

HB 2041 HD1

Measure Title: RELATING TO FRANCHISES.

Report Title: Franchise; General Provisions

Description: Voids provisions in a franchise that restricts the resolution of claims arising to foreign forums. Effective 07/01/2112. (HD1)

Companion: SB2623

Package: None

Current Referral: CPN/JDL

Introducer(s): MCKELVEY

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE
INTERNATIONAL FRANCHISE ASSOCIATION (IFA) IN OPPOSITION TO
H.B. NO. 2041, HD 1**

Date: Tuesday, April 1, 2014

Time: 10:45 am

To: Chairperson Rosalyn Baker and Chairman Clayton Hee and Members of the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the International Franchise Association (IFA) in OPPOSITION to H.B. No. 2041, HD 1, Relating to Franchises.

The IFA is an organization that has both franchisors and franchisees as members and represents the franchise industry globally.

This bill attempts to change the franchise law in the state of Hawaii by providing that any provision in a franchise agreement that restricts jurisdiction or venue to a forum (state) other than Hawaii is void regarding a claim or business dealings that concerns a franchise in Hawaii.

The IFA opposes this bill for several reasons set forth below.

1. Franchise agreements generally contain a provision that provides that any dispute arising out of the agreement be resolved in the state where the franchisor is located. This provides uniformity, consistency and efficiency in both the legal and administrative areas between the franchisor and franchisee. The franchisor would be placed in an untenable position if it had to litigate in 50 states. Further, franchisees that have franchises in more than one state

would also have some disadvantages as well. It will tend to increase costs and burdens for both the franchisor as well as many franchisees.

2. Many agreements also have an arbitration provision which specifies that the any dispute is to be arbitrated in the state where the franchisor is located. It is clear that a state cannot force a change in the arbitration provisions which is protected under federal law pursuant to the Federal Arbitration Act.
3. The franchise agreements are based upon contracts mutually agreed to by the parties and it is the choice of a potential franchisee to not agree to the provisions and not accept to become the franchisee if they object to the provisions in the contract. To impose such a provision in Hawaii's law changes the playing field for the franchisors and may have unintended consequences in our business environment. The IFA feels that the committees need to be aware that the passage of this bill could result in a barrier to investment in Hawaii from both a franchisor's and franchisee's point of view. Many franchisees are mainland corporations and want the uniformity and may not want to invest in franchises in Hawaii if such a provision is contained in our law.
4. IFA is not aware of a rash of litigation that has occurred arising out of disputes with Hawaii franchisees and disputes, if any, are often initially resolved in discussions with the franchisors. The IFA is of the opinion that such a provision is not necessary and will have detrimental impact on the business climate in Hawaii.

5. Hawaii's law already provides that a franchisor "shall be amenable to the jurisdiction of the courts of this State, and shall be amenable to the service of process as provided by law and rule." That section of the Hawaii Revised Statutes also provides that the Hawaii commissioner of securities is designated to receive service of process for any person who sells a franchise in our state.
6. Our law further provides that it would be an unfair and deceptive practice to require at the time of entering into a franchisee to agree to a waiver that would relieve any person from liability imposed by this chapter. It further states that any provision requiring a franchisee to waive compliance with any provision of this chapter is void.
7. Most franchise agreements also have a provision that provides for the choice of applicable law to be the law of the state where the franchisor is located or some other state other than the state of the franchisee. This again is for the reason of uniformity and consistency. Therefore, if this bill were to pass, the franchisee and the courts of this state would be applying the law of some other state than Hawaii and this could create additional burdens and costs to all parties involved in the dispute.
8. By adding this provision to our law it could possibly create economic adjustments that have to be made to future franchise contracts by potentially increasing the costs to obtain the franchise as well as the royalties that are part of the agreement. The committees should also be aware of the possibility of any adjustment that may need to be made on any renewals of existing contract if the law is altered.

For these primary reasons the IFA is opposed to this bill and requests that the committees hold this bill. Thank you very much for allowing me to testify in OPPOSITION to this measure. IFA appreciates consideration of its concerns. Please feel free to contact me should you have any questions or desire additional information.



March 31, 2014

Hawaii Senate Committee on Commerce and Consumer Protection
Attn: Chair Rosalyn Baker

Hawaii Senate Committee on Judiciary and Labor
Attn: Chair Clayton Hee

Re: Requesting Support for Hawaii H.B. 2041

Honorable Chairmen Baker, Hee and Respective Committee Members,

On behalf of more than 30,000 franchisees owning more than 80,000 businesses and employing over 1.4 million individuals, I request you support of H.B. 2041, a measure which supports franchisees throughout the State of Hawaii.

