

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023

# A Bill

HOUSE BILL 1783

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By: Representatives Wardlaw, F. Allen, Beaty Jr., Bentley, M. Berry, Dalby, Ennett, Eubanks, K. Ferguson, V. Flowers, Gramlich, Hawk, G. Hodges, Holcomb, Hollowell, Jean, Ladyman, Lynch, Magie, McClure, M. McElroy, B. McKenzie, Milligan, Nicks, Pearce, Perry, Puryear, J. Richardson, Richmond, Rye, Schulz, Steimel, Unger, Vaught, Warren, D. Whitaker, Wooldridge  
By: Senators Hill, J. Boyd, J. Bryant, Crowell, B. Davis, Dees, Flippo, K. Hammer, Hester, Irvin, B. Johnson, M. Johnson, F. Love, M. McKee, J. Payton, J. Petty, Stone, G. Stubblefield, D. Wallace

## For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS FRANCHISE PRACTICES ACT;  
AND FOR OTHER PURPOSES.

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## Subtitle

TO AMEND THE ARKANSAS FRANCHISE PRACTICES  
ACT.

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

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SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(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;

(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";

(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(5), concerning the definition of  
 11 "sale, transfer, or assignment" under the Arkansas Franchise Practices Act,  
 12 is amended to read as follows:

13 (5) "Sale, transfer, or assignment" means any disposition of a  
 14 franchise or any interest therein, with or without consideration, to include,  
 15 ~~but not be limited to,~~ without limitation a sale, bequest, inheritance, gift,  
 16 exchange, lease, transfer by or through a trust, or license;

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 18 SECTION 3. Arkansas Code § 4-72-202(7), concerning the definition of  
 19 "good cause" under the Arkansas Franchise Practices Act, is amended to read  
 20 as follows:

21 (7) "Good cause" means:

22 (A) Failure ~~by~~ of a franchisee to substantially comply  
 23 ~~substantially~~ with the material requirements imposed upon ~~him or her~~ the  
 24 franchisee by the franchise agreement or reasonable and material corporate  
 25 policies or procedures adopted and sought to be imposed by the franchisor, ~~or~~  
 26 ~~sought to be imposed by the franchisor, which requirements are not~~  
 27 ~~discriminatory as compared with the requirements imposed on other similarly~~  
 28 ~~situated franchisees, either by their terms or in the manner of their~~  
 29 ~~enforcement~~ to the extent authorized under the franchise agreement; ~~or~~

30 (B) The failure by the franchisee to act in good faith and  
 31 in a commercially reasonable manner in carrying out the terms of the  
 32 franchise; ~~or~~

33 (C) Voluntary abandonment of the franchise; ~~or~~

34 (D) Conviction of the franchisee in a court of competent  
 35 jurisdiction of an offense, punishable by a term of imprisonment in excess of  
 36 one (1) year, substantially related to the business conducted pursuant to the

1 franchise; ~~or~~

2 (E) Any act by a franchisee which substantially impairs  
3 the franchisor's trademark or trade name; ~~or~~

4 (F) The institution of insolvency or bankruptcy  
5 proceedings by or against a franchisee, or any assignment or attempted  
6 assignment by a franchisee of the franchise or the assets of the franchise  
7 for the benefit of the creditors; ~~or~~

8 (G) Loss of the franchisor's or franchisee's right to  
9 occupy the premises from which the franchise business is operated; or

10 (H) Failure of the franchisee to pay to the franchisor  
11 within ten (10) days after receipt of notice of any sums past due the  
12 franchisor and relating to the franchise; and

13

14 SECTION 4. Arkansas Code § 4-72-202(8), concerning the definition of  
15 "good faith" under the Arkansas Franchise Practices Act, is amended to read  
16 as follows:

17 (8) "Good faith" means honesty in fact in the conduct, business  
18 dealings, or transaction concerned and the observation of commercially  
19 reasonable standards of fair dealing.

20

21 SECTION 5. Arkansas Code § 4-72-202, concerning definitions under the  
22 Arkansas Franchise Practices Act, is amended to add an additional subdivision  
23 to read as follows:

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

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

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

28

29 SECTION 6. Arkansas Code § 4-72-203 is amended to read as follows:  
30 4-72-203. Applicability of subchapter.

31 (a)(1) This subchapter applies only to a franchise entered into,  
32 renewed, or transferred after March 4, 1977, the performance of which  
33 contemplates or requires the franchise to establish or maintain a place of  
34 business or conduct business within the State of Arkansas.

