

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

HOUSE BILL 2187

5 By: Representative D. Douglas  
6 By: Senator Files  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE A FRANCHISE PERMIT FOR CERTAIN  
10 RETAIL LIQUOR PERMIT HOLDERS; TO PROVIDE THAT  
11 FRANCHISE AGREEMENTS BE PERMITTED UNDER CERTAIN  
12 CIRCUMSTANCES; TO DECLARE AN EMERGENCY; AND FOR OTHER  
13 PURPOSES.  
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## Subtitle

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17 TO CREATE A FRANCHISE PERMIT FOR CERTAIN  
18 RETAIL LIQUOR PERMIT HOLDERS; TO PROVIDE  
19 THAT FRANCHISE AGREEMENTS BE PERMITTED  
20 UNDER CERTAIN CIRCUMSTANCES; AND TO  
21 DECLARE AN EMERGENCY.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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### SECTION 1. DO NOT CODIFY. Legislative Intent.

#### (a) The General Assembly finds that:

##### (1) This bill does not change:

29 (A) That a person, firm, or corporation shall not have an  
30 ownership interest in more than one (1) retail liquor permit; and

31 (B) That each retail liquor premise shall have its own  
32 permit from the Alcoholic Beverage Control Division; and

33 (2) The purpose of this bill is to allow a franchise contract  
34 between a retail liquor permit holder and a person, firm, or corporation to  
35 use only the person, firm, or corporation's trade name, trademark, service  
36 mark, or related characteristic.



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2 SECTION 2. Arkansas Code § 3-4-205(a) and (b), concerning the  
3 prohibition of interest in multiple retail liquor permits, is amended to read  
4 as follows:

5 (a) For purposes of this section, ~~the term "vested permits" defined as~~  
6 ~~those:~~

7 (1) "Franchise contract" means a written agreement in which a  
8 person, firm, or corporation grants to another person, firm, or corporation a  
9 license to use a trade name, trademark, service mark, or related  
10 characteristic within an exclusive or nonexclusive territory and to provide  
11 services and goods with no alcohol content; and

12 (2) "Vested permits" means the multiple retail liquor permits  
13 which were lawfully issued to any person, firm, or corporation prior to July  
14 19, 1971.

15 (b)(1)(A) No retail liquor permit shall be issued, either as a new  
16 permit or as a replacement of an existing permit, to any person, firm, or  
17 corporation if the person, firm, or corporation has ~~any~~ an ownership interest  
18 in another retail liquor permit, ~~regardless of the degree of interest.~~

19 (B) A retail liquor permit shall apply only to one (1)  
20 location, and a person, firm, or corporation shall not be ~~permitted to~~  
21 ~~receive any direct or indirect financial benefit from the sale of liquor at~~  
22 ~~any location other than the permitted location~~ have an ownership interest in  
23 more than one (1) retail liquor permit .

24 (C) A person, firm, or corporation is not permitted to  
25 receive a direct or indirect financial benefit from more than one (1) retail  
26 liquor permit holder, unless the financial benefit:

27 (i) Is reasonable; and

28 (ii) Is provided under the terms of a franchise  
29 contract.

30 (D) A retail liquor permit holder shall obtain prior  
31 written approval from the Alcoholic Beverage Control Division to enter into a  
32 franchise contract under § 3-4-608.

33 (2) However, notwithstanding this prohibition, any retail liquor  
34 permits held by any person, firm, or corporation on July 19, 1971, which  
35 continue to be held by any person, firm, or corporation having an interest in  
36 more than one (1) retail liquor permit on August 13, 1993, shall be vested

1 permits.

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3 SECTION 3. Arkansas Code § 3-4-301(a)(8), (9), and (10), concerning  
4 the revocation of permits, are repealed.

