

# State of Wisconsin



2015 Senate Bill 422

Date of enactment:  
Date of publication\*:

## 2015 WISCONSIN ACT

AN ACT *to amend* 108.065 (1e) (intro.), (a) (intro.) and (b) (intro.); and *to create* 102.04 (2r), 104.015, 108.065 (1e) (c), 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.

*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 (1e) (intro.), (a) (intro.) and (b) (intro.) of the statutes are amended to read:

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

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

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

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

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

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

108.065 (4) (a) A franchisor, as defined in [16 CFR 436.1](#) (k), is not considered to be an employer of a fran-

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

chisee, 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.

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

**SECTION 6.** 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 7.** 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 8. Initial applicability.**

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