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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT****Senator Dave Cortese, Chair****2023 - 2024 Regular**

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<b>Bill No:</b>	AB 1228	<b>Hearing Date:</b>	September 12, 2023
<b>Author:</b>	Holden		
<b>Version:</b>	September 11, 2023		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Alma Perez-Schwab		

**SUBJECT:** Fast food restaurant franchisors and franchisees: joint liability

**KEY ISSUE**

Should the Legislature repeal, revise and recast provisions of the Fast Food Accountability and Standards Recovery Act (FAST Act) to codify changes that have been negotiated and agreed to by both proponents and opponents (seeking a referendum) of AB 257 but only if the referendum is withdrawn by January 1, 2024?

**ANALYSIS**

**Existing law:**

- 1) Provides that the California Occupational Safety and Health Act assures safe and healthful working conditions for all workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)
- 2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, protect and improve the health and safety of workers by proposing, administering, and enforcing occupational safety and health standards. (Labor Code §140 et seq.; §6300 et seq.)
- 3) Establishes, also within DIR, the Division of Labor Standards and Enforcement (DLSE) under the direction of the Labor Commissioner (LC), with the duty to investigate employee complaints and enforce labor laws. (Labor Code §79 et seq.)
- 4) Establishes the Fast Food Accountability and Standards Recovery Act or FAST Recovery Act to, among other things, create the Fast Food Council within the Department of Industrial Relations (DIR) for the purpose of establishing sectorwide minimum standards on wages, working hours, and other working conditions adequate to ensure and maintain the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers, as specified. (Labor Code §1470-1473)
- 5) Defines, for purposes of these provisions, the following:
  - a. “Fast food chain” means a set of restaurants consisting of *100 or more establishments* nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services.

- b. “Fast food restaurant” means any establishment in the state that is part of a fast food chain and that, in its regular business operations, primarily provides food or beverages in the following manner:
  - i. For immediate consumption either on or off the premises.
  - ii. To customers who order or select items and pay before eating.
  - iii. With items prepared in advance, including items that may be prepared in bulk and kept hot, or with items prepared or heated quickly.
  - iv. With limited or no table service. Table service does not include orders placed by a customer on an electronic device.(Labor Code §1470)
- 6) Establishes, until January 1, 2029, the Fast Food Council (Council) as a 10-member council, comprising of fast food employees, worker advocates, franchisors, franchisees, and government officials within DIR and the Governor’s Office of Business and Economic Development (Go-Biz) to provide direction to, and coordinate with, the Governor, executive and local agencies regarding the health, safety, and employment of fast food restaurant workers. (Labor Code §1471)
- 7) Prohibits the Fast Food Council from promulgating, petitioning for, issuing, amending, or repealing, any standards, rules, or regulations, as specified, until after the Director of Industrial Relations receives a petition approving the creation of the Council signed by at least 10,000 California fast food restaurant employees. (Labor Code §1471)
- 8) Provides that any minimum wage established by the Council shall, from January 1, 2023, to December 31, 2023, inclusive, *not be greater than twenty-two dollars (\$22) per hour* and provides that, on January 1, 2024 and annually thereafter, the highest hourly minimum wage that may be established by the council shall increase by no more than the lesser of one of the following, rounded to the nearest ten cents (\$0.10):
  - a. 3.5 percent.
  - b. The rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W).(Labor Code §1471)
- 9) Specifies that nothing in the provisions governing the Council shall be construed to 1) give the Council the authority to create or amend statutes; 2) permit the Council to promulgate regulations creating new paid time off benefits, such as paid sick leave or paid vacation; or 3) permit the Council to promulgate regulations regarding predictable scheduling, as specified. (Labor Code §1471)
- 10) Provides that, to the extent that any minimum standards that the Council finds are reasonably necessary to protect fast food restaurant employee health and safety fall within the jurisdiction of the Occupational Safety and Health Standards Board, the Council is not authorized to promulgate the standards but rather shall petition the board to adopt, amend, or repeal any relevant standards. (Labor Code §1471)

