2015 ASSEMBLY BILL 578

December 7, 2015 –Introduced by Representatives KUGLITSCH, BORN, R. BROOKS, CRAIG, GANNON, HUTTON, JARCHOW, KNUD, MURPHY, ROHRKASTE, SANFELIPPO, SKOWRONSKI, TITTL and BALLWEG, cosponsored by Senators KAPENGA, MARKLEIN and STROEBEL. Referred to Committee on Small Business Development.

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

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

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

(b) The franchisor has been found by the department or the division 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.

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

104.015 Franchisors excluded. For purposes of this chapter, a franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), 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 by the department 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.

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

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

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

(b) The franchisor has been found by the department 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.

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

**109.015 Franchisors excluded.** For purposes of this chapter, a franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), 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 by the department 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.

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

**111.3205 Franchisors excluded.** For purposes of this subchapter, a franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), 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 by the department 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.

**SECTION 6. Initial applicability.**
(1) **Exclusion of Franchisors as Employers.** This act first applies to work performed on the effective date of this subsection.