

# HB 1623 HD1

Measure Title: RELATING TO FRANCHISE INVESTMENT LAW.

Report Title: Franchisee; Advertising Campaigns; Non-participation

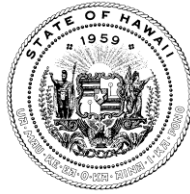
Description: Requires franchisees to disclose their non-participation in advertising campaigns of the franchisor in which discounts or promotions are offered. Prohibit franchisors from limiting or restricting the disclosures. (HB1623 HD1)

Companion: [SB2061](#)

Package: None

Current Referral: CPH

Introducer(s): TAKUMI, ICHIYAMA



DAVID Y. IGE  
GOVERNOR  
DOUGLAS S. CHIN  
LT. GOVERNOR

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TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Thursday, March 22, 2018  
9:15 a.m.

**TESTIMONY ON HOUSE BILL NO. 1623, H.D. 1, RELATING TO FRANCHISE INVESTMENT LAW.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 1623, H.D. 1, Relating to Franchise Investment Law. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection. The Department appreciates the intent of this bill and offers comments.

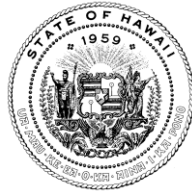
This bill adds a new section to Hawaii Revised Statutes (“HRS”) chapter 482E that: (1) requires a franchisee to disclose at its entrance or storefront that it is not participating in a promotion or discount offered by the franchise; and (2) prohibits a franchisor from limiting or placing conditions upon the franchisee in making the required disclosure. H.D. 1 amends the bill by changing its effective date to facilitate further discussion.

Consumers are often confused or misled by offers a franchise makes in national advertising campaigns. While an advertisement may state that an offer is not available in Hawaii, this disclosure is often in tiny print and therefore insufficient to inform the

consumer that the offer is not available in the State. If a promotion or discount is not available in Hawaii or at a particular location, this information should be disclosed to the consumer. The disclosure requirement in this bill will clarify to consumers whether an offer is available in Hawaii.

The Department also respectfully submits this new section is not appropriately placed in HRS chapter 482E, since this bill focuses on consumer protection, whereas the purpose of chapter 482E is to regulate the sale of franchises to minimize losses to the franchisee.

Thank you for the opportunity to testify on H.B. 1623, H.D. 1. I would be happy to answer any questions the Committee may have.



DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR

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TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 1623, H.D.1, Relating to Franchise Investment Law. My name is Ty Nohara, and I am the Commissioner of Securities for the Department’s Business Registration Division. The Department takes no position on this bill and offers comments. While we understand the Legislature’s intent in proposing this amendment, we believe that it goes beyond the scope of what the franchise investment law was intended to do.

The Federal Trade Commission (“FTC”), which provides oversight on the sale of franchises at the federal level, has promulgated a Franchise Rule (“FTC Rule”). The FTC Rule is intended to prevent unfair and deceptive practices in the sale of franchises and is “primarily a pre-sale disclosure rule.” The FTC Rule does not purport to regulate the substantive terms of the franchisee-franchisor relationship, but it requires franchisors to disclose material information prior to sales so that a prospective franchisee can make an informed decision.

Hawaii Revised Statutes (“HRS”) chapter 482E (Franchise Investment Law) mirrors the FTC Rule. HRS section 482E-1 specifies that the law is intended “to regulate the sale of franchises in the State to minimize losses to the franchisee in cases where the franchisor . . . has not provided full and complete information . . . .” The intent of the FTC Rule and the Hawaii Franchise Investment Law is to assure that prospective purchasers of a franchise receive the information necessary to make an informed business decision without the need for states or the federal government to become involved in specifying terms of a franchise contract.

Thank you for the opportunity to testify on H.B. 1623, H.D.1. I would be happy to answer any questions the Committee may have.



**Tyler Roukema, Chairman** – Outback Steakhouse      **Kelii Gouveia, Incoming Chair** – Hula Grill  
**Hide Sakurai, Vice Chair** – Diamond Dining      **Dirk Koeppenkastrop, Secretary** – Il Gelato  
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To: Sen. Rosalyn H Baker, Chair  
Sen. Jill N Tokuda, Vice Chair  
Members of the Committee on Commerce, Consumer Protection and Health

From: Victor Lim, Legislative Chair  
Hawaii Restaurant Association

Subj: HB1623 HD1 Advertising campaigns non-participation

Date: March 20, 2018

We at the Hawaii Restaurant Association representing 3,500 restaurants here have questions regarding the intent of this bill in that it is very broad and cover many industries here in Hawaii and not limited to just restaurants. In our restaurant industry alone, we have many sub categories from fine dining (Morton's, Ruth Chris's, Roy's), fast casual (Chili's, Ruby Tuesday, Outback, CPK), and quick service (McDonald's, Wendy's, Subway) restaurants.

Everyone of the above concepts have a different way of communicating what their respective national advertising offers and how the local entities here in Hawaii choose to honor. We have printed menus for sit down restaurants to big menu boards at the quick service concepts. The national advertising all have to state (.....at participating restaurants, .....contiguous 48 states, .....except AK and HI) as required by the federal provisions.

The broadness of this bill makes it very hard for us or any other industry to properly understand and try to comply.

Thank you for giving us an opportunity to share our comments with your committee. If you have further questions, please feel free to let us know.

Thanks and Aloha.

