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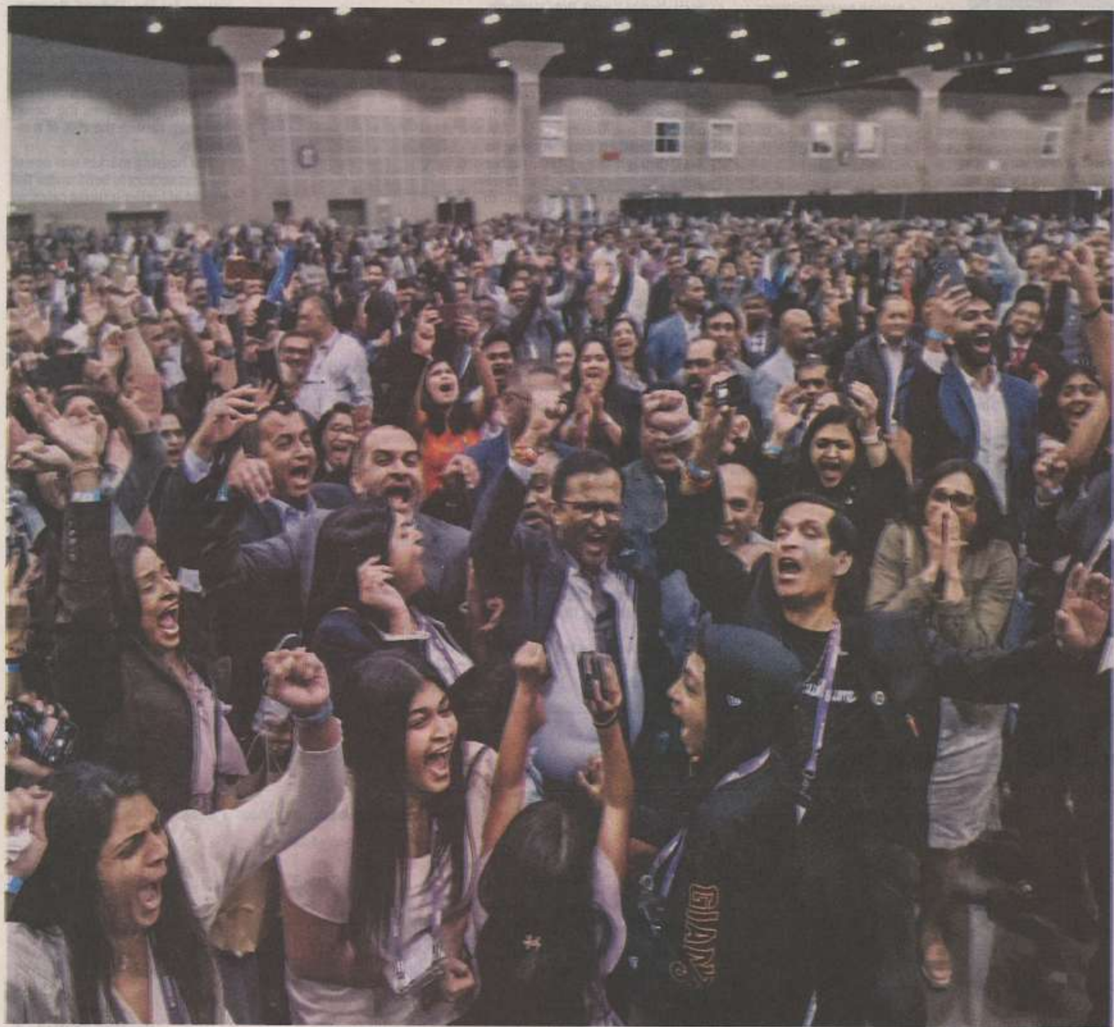
Rain and snow showers are forecast in the Upper Midwest today. Thunderstorms with strong winds and hail are likely in the lower Mississippi Valley. Weather map, Page B8.

VOL. CLXXII .... No. 59,765 FRIDAY, APRIL 21, 2023 Prices in Canada may be higher $4.00

Discontented Franchisees Seek A Bigger Say in Their Business



MARK ABRAMSON FOR THE NEW YORK TIMES
Members of the Asian American Hotel Owners Association at a conference this week after electing officers. The group's chief executive says hotel owners are frustrated with franchisers.

Franchisers say the foundation of how their industry operates is under assault at the state and federal levels.

By LYDIA DePILLIS

When you visit a McDonald's, a Jiffy Lube or a Hilton Garden Inn, you may assume you're visiting one business. More likely, you're actually visiting two: the operator of that particular location, known as the franchisee, and the larger company that owns the intellectual property behind it, or the franchiser.

