

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0232.02 Bart Miller x2173

HOUSE BILL 16-1154

HOUSE SPONSORSHIP

DelGrosso,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CLARIFICATION OF THE CONSTRUCTION OF THE
102 DEFINITION OF "EMPLOYER" DEALING WITH THE
103 EMPLOYER-EMPLOYEE RELATIONSHIP TO INCLUDE A
104 REQUIREMENT THAT AN EMPLOYER MUST EXERT A LEVEL OF
105 CONTROL OVER AN EMPLOYEE, AND, IN CONNECTION
106 THEREWITH, PROVIDING THAT A FRANCHISOR IS NOT AN
107 EMPLOYER OF A FRANCHISEE OR A FRANCHISEE'S EMPLOYEES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill clarifies that the definition of "employer" only includes a person that possesses authority to control an employee's terms and conditions of employment and actually exercises that authority directly. The bill specifies that a franchisor is not considered an employer of a franchisee's employees unless a court finds that a franchisor exercises 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.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 8-1-101, **add** (7) (c)
3 as follows:

4 **8-1-101. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (7) (c) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSECTION
7 (7), NOTHING IN THIS SUBSECTION (7) CREATES AN EMPLOYMENT
8 RELATIONSHIP BETWEEN AN EMPLOYER AND AN EMPLOYEE UNLESS THE
9 EMPLOYER POSSESSES AUTHORITY TO CONTROL THE EMPLOYEE'S TERMS
10 AND CONDITIONS OF EMPLOYMENT AND ACTUALLY EXERCISES THAT
11 AUTHORITY DIRECTLY.

12 **SECTION 2.** In Colorado Revised Statutes, **add** 8-1-101.5 as
13 follows:

14 **8-1-101.5. Franchisors not employers - franchisee employees.**

15 (1) IN THIS TITLE, "FRANCHISEE" AND "FRANCHISOR" HAVE THE MEANINGS
16 ASSIGNED BY 16 CFR 436.1.

17 (2) FOR PURPOSES OF THIS TITLE, A FRANCHISOR IS NOT AN
18 EMPLOYER OF:

19 (a) A FRANCHISEE; OR

20 (b) A FRANCHISEE'S EMPLOYEES.

1 (3) WITH RESPECT TO A SPECIFIC CLAIM FOR RELIEF UNDER THIS
2 TITLE MADE BY A FRANCHISEE OR A FRANCHISEE'S EMPLOYEE, THIS
3 SECTION DOES NOT APPLY TO A FRANCHISOR WHO IS FOUND BY A COURT OF
4 COMPETENT JURISDICTION IN THIS STATE TO HAVE EXERCISED A TYPE OR
5 DEGREE OF CONTROL OVER THE FRANCHISEE OR THE FRANCHISEE'S
6 EMPLOYEES NOT CUSTOMARILY EXERCISED BY A FRANCHISOR FOR THE
7 PURPOSE OF PROTECTING THE FRANCHISOR'S TRADEMARKS AND BRAND.

8 **SECTION 3.** In Colorado Revised Statutes, 8-3-104, **add** (11) (g)
9 as follows:

10 **8-3-104. Definitions.** As used in this article, unless the context
11 otherwise requires:

12 (11) (g) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSECTION
13 (11), NOTHING IN THIS SUBSECTION (11) CREATES AN EMPLOYMENT
14 RELATIONSHIP BETWEEN AN EMPLOYER AND AN EMPLOYEE UNLESS THE
15 EMPLOYER POSSESSES AUTHORITY TO CONTROL THE EMPLOYEE'S TERMS
16 AND CONDITIONS OF EMPLOYMENT AND ACTUALLY EXERCISES THAT
17 AUTHORITY DIRECTLY.

18 **SECTION 4.** In Colorado Revised Statutes, 8-4-101, **amend** (6)
19 as follows:

20 **8-4-101. Definitions.** As used in this article, unless the context
21 otherwise requires:

22 (6) (a) "Employer" means every person, firm, partnership,
23 association, corporation, migratory field labor contractor or crew leader,
24 receiver, or other officer of court in Colorado, and any agent or officer
25 thereof, of the above mentioned classes, employing any person in
26 Colorado; except that the provisions of this article shall not apply to the
27 state or its agencies or entities, counties, cities and counties, municipal

1 corporations, quasi-municipal corporations, school districts, and
2 irrigation, reservoir, or drainage conservation companies or districts
3 organized and existing under the laws of Colorado.

