

March 31, 2014

Dear Chairman and Members of the Senate Committee on Commerce and Consumer Protection and the Senate Committee on Judiciary and Labor,

I am submitting this testimony in support of House Bill 2041. While I intend to appear in person at the hearing tomorrow, I have a court matter set for 10 a.m. tomorrow which was set prior the time this hearing was set and which may delay or prevent my appearance.

I am a shareholder/director with the law firm of Alston Hunt Floyd & Ing. In recent years, I have had several clients who have sought advice and assistance with franchise matters. These clients are local businessmen and women who signed up to be franchisees, however, for one reason or another they now need help in dealing with their mainland franchisors. However, one frustration I have faced is that invariably in the boilerplate of their franchise agreements is a provision signed at the time the franchise agreement was entered into, requiring any future dispute – despite the facts and circumstances of the dispute -- to be adjudicated in a specific forum on the mainland hand-picked by the franchisor. The result of such a clause is to put the franchisee at a great disadvantage in seeking a fair and equitable resolution of his or her issues with the franchisor simply because of the expense of traveling to the mainland for a resolution. In fact, it dictates in large part whether and how the franchisee can obtain relief.

Hawaii Revised Statutes Section 425E-5, as it currently reads, requires franchisors to be amenable to jurisdiction in the State of Hawaii, evincing a clear intent to allow in-state franchisees to have disputes arising under Hawaii law and involving in-state franchises to be determined by local state and federal courts. However, franchisors typically include as part of the boilerplate in their franchise agreements a provision requiring that any disputes –whether or not arising in Hawaii and whether or not involving Hawaii law – to be resolved in a forum removed from Hawaii. The net effect is to thwart the Hawaii legislature's intent to provide a local state or federal forum for Hawaii franchise disputes. This amendment would reflect the legislature's intent and is consistent with similar state statutes in other states with franchise investment laws.

Given Hawaii's physical isolation from other states, the imposition of a mainland forum selection clause is a great hardship to local businesses, and impractical. A dispute regarding a Hawaii franchise will typically involve conduct in Hawaii, with the witnesses and physical evidence located in state and will typically involve the application of Hawaii

law, including the interpretation and application of Hawaii's franchise investment law. However, as matters currently stand, local disputes involving local law are as a practical matter never determined by a local court. Instead, they are adjudicated thousands of miles away in a foreign forum which does not allow for the robust and authoritative development of judicial precedent to inform parties about how to interpret and apply Hawaii's franchise investment law.

It is my understanding that this bill has been, in general, reviewed and approved by the Hawai'i Department of Commerce and Consumer Affairs.

In conclusion, it is really only fair that a dispute arising in Hawaii and implicating Hawaii law be allowed to be determined in Hawaii. This bill does not mandate that the matter be heard in Hawaii but would correct an injustice to ensure that Hawaii remains an option if that is what is fair to the parties at the time the dispute arises.

Thank you in advance for allowing me to present testimony on this issue of great importance to the citizens of our State and our local business community.

Sincerely,

Thomas E. Bush