

SB 2623

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.

Companion: HB2041

Package: None

Current Referral: CPN/JDL

Introducer(s): WAKAI, Baker, English, Ihara, Keith-Agaran, Kidani, Nishihara



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TO THE SENATE COMMITTEES ON COMMERCE & CONSUMER PROTECTION
AND JUDICIARY & LABOR
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

Date: Tuesday, February 11, 2014

Time: 9:11 a.m.

Conference Room: 229

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION

**TESTIMONY ON SENATE BILL NO. 2623
RELATING TO FRANCHISES**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, THE HONORABLE CLAYTON HEE,
CHAIR, AND MEMBERS OF THE COMMITTEES:

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. We offer written 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

Testimony of Tung Chan
February 11, 2014
CPN & JDL Committees
SB 2623
Page 2 of 2

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 submit written testimony on this bill.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Commerce and Consumer Protection
and Committee on Judiciary and Labor
Tuesday, February 11, 2014 at 9:30 A.M.
Conference Room 229, State Capitol**

RE: SENATE BILL 2623 RELATING TO FRANCHISES

Chairs Baker and Hee, and Vice Chairs Taniguchi and Shimabukuro, and Members of the Committees:

The Chamber **supports** SB 2623 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.

SB 2623 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, SB 2623 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.

SB2623

Submitted on: 2/7/2014

Testimony for CPN/JDL on Feb 11, 2014 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Sisson	Edible Arrangements Manoa	Support	No

Comments: The legislation is very important to small business owners (franchisees) in Hawaii. It would reduce the severe costs of litigation with a franchisor. These costs can be extreme for all mainland franchisees, however due to Hawaii's remote location the costs of travel for litigation would be insurmountable. Passing this bill would be very beneficial to the continued growth and survival of our local community of small business owners.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

February 9, 2014

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

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: Senate Committees on the Judiciary and on Commerce/ Consumer Protection

Hearing: February 11, 2014 at 9:30 am

Re: Strong Support for SB 2623

Thank you for the opportunity to submit testimony in support of SB 2623. I am offering testimony on this issue as an individual, based on experience assisting clients with legal issues related to franchises as a practicing attorney.

By voiding franchise provisions that restrict the adjudication or venue for claims resolution to a forum outside of the State of Hawaii, the passage of SB 2623 would benefit, support, and protect local businesses operating as franchises in our state.

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

David R. Squeri,
Attorney at Law

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