

Arkansas Franchise Practices Act

4-72-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) "Franchise" means a written or oral agreement for a definite or indefinite period in which a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic within an exclusive or nonexclusive territory or to sell or distribute goods or services within an exclusive or nonexclusive territory at wholesale or retail, by lease agreement, or otherwise.

(B) However, a franchise is not created by a lease, license, or concession granted by a retailer to sell goods or furnish services on or from premises which are occupied by the retailer-grantor primarily for its own merchandising activities and a franchise is not created by door-to-door sales complying with § 4-89-101 et seq.;

(2) "Person" means a natural person, corporation, partnership, trust, or other entity, and, in case of an entity, "person" shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in active control of the activities of each entity;

(3) "Franchisor" means a person who grants a franchise to another person;

(4) "Franchisee" means a person to whom a franchise is offered or granted;

(5) "Sale, transfer, or assignment" means any disposition of a franchise or any interest therein, with or without consideration, to include, but not be limited to, a bequest, inheritance, gift, exchange, lease, or license;

(6) "Place of business" means a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services;

(7) "Good cause" means:

(A) Failure by a franchisee to comply substantially with the requirements imposed upon him or her by the franchisor, or sought to be imposed by the franchisor, which requirements are not discriminatory as compared with the requirements imposed on other similarly situated franchisees, either by their terms or in the manner of their enforcement; or

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

(C) Voluntary abandonment of the franchise; or

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

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

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

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

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

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

4-72-203. Applicability of subchapter.

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. However, the provisions of this subchapter shall 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.

4-72-204. Termination, cancellation, or failure to renew.

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

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

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

(b) No franchisor shall directly or indirectly terminate, cancel, or fail to renew a franchise without first giving written notice to the franchisee at least ninety (90) days in advance of such action, setting forth the reasons for the termination, cancellation, or intention not to renew, and, in the case of terminations, shall provide the franchisee with thirty (30) days in which to rectify any claimed deficiency.

(c) The notice provisions of this section shall not apply where the reason for termination or cancellation is good cause under § 4-72-202(7)(C)-(H).

(d) If the reason for termination, cancellation, or failure to renew is for repeated deficiencies within a twelve-month period giving rise to good cause under § 4-72-202(7)(A) or (B), the franchisee shall have ten (10) days to rectify the repeated deficiencies and thereby void the notice.

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

(a) It shall be a violation of this subchapter for any franchisee to transfer, assign, or sell a franchise or interest therein to another person unless the franchisee first notifies the franchisor of that intention by written notice, setting forth 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 franchisor shall within sixty (60) days after receipt of the notice either approve in writing to the franchisee the sale to the proposed transferee or by written notice advise the franchisee of the unacceptability of the proposed transferee, setting forth a material reason relating to the character, financial ability, or business experience of the proposed transferee.

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

(c) No transfer, assignment, or sale pursuant to this section shall be valid unless the transferee agrees in writing to comply with all of the requirements of the franchise then in effect.

4-72-206. Unlawful practices of franchisors.

It shall be a violation of this subchapter for any franchisor, through any officer, agent, or employee to engage directly or indirectly in any of the following practices:

(1) To require a franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this subchapter;

(2) To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose;

(3) To require or prohibit any change in management of any franchisee unless the requirement or prohibition of change shall be for reasonable cause, which cause shall be stated in writing by the franchisor;

(4) To restrict the sale of any equity or debenture issue or the transfer of any security of a franchisee or in any way prevent or attempt to prevent the transfer, sale, or issuance

of shares of stock or debentures to employees, personnel of the franchisee, or heirs of the principal owner as long as basic financial requirements of the franchisor are complied with, if the sale, transfer, or issuance does not have the effect of accomplishing a sale of the franchise;

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

(6) To refuse to deal with a franchise in a commercially reasonable manner and in good faith; or

(7) To collect a percentage of the franchisee's sales as an advertising fee and not use these funds for the purpose of advertising the business conducted by the franchisee.

4-72-207. Misleading and fraudulent schemes - Penalty - Prosecutions.

(a) It shall be unlawful for any person, directly or indirectly, in connection with the offer, sale, purchase, transfer, or assignment of any franchise in this state to knowingly:

(1) Employ any device, scheme, or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) Any violation of this section shall be a Class B felony.

(c) Prosecutions for offenses committed in violation of this section must be commenced within five (5) years from the date of the crime or within five (5) years from the date of the commission of the last overt act in furtherance of the scheme to defraud.

4-72-208. Franchisee's remedies.

(a) Any franchisee who is harmed by a violation or violations of § 4-72-207 shall be entitled to recover treble damages in a civil action and, where appropriate, obtain injunctive relief in addition to reasonable attorney's fees and costs of litigation.

(b) Any franchisee who is harmed by a violation of any other section of this subchapter shall be entitled to recover actual damages in a civil action and, where appropriate, obtain injunctive relief in addition to reasonable attorney's fees and costs of litigation.

(c) In addition to the other remedies provided for in this subchapter, the Attorney General shall have authority to file a petition in the circuit court of the county in which the State Capitol is located, seeking an injunction prohibiting any person, firm, corporation, partnership, or other entity from engaging in any of the practices prohibited by this subchapter. However, nothing shall prohibit the Securities Commissioner from taking appropriate action whenever a franchise constitutes a security under the Arkansas Securities Act, § 23-42-101 et seq.

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

Upon termination of any franchise by a franchisor without good cause, the franchisor shall, at the franchisee's option, repurchase at franchisee's net cost, less a reasonable allowance for depreciation or obsolescence, the franchisee's inventory, supplies, equipment, and furnishings purchased by the franchisee from the franchisor or its approved sources; however, no compensation shall be allowed for the personalized items which have no value to the franchisor.

4-72-210. Immunity granted those furnishing information.

No liability on the part of, and no cause of action of any nature other than as provided by this subchapter, shall arise against any franchisor, its officers, agents, or employees furnishing information as to reasons for termination, cancellation, intent not to renew, failure to renew, refusal to do business, or substantial change in competitive circumstances, unacceptability of a proposed transferee or relating to the character, financial ability, or business experience of a proposed transferee, or for statements made or evidence submitted at any hearing or trial conducted in connection therewith.