



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0295/1
GM/AM/MD:emw/jld/wlj

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 422**

February 3, 2016 - Offered by Senator KAPENGA.

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

Analysis by the Legislative Reference Bureau

This substitute amendment 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 substitute amendment 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.

With respect to the unemployment insurance law, the substitute amendment provides for the application of the exclusion only if a franchisor is found to be an

employer of a franchisee or of an employee of a franchisee under provisions in current law used for determining which employing unit is considered an employer.

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

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

2 102.04 (2r) For purposes of this chapter, a franchisor, as defined in 16 CFR
3 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR
4 436.1 (i), or of an employee of a franchisee, unless any of the following applies:

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

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

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

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

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

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

20 **SECTION 3.** 108.065 (1e) (intro.), (a) (intro.) and (b) (intro.) of the statutes are
21 amended to read:

1 108.065 (1e) (intro.) Except as provided in subs. (2) and (3), if there is more than
2 one employing unit that has a relationship to an employee, the department shall
3 determine which of the employing units is the employer of the employee by
4 considering doing the following:

5 (a) (intro.) ~~An~~ Considering an employing unit's right by contract and in fact to:

6 (b) (intro.) ~~Which~~ Considering which employing unit:

7 **SECTION 4.** 108.065 (1e) (c) of the statutes is created to read:

8 108.065 (1e) (c) If, after the application of pars. (a) and (b), a franchisor, as
9 defined in 16 CFR 436.1 (k), is determined to be the employer of a franchisee, as
10 defined in 16 CFR 436.1 (i), or of an employee of a franchisee, applying sub. (4). The
11 department shall apply sub. (4) only as provided in this paragraph.

12 **SECTION 5.** 108.065 (4) of the statutes is created to read:

13 108.065 (4) (a) A franchisor, as defined in 16 CFR 436.1 (k), is not considered
14 to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), or of an employee
15 of a franchisee, unless any of the following applies:

16 1. The franchisor has agreed in writing to assume that role.

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

21 (b) This subsection shall be applied only as provided in sub. (1e) (c).

22 **SECTION 6.** 109.015 of the statutes is created to read:

23 **109.015 Franchisors excluded.** For purposes of this chapter, a franchisor,
24 as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee,

1 as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the
2 following applies:

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

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

8 **SECTION 7.** 111.3205 of the statutes is created to read:

9 **111.3205 Franchisors excluded.** For purposes of this subchapter, a
10 franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a
11 franchisee, as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless
12 any of the following applies:

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

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

18 **SECTION 8. Initial applicability.**

19 (1) **EXCLUSION OF FRANCHISORS AS EMPLOYERS.** This act first applies to work
20 performed on the effective date of this subsection.

21 (END)