



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**
TO THE HOUSE COMMITTEE ON JUDICIARY
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015
TUESDAY, MARCH 31, 2015
2:05 PM

TESTIMONY IN SUPPORT, WITH REQUESTED AMENDMENTS OF S.B. 464, S.D.1,
H.D. 1., RELATING TO CONSUMER PROTECTION.

TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA”), Office of
Consumer Protection (“OCP”) appreciates the opportunity to testify in support of Senate
Bill No. 464, S.D. 1, H.D. 1, Relating to Consumer Protection. My name is Stephen
Levins and I am the Executive Director of the OCP.

Senate Bill No. 464, S.D. 1, H.D. 1 enhances the regulation of automatic renewal
and continuous service clauses by: requiring persons charging a consumer’s credit or
debit card or account to obtain an acknowledgment and affirmative consent from the
affected consumer; establishing clear notice, disclosure and contact information

requirements; and requiring a method of cancellation for free trial offers and an opportunity to cancel before the commencement of automatic billing.

Based on complaints received from consumers over the years, the OCP has observed that the problematic aspects of automatic renewal and continuous service clauses fall into three broad categories:

1. failing to adequately disclose the material terms of the offer;
2. failing to obtain consumers' express informed consent before billing or charging them; and
3. failing to provide effective means for consumers to cancel.

Clear disclosure of all terms and conditions in a consumer contract is a fundamental tenet of consumer protection law. Businesses should not be allowed to impose binding contractual language without the knowledge of the consumer, and no consumer should be laden with a legal obligation that he or she does not understand or affirmatively accept.

Amending section 481-9.5 will help to ensure that Hawaii consumers will enjoy the same protections as those in California. This is because the amendments contained in H.D. 1 are very similar in nature to the law in California. See, Cal. Com. Code sections 17600-17606.

While H.D. 1 goes a long way in helping Hawaii consumers, the OCP believes that additional minor revisions are necessary in order to more fully harmonize this measure with current law. In this regard, the OCP proposes the following amendments

as reflected in a proposed H.D. 2, attached to the testimony. The amendments consist of:

- amending the section title of section 481-9.5, Haw. Rev. Stat., to clarify that it would apply to continuous service clauses in addition to automatic renewal clauses;
- adding a definition of “automatic renewal”;
- amending subsections (d), (e), (f), (g), and (h) so that they are fully consistent with subsections (a) and (b); and
- amending subsection (e) to comport with the California law on which the provision is largely based.
- amending the current effective date of July 1, 2112 to instead read July 1, 2015.

This measure is laudable because it specifically addresses the problematic areas of automatic renewal and continuous service clauses in a clear and meaningful way and if adopted will ensure that Hawaii consumers will be made fully aware of all of the terms and conditions of the clauses. In view of this, the OCP is in strong support.

Thank you for the opportunity to support Senate Bill No. 464, S.D. 1, H.D.1. I am available for any questions you have regarding this Bill.

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. Section 481-9.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[[§]481-9.5[[§]] **Automatic renewal and continuous service**
4 **clauses.** (a) Any person who sells or offers to sell any
5 products or services to a consumer pursuant to a consumer
6 contract that has a specified term of more than one month and an
7 automatic renewal clause under which the contract will
8 automatically renew for a specified term of more than one month
9 unless the consumer cancels the contract, shall disclose the
10 automatic renewal clause and the procedure by which the consumer
11 can cancel automatic renewal of the consumer contract clearly
12 and conspicuously in the consumer contract.

13 (b) Any person who sells or offers to sell any products or
14 services to a consumer pursuant to a consumer contract that has
15 a specified contract term of twelve months or more, under which
16 the contract will automatically renew for a specified term of

1 more than one month unless the consumer cancels the consumer
2 contract, shall notify the consumer clearly and conspicuously:

3 (1) That the consumer contract will automatically renew
4 unless the consumer cancels the contract;

5 (2) How to cancel the contract; and

6 (3) The deadline by which the consumer shall respond to
7 cancel the consumer contract and prevent automatic
8 renewal.

9 The notice provided to the consumer under this subsection shall
10 be sent to the consumer no less than thirty days and no more
11 than sixty days before the date upon which the consumer shall
12 respond under paragraph (3).

13 (c) The notice to the consumer required by this section
14 may be provided electronically if the:

15 (1) Transaction for sale of products or services was
16 conducted electronically at the election of the
17 consumer and in compliance with the requirements of
18 chapter 489E, the uniform electronic transactions act;

19 or

20 (2) Consumer elects to receive electronic communications
21 and provides a valid electronic-mail address for the

1 purpose of receiving the notice required by this
2 section.

