

BILL ANALYSIS

C.S.H.B. 1686
By: Farney
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have raised concerns regarding recent decisions by the National Labor Relations Board regarding the definition of an "employer" and feel that these decisions have opened the door to lawsuits against franchisors for the actions of franchisees. The parties contend that the common understanding of a franchisor-franchisee relationship, in which 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, is being questioned. In an effort to ensure that franchisors in Texas are not held unfairly liable for the actions of franchisees, to prevent frivolous lawsuits, and to encourage franchisees to act responsibly, C.S.H.B. 1686 seeks to clarify state law regarding franchisor-franchisee relationships.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1686 amends the Labor Code to establish that a franchisor is not considered to be an employer of a franchisee or a franchisee's employees for purposes of statutory provisions relating to employment discrimination, statutory provisions relating to payment of wages, the Texas Minimum Wage Act, or the Texas Workers' Compensation Act; that a franchisor is not considered to be in a coemployment relationship with a franchisee or a franchisee's employees for purposes of statutory provisions governing professional employer organizations; and that the general definition of "employer" in the Texas Unemployment Compensation Act does not apply to a franchisor with respect to a franchisee or a franchisee's employees. The bill's provisions, with respect to a specific claim for relief under the applicable statutory provisions made by a franchisee or a franchisee's employee, do not apply to a franchisor who has been found by a court of competent jurisdiction 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.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1686 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 21, Labor Code, is amended by adding Section 21.0022 to read as follows:

Sec. 21.0022. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

SECTION 2. Subchapter A, Chapter 61, Labor Code, is amended by adding Section 61.0031 to read as follows:

Sec. 61.0031. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 21, Labor Code, is amended by adding Section 21.0022 to read as follows:

Sec. 21.0022. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

(c) 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 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. Subchapter A, Chapter 61, Labor Code, is amended by adding Section 61.0031 to read as follows:

Sec. 61.0031. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

(c) 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 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. Subchapter A, Chapter 62, Labor Code, is amended by adding Section 62.006 to read as follows:

Sec. 62.006. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

SECTION 3. Subchapter A, Chapter 62, Labor Code, is amended by adding Section 62.006 to read as follows:

Sec. 62.006. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

(c) 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 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. Chapter 91, Labor Code, is amended by adding Section 91.0013 to read as follows:

Sec. 91.0013. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be in a coemployment relationship with:

- (1) a franchisee; or
- (2) a franchisee's employees.

SECTION 4. Chapter 91, Labor Code, is amended by adding Section 91.0013 to read as follows:

Sec. 91.0013. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be in a coemployment relationship with:

- (1) a franchisee; or
- (2) a franchisee's employees.

(c) 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 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. Section 201.021, Labor Code, is amended by adding Subsection (d) to read as follows:

(d) In this subsection, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1. The definition of employer provided by this section does not apply to a franchisor with respect to:

- (1) a franchisee; or
- (2) a franchisee's employees.

SECTION 6. Subchapter B, Chapter 401, Labor Code, is amended by adding Section 401.014 to read as follows:

Sec. 401.014. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this subtitle, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

SECTION 7. Subchapter A, Chapter 411, Labor Code, is amended by adding Section 411.005 to read as follows:

Sec. 411.005. FRANCHISORS

SECTION 5. Section 201.021, Labor Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In this subsection, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1. The definition of employer provided by this section does not apply to a franchisor with respect to:

- (1) a franchisee; or
- (2) a franchisee's employees.

(e) 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 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. Subchapter B, Chapter 401, Labor Code, is amended by adding Section 401.014 to read as follows:

Sec. 401.014. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this subtitle, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

(c) 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 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. Subchapter A, Chapter 411, Labor Code, is amended by adding Section 411.005 to read as follows:

Sec. 411.005. FRANCHISORS

EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) 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 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. The change in law made by this Act applies only to the liability of a franchisor based on conduct occurring on or after the effective date of this Act. Conduct by a franchisor occurring before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 8. Same as introduced version.

SECTION 9. This Act takes effect September 1, 2015.

SECTION 9. Same as introduced version.