



2015 SENATE BILL 422

December 3, 2015 - Introduced by Senators KAPENGA, MARKLEIN and STROEBEL, cosponsored by Representatives KUGLITSCH, BORN, R. BROOKS, CRAIG, GANNON, HUTTON, JARCHOW, KNODL, MURPHY, ROHRKASTE, SANFELIPPO, SKOWRONSKI and TITTL. Referred to Committee on Labor and Government Reform.

1 **AN ACT** *to create* 102.04 (2r), 104.015, 108.065 (4), 109.015 and 111.3205 of the
2 statutes; **relating to:** exclusion of a franchisor as the employer of a franchisee
3 or of an employee of a franchisee.

Analysis by the Legislative Reference Bureau

This bill excludes a franchisor as the employer of a franchisee or of an employee of a franchisee for purposes of certain laws relating to employment. Specifically, the bill provides that for purposes of the laws relating to worker's compensation, unemployment insurance, employment discrimination, minimum wage, and wage payments, a franchisor is not considered to be the employer of a franchisee or of an employee of a franchisee, unless any of the following applies:

1. The franchisor has agreed in writing to assume that role.
2. The franchisor has been found to have exercised 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.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 102.04 (2r) of the statutes is created to read:

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1 102.04 **(2r)** For purposes of this chapter, a franchisor, as defined in 16 CFR
2 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR
3 436.1 (i), or of an employee of a franchisee, unless any of the following applies:

4 (a) The franchisor has agreed in writing to assume that role.

5 (b) The franchisor has been found by the department or the division to have
6 exercised a type or degree of control over the franchisee or the franchisee's employees
7 that is not customarily exercised by a franchisor for the purpose of protecting the
8 franchisor's trademarks and brand.

9 **SECTION 2.** 104.015 of the statutes is created to read:

10 **104.015 Franchisors excluded.** For purposes of this chapter, a franchisor,
11 as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee,
12 as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the
13 following applies:

14 **(1)** The franchisor has agreed in writing to assume that role.

15 **(2)** The franchisor has been found by the department to have exercised a type
16 or degree of control over the franchisee or the franchisee's employees that is not
17 customarily exercised by a franchisor for the purpose of protecting the franchisor's
18 trademarks and brand.

19 **SECTION 3.** 108.065 (4) of the statutes is created to read:

20 108.065 **(4)** Notwithstanding sub. (1e), a franchisor, as defined in 16 CFR 436.1
21 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1
22 (i), or of an employee of a franchisee, unless any of the following applies:

23 (a) The franchisor has agreed in writing to assume that role.

24 (b) The franchisor has been found by the department to have exercised a type
25 or degree of control over the franchisee or the franchisee's employees that is not

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1 customarily exercised by a franchisor for the purpose of protecting the franchisor's
2 trademarks and brand.

3 **SECTION 4.** 109.015 of the statutes is created to read:

4 **109.015 Franchisors excluded.** For purposes of this chapter, a franchisor,
5 as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee,
6 as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the
7 following applies:

8 (1) The franchisor has agreed in writing to assume that role.

9 (2) The franchisor has been found by the department to have exercised a type
10 or degree of control over the franchisee or the franchisee's employees that is not
11 customarily exercised by a franchisor for the purpose of protecting the franchisor's
12 trademarks and brand.

13 **SECTION 5.** 111.3205 of the statutes is created to read:

14 **111.3205 Franchisors excluded.** For purposes of this subchapter, a
15 franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a
16 franchisee, as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless
17 any of the following applies:

18 (1) The franchisor has agreed in writing to assume that role.

19 (2) The franchisor has been found by the department to have exercised a type
20 or degree of control over the franchisee or the franchisee's employees that is not
21 customarily exercised by a franchisor for the purpose of protecting the franchisor's
22 trademarks and brand.

23 **SECTION 6. Initial applicability.**