- 11) Requires the Council to conduct a full review of the adequacy of the minimum fast food restaurant health, safety, and employment standards at least once every three years and, upon that review, make necessary changes and/or petitions for changes, as specified. (Labor Code §1471)
- 12) Authorizes a county, or a city with a population of greater than 200,000, to establish a Local Fast Food Council, as specified, to periodically hold meetings that are open to the public, at which the public, including fast food restaurant employees, shall have the opportunity to be heard on issues of local fast food restaurant health, safety, and employment conditions. A Local Fast Food Council may provide written recommendations to the state Council regarding minimum state health, safety, and employment standards, including training, that the Local Fast Food Council finds are reasonably necessary to protect the health, safety, and welfare of fast food restaurant workers. A Local Fast Food Council shall operate independently from the council. (Labor Code §1471)
- 13) Requires the Labor Commissioner, the Division of Labor Standards Enforcement, and the Occupational Safety and Health to enforce the fast food restaurant standards promulgated by the Council, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation, through the procedures set forth in existing law, as specified. (Labor Code §1471)
- 14) Provides that a standard promulgated by the Council shall not supersede a standard covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and a regular hourly rate of pay not less than 30 percent more than the state minimum wage for those employees, if the agreement provides equivalent or greater protection than the standards established by the council and if state law on the same issue authorizes an exception for employees covered by a collective bargaining agreement. (Labor Code §1471)
- 15) Provides that on January 1, 2029, the provisions creating the Council and its authorities shall become inoperative, and the council shall cease operations. (Labor Code §1471)
- 16) Prohibits a fast food restaurant operator from discharging or in any manner discriminating or retaliating against any employee for, among other things, making a complaint or disclosing information to a person with authority to investigate, discover, or correct the violation or noncompliance, to the media, to the Legislature, or to a watchdog or community based organization, or a governmental agency regarding employee or public health or safety. Also protects employees refusing to work in violation of public health and safety laws, as specified. (Labor Code §1472)
- 17) Provides that any employee discharged or otherwise discriminated or retaliated against, as specified, shall have a right of action for, and shall be entitled to, reinstatement, and treble the lost wages and work benefits caused by the discrimination or retaliation, and the employee's reasonably incurred attorney's fees and costs. Additionally, includes a rebuttable presumption of unlawful discrimination or retaliation if a fast food operator discharges or takes any other adverse action against an employee within 90 days of the operators' knowledge that the employee took any of the protected actions specified in (18) above. (Labor Code §1472)

- 18) Pursuant to a referendum petition, the provisions of the FAST Recovery Act have been suspended and are effective only if approved as a referendum measure at the November 5, 2024 election.

**This bill:**

- 1) Repeals existing provisions of the FAST Recovery Act, Sections 1470, 1471, 1472, and 1473, revises and recasts these provisions to make several changes to the Act but only if Referendum No. 1939 (Attorney General No. 22-0005) has been withdrawn by its proponents by January 1, 2024.
- 2) Provides various relevant definitions, including, among others, the following:
  - a. “National fast food chain” means a set of limited-service restaurants consisting of more than *60 establishments* nationally (was previously 100) that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises where patrons generally order or select items and pay before consuming, with limited or no table service. For purposes of these definitions, “limited-service restaurant” includes, but is not limited to, an establishment with the North American Industry Classification System Code 722513.
  - b. “Fast food restaurant” means a limited-service restaurant in the state that is part of a national fast food chain. Exempts from this definition, an establishment operating as a bakery that produces bread for sale on the establishment’s premises, as specified.
    - i. *These definition updates do not change the nature of which fast food/quick service restaurants are covered and retains much of the existing definitions in the FAST Act.*
- 3) Consistent with the existing FAST Act, specifies that the Council’s purposes are to establish *fast food restaurant minimum standards* on wages, and develop fast food restaurant minimum standards on working hours, and other working conditions adequate to ensure and maintain the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers and to ensure and effect interagency coordination and prompt agency responses regarding issues affecting the health, safety, and employment of fast food restaurant workers.
- 4) Modifies the composition of the Council to reduce its size from ten to nine members and remove the agency representatives (one from DIR and one from Go-Biz) as voting members of the Council and instead adds one unaffiliated member of the public to the Council, as specified. One representative from DIR and one representative from Go-Biz shall be nonvoting members of the Council.
- 5) Provides that the unaffiliated member of the public shall be the chairperson of the Council.
- 6) Specifies that the Council shall provide direction to, and coordinate with, state agencies regarding the health, safety and employment of fast food restaurant workers – striking (from the existing FAST Act) references to coordinating with the Governor and local agencies.

