



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Consumer Protection and Commerce
Wednesday, February 11, 2015 at 2:30 P.M.
Conference Room 325, State Capitol**

RE: HOUSE BILL 1000 RELATING TO FRANCHISES

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

The Chamber of Commerce of Hawaii ("The Chamber") **supports** HB 1000, which voids franchise provisions that restrict the resolution of claims arising under or relating to a franchise in this State to a foreign forum.

The Chamber is the largest business organization in Hawaii, representing over 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 members and the entire business community 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 1000 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 1000 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.

February 9, 2015

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

I am submitting this testimony in support of House Bill 1000.

I am a shareholder/director with the law firm of Alston Hunt Floyd & Ing. In recent years, I have had 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.

It is also consistent with other Hawaii statutes that prohibit pre-dispute venue selection provisions in similar situations. For example, in regulating auto dealerships under Hawaii's Motor Vehicle Industry Licensing Act, this legislature enacted Hawaii Revised Statutes Section 437-52, which prevents out-of-state manufacturers and distributors from requiring local dealers to bring actions only in venues outside of Hawaii. That is exactly what this law does. It prevents out-of-state franchisors from requiring local franchisees to bring actions only in venues outside of Hawaii.

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

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 09, 2015 9:34 AM
To: CPCtestimony
Cc: ManoaPO@gmail.com
Subject: Submitted testimony for HB1000 on Feb 11, 2015 14:30PM

HB1000

Submitted on: 2/9/2015

Testimony for CPC on Feb 11, 2015 14:30PM in Conference Room 325

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Robert Sisson | Individual | Comments Only | No |

Comments: Our status quo is indeed a problem that needs to be addressed. As a franchisee in Hawaii, I am thankful to have this opportunity to add testimony for this bill. The current law is a deterrent for small business growth in Hawaii. This new bill would remove a potentially tremendous financial barrier to small business owners. Further it would promote growth by protecting small business owner. The legislation is very important to small business owners (franchisees) in Hawaii as 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.

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