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## A BILL FOR AN ACT

RELATING TO FRANCHISES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Hawaii's franchise investment law regulates the  
2 sale of franchises in Hawaii. While franchisors are required to  
3 be amenable to the jurisdiction of the courts of this State,  
4 franchises may include a pre-dispute forum selection clause that  
5 requires the adjudication of disputes in an out-of-state  
6 jurisdiction.

7           The legislature finds that given Hawaii's physical  
8 isolation from other states, mandating the imposition of an out-  
9 of-state forum selection clause in a franchise without regard to  
10 the facts of the dispute is impractical and a great hardship to  
11 franchisees. A dispute regarding a Hawaii franchise will  
12 typically involve conduct in Hawaii, with the witnesses and  
13 physical evidence located in the State. It is frequently cost  
14 prohibitive for a franchisee to have disputes adjudicated out-  
15 of-state, with the result that the franchisees cannot afford to  
16 utilize the protections afforded them under Hawaii law,  
17 frustrating a purpose of Hawaii's franchise investment law.



1           The legislature further finds that having Hawaii franchise  
2 disputes adjudicated thousands of miles away in a foreign forum  
3 does not allow for the robust and authoritative development of  
4 judicial precedent to inform parties about how to interpret and  
5 apply Hawaii's law regarding franchisor-franchisee disputes.

6           The purpose of this Act is to make voidable the use of pre-  
7 dispute forum selection clauses in franchises that require the  
8 adjudication of disputes in an out-of-state jurisdiction and to  
9 make Hawaii's franchise laws consistent with the statutory  
10 schemes of other states that have enacted franchise investment  
11 laws.

12           SECTION 2. Section 482E-5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "**§482E-5 General provisions.** (a) Every person selling  
15 franchises in this State [~~shall~~] at all times shall keep and  
16 maintain a complete set of books, records, and accounts of such  
17 sales and shall thereafter at such times as are required by the  
18 director make and file in the office of the director a report  
19 setting forth the franchises sold by it and the proceeds derived  
20 therefrom.



1 (b) It is unlawful for any person in connection with the  
2 offer, sale, or purchase of any franchise directly or  
3 indirectly:

4 (1) To make any untrue statement of a material fact in any  
5 offering circular or report filed with the director  
6 under this chapter or wilfully to omit to state in any  
7 offering circular or report, any material fact which  
8 is required to be stated therein.

9 (2) To sell or offer to sell a franchise in this State by  
10 means of any written or oral communication which  
11 includes an untrue statement of a material fact or  
12 omits to state a material fact necessary in order to  
13 make the statements made in light of the circumstances  
14 under which they were made not misleading.

15 (3) To employ any device, scheme, or artifice to defraud.

16 (4) To engage in any act, practice, or course of business  
17 which operates or would operate as a fraud or deceit  
18 upon any person.

19 (5) To violate any order of the director.

20 (c) Any person who is engaged or hereafter engaged  
21 directly or indirectly in the sale of a franchise or in business



1 dealings concerning a franchise, either in person or in any  
2 other form of communication, shall be subject to this chapter,  
3 shall be amenable to the jurisdiction of the courts of this  
4 State, and shall be amenable to the service of process as  
5 provided by law and rule. Every person who sells a franchise in  
6 this State shall file with the director in such form as the  
7 director by rule prescribes, an irrevocable consent appointing  
8 the commissioner or the commissioner's successor in office to be  
9 the person's attorney, to receive service or any lawful process  
10 in any noncriminal suit, action, or proceeding against the  
11 person or the person's successor, executor, administrator, or  
12 personal representative which arises under this chapter or any  
13 rule or order hereunder after the consent has been filed, with  
14 the same force and validity as if served personally on the  
15 person filing consent. A person who has filed such a consent in  
16 connection with a previous sale under this law need not file  
17 another. Service may be made by leaving a copy of the process  
18 in the office of the commissioner but is not effective unless:

19 (1) The plaintiff, who may be the director, in a suit,  
20 action, or proceeding instituted by the plaintiff  
21 forthwith sends notice of the service and a copy of



1           the process by registered or certified mail to the  
 2           defendant or respondent at the defendant's or  
 3           respondent's last address on file with the director;  
 4           and

5           (2) The plaintiff's affidavit of compliance with this  
 6           section is filed in the case on or before the return  
 7           day of the process, if any, or within such further  
 8           times the court allows.

9           (d) Any provision in a franchise agreement that restricts  
 10          jurisdiction or venue to a forum outside of this State is  
 11          voidable, at the option of the franchisee, with respect to any  
 12          claim arising under or relating to a franchise in this State or  
 13          to business dealings concerning a franchise in this State.

14          [~~(d)~~] (e) In any proceeding under this chapter, the burden  
 15          of proving an exception or an exemption from a definition is  
 16          upon the person claiming it."

17          SECTION 3. This Act does not affect rights and duties that  
 18          matured, penalties that were incurred, and proceedings that were  
 19          begun before its effective date.

20          SECTION 4. Statutory material to be repealed is bracketed  
 21          and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2016.

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JAN 25 2016

# H.B. NO. 2192

**Report Title:**

Franchise; General Provisions; Forum

**Description:**

Makes voidable, franchise provisions that restrict the resolution of claims arising under or relating to a franchise in this State to a foreign forum.

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