- 7) Strikes provisions from the existing FAST Act that would have required a petition signed by at least 10,000 California fast food restaurant employees before the Council could promulgate, petition for, issue, amend, or repeal any standards, rules or regulations.
- 8) Requires the Council to convene its first meeting by no later than March 15, 2024.
- 9) In developing minimum fast food restaurant employment standards, authorizes the Council to take account of regional difference.
- 10) Strikes from the existing FAST Act, the Council's sole authority to promulgate minimum fast food restaurant standards to instead include state agency involvement by specifying that all standards, rules and regulations developed by the Council shall be issued, amended, or repealed per existing Administrative Procedure Act rulemaking provisions and subject to the following:
  - a. With the exception of standards regarding the minimum wage, specifies that the Labor Commissioner shall be responsible for issuing, amending, or repealing, as applicable, standards developed by the Council, as specified.
  - b. Requires the Council to send proposed written standards to the LC and request that the commissioner prepare a notice of proposed rulemaking action.
  - c. Upon receiving such request, the LC shall determine whether the proposed written standards are consistent with the council's authority and rulemaking law, as specified, and if it so, the LC shall prepare and submit to the Office of Administrative Law a notice of proposed rulemaking action, as specified.
- 11) Provides that, if the LC determines that the proposed standards are not consistent with the council's authority or do not meet the rulemaking criteria, the LC shall, within 60 days of receiving the council's rulemaking request, provide the council with a written explanation of the reasons for that determination and allows the council to modify its proposal as appropriate.
- 12) Grants the LC responsibility and authority to carry out the specified rulemaking requirements per Sections 11346.8 and 11346.9 of the Government Code.
- 13) Strikes from the existing FAST Act, provisions requiring the Council to submit, to the appropriate committees on labor of each house of the Legislature, a report that contains a copy of proposed standards, repeals, or amendments and a statement of the council's reasons for adopting them by January 15 and prohibition on those going into effect before October 15 of that same year. Also strikes provisions specifying that nothing restrains the Legislature from enacting legislation that prevents a standard, repeal, or amendment from taking effect.
- 14) Maintains the requirement in the FAST Act that the Council provide information as requested by the appropriate committees of the Legislature on labor to facilitate a review of the council's performance and standards, which review may be conducted in a joint hearing held every three years or as otherwise designated by the appropriate committees of the Legislature on labor.
- 15) Modifies the minimum wage provisions in the FAST Act to specify that, effective April 1, 2024, the hourly minimum wage for fast food restaurant employees shall be twenty dollars (\$20) per hour. Thereafter, and only until January 1, 2029 when the Council ceases to

operate, provides that the Council *may* establish annual fast food restaurant employee minimum wage increases as follows:

