

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H4/4/23 S4/5/23

A Bill

HOUSE BILL 1783

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.

Subtitle

TO AMEND THE ARKANSAS FRANCHISE PRACTICES
ACT.

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

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



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

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

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

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

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

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

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

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

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

state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-72-211. Venue restriction – Void.

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

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

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

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

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

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

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