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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

Date: Wednesday, February 12, 2014
Time: 2:10 p.m.
Conference Room: 325

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

**TESTIMONY ON HOUSE BILL NO. 2041
RELATING TO FRANCHISES**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division ("Division") of the Department of Commerce and Consumer Affairs. I am offering testimony regarding a minor technical comment.

This measure amends HRS §482E-5 to void provisions in a franchise agreement with a Hawaii franchise that restricts the pre-dispute forum selection to a jurisdiction other than Hawaii. The Division requests a minor technical amendment to avoid ambiguity. We merely ask to not move and leave, as is, the placement of the word "shall" on page 2, line 15, (appearing before the adverbial clause "at all times") to preserve parallel sentence structure and make it clear which adverbial clause applies to

which verb. Please note that the second "shall" on page 2, line 17, also appears before an adverbial clause: "thereafter at such times".

Thank you for the opportunity to testify. I would be happy to answer any questions the Committee may have.

February 9, 2014

Dear Chairman and Members of the House Committees on Commerce and Consumer Protection,

I am submitting this testimony in support of House Bill 2041.

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.

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

From: David Squeri, Esq.
To: HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Hearing: February 12, 2014 at 2:10 pm
Location: Conference Room 325

Re: Strong Support for HB 2041

Thank you for the opportunity to submit testimony in support of HB 2041. I am offering testimony on this issue as an individual, based on experience as a practicing attorney assisting clients with legal issues related to franchisees.

By voiding franchise provisions that restrict the adjudication and/or venue for dispute resolution to a forum outside of the State of Hawaii, the passage of HB 2041 would benefit, support, and protect local Hawaii businesses operating as franchises.

Currently, most Franchise Agreements contain provisions mandating that any dispute arising out of the subject Franchise is required to be resolved in a venue and/or at a location that is to the out of state Franchisors advantage. The mandated location is usually the home state of the Franchisor, or a place where the Franchisor enjoys a considerable "home team" advantage. As there is usually very little opportunity for a Franchisee to negotiate more advantageous terms when entering into a Franchise Agreement, this type of restrictive provision is often forced upon the Hawaii Franchisee as a means of protecting the out of state Franchisors' interests.

By forcing the Franchisee to travel to a faraway location, restrictions on dispute resolution, adjudication, and/or venue can effectively result in barring a Franchisee from making legitimate claims that they may otherwise be entitled to make. Furthermore, if forced to litigate or arbitrate a legal dispute in another state, the costs and associated hardship of the Hawaii based Franchisee is likely to be greatly increased, including paying additional travel expenses for witnesses and/or employees.

The applicable Hawaii law establishes the jurisdiction of the Hawaii Courts over an out of state party that transacts business within this State and purposefully avails itself of the privilege of conducting activities within Hawaii; thus invoking the benefits and protections of our laws. *Haw. Rev. Stat. § 634-35*; Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958); Creative Leisure International, Inc. v. Aki, 59 Haw. at 273, 580 P.2d 66. Hawaii Franchisees should be ensured of this protection when transacting with out of state Franchisors.

Thank you for opportunity to give testimony, and for your consideration in this matter.

David R. Squeri,
Attorney at Law

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Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Consumer Protection and Commerce
Wednesday, February 12, 2014 at 2:10 P.M.
Conference Room 325, State Capitol**

RE: HOUSE BILL 2041 RELATING TO FRANCHISES

Chair McKelvey, and Vice Chair Kawakami, and Members of the Committee:

The Chamber **supports** HB 2041 Relating to Franchises.

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 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 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.