Conflict is inherent in that relationship, but it's hit a boil in recent months, as franchisees say they're being squeezed out of the profits their business generates through new fees, required vendors and constraints on their ability to sell.

On Monday, the Government Accountability Office released a report finding that franchisees "do not enjoy the full benefit of the risks they bear," citing interviews with dozens of small business owners who said they lacked control over basic operations that determined their ability to earn a profit.

HAIYUN JIANG/THE NEW YORK TIMES
Franchisers have been largely successful in heading off new laws, which the chief executive of McDonald's has described as an existential threat.

They've found a sympathetic ear in the Biden administration and in several state legislatures, giving rise to a growing wave of proposals to limit the power of franchisers.

Franchisers have been largely successful in heading off new laws and rules, which the chief executive of McDonald's, Chris Kempczinski, has described as an existential threat.

"The reality is that our business model is under attack," he said in February at the convention of the International Franchise Association, a trade group for franchisers,

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Franchisees Seek a Bigger Say in Their Business

FROM FIRST BUSINESS PAGE

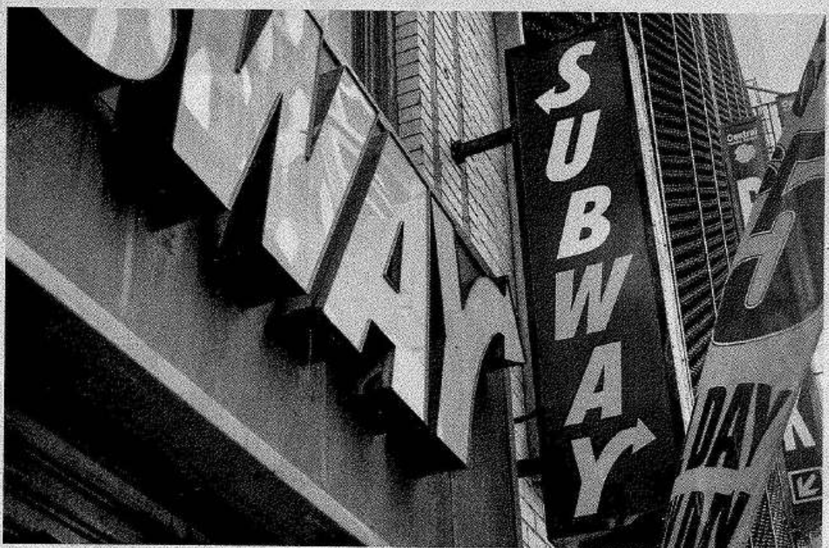
franchisees and franchise suppliers. "If you're not paying attention to these pieces of legislation because you think they don't impact you, think again."

Franchising has been a feature of American capitalism for decades, allowing brands to grow quickly using investment from entrepreneurs who commit their own capital in exchange for a business plan and a logo that consumers might recognize. The Federal Trade Commission requires franchisers to disclose factors including start-up costs and the company's financial performance to those considering buying a franchise, and some state laws govern considerations like transfer rights.

But much of the relationship is largely unregulated — changes a franchiser can make to contracts, for example, and which vendors can be required.

Keith Miller, a Subway franchisee in California who has become an advocate for franchisee rights, said the lack of oversight had given rise to an increasing number of disputes. "There's more of a squeeze on the franchisees than ever," he said. Franchisees' royalty payments used to cover things like marketing, new menus and sales tools, he added, but "now you seem to have to pay for your services."

MARK ABRAMSON FOR THE NEW YORK TIMES



CARLO ALLEGRI/REUTERS

Above center, Laura Lee Blake, the leader of the Asian American Hotel Owners Association. A Subway franchisee says a lack of oversight has given rise to more disputes.

The franchise industry says that its business model remains beneficial to individual owners, and that additional regulation would protect substandard franchisees at everyone else's expense. Matthew Haller, chief executive of the International Franchise Association, cited a 2021 survey by the market research firm Franchise Business Review in which 82 percent of franchisees said they supported their corporate leadership.

But legislative battles at the state level reflect rising tension.

Hotel franchisees, squeezed by lost revenue during pandemic lockdowns, say they have also been hurt by the hotel brands' loyalty programs, which require the hotelier to rent rooms at a reduced rate. A bill in New Jersey that would limit those loyalty programs, as well as rebates that brands can collect from vendors that franchisees are required to use, faces fierce opposition from the American Hotel and Lodging Association. In a statement, the association's chief executive, Chip Rogers, said the bill would "completely undermine the foundation of hotel franchising by limiting a brand's ability to enforce brand standards."

