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**HOUSE BILL NO. 1394**

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on February 13, 2017)

(Patron Prior to Substitute—Delegate Head)

*A BILL to amend and reenact § 40.1-2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 40.1-2.2, relating to the status of a franchisee and its employees as employees of the franchisor.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 40.1-2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 40.1-2.2 as follows:**

**§ 40.1-2. Definitions.**

As used in this title, unless the context clearly requires otherwise, the following terms have the following meanings:

"Board" means the Safety and Health Codes Board.

"Business establishment" means any proprietorship, firm or corporation where people are employed, permitted or suffered to work, including agricultural employment on a farm.

"Commission" means the Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to "Commissioner" shall include his authorized representatives.

"Department" means the Department of Labor and Industry.

"Employ" ~~shall include~~ *includes* to permit or suffer to work.

"Employee" means any person who, in consideration of wages, salaries, or commissions, may be permitted, required, or directed by any employer to engage in any employment directly or indirectly, *except as otherwise provided in § 40.1-2.2.*

"Employer" means an individual, partnership, association, corporation, legal representative, receiver, trustee, or trustee in bankruptcy doing business in or operating within this Commonwealth who employs another to work for wages, salaries, or on commission and shall include any similar entity acting directly or indirectly in the interest of an employer in relation to an employee.

"Female" or "woman" means a female 18 years of age or over.

"Franchisee" and "franchisor" have the same meaning ascribed to such terms in 16 C.F.R. § 436.1.

"Machinery" means machines, belts, pulleys, motors, engines, gears, vats, pits, elevators, conveyors, shafts, or tunnels, including machinery being operated on farms in connection with the production or harvesting of agricultural products.

**§ 40.10-2.2. Application of title to franchisees or employees of franchisees.**

A. Notwithstanding any voluntary agreement entered into between the U.S. Department of Labor and a franchisee or a franchisor, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisee's franchisor.

B. With respect to a specific claim for relief under this title made by a franchisee or a franchisee's employee, subsection A does not apply if the franchisor has been found by a court of competent jurisdiction in the Commonwealth to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.