35 (2) To the fullest extent permitted by the United States  
36 Constitution and the Arkansas Constitution, this subsection is intended to

1 apply to a franchise:

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

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

5 ~~(b) However, the provisions of this~~ This subchapter ~~shall~~ does not  
 6 apply to those business relations, actions, transactions, or franchises  
 7 subject to ~~the provisions of~~ § 4-72-401 et seq. and § 4-72-501 et seq., ~~or~~  
 8 ~~which are subject to the Federal Trade Commission regulations, “Disclosure~~  
 9 ~~Requirements and Prohibitions Concerning Franchising and Business Opportunity~~  
 10 ~~Ventures”, 16 C.F.R. 436.1 et seq.~~

11  
 12 SECTION 7. Arkansas Code § 4-72-204(a), concerning a violation under  
 13 the Arkansas Franchise Practices Act, is amended to read as follows:

14 (a) It ~~shall be~~ is a violation of this subchapter for a franchisor to:

15 (1) Terminate or cancel a franchise without good cause; or

16 (2) ~~(A) Fail to renew a franchise except for good cause or except~~  
 17 ~~in accordance with the current policies, practices, and standards established~~  
 18 ~~by the franchisor which in their establishment, operation, or application are~~  
 19 ~~not arbitrary or capricious.~~

20 (B) Failing to renew a franchise in violation of  
 21 subdivision (a)(2)(A) of this section includes without limitation allowing a  
 22 franchise to expire without offering a franchisee in good standing an  
 23 opportunity to renew the franchise under substantially the same material  
 24 business and economic terms.

25  
 26 SECTION 8. Arkansas Code § 4-72-204(d), concerning the time frames to  
 27 remedy a deficiency under the Arkansas Franchise Practices Act, is amended to  
 28 read as follows:

29 (d) If the reason for termination, cancellation, or failure to renew  
 30 is for repeated material breaches or deficiencies within a twelve-month  
 31 period giving rise to good cause under § 4-72-202(7)(A) or (B), the  
 32 franchisee shall have ~~ten (10)~~ twenty (20) days or a longer period of time as  
 33 may reasonably be required with the exercise of due diligence to rectify the  
 34 repeated material breaches or deficiencies and thereby void ab initio the  
 35 notice under subsection (b) of this section.

1 SECTION 9. Arkansas Code § 4-72-205 is amended to read as follows:  
 2 4-72-205. Transfer, assignment, or sale of franchise.

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

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

14 (A) ~~approve~~ Approve in writing to the franchisee or to the  
 15 franchise owner the sale, transfer, or assignment to the proposed transferee;  
 16 or

17 (B) ~~by~~ By written notice advise the franchisee and  
 18 franchise owner of the unacceptability of the proposed transferee, ~~setting~~  
 19 ~~forth~~ stating a material ~~reason~~ deficiency relating to the character,  
 20 financial ability, or business experience of the proposed transferee based on  
 21 the application of the franchisor's then-existing standards consistently and  
 22 uniformly applied to similarly situated franchisees operating within the  
 23 franchise brand.

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

27 (c) ~~No~~ A transfer, assignment, or sale ~~pursuant to~~ under this section  
 28 shall not be valid unless the transferee agrees in writing to comply with ~~all~~  
 29 ~~of~~ the reasonable and legal requirements of the franchise then in effect.

30 (d) A franchisor's approval is not required for a transfer of a  
 31 franchise by a franchisee or franchise owner to:

32 (1) A key management employee of the franchisee who:

33 (A) Is operationally and financially qualified; and

34 (B) Meets the franchisor's:

35 (i) Then current requirements for granting new  
 36 franchises; or

1                   (ii) Then current requirements for granting renewal  
2 franchises if the franchisor is not granting a significant number of new  
3 franchises;

4                   (2) An existing franchisee of the franchisor; or

5                   (3) The spouse, child, or heir of the franchisee or franchise  
6 owner who is operationally and financially qualified.

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

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

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19                   SECTION 10. Arkansas Code § 4-72-206(a)(6), concerning the unlawful  
20 dealing practices of franchisors under the Arkansas Franchise Practices Act,  
21 is amended to read as follows:

22                   (6) To fail or refuse to deal with a ~~franchise~~ franchisee in a  
23 commercially reasonable manner and in good faith as defined under this  
24 subchapter; or

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26                   SECTION 11. Arkansas Code § 4-72-206(a), concerning unlawful practices  
27 of franchisors under the Arkansas Franchise Practices Act, is amended to add  
28 additional subdivisions to read as follows:

29                   (8) To require a franchisee at the time of entering into a  
30 franchise agreement to waive or eliminate the obligation of good faith and  
31 fair dealing under this section;