- a. No more than the lesser of the following, rounded to the nearest ten cents (\$0.10):
  - i. 3.5 percent; or
  - ii. The rate of change in the annual United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W), as specified.
- 16) In establishing the annual minimum wage increases, authorizes the Council to elect to set minimum standards that vary by region or to set a statewide minimum wage increase.
- 17) Specifies that the minimum wage for fast food restaurant employees shall be enforced by the LC through the existing enforcement procedures of the Labor Code, or by a covered worker through a civil action, through the same means and with the same relief available for violations of any other state minimum wage requirement.
- 18) Requires DIR to update specified wage orders to be consistent with any minimum hourly wage adopted by the council and any other standards or requirements developed by the Council and adopted by the LC, as specified, except that any existing provisions providing greater protections or benefits shall continue in full force and effect.
- 19) Strikes provisions in the FAST Act requiring annual increases to the minimum wage, as specified, after January 1, 2029 when the Council is no longer operative.
- 20) Prohibits the Council from establishing any minimum wage increase that takes effect commencing on a date after the 2029 calendar year (when the provisions of the Council become inoperative), however, authorizes the Council to provide advice to any appropriate state agencies regarding minimum wage increases that would take effect commencing on a date on or after January 1, 2030.
- 21) Adds provisions specifying that to the extent that any minimum standards that the Fast Food Council finds are necessary fall within the jurisdiction of the Civil Rights Council, as defined, the Fast Food Council shall petition the Civil Rights Council for the adoption, amendment, or repeal of any such regulation.
- 22) Requires the Civil Rights Council to consider and respond to the petition no later than six months following receipt of the petition, or within no more than three months if the petition relates to an emergency, as defined, and prohibits the Civil Rights Council from adopting a recommended standard that would reduce protections provided under the California Fair Employment and Housing Act or other law within the Civil Rights Council's jurisdiction.
- 23) Maintains from the FAST Act, provisions specifying that the Council does not have the authority to create or amend statutes; can't set regulations creating new paid time off benefits, such as paid sick leave or paid vacation, or predictable scheduling.
- 24) Strikes from the FAST Act, provisions authorizing a county, or a city with a population of greater than 200,000, to establish a Local Fast Food Council to hold public meetings and provide written recommendation to the state Council regarding minimum health, safety and employment standards that the local council finds necessary but maintains local coordination provisions, outlined in (25) below.

- 25) Modifies FAST Act provisions around local agency meetings, to specify that the Council may coordinate with local agencies and *request* that they hold public meetings or hearings, at which the public, including fast food restaurant employees, shall have the opportunity to be heard on issues of fast food restaurant health, safety, and employment conditions. After these meetings or hearings, the Council may request information from the local agencies, including any recommendations for action by the council.
- 26) Maintains existing Labor Commissioner enforcement provisions, as specified, and remedies for violations as currently found in the FAST Act.
- 27) Provides that the Labor Commissioner is authorized to issue any other rules, regulations, and guidance necessary for the enforcement of these provisions, as specified.
- 28) Preempts any local municipalities from establishing higher minimum wages, by prohibiting any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees from being enacted or enforced by any city, county, or city and county, including charter cities, charter counties, and charter cities and counties. However, these provisions do not preclude any employer from establishing higher wage or compensation rates for its employees or contracted employees.
- 29) Specifies that the above prohibition does not preclude a city, county, or city and county, including charter cities, charter counties, and charter cities and counties, from establishing a minimum wage that is generally applicable to all industries.
- 30) Specifies that all provisions, with some exceptions, become inoperative as of January 1, 2029 (consistent with the existing FAST Act provisions) and the Council shall cease operations but specifies that any standards adopted by the appropriate agencies pursuant to these provisions shall not be impacted by the cessation of the Council.
- 31) Modifies but maintains provisions around unlawful discharge or discrimination of employees, to specify that, consistent with existing Labor Code protections, a fast food restaurant operator shall not discharge or in any manner discriminate or retaliate against any employee due to the employee's participation in or testimony to any proceeding convened by the Council, as specified. The bill also deems the Council a governmental agency for purposes of these prohibitions.
- 32) Strikes from the FAST Act, provisions granting any employee of a fast food restaurant operator discharged or otherwise discriminated or retaliated against a right of action and prescribed remedies for such violations.
- 33) Strikes from the FAST Act, a rebuttable presumption of unlawful discrimination or retaliation if a fast food restaurant operator discharges or take any adverse employment action against one of its employees within 90 days following the date when the operator had knowledge of that employee's action or actions, as specified.
- 34) Specifies that these new provisions of the FAST Act shall become operative and shall take effect commencing January 1, 2024, only if Referendum No. 1939 (Attorney General No. 22-0005) has been withdrawn by its proponents by January 1, 2024. If that referendum has not

