

BILL ANALYSIS

Senate Research Center

S.B. 652
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Natural Resources & Economic Development
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under a franchisor-franchisee relationship, a franchisor sells a business model, marketing, name recognition, and other elements of business strategy and goodwill to a franchisee for a fee. In this type of arrangement, the franchisor places some requirements on the franchisee in order to participate as a franchisee, but the franchisee has responsibility and control over day-to-day operations of the business, including employee relations, payrolls, workplace safety, facilities maintenance, and compliance with relevant state and federal laws. In a franchisor-franchisee relationship, a franchisee is responsible for all employment decisions regarding employees of the franchisee, and the franchisor has no interaction with or authority over the franchisee's employees.

However, recent decisions by the National Labor Relations Board (NLRB) have expanded the definition of an "employer," called the common understanding of a franchisor-franchisee relationship into question, and opened the door to lawsuits against franchisors for the actions of franchisees.

S.B. 652 clarifies that, under Texas law, a franchisor is not the employer of a franchisee's employees for the following purposes: employment discrimination law, wage and hour law, minimum wage law, professional employer organization law, unemployment law, workers compensation law, and workplace safety law.

S.B. 652 seeks to ensure Texas franchisors are not unfairly liable for the actions of franchisees, to prevent frivolous lawsuits, and to encourage franchisees to act responsibly.

S.B. 652 amends current law relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 21, Labor Code, by adding Section 21.0022, as follows:

Sec. 21.0022. FRANCHISORS EXCLUDED. (a) Defines "franchisee" and "franchisor."

(b) Provides that, for purposes of this chapter, a franchisor is not considered to be an employer of a franchisee or a franchisee's employees.

(c) Provides that, with respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 2. Amends Subchapter A, Chapter 61, Labor Code, by adding Section 61.0031, as follows:

Sec. 61.0031. FRANCHISORS EXCLUDED. (a) Defines "franchisee" and "franchisor."

(b) Provides that, for purposes of this chapter, a franchisor is not considered to be an employer of a franchisee or a franchisee's employees.

(c) Provides that, with respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 3. Amends Subchapter A, Chapter 62, Labor Code, by adding Section 62.006, as follows:

Sec. 62.006. FRANCHISORS EXCLUDED. (a) Defines "franchisee" and "franchisor."

(b) Provides that, for purposes of this chapter, a franchisor is not considered to be an employer of a franchisee or a franchisee's employees.

(c) Provides that, with respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 4. Amends Chapter 91, Labor Code, by adding Section 91.0013, as follows:

Sec. 91.0013. FRANCHISORS EXCLUDED. (a) Defines "franchisee" and "franchisor."

(b) Provides that, for purposes of this chapter, a franchisor is not considered to be in a coemployment relationship with a franchisee or a franchisee's employees.

(c) Provides that, with respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 5. Amends Section 201.021, Labor Code, by adding Subsections (d) and (e), as follows:

(d) Defines "franchisee" and "franchisor." Provides that the definition of employer provided by this section does not apply to a franchisor with respect to a franchisee or a franchisee's employees.

(e) Provides that, with respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, Subsection (d) does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 6. Amends Subchapter B, Chapter 401, Labor Code, by adding Section 401.014, as follows:

Sec. 401.014. FRANCHISORS EXCLUDED. (a) Defines "franchisee" and "franchisor."

(b) Provides that, for purposes of this subtitle, a franchisor is not considered to be an employer of a franchisee or a franchisee's employees.

(c) Provides that, with respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 7. Amends Subchapter A, Chapter 411, Labor Code, by adding Section 411.005, as follows:

Sec. 411.005. FRANCHISORS EXCLUDED. (a) Defines "franchisee" and "franchisor."

(b) Provides that, for purposes of this chapter, a franchisor is not considered to be an employer of a franchisee or a franchisee's employees.

(c) Provides that, with respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2015.