed into law.

### **What are the Arguments in Favor of AB 1228?**

In support of AB 1228, Holden contends that fast food restaurants are "rampant" with violations of California's employment laws and that restaurants operating under the franchise model are the worst offenders. While Holden cites a study from the UCLA Labor Center that found more than half of fast-food workers interviewed or surveyed reported that they experienced wage violations, neither Holden nor the

bill itself cites evidence that the franchise model contributes to those violations or that such violations occur more frequently among franchisee restaurants compared to other establishments. Instead, Holden refers to his own experience as a former fast-food franchisee, explaining, "I know how much pressure maintaining a safe and healthy working environment puts on local owner-operators, especially when global corporations refuse to contribute their share." Other proponents include labor unions and progressive groups, who claim the bill corrects the imbalance of power between franchisees and franchisors.

### **What are the Arguments Against AB 1228?**

More than 50 chambers of commerce throughout California oppose the bill, along with many of the fast-food companies that stand to be impacted by the legislation. These opponents argue that the bill would effectively dismantle the franchise model in California and would destroy the livelihoods of small business owners throughout the state who operate franchise restaurants. According to the opponents, the proposed law improperly assumes that franchisors have control over how small business owners choose to comply with employment laws and treats the business owners not like the entrepreneurs they are, but like middle managers of large corporations.

The bill does not provide evidence that employment law violations occur any more frequently in fast food restaurants than they do in other California businesses, and opponents of the bill point out that the fast-food industry accounts for only 1.6 percent of wage claims in California, while fast food workers make up 3.2 percent of California's workforce. Nor does the bill identify any instance in which a fast-food employee prevailed in a legal action but was unable to collect damages because the franchisee-employer lacked sufficient funds or insurance to pay up. Unless franchisees are systemically undercapitalized, AB 1228 would appear to benefit fast food franchisees who share liability with (and have new legal recourse against) their franchisors, without actually improving the workplace for fast food employees. The bill could even incentivize noncompliance with employment laws because franchisees will be able to share legal liability with their deep-pocketed franchisors.

In short, it is not clear that AB 1228 will have a meaningful positive impact on fast-food workers in California, but it is likely to impose a significant burden on franchisors who do business in the state.

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