been withdrawn by its proponents by January 1, 2024, these new provisions shall become inoperative on January 1, 2024, and as of that date, are repealed.

- 35) Finds and declares that establishing uniform statewide regulation of certain aspects of minimum wage for fast food restaurant workers is a matter of statewide concern and directs specified provisions to apply to all cities, including charter cities.

## COMMENTS

### 1. Background: Workplace Health and Safety of Fast Food Workers

California employers have a legal obligation to provide and maintain a safe and healthful workplace for their employees as well as abide by minimum wage and labor standards required under the Labor Code. In spite of these protections, wage theft and labor law violations continue to be a problem many workers face. According to a Department of Industrial Relations (DIR) Labor Enforcement Task Force April 16, 2021<sup>1</sup> report to the Legislature, over the last couple of years, nine out of ten businesses inspected were found to be out of compliance by at least one LETF partner agency. In addition, LETF assessed over \$8.3 million in wages due to workers.

Because of the continuing impacts of COVID-19 and increased costs of living, workers in California are struggling to make ends meet. A University of California Los Angeles Labor Center report, *“The Fast-Food Industry and COVID-19 in Los Angeles,”* found that “fast-food workers were more than twice as likely as other workers to fall below the federal poverty line, and more than one-and-one-half times more likely to be uninsured. Low wages caused two-thirds to enroll in a safety net program—at a public cost of \$1.2 billion. Nearly seven in ten fast-food workers were women vulnerable to sexual harassment in the industry. Further, we reviewed studies that showed that even before COVID-19, fast-food workers in Los Angeles County faced disproportionately high rates of injury, workplace violence, harassment, retaliation, and wage theft.”

### 2. AB 257 FAST Recovery Act Passage and Referendum:

Last year, AB 257 (Holden, Chapter 246, Statutes of 2022) enacted the Fast Food Accountability and Standards Recovery Act or FAST Recovery Act. As noted under existing law above, the FAST Act created the Fast Food Council to establish sectorwide minimum standards on wages, working hours, and other working conditions adequate to ensure the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers. AB 257 was opposed by various organizations, including the California Chamber of Commerce, California Restaurant Association and the International Franchise Association.

Not long after AB 257 was signed by the Governor, a coalition of California small business owners, restaurateurs, franchisees and related entities, organized as Save Local Restaurants, submitted a referendum petition challenging AB 257. AB 257 was set to go into effect on January 1, 2023 before a Sacramento judge put it on hold on December 30, 2022 in response

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<sup>1</sup> Labor Enforcement Task Force Report to the Legislature, April 16, 2021. <https://www.dir.ca.gov/letf/LETF-Legislative-Report-2021.pdf>



to a lawsuit filed by fast-food industry group Save the Restaurants seeking to halt the law from going into effect before it could collect 1 million petition signatures to qualify the referendum.

On January 24, 2023, the California Secretary of State completed its verification process and qualified the referendum (Referendum No. 1939 (Attorney General No. 22-0005)) for the November 5, 2024 ballot. The law will not take effect unless it is approved by voters in the November 2024 election.

### **3. Need for this bill?**

This bill, AB 1228 (Holden), as introduced this year, would have required that a fast food restaurant franchisor share with its fast food restaurant franchisee all civil legal responsibility and civil liability for the franchisee's violations of prescribed laws and orders or their implementing rules or regulations. These joint liability provisions were also in versions of AB 257 but were amended out of the bill on August 25, 2022.

