

117TH CONGRESS  
1ST SESSION

# S. 1636

To clarify the treatment of 2 or more employers as joint employers under the National Labor Relations Act and the Fair Labor Standards Act of 1938.

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## IN THE SENATE OF THE UNITED STATES

MAY 13, 2021

Mr. MARSHALL (for himself, Mr. SCOTT of South Carolina, Mr. INHOFE, Mr. BURR, Mr. CASSIDY, and Mr. BRAUN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To clarify the treatment of 2 or more employers as joint employers under the National Labor Relations Act and the Fair Labor Standards Act of 1938.

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 “Save Local Business  
5       Act”.

1 **SEC. 2. CLARIFICATION OF JOINT EMPLOYMENT.**

2 (a) NATIONAL LABOR RELATIONS ACT.—Section  
3 2(2) of the National Labor Relations Act (29 U.S.C.  
4 152(2)) is amended—

5 (1) by striking “The term ‘employer’” and in-  
6 serting “(A) The term ‘employer’”; and

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

8 “(B) An employer may be considered a joint employer  
9 of the employees of another employer only if each employer  
10 directly, actually, and immediately exercises significant  
11 control over the essential terms and conditions of employ-  
12 ment of the employees of the other employer, such as hir-  
13 ing such employees, discharging such employees, deter-  
14 mining the rate of pay and benefits of such employees,  
15 supervising such employees on a day-to-day basis, assign-  
16 ing such employees a work schedule, position, or task, or  
17 disciplining such employees.”.

18 (b) FAIR LABOR STANDARDS ACT OF 1938.—Section  
19 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C.  
20 203(d)) is amended—

21 (1) by striking “‘Employer’ includes” and in-  
22 serting “(1) ‘Employer’ includes”; and

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

24 “(2) An employer may be considered a joint employer  
25 of the employees of another employer for purposes of this  
26 Act only if each employer meets the criteria set forth in

1 section 2(2)(B) of the National Labor Relations Act (29  
2 U.S.C. 152(2)(B)) except that, for purposes of deter-  
3 mining joint-employer status under this Act, the terms  
4 ‘employee’ and ‘employer’ referenced in such section shall  
5 have the meanings given such terms in this section.”.

