



State of Wisconsin
2015 - 2016 LEGISLATURE

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**ASSEMBLY AMENDMENT 3,
TO ASSEMBLY BILL 456**

January 20, 2016 - Offered by Representative ALLEN.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 1: before that line insert:

3 **"SECTION 1b.** 71.63 (2) of the statutes is amended to read:

4 71.63 (2) "Employee" means a resident individual who performs or performed
5 services for an employer anywhere or a nonresident individual who performs or
6 performed such services within this state, and includes an officer, employee or
7 elected official of the United States, a state, territory, or any political subdivision
8 thereof, or the District of Columbia, or any agency or instrumentality of any one or
9 more of these entities. The term includes an officer of a corporation, an entertainer
10 and an entertainment corporation, but does not include a ~~qualified real estate agent~~
11 ~~or a~~ direct seller who is not treated as an employee under section 3508 of the Internal
12 Revenue Code or a real estate broker or salesperson who is excluded under s.
13 452.38.".

1 **2.** Page 8, line 2: after that line insert:

2 “**SECTION 1d.** 102.07 (8) (a) of the statutes is amended to read:

3 102.07 (8) (a) Except as provided in ~~par.~~ pars. (b) and (bm), every independent
4 contractor is, for the purpose of this chapter, an employee of any employer under this
5 chapter for whom he or she is performing service in the course of the trade, business,
6 profession or occupation of such employer at the time of the injury.

7 **SECTION 1e.** 102.07 (8) (bm) of the statutes is created to read:

8 102.07 (8) (bm) A real estate broker or salesperson who is excluded under s.
9 452.38 is not an employee of a firm, as defined in s. 452.01 (4w), for whom the real
10 estate broker or salesperson performs services unless the firm elects under s. 102.078
11 to name the real estate broker or salesperson as its employee.

12 **SECTION 1f.** 102.078 of the statutes is created to read:

13 **102.078 Election by real estate firm. (1)** A firm, as defined in s. 452.01 (4w),
14 may elect to name as its employee for purposes of this chapter a real estate broker
15 or salesperson who is excluded under s. 452.38 by an endorsement on its policy of
16 worker’s compensation insurance or, if the firm is self-insured under s. 102.28 (2) (b),
17 by filing a declaration with the department in the manner provided in s. 102.31 (2)
18 (a) naming the real estate broker or salesperson as an employee of the firm for
19 purposes of this chapter. A declaration under this subsection shall state all of the
20 following:

21 (a) The name of the real estate broker or salesperson to be covered under this
22 chapter.

1 (b) That a written agreement has been entered into that provides that the real
2 estate broker or salesperson shall not be treated as an employee for federal and state
3 tax purposes.

4 (c) That 75 percent or more of the compensation related to sales or other output,
5 as measured on a calendar year basis, paid to the real estate broker or salesperson
6 under the written agreement specified in par. (b) is directly related to the brokerage
7 services performed by the real estate broker or salesperson on behalf of the firm.

8 **(2)** A firm, as defined in s. 452.01 (4w), may revoke a declaration under sub.
9 (1) by providing written notice to the department in the manner provided in s. 102.31
10 (2) (a) and to the real estate broker or salesperson named in the declaration. A
11 revocation under this subsection is effective 30 days after the department receives
12 notice of that revocation.

13 **SECTION 1g.** 103.001 (5) of the statutes is amended to read:

14 103.001 (5) "Employee" means, except as provided in s. 452.38, any person who
15 may be required or directed by any employer, in consideration of direct or indirect
16 gain or profit, to engage in any employment, or to go or work or be at any time in any
17 place of employment.

18 **SECTION 1h.** 103.10 (1) (b) of the statutes is amended to read:

19 103.10 (1) (b) Except as provided in sub. (1m) (b) 2. and s. 452.38, "employee"
20 means an individual employed in this state by an employer, except the employer's
21 parent, spouse, domestic partner, or child.

22 **SECTION 1k.** 104.01 (2) (b) 2. of the statutes is repealed and recreated to read:

23 104.01 (2) (b) 2. An individual excluded under s. 452.38.

24 **SECTION 1m.** 106.01 (1) of the statutes is amended to read:

1 106.01 (1) FORMATION OF APPRENTICE CONTRACT. Any person 16 years of age or
2 over may enter into an apprentice contract binding himself or herself to serve as an
3 apprentice as provided in this section. Except as provided in ss. 106.02, and 106.025,
4 ~~and 106.03~~, the term of service of an apprenticeship shall be for not less than one
5 year. Every apprentice contract shall be in writing and shall be signed by the
6 apprentice, the department, and the sponsor or an apprenticeship committee acting
7 as the agent of the sponsor. If the apprentice has not reached 18 years of age, the
8 apprentice contract shall also be signed by one of the apprentice's parents or, if both
9 parents are deceased or legally incapable of giving consent, by the guardian of the
10 apprentice or, if there is no guardian, by a deputy of the department. The department
11 shall specify the provisions that are required to be included in an apprentice contract
12 by rule promulgated under sub. (11).

13 **SECTION 1n.** 106.03 of the statutes is repealed.

14 **SECTION 1p.** 108.02 (15) (k) 7. of the statutes is amended to read:

15 108.02 (15) (k) 7. ~~By an individual for a person as a real estate agent or as a~~
16 ~~real estate salesperson, if all of the service performed as a real estate agent or sales~~
17 ~~person by the individual for the person is performed for remuneration solely by way~~
18 ~~of commission~~ a real estate licensee, as defined in s. 452.01 (5), who is excluded under
19 s. 452.38;”.

20 **3.** Page 8, line 5: after that line insert:

21 **“SECTION 2d.** 109.01 (1r) of the statutes is amended to read:

22 109.01 (1r) “Employee” means any person employed by an employer, except
23 that “employee” does not include an officer or director of a corporation, a member or
24 manager of a limited liability company, a partner of a partnership or a joint venture,

1 the owner of a sole proprietorship, an independent contractor or person otherwise
2 excluded under s. 452.38, or a person employed in a managerial, executive, or
3 commissioned sales capacity or in a capacity in which the person is privy to
4 confidential matters involving the employer–employee relationship.

5 **SECTION 2f.** 111.32 (5) of the statutes is amended to read:

6 111.32 (5) “Employee” does not include any individual employed by his or her
7 parents, spouse, or child or any individual excluded under s. 452.38.”.

8 **4.** Page 58, line 4: delete the material beginning with “Notwithstanding” and
9 ending with “satisfied:” on line 10, and substitute “Except as otherwise provided in
10 s. 102.078, a licensee shall not, under ch. 102, 103, 104, 108, or 109, under subch. X
11 of ch. 71 or subch. II of ch. 111, under any other law or rule, or in any action or
12 proceeding under the common law, be considered an employee of a firm if all of the
13 following are satisfied:”.

14 **5.** Page 60, line 25: after that line insert:

15 “(1m) EMPLOYMENT EXCLUSION; UNEMPLOYMENT INSURANCE. The treatment of
16 sections 108.02 (15) (k) 7. and 452.38 (with respect to chapter 108 of the statutes) of
17 the statutes first applies to services performed on the effective date of this
18 subsection.”.

19 **6.** Page 61, line 16: after that line insert:

20 “(2m) EMPLOYMENT EXCLUSION; UNEMPLOYMENT INSURANCE. The treatment of
21 section 108.02 (15) (k) 7. of the statutes and SECTION 180 (1m) of this act takes effect
22 on October 1, 2016.”.

23 (END)