32                   (9) To provide any term or condition in a lease or other  
33 agreement ancillary or collateral to a franchise, which term or condition  
34 directly or indirectly violates this subchapter;

35                   (10) To require that a franchisee or successor to a franchisee  
36 make an agreement that unreasonably changes the material economic terms of

1 the franchise, including without limitation the rent, marketing fees,  
 2 franchise fees, service fees, and other fees paid by franchisee or the  
 3 franchisee's successor before the expiration of the existing franchise  
 4 agreement term, as a condition of:

5 (A) A franchise sale, transfer, or assignment;

6 (B) A franchise renewal; or

7 (C) Granting of a new franchise agreement upon expiration  
 8 of a franchise agreement; or

9 (11) A condition, stipulation, or provision purporting to bind a  
 10 person to waive compliance with this subchapter is contrary to public policy  
 11 and is void.

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 13 SECTION 12. Arkansas Code § 4-72-208(b), concerning remedies available  
 14 to a franchisee under the Arkansas Franchise Practices Act, is amended to  
 15 read as follows:

16 (b) ~~Any~~ A franchisee ~~who~~ that is harmed by a violation of ~~any other~~  
 17 ~~section of~~ this subchapter ~~shall be~~ is entitled to recover actual and  
 18 consequential damages in a civil action and, ~~where~~ if appropriate, obtain  
 19 injunctive relief, including without limitation:

20 (1) A prohibitive injunction;

21 (2) A mandatory injunction;

22 (3) ~~in addition to reasonable~~ Reasonable attorney's fees and  
 23 costs of litigation; and

24 (4) Any other relief that the court deems just and equitable.

25  
 26 SECTION 13. Arkansas Code § 4-72-209 is amended to read as follows:

27 4-72-209. Franchisee's right of repurchase.

28 (a) Upon termination or nonrenewal of any a franchise by a franchisor  
 29 without good cause that is in violation of this subchapter, in addition to  
 30 the franchisee's right to exercise the franchisee's other remedies under this  
 31 subchapter and common law, the franchisor shall, at the franchisee's option,  
 32 shall repurchase at the franchisee's net cost, less a reasonable allowance  
 33 for depreciation ~~or obsolescence~~, the franchisee's inventory, supplies,  
 34 equipment, and furnishings purchased by the franchisee from the franchisor or  
 35 ~~its~~ the franchisor's approved sources+.

36 (b) ~~however, no compensation~~ Compensation under subsection (a) of this

1 section shall not be allowed for the personalized items ~~which~~ of the  
2 franchisee that have no value to the franchisor.

3  
4 SECTION 14. Arkansas Code Title 4, Chapter 72, Subchapter 2, is  
5 amended to add additional sections to read as follows:

6 4-72-211. Venue restriction – Void.

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

11  
12 4-72-212. Duties of good faith and fair dealing – Termination – Rights  
13 of survivors.

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

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

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

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

23  
24 4-72-213. Additional terms upon renewal.

25 If a franchise owner is in good standing upon renewal, the addition of  
26 new terms to the franchise agreement by the franchisor that materially  
27 changes significant business and economic terms of the franchise agreement  
28 shall not constitute an offer to renew a franchise agreement under § 4-72-204  
29 of this subchapter.

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31 4-72-214. Goodwill.

32 A franchisee owns all the goodwill of his, her, or its own franchise if  
33 the franchise is sold to avoid unjust enrichment to the franchisor.

34  
35 4-72-215. Releases.

36 (a) A franchisee is not required to sign:

1           (1) A release if doing so causes the franchisee to suffer a  
 2 substantial financial loss; or

3           (2) A general release to leave the franchisor's system.

4           (b) A franchisor has a duty to mitigate damages for a franchisee  
 5 leaving the system.

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 7           SECTION 15. DO NOT CODIFY. Severability. If any provision or section  
 8 of this act or the application thereof to any person or circumstance is held  
 9 invalid, the invalidity shall not affect other provisions or applications of  
 10 the act that can be given effect without the invalid provisions or  
 11 applications, and to this end the provisions of the act are declared to be  
 12 severable.

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 14           SECTION 16. DO NOT CODIFY. Retroactivity.

15           (a) Sections 1, 2, 5, and 6 of this act apply retroactively to the  
 16 effective date of Acts 1991, No. 411.

17           (b) Sections 3, 4, 7, 8, 9, 10, 11, 12, 13, and 14 of this act only  
 18 apply to franchise agreements or contracts entered into or renewed on and  
 19 after the effective date of this act.

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