5 ~~(8) Subsequent to March 1, 2011, if a retail liquor permittee~~  
6 ~~directly or indirectly remunerates any person, firm, or corporation that has~~  
7 ~~a direct or indirect pecuniary, proprietary, or financial interest in the~~  
8 ~~creation, establishment, operation, or contractual branding of another~~  
9 ~~permitted liquor establishment;~~

10 ~~(9) Subsequent to March 1, 2011, if a retail liquor permittee~~  
11 ~~directly or indirectly receives remuneration from any other retail liquor~~  
12 ~~permittee relating to the creation, establishment, operation, or contractual~~  
13 ~~branding of another permitted liquor establishment; or~~

14 ~~(10) Subsequent to March 1, 2011, if a retail liquor permittee~~  
15 ~~brands the permitted location with the same name or logo as another retail~~  
16 ~~liquor permittee.~~

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18 SECTION 4. Arkansas Code § 3-4-601 is amended to read as follows:  
19 3-4-601. Kinds of permits generally.

20 There shall be ~~six (6)~~ seven (7) kinds of permits, each of which shall  
21 be distinctive in color and design so as to be readily distinguishable from  
22 each other, to wit:

- 23 (1) Distiller's permit;
- 24 (2) Brewer's permit;
- 25 (3) Rectifier's permit;
- 26 (4) Wholesaler's permit;
- 27 (5) Dispenser's permit; ~~and~~
- 28 (6) Hotel, restaurant, or club permit; ~~and~~
- 29 (7) Franchise permit.

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31 SECTION 5. Arkansas Code Title 3, Chapter 4, Subchapter 6, is amended  
32 to add an additional section to read as follows:

33 3-4-608. Retail liquor permit holder – Franchise permit – Approval.

34 (a)(1) A retail liquor permit holder shall apply to the Alcoholic  
35 Beverage Control Division for a franchise permit that allows the permit  
36 holder to operate its retail liquor premises as a franchise under a franchise

1 contract as defined under § 3-4-205.

2 (2) A franchise permit shall be granted only to a retail liquor  
3 permit holder whose permitted retail premises are subject to the franchise  
4 contract are located in:

5 (A) Benton County;

6 (B) Pulaski County;

7 (C) Sebastian County; or

8 (D) Washington County.

9 (b)(1) The application shall be in writing and shall provide the  
10 information concerning the applicant for the permit and the premises to be  
11 used by the applicant as the division may require.

12 (2) A copy of the retail liquor permit holder's franchise  
13 contract shall be submitted with the retail liquor permit holder's  
14 application.

15 (c) The division shall review the information required by the division  
16 in the application under subdivision (b)(1) of this section and the franchise  
17 contract to determine whether the contract:

18 (1) Is a franchise agreement as defined under § 3-4-205; and

19 (2) Does not grant a person, firm, or corporation an ownership  
20 interest in more than one (1) retail liquor permit.

21 (d) If the division grants the application, the division shall issue a  
22 permit in the form determined by the rules of the division.

23 (e) The permit shall contain a description of the premises permitted  
24 and in form and substance shall be a permit to the person specifically  
25 designated in the permit to sell and dispense at retail spirituous or vinous  
26 liquors.

27 (f)(1) A retail liquor permit holder may appeal an order denying the  
28 issuance of a franchise permit to the circuit court of the county in which  
29 the premises are situated or the Pulaski County Circuit Court.

30 (2) Appeals shall be governed by the terms of the Arkansas  
31 Administrative Procedure Act, § 25-15-201 et seq.

32 (g) The division may charge a permit application fee and an annual  
33 renewal fee not to exceed five hundred dollars (\$500).

34 (h) A franchise permit may be renewed under § 3-4-216.

35 (i) The division shall promulgate rules to implement this section.

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1           SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
2 General Assembly of the State of Arkansas that this act is necessary to  
3 prevent unfair restrictions on commerce and that this act is immediately  
4 necessary to allow investment in businesses in the State of Arkansas and to  
5 ensure that current or prospective retail liquor permittees are not denied the  
6 benefits of a cobranding or franchise arrangement. Therefore, an emergency  
7 is declared to exist and this act being immediately necessary for the  
8 preservation of the public peace, health, and safety shall become effective  
9 on:

10                   (1) The date of its approval by the Governor;

11                   (2) If the bill is neither approved nor vetoed by the Governor,  
12 the expiration of the period of time during which the Governor may veto the  
13 bill; or

14                   (3) If the bill is vetoed by the Governor and the veto is  
15 overridden, the date the last house overrides the veto.

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