

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

As Engrossed: H4/4/23

# A Bill

HOUSE BILL 1783

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  
11

## For An Act To Be Entitled

12 AN ACT TO AMEND THE ARKANSAS FRANCHISE PRACTICES ACT;  
13 AND FOR OTHER PURPOSES.  
14

### Subtitle

15 TO AMEND THE ARKANSAS FRANCHISE PRACTICES  
16 ACT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. DO NOT CODIFY. Legislative findings.

23 The General Assembly finds that:

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

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

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

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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.

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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)(1) This subchapter does not govern the relationship between a  
4 wholesaler and a supplier of beer.

5 (2) The relationship between a wholesaler and a supplier of beer  
6 is governed by § 3-5-1101 et seq.

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

9 4-72-205. Transfer, assignment, or sale of franchise.

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

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

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

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

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

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

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

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

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

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

19 4-72-211. Venue restriction – Void.

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

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25 4-72-212. Duties of good faith and fair dealing – Termination – Rights  
26 of survivors.

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

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

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

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

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

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8           SECTION 7. DO NOT CODIFY. Retroactivity.

9           (a) Sections 1 and 3 of this act apply retroactively to the effective  
10 date of Acts 1991, No. 411.

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

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15   /s/Wardlaw  
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