The Coalition of Franchisee Associations (CFA), exclusively comprised of franchisee association and franchisee members, brings together some of the largest and most reputable independent franchisee associations with a mission “to leverage the collective strengths of franchisee associations for the benefit of the franchisee community.” The CFA represents 17 franchisee associations whose members own brands including Subway, Burger King, 7-Eleven, AM/PM Service Stations, Buffalo Wild Wings, Dunkin’ Donuts, Meineke, Kumon Learning Centers, Domino’s, Little Caesars, the Asian American Hotel Owners Association (AAHOA) and Supercuts, among others.

Hawaii House Bill 2041 and its House companion bill, Senate Bill 2623, aim to protect franchisees by voiding the use of pre-dispute forum selection clauses in franchise agreements. Many current franchise agreements include clauses which require franchisees to travel to the franchisor’s venue in order to resolve franchise-related disputes. Because Hawaii is physically isolated from other states, the travel costs and time needed to resolve franchise disputes places an undue hardship on franchise owners across Hawaii. If franchise disputes arise from actions conducted in Hawaii – with all witnesses and evidence located in the state – it would be much more time and cost effective to conduct dispute resolution procedures in Hawaii.

HB 2041 and its companion bill, SB 2623, allow all claims resulting from actions taking place in Hawaii to be resolved in-state. It protects the small business owners who live in Hawaii, invest their business in Hawaii and help create jobs and stimulate Hawaii’s economy as opposed to those who have no business





presence in the state. If passed into law, HB 2041 will help the thousands of franchisees in the state by allowing them to reduce costs, increase efficiency, and focus on growing their businesses.

For the reasons above, the CFA fully supports HB 2041 and ask that you vote in favor the bill. Thank you for your time and consideration.

Sincerely,



Misty Chally
Executive Director, CFA





Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Commerce and Consumer Protection
Tuesday, April 1, 2014 at 10:45 A.M.
Conference Room 229, State Capitol**

RE: HOUSE BILL 2041 HD1 RELATING TO FRANCHISES

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber **supports** HB 2041 HD1, which voids provisions in a franchise that restricts the resolution of claims arising to foreign forums.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the “Voice of Business” in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state’s economic climate and to foster positive action on issues of common concern.

The Chamber supports this bill which helps local franchisees to have adjudication in the Hawaii court system. Many current franchise agreements include clauses which require franchisees to travel to the franchisor’s venue in order to resolve franchise-related disputes. Because Hawaii is physically isolated from other states, the travel costs and time needed to resolve franchise disputes places an undue hardship on franchise owners across Hawaii. If franchise disputes arise from actions conducted in Hawaii – with all witnesses and evidence located in the state – it would be much more time and cost effective to conduct dispute resolution procedures in Hawaii.

HB 2041 HD1 prohibits the use of any pre-dispute forum selection clauses in franchise agreements. This allows all claims resulting from action taking place in Hawaii to be resolved in-state. If passed into law, HB 2041 HD1 will help the thousands of franchisees in the state by allowing them to reduce costs, increase efficiency, and focus on growing their businesses.

Thank you for the opportunity to testify on this matter.

March 29, 2014

Honorable Legislators

Ref: HB 2041

Please know the Hawaii Subway franchisees and their families strongly support passage of this Bill to help protect the viability of our small businesses throughout Hawaii.

Currently, our businesses are at significant risk whereas our Franchisor can, **on a whim**, or otherwise, require we, as individual Hawaii franchisee owners, to defend our positions on any dispute in Connecticut on the East Coast. We must bear the expense of travel for ourselves, our witnesses and our attorneys at a distant, so to speak, foreign venue under the rule of law of a jurisdiction not of our choosing.

As our elected representative we ask you to consider how patently unfair this current foreign dispute settlement clause imposed by the Franchisor, has been and will continue to be to our local Hawaii businesses without your help.

We strongly urge you to pass this Bill so that we, as local Hawaii residents have our day in a Court of Hawaii under the rule of law of Hawaii.

Mahalo for your consideration and support!

Steven Handy
Chair
Hawaii Subway Franchisee Council
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Hilo, Hawaii 96720
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