



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Senate Bill 422

**Senate Substitute
Amendment 1**

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Contact: Scott Grosz, Principal Attorney (266-1307)

SENATE BILL 422

Senate Bill 422 excludes a franchisor from classification as the employer of a franchisee or of an employee of a franchisee for purposes of certain state laws relating to employment (worker's compensation, unemployment insurance, employment discrimination, minimum wage, and wage payments). Under the bill, a franchisor may be considered the employer of a franchisee or of an employee of a franchisee under the above laws only if one of the following is satisfied:

- The franchisor has agreed in writing to assume the role of employer.
- The Department of Workforce Development (DWD), in administering the particular employment law, has found the franchisor to exercise a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SENATE SUBSTITUTE AMENDMENT 1

Generally, Senate Substitute Amendment 1 excludes a franchisor from being considered an employer under the same conditions and in relation to the same laws relating to employment as Senate Bill 422. However, the substitute amendment modifies the manner in which the exclusion is to be administered by DWD for purposes of unemployment insurance when more than one employing unit has a relationship with an employee. Under the substitute amendment, when determining which employing unit is the employer of an employee, DWD must first analyze the relationship of the employing units to the employee under the procedures prescribed by current law.

If, under the initial analysis, a franchisor is determined to be the employer of a franchisee or of an employee of a franchisee, DWD must then apply the analysis described above, which specifies that DWD may not consider a franchisor to be an employer unless the franchisor has agreed to assume that role or unless the franchisor is found to exercise a degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor. Alternatively, under the substitute amendment, if DWD determines that a franchisor is not an employer under the procedures prescribed by current law, no further analysis of the franchisor would be required.

BILL HISTORY

Senator Kapenga introduced Senate Substitute Amendment 1 on February 3, 2016. On February 4, 2016, the Senate Committee on Labor and Government Reform recommended adoption of the substitute amendment, and passage of Senate Bill 422, as amended, on consecutive votes of Ayes, 3; Noes, 1.

SG:ty