

1 State of Arkansas As Engrossed: H4/4/23 S4/5/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1783

4

5 By: Representatives Wardlaw, F. Allen, Beaty Jr., Bentley, M. Berry, Dalby, Ennett, Eubanks, K.
6 Ferguson, V. Flowers, Gramlich, Hawk, G. Hodges, Holcomb, Hollowell, Jean, Ladyman, Lynch, Magie,
7 McClure, M. McElroy, B. McKenzie, Milligan, Nicks, Pearce, Perry, Puryear, J. Richardson, Richmond,
8 Rye, Schulz, Steimel, Unger, Vaught, Warren, D. Whitaker, Wooldridge

9 By: Senators Hill, J. Boyd, J. Bryant, Crowell, B. Davis, Dees, Flippo, K. Hammer, Hester, Irvin, B.
10 Johnson, M. Johnson, F. Love, M. McKee, J. Payton, J. Petty, Stone, G. Stubblefield, D. Wallace

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For An Act To Be Entitled

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AN ACT TO AMEND THE ARKANSAS FRANCHISE PRACTICES ACT;

14

AND FOR OTHER PURPOSES.

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16

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Subtitle

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TO AMEND THE ARKANSAS FRANCHISE PRACTICES

19

ACT.

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. DO NOT CODIFY. Legislative findings.

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The General Assembly finds that:

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(1) It is necessary to clarify the applicability of the Arkansas Franchise Practices Act, § 4-72-201 et seq., specifically as it relates to amendments to the Arkansas Franchise Practices Act, § 4-72-201 et seq., enacted by Acts 1991, No. 411;

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(2) When the Arkansas Franchise Practices Act, § 4-72-201 et seq., was passed in Acts 1977, No. 355, the emergency clause expressed a public interest and necessity in defining "the relationship and responsibilities of franchisors and franchisees in connection with franchise agreements";

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(3) Acts 1991, No. 411, amended the Arkansas Franchise Practices Act, § 4-72-201 et seq., to include language that might be interpreted to



1 exempt franchises subject to the Federal Trade Commission regulations
2 "Disclosure Requirements and Prohibitions concerning Franchising and Business
3 Opportunity Ventures," 16 C.F.R. § 436.1;

4 (4) The subject matter of the federal regulations in 16 C.F.R. §
5 436.1 et seq. involves mandatory pre-agreement disclosure requirements that
6 apply to virtually all franchise agreements while the subject matter of the
7 Arkansas Franchise Practices Act, § 4-72-201 et seq., involves post-agreement
8 protection for both franchisors and franchisees;

9 (5) In Lodging Development & Management Inc. v. Days Inn
10 Worldwide, Inc., 2001 U.S. Dist. LEXIS 26089, 2001 WL 35756572 (E.D. Ark.
11 Oct. 18, 2001), the court came to a logical conclusion stating "it is
12 difficult to imagine that the General Assembly intended [in Acts 1991, No.
13 411] to eviscerate every substantive post-agreement protection for both
14 franchisors and franchisees contained in the Arkansas Franchise Practices
15 Act, § 4-72-201 et seq., with a passing reference to a federal regulation
16 concerning with pre-agreement disclosures";

17 (6) The amendment to § 4-72-203 in this act clarifies that:

18 (A) A franchise agreement entered into, renewed, or
19 transferred after March 4, 1977, the performance of which contemplates or
20 requires the franchise to establish or maintain a place of business within
21 this state, is subject to the Arkansas Franchise Practices Act, § 4-72-201 et
22 seq., unless otherwise expressly excluded; and

23 (B) Acts 1991, No. 411 was simply intended to affirm that
24 the regulations under 16 C.F.R. § 436.1 stated the pre-agreement disclosure
25 requirements for franchises covered by the Arkansas Franchise Practices Act,
26 § 4-72-201 et seq.;

27 (7) The distribution and sales through franchises conducting
28 business in this state are vital to the public interest and welfare as well
29 as to the state's economy;

30 (8) It is in the public interest to further define the
31 relationship and responsibilities of franchisors and franchisees with
32 franchise agreements to:

33 (A) Protect franchisees from unreasonable termination by
34 franchisors that may result from the economic imbalance between franchisors
35 and franchisees, the absence of free bargaining, and the commercially
36 unreasonable practices of some franchisors engaging in business in this

1 state;

2 (B) Maintain strong and sound franchises that are
 3 essential to providing continuing and reliable services to the consuming
 4 public in this state; and

5 (C) Provide suitable and stable employment to the citizens
 6 of this state; and

7 (9) It is necessary to establish this public policy to protect
 8 the public interest in regulation of franchise agreements.

9
 10 SECTION 2. Arkansas Code § 4-72-202, concerning definitions under the
 11 Arkansas Franchise Practices Act, is amended to add an additional subdivision
 12 to read as follows:

13 (9) "Franchise owner" means a person who:

14 (A) Owns a financial interest in a franchise; or

15 (B) Has guaranteed the obligations of a person or legal
 16 entity under a franchise agreement.

17
 18 SECTION 3. Arkansas Code § 4-72-203 is amended to read as follows:
 19 4-72-203. Applicability of subchapter.

20 (a)(1) This subchapter applies only to a franchise entered into,
 21 renewed, or transferred after March 4, 1977, the performance of which
 22 contemplates or requires the franchise to establish or maintain a place of
 23 business within the State of Arkansas.

