

117TH CONGRESS  
2D SESSION

# S. 4976

To amend the Trademark Act of 1946 to provide that the licensing of a mark for use by a related company may not be construed as establishing an employment relationship between the owner of the mark, or an authorizing person, and either that related company or the employees of that related company, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2022

Mr. KING (for himself, Mr. LANKFORD, Mr. TILLIS, Ms. COLLINS, Mr. MANCHIN, Mr. CORNYN, and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Trademark Act of 1946 to provide that the licensing of a mark for use by a related company may not be construed as establishing an employment relationship between the owner of the mark, or an authorizing person, and either that related company or the employees of that related company, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trademark Licensing  
5 Protection Act of 2022”.

1 **SEC. 2. SAFE HARBOR.**

2 Section 5 of the Act entitled “An Act to provide for  
3 the registration and protection of trademarks used in com-  
4 merce, to carry out the provisions of certain international  
5 conventions, and for other purposes”, approved July 5,  
6 1946 (commonly known as the “Trademark Act of 1946”)  
7 (15 U.S.C. 1055), is amended—

8 (1) in the first sentence, by striking “Where a”  
9 and inserting the following:

10 “(a) IN GENERAL.—Where a”; and

11 (2) by adding at the end the following:

12 “(b) CONSISTENCY IN USE.—

13 “(1) DEFINITIONS.—In this subsection—

14 “(A) the term ‘authorizing person’ means  
15 a person that is authorized by the owner of a  
16 mark to license that mark for use by a related  
17 company;

18 “(B) the term ‘communicate’, with respect  
19 to subparagraph (D)(i)(II), does not include  
20 any communication related to a personnel or  
21 employment policy or procedure;

22 “(C) the term ‘employment relationship’  
23 means any type of joint employer relationship,  
24 single employer relationship, or other employ-  
25 ment-related status or relationship;

1           “(D) the term ‘exercise control over the  
2           mark’—

3                   “(i) includes, but is not limited to, re-  
4                   quiring a related company to—

5                           “(I) complete training conducted  
6                           for the purpose of preserving or en-  
7                           hancing goodwill, a reputation, uni-  
8                           formity, or the expectation of the pub-  
9                           lic with respect to the nature and  
10                          quality of goods or services associated  
11                          with a mark; or

12                           “(II) communicate with the  
13                           owner of a mark, or an authorizing  
14                           person, with respect to preserving or  
15                           enhancing goodwill, a reputation, uni-  
16                           formity, or the expectation of the pub-  
17                           lic with respect to the nature and  
18                           quality of goods or services associated  
19                           with a mark; and

20                          “(ii) does not include any personnel or  
21                          employment policy or procedure that is  
22                          communicated—

23                                  “(I) by—

24    “(aa) the owner of a mark;  
25    or

1 “(bb) an authorizing person;

2 and

3 “(II) to—

4 “(aa) a related company  
5 with respect to the mark; or

6 “(bb) any employee of a re-  
7 lated company described in item  
8 (aa);

9 “(E) the term ‘franchise’ means a fran-  
10 chise, as defined—

11 “(i) in section 436.1(h) of title 16,  
12 Code of Federal Regulations, as in effect  
13 on the date of enactment of this sub-  
14 section; or

15 “(ii) under an applicable State fran-  
16 chise law;

17 “(F) the term ‘franchisee’ means a  
18 franchisee, as defined—

19 “(i) in section 436.1(i) of title 16,  
20 Code of Federal Regulations, as in effect  
21 on the date of enactment of this sub-  
22 section; or

23 “(ii) under an applicable State fran-  
24 chise law;

1           “(G) the term ‘franchisor’ means a  
2 franchisor, as defined—

3           “(i) in section 436.1(k) of title 16,  
4 Code of Federal Regulations, as in effect  
5 on the date of enactment of this sub-  
6 section; or

7           “(ii) under an applicable State fran-  
8 chise law; and

9           “(H) the term ‘personnel or employment  
10 policy or procedure’ means—

11           “(i) any contractually retained right  
12 of the owner of a mark, or an authorizing  
13 person, to directly control a related com-  
14 pany’s hiring, promotion, firing, or dis-  
15 cipline of the employees of such related  
16 company;

17           “(ii) any contractually retained right  
18 of the owner of a mark, or an authorizing  
19 person, to directly control a related com-  
20 pany’s rates of pay, including wages and  
21 fringe benefits;

22           “(iii) any contractually retained right  
23 of the owner of a mark, or an authorizing  
24 person, to directly control a related com-

1           pany’s assignment of employee work sched-  
2           ules;

3           “(iv) any contractually retained right  
4           of the owner of a mark, or an authorizing  
5           person, to directly control collective bar-  
6           gaining procedures or labor relations; and

7           “(v) any contractually retained right  
8           of the owner of a mark, or an authorizing  
9           person, to directly supervise the employees  
10          of a related company.

11          “(2) APPLICABILITY.—For the purposes of the  
12          National Labor Relations Act (29 U.S.C. 151 et  
13          seq.) and the Fair Labor Standards Act of 1938 (29  
14          U.S.C. 201 et seq.), none of the following may be  
15          construed, alone or in combination with any other  
16          factor, as establishing an employment relationship  
17          between the owner of a mark that is a franchisor,  
18          or an authorizing person that is a franchisor, and a  
19          related company with respect to that franchisor, or  
20          the employees of that related company:

21                 “(A) The licensing of the mark for use by  
22                 that related company or the employees of that  
23                 related company.

1           “(B) Any exercise of control over the mark  
2           by that owner or authorizing person, as applica-  
3           ble—

4                   “(i) with respect to the use of the  
5                   mark by that related company or the em-  
6                   ployees of that related company; and

7                   “(ii) for the purpose of preserving or  
8                   enhancing goodwill, a reputation, uni-  
9                   formity, or the expectation of the public  
10                  with respect to the nature and quality of  
11                  goods or services associated with the  
12                  mark.”.

13 **SEC. 3. APPLICABILITY.**

14           This Act, and the amendments made by this Act,  
15 shall not apply to any proceeding before the National  
16 Labor Relations Board that is commenced before the date  
17 of enactment of this Act.

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