4 (b) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSECTION (6),
5 NOTHING IN THIS SUBSECTION (6) CREATES AN EMPLOYMENT
6 RELATIONSHIP BETWEEN AN EMPLOYER AND AN EMPLOYEE UNLESS THE
7 EMPLOYER POSSESSES AUTHORITY TO CONTROL THE EMPLOYEE'S TERMS
8 AND CONDITIONS OF EMPLOYMENT AND ACTUALLY EXERCISES THAT
9 AUTHORITY DIRECTLY.

10 **SECTION 5.** In Colorado Revised Statutes, 8-5-101, **amend** (5)
11 as follows:

12 **8-5-101. Definitions.** As used in this article, unless the context
13 otherwise requires:

14 (5) (a) "Employer" means the state and every county, city, town,
15 and body corporate and politic therein and every person, corporation,
16 partnership, and association, including those operating in a representative
17 capacity.

18 (b) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSECTION (5),
19 NOTHING IN THIS SUBSECTION (5) CREATES AN EMPLOYMENT
20 RELATIONSHIP BETWEEN AN EMPLOYER AND AN EMPLOYEE UNLESS THE
21 EMPLOYER POSSESSES AUTHORITY TO CONTROL THE EMPLOYEE'S TERMS
22 AND CONDITIONS OF EMPLOYMENT AND ACTUALLY EXERCISES THAT
23 AUTHORITY DIRECTLY.

24 **SECTION 6.** In Colorado Revised Statutes, 8-13.5-103, **amend**
25 (1) as follows:

26 **8-13.5-103. Definitions.** As used in this article, unless the context
27 otherwise requires:

1 (1) (a) "Employer" means a person engaged in business who has
2 one or more employees. "Employer" includes the state and any political
3 subdivision of the state.

4 (b) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSECTION (1),
5 NOTHING IN THIS SUBSECTION (1) CREATES AN EMPLOYMENT
6 RELATIONSHIP BETWEEN AN EMPLOYER AND AN EMPLOYEE UNLESS THE
7 EMPLOYER POSSESSES AUTHORITY TO CONTROL THE EMPLOYEE'S TERMS
8 AND CONDITIONS OF EMPLOYMENT AND ACTUALLY EXERCISES THAT
9 AUTHORITY DIRECTLY.

10 **SECTION 7.** In Colorado Revised Statutes, 8-40-201, **amend** (7)
11 as follows:

12 **8-40-201. Definitions.** As used in articles 40 to 47 of this title,
13 unless the context otherwise requires:

14 (7) "Employer" has the meaning set forth in section 8-40-203 and
15 the scope of such term is set forth in section 8-40-302. EXCEPT AS
16 SPECIFICALLY PROVIDED IN THIS SUBSECTION (7) AND SECTIONS 8-40-203
17 AND 8-40-302, NOTHING IN THIS SUBSECTION (7) OR SECTION 8-40-203 OR
18 8-40-302 CREATES AN EMPLOYMENT RELATIONSHIP BETWEEN AN
19 EMPLOYER AND AN EMPLOYEE UNLESS THE EMPLOYER POSSESSES
20 AUTHORITY TO CONTROL THE EMPLOYEE'S TERMS AND CONDITIONS OF
21 EMPLOYMENT AND ACTUALLY EXERCISES THAT AUTHORITY DIRECTLY.

22 **SECTION 8.** In Colorado Revised Statutes, 8-70-103, **amend** (9)
23 as follows:

24 **8-70-103. Definitions.** As used in articles 70 to 82 of this title,
25 unless the context otherwise requires:

26 (9) "Employer" has the meaning set forth in section 8-70-113.
27 EXCEPT AS SPECIFICALLY PROVIDED IN THIS SUBSECTION (9) AND SECTION

1 8-70-113, NOTHING IN THIS SUBSECTION (9) OR SECTION 8-70-113 CREATES
2 AN EMPLOYMENT RELATIONSHIP BETWEEN AN EMPLOYER AND AN
3 EMPLOYEE UNLESS THE EMPLOYER POSSESSES AUTHORITY TO CONTROL
4 THE EMPLOYEE'S TERMS AND CONDITIONS OF EMPLOYMENT AND
5 ACTUALLY EXERCISES THAT AUTHORITY DIRECTLY.

6 **SECTION 9. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly (August
9 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within such period, then the act, item, section, or part will not take effect
13 unless approved by the people at the general election to be held in
14 November 2016 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.