24 (2) To the fullest extent permitted by the United States
 25 Constitution and the Arkansas Constitution, this subsection is intended to
 26 apply to a franchise:

27 (A) In existence on the effective date of this act; and

28 (B) Granted, renewed, or transferred after the effective
 29 date of this act.

30 (b) However, the provisions of this This subchapter shall does not
 31 apply to those business relations, actions, transactions, or franchises
 32 subject to the provisions of § 4-72-401 et seq. and § 4-72-501 et seq., or
 33 which are subject to the Federal Trade Commission regulations, "Disclosure
 34 Requirements and Prohibitions Concerning Franchising and Business Opportunity
 35 Ventures", 16 C.F.R. 436.1 et seq. or to any franchise for which the initial
 36 franchise fee paid by the franchisee or franchise owner to the franchisor

1 does not exceed twenty thousand dollars (\$20,000) and the initial term of the
2 franchise does not exceed one (1) year.

3 (c) Notwithstanding the provisions of subsection (b) of this section,
4 this subchapter applies to the relationship between a wholesaler and a
5 supplier of wine, spirits, beer, nonalcoholic beverages, or any other
6 alcoholic beverage regardless of the initial franchise fee, if any, or
7 initial term of the franchise.

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9 SECTION 4. Arkansas Code § 4-72-205 is amended to read as follows:

10 4-72-205. Transfer, assignment, or sale of franchise.

11 (a) ~~It shall be~~ Except as provided in subsection (d) of this section,
12 it is a violation of this subchapter for ~~any~~ a franchisee or a franchise
13 owner to transfer, assign, or sell a franchise or interest therein to another
14 person unless the franchisee or the franchise owner first notifies the
15 franchisor of that intention by written notice, ~~setting forth~~ stating in the
16 notice of intent the prospective transferee's name, address, statement of
17 financial qualification, and business experience during the previous five (5)
18 years.

19 (b)(1) ~~The~~ Within thirty (30) days after receipt of the notice under
20 subsection (a) of this section, the franchisor shall ~~within sixty (60) days~~
21 ~~after receipt of the notice either:~~

22 (A) ~~approve~~ Approve in writing to the franchisee or to the
23 franchise owner the sale, transfer, or assignment to the proposed transferee;
24 or

25 (B) ~~by~~ By written notice advise the franchisee and
26 franchise owner of the unacceptability of the proposed transferee, ~~setting~~
27 ~~forth~~ stating a material ~~reason~~ deficiency relating to the character,
28 financial ability, or business experience of the proposed transferee based on
29 the application of the franchisor's then-existing standards consistently and
30 uniformly applied to similarly situated franchisees operating within the
31 franchise brand.

32 (2) If the franchisor does not reply within the specified ~~sixty~~
33 ~~(60)~~ thirty (30) days, his or her the franchisor's approval is deemed
34 granted.

35 (c) ~~No~~ A transfer, assignment, or sale ~~pursuant to~~ under this section
36 shall not be valid unless the transferee agrees in writing to comply with ~~all~~

1 of the reasonable and legal requirements of the franchise then in effect.

2 (d) A franchisor's approval is not required for a transfer of a
3 franchise by a franchisee or franchise owner to the spouse, child, or heir of
4 the franchisee or franchise owner who is operationally and financially
5 qualified.

6 (e) It is a violation of this subchapter for a franchisor or the
7 franchisor's related entities, affiliates, or assigns to exercise a right of
8 first refusal with respect to a franchisee's transfer, assignment, or sale in
9 the case of a transfer, sale, or assignment under subsection (d) of this
10 section.

11 (f) Except as provided in subsection (d) of this section, this section
12 does not prohibit a franchisor from exercising a contractual right of first
13 refusal to purchase a franchise or all or substantially all of the assets of
14 a franchise business after receiving a bona fide offer from a proposed
15 purchaser to purchase the franchise or assets of a franchise business on
16 precisely the terms and conditions stated in the bona fide offer.

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18 SECTION 5. Arkansas Code Title 4, Chapter 72, Subchapter 2, is amended
19 to add additional sections to read as follows:

20 4-72-211. Venue restriction – Void.

21 Any provision of a franchise agreement that restricts venue to a forum
22 outside the State of Arkansas is void with respect to any claims arising
23 under or relating to a franchise agreement involving a franchise operating or
24 conducting business in this state.

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26 4-72-212. Duties of good faith and fair dealing – Termination – Rights
27 of survivors.

28 (a) A transaction under this subchapter shall be consistent with the
29 governing principles and the obligation of good faith and fair dealing.

30 (b) A franchisor may terminate a franchise agreement only for material
31 cause as determined under objective standards.

32 (c)(1) A survivor of a franchisee shall be treated in good faith and
33 provided a sufficient opportunity to become an owner of the franchise.

34 (2) As used in subdivision (c)(1) of this section, "survivor"
35 means an immediate family member or designated heir of the franchisee or
36 franchise owner.

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SECTION 6. DO NOT CODIFY. Severability. If any provision or section of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provisions or applications, and to this end the provisions of the act are declared to be severable.

SECTION 7. DO NOT CODIFY. Retroactivity.
(a) Sections 1 and 3 of this act apply retroactively to the effective date of Acts 1991, No. 411.

(b) Sections 2, 4, and 5 of this act only apply to franchise agreements or contracts entered into or renewed on and after the effective date of this act.

/s/Wardlaw

APPROVED: 4/13/23