

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

HOUSE BILL 2187

By: Representative D. Douglas

By: Senator Files

## For An Act To Be Entitled

AN ACT TO CREATE A FRANCHISE PERMIT FOR CERTAIN  
RETAIL LIQUOR PERMIT HOLDERS; TO PROVIDE THAT  
FRANCHISE AGREEMENTS BE PERMITTED UNDER CERTAIN  
CIRCUMSTANCES; TO DECLARE AN EMERGENCY; AND FOR OTHER  
PURPOSES.

## Subtitle

TO CREATE A FRANCHISE PERMIT FOR CERTAIN  
RETAIL LIQUOR PERMIT HOLDERS; TO PROVIDE  
THAT FRANCHISE AGREEMENTS BE PERMITTED  
UNDER CERTAIN CIRCUMSTANCES; AND TO  
DECLARE AN EMERGENCY.

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

### SECTION 1. DO NOT CODIFY. Legislative Intent.

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

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

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

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

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



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

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

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

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

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

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

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

(i) Is reasonable; and

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

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

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

permits.

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

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

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

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

SECTION 4. Arkansas Code § 3-4-601 is amended to read as follows:

3-4-601. Kinds of permits generally.

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

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

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

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

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

contract as defined under § 3-4-205.

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

- (A) Benton County;
- (B) Pulaski County;
- (C) Sebastian County; or
- (D) Washington County.

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

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

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

- (1) Is a franchise agreement as defined under § 3-4-205; and
- (2) Does not grant a person, firm, or corporation an ownership interest in more than one (1) retail liquor permit.

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

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

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

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

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

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

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

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

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

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

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