Laura Lee Blake, the chief executive of the 20,000-member Asian American Hotel Owners Association, said hoteliers had reached desperation. "There comes a point when you've tried and tried to meet with the franchisers to ask for changes, and they refuse to listen," she said.

In Arizona, legislation introduced to enhance franchisees' ability to sell their businesses and prevent retaliation from franchisers if they band together in associations has also faced resistance. The bill was approved by two committees in February and March, but the International Franchise Association hired two lobbying firms to fight it.

In a Republican caucus meeting, opponents attacked the legislation as a "sledgehammer" that would bring the government into private business relationships. The bill's sponsor, Representative Anastasia Travers, a freshman Democrat, said she was taken aback by how quickly opposition snowballed, and ultimately gave up on it for the 2023 session.

"Time has not been my friend," Ms. Travers said.

A similar bill in Arkansas, which the International Franchise Association initially said would be "the most extreme franchise regulation of any state," was amended to strip entire sections, including one that would have prevented franchisers from imposing any requirement that "unreasonably changes" the financial terms of the relationship as a condition of renewal or sale.

After the bill was slimmed down — leaving provisions such as one restoring the existing statute, which had been rendered ineffective by a subsequent law, and another requiring the franchiser to establish material cause before terminating the franchise — the industry group withdrew its opposition, allowing swift passage.

In an email to supporters before the votes, the franchise association's vice president for state and local government relations, Jeff Hanscom, credited the Arkansas agribusiness giant Tyson Foods for being "instrumental in negotiating this outcome." Tyson Foods did not respond to a request for comment.

At the federal level, franchisers may face greater challenges.

The Biden administration is moving on two fronts. One is the Federal Trade Commission, which issued a request in March for information about the ways in which franchisers control franchisees. The initiative could result in additional guidance or rules — putting the industry on high alert.

The second front is the National Labor Relations Board, which has proposed making it easier for franchisers to be designated as "joint employers" that would be liable for the labor law violations of franchisees if they exerted significant control over working conditions. Franchisers maintain that this would "destroy" the business model, because it would subject them to unacceptable risks.

Franchisers attribute the flurry of activity to union influence. The Service Employees International Union, in particular, has long fought to get McDonald's designated as a joint employer so it would be easier to mount an organizing effort across the chain, rather than store by store.

Robert Zarco, a Miami lawyer retained by an association of 1,000 McDonald's owners, said that to avoid the joint-employer designation, and the extra liability it would bring, franchisers could choose to weaken their grip on franchisee operations.

"If the company wants to not be considered a joint employer, it's very simple to fix," he said. "Unwind all those excessive controls that they have implemented that are outside of protecting the brand and the product and service quality."

The franchise association's federal lobbying spending hit a high of $1.24 million in 2022, alongside millions more spent in recent years on federal elections, which doesn't include money spent by the individual franchise brands.

The high stakes are evident in other ways, as well.

The Franchise Times, a 30-year-old independent trade publication with six editorial employees, writes about day-to-day events in the industry: acquisitions, executive leadership changes, technology trends. When strife arises, such as lawsuits and bankruptcies, it writes about those, too.

Earlier this year, the publication's legal columnist, Beth Ewen, wrote several stories about Unleashed Brands, a portfolio of franchises that has drawn lawsuits from franchisees. In response, the company published a markup of one of Ms. Ewen's stories in red pen font with "DEBUNKED" stamped across the top. (The organization had given similar treatment to an article about the company by The New York Times. Both publications stand by their reporting, and Unleashed did not ask for corrections.)

In March, a new website popped up at the address "NoFranchiseTimes.com." Its front page was devoted to an attack on what it called "editorial bias," "denigrating the businesses that support their publication."

It called for the publication's advertisers — which include law firms, vendors and brands — to cancel their purchases.

Michael Browning Jr., the chief executive of Unleashed Brands and a board member of the International Franchise Association, emailed the trade group's membership saying that while he had not created the website, he supported its message and thought the group should revoke The Franchise Times's membership. Mr. Browning did not respond to a request for further comment.

The association declined to revoke the membership, and the publication says its advertising revenue is up from last year. But to Ms. Ewen, a 35-year veteran of business reporting, the episode shows that the industry is trying to divert attention from real problems — and that some members are playing hardball.

"They're trying to hit at our business model and our ability to keep going," she said. "There's a lot of people spending a lot of time trying to get us and others to stop doing these stories."