On September 11, 2023, AB 1228 was amended to strike all the joint liability provisions and instead codify an agreement that has been reached between the proponents of AB 257 and opposition (Save Local Restaurants – seeking the referendum of AB 257) that would repeal the existing FAST Act provisions, revise and recast them but only if the AB 257 referendum has been withdrawn by its proponents by January 1, 2024.

According to the author, “AB 1228, as amended, creates a path forward to resolve employer community concerns around the content of AB 257 (2022) while preserving fast food workers' hard fought efforts to secure a seat at the table and means to raise standards. The joint liability provisions of AB 1228 will be replaced with an updated version of AB 257's Fast Food Council that will go into effect providing the referendum is withdrawn by January 1, 2024.”

### **4. Proponent Arguments:**

According to a coalition of labor and community advocates, “for the last decade, fast-food cooks, cashiers and baristas in California have been sounding the alarm on the poverty pay and unsafe working conditions plaguing the industry. Fast-food workers and community allies across the state have demanded that workers get a seat at the table to resolve these critical issues.” They argue that “new amendments to AB 1228, the Fast Food Franchisor Responsibility Act, were introduced to build on what was won under AB 257. Contingent upon the fast-food industry dropping their referendum against AB 257, the amendments to AB 1228 clear the path for fast-food workers to start making much-needed improvements to their wages and working conditions.”

According to the International Franchise Association, the National Restaurant Association and Save Local Restaurants, this agreement reflects the best interest of workers, local franchised restaurant owners and restaurant brands by: 1) protecting the franchise business model that provides opportunities for thousands of diverse Californians to become small business owners; 2) provides meaningful wage increases for workers; and 3) eliminates significant – and potentially existential – threats, costs, and regulatory burdens targeting local restaurants in California.

**5. Opponent Arguments:**

None received.

**6. Prior and Related Legislation:**

AB 1228 (Holden, 2023): the previous version of this bill also dealt with the fast food industry and would have required that a fast food restaurant franchisor share with its fast food restaurant franchisee all civil legal responsibility and civil liability for the franchisee's violations of prescribed laws and orders or their implementing rules or regulations. Joint liability provisions were also in versions of AB 257 but were amended out of the bill on August 25, 2022.

AB 421 (Bryan, Chapter 162, Statutes of 2023), signed into law on September 8, 2023, requires the top funders be listed in the state voter information guide for a referendum measure, as specified. This bill also recasts the ballot question and responses for a referendum measure, as specified. Finally, this bill changes the certification timeline for statewide referendum allowing for additional time for proponents of a statewide referendum measure to withdraw the measure, as specified. AB 421 was a key to AB 1228 moving in this direction because it created a process for proponents of a referendum to withdraw their measure from the ballot until 131 days before the election, this process already existed for other statewide initiatives but not for efforts to overturn a law passed through the legislative process.

AB 257 (Holden, Chapter 246, Statutes of 2022) enacted the Fast Food Accountability and Standards Recovery Act to, among other things, establish the Fast Food Council within the Department of Industrial Relations, with a sunset date of January 1, 2029, for the purpose of establishing sectorwide minimum standards on wages, working hours, and other working conditions related to the health, safety, and welfare of, and supplying the necessary cost of proper living to, fast food restaurant workers.

**SUPPORT**

Action Center on Race and the Economy  
Amigos de Guadalupe Center for Justice and Empowerment  
California Alliance for Retired Americans  
California Rural Legal Assistance Foundation  
CARAS Gilroy  
Clergy and Laity United for Economic Justice  
Fight for \$15  
Indivisible CA: StateStrong  
International Franchise Association  
Media Alliance  
National Restaurant Association  
North Bay Jobs with Justice  
PowerSwitch Action  
Santa Cruz Climate Action Network  
Save Local Restaurants  
SEIU California

Silicon Valley Rising Action  
United for Respect  
Working Partnerships USA  
Worksafe

**OPPOSITION**

None received

**-- END --**