



**Testimony to the House Committee on Economic Development & Business  
Tuesday, February 3, 2015 at 9:00 A.M.  
Conference Room 312, State Capitol**

**RE: HOUSE BILL 1000 RELATING TO FRANCHISES**

Chair Kawakami, Vice Chair Kong, 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 3, 2015

RE: International Franchise Association Opposition to H.B. 1000

**LATE**

Members of the House Economic Development & Business Committee:

On behalf of the International Franchise Association (IFA) and I would like to register our opposition to HB 1000 which attempts to amend Hawaii's current franchise law (HRS chapter 482E) by including a provision stating if a franchise agreement restricts jurisdiction to a forum outside of Hawaii, such provision is void.

Celebrating 55 years of excellence, education and advocacy, the International Franchise Association is the world's oldest and largest organization representing franchising worldwide. IFA works through its government relations and public policy, media relations and educational programs to protect, enhance and promote franchising and the more than 780,000 franchise establishments that support nearly 8.9 million direct jobs, \$890 billion of economic output for the U.S. economy and 3 percent of the Gross Domestic Product (GDP), including over 2,800 establishments in Hawaii generating more than \$5 billion in economic output each year and supporting over 46,000 Hawaiian jobs. IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law, technology and business development.

Subsection (c) of HRS sec. 482E-5 basically provides that a franchisor "shall be amenable to the jurisdiction of the courts of this State, and shall be amenable to the service of process as provided by law and rule." That section further provides that every person who sells a franchise shall file with the director of DCCA an irrevocable consent appointing the commissioner of securities of the DCCA to be the attorney to receive service of process with the same force and validity as if served personally.

Current Hawaii statute further provides in HRS 482E-6 (2) (F) that it would be an unfair or deceptive act or practice or an unfair method of competition to "require a franchisee at the time of entering into a franchise to agree to a waiver that would relieve any person from liability imposed by this chapter." It further states any "condition, stipulation or provision binding any person acquiring any franchise to waive compliance with any provision of this chapter or a rule promulgated hereunder shall be void."

The impact of this provision guarantees a franchisee can file a civil suit in the courts of Hawaii in accordance with subsection 5 mentioned above.

Further, many of the franchise agreements contain an arbitration provision which specify venues and it is clear a state cannot force a change in the arbitration clause which is protected under federal law pursuant to the Federal Arbitration Act.

Lastly, this bill would implement irregular restrictions on provisions of franchise relationship agreements that pertain to jurisdiction and venue. IFA feels that franchising is already heavily regulated in Hawaii, and this legislation interferes in items normally left to private contract negotiations.

If you have any further questions please feel free to contact me. Thank you for your consideration IFA's opposition and interpretation of existing Hawaii law. We respectfully ask you to vote "No" on HB 1000.

Sincerely,

Jeff Hanscom

Jeff Hanscom  
Director, State Government Relations & Public Policy  
International Franchise Association

**LATE**

February 2, 2015

Dear Chairman and Members of the House Committee on Economic Development & Business,

I am submitting this testimony in support of House Bill 1000. While I intend to appear in person at the hearing tomorrow, I have a 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.

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