3 (d) Any person who sells or offers to sell any products or
4 services to a consumer pursuant to a consumer contract
5 containing a continuous service clause, shall clearly and
6 conspicuously disclose the continuous service clause and the
7 procedure by which the consumer can cancel the contract.

8 (e) No person shall charge the consumer's credit or debit
9 card or the consumer's account with a third party for an
10 automatic renewal or continuous service without first obtaining
11 the consumer's affirmative consent to the agreement containing
12 the automatic renewal offer terms or continuous service offer
13 terms.

14 (f) No person shall fail to provide an acknowledgment that
15 includes the automatic renewal or continuous service offer
16 terms, cancellation policy, and information regarding how to
17 cancel in a manner that is capable of being retained by the
18 consumer. If the offer includes a free trial, the person shall
19 also clearly and conspicuously disclose in the acknowledgment
20 how to cancel and allow the consumer to cancel before the
21 consumer pays for the goods or services.

1 (g) A person making automatic renewal or continuous
2 service offers shall provide a toll-free telephone number,
3 electronic mail address, postal address only when the seller
4 directly bills the consumer, or another cost-effective, timely,
5 and easy-to-use mechanism for cancellation that shall be clearly
6 and conspicuously described in the acknowledgment specified in
7 this section.

8 (h) In the case of a material change in the terms of the
9 automatic renewal or continuous service offer that has been
10 accepted by a consumer in Hawaii, the person shall clearly and
11 conspicuously provide the consumer with a notice of the material
12 change and provide information regarding how to cancel in a
13 manner that is capable of being retained by the consumer.

14 [~~d~~] (i) Any person who knowingly violates this section
15 or who knowingly fails to cancel an automatic renewal contract
16 upon consumer request shall be deemed to have engaged in an
17 unfair method of competition and unfair or deceptive act or
18 practice in the conduct of any trade or commerce within the
19 meaning of section 480-2.

20 [~~e~~] (j) This section shall not apply to any:

1 (1) Financial institution subject to chapter 412 to the
2 extent that the financial institution is engaged in
3 activities regulated pursuant to chapter 412; and

4 (2) Insurer subject to chapter 431, 432, or 432D to the
5 extent that the insurer is engaged in activities
6 regulated pursuant to those chapters.

7 [~~f~~] (k) For purposes of this section:

8 "Automatic renewal" means a plan or arrangement in which a
9 paid subscription or purchasing agreement is automatically
10 renewed for a specified term of more than one month.

11 "Clearly and conspicuously" means in larger type than the
12 surrounding text; in contrasting type, font, or color to the
13 surrounding text of the same size; or set off from the
14 surrounding text of the same size by symbols or other marks in a
15 manner that clearly calls attention to the language. In the
16 case of an audio disclosure, "clear and conspicuous" and
17 "clearly and conspicuously" mean in a volume and cadence
18 sufficient to be readily audible and understandable.

19 "Consumer" shall have the same meaning as in section 480-1.

20 "Continuous service" means a plan or arrangement in which a
21 subscription or purchasing agreement continues until the
22 consumer cancels the service."

S.B. NO. 464
S.D. 1
H.D. 1
PROPOSED
H.D. 2

1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2015.

S.B. NO. 464
S.D. 1
H.D. 1
PROPOSED
H.D. 2

Report Title:

Unfair and Deceptive Practices; Free Trial Offers; Automatic Renewals

Description:

Requires persons charging a consumer's credit or debit card or account for automatic renewal or continuous service offer to provide the consumer an acknowledgement containing the automatic renewal offer terms or continuous service offer terms. Requires acknowledgment of terms, cancellation policy, and how to cancel to be provided. Requires free trial offers to clearly and conspicuously disclose how to cancel the agreement prior to the consumer being charged for goods and services. (SB464 HD1 Proposed HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

200 Akamainui Street
Mililani, Hawaii 96789-3999
Tel: 808-625-2100
Fax: 808-625-5888



Honorable Karl Rhoads, Chair
Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary
Hawaii State Capitol
Honolulu, HI 96813

RE: SB 464 SD1, HD1 – Relating to Consumer Protection – Testimony in Support

March 31, 2015; 2:05 p.m., Hawaii State Capitol Room 325

Aloha Chair Rhoads, Vice Chair San Buenaventura, and members of the committee,

On behalf of Oceanic Time Warner Cable, which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to offer testimony in support of SB 464 SD1, HD1.

SB 464 SD1, HD1 amends Section 481-9.5, Hawaii Revised Statutes, to require persons that offer an automatic renewal or continuous service of products and services to obtain the acknowledgement and affirmative consent from the consumer of the renewal terms prior to charging the consumer's credit/debit card or the consumer's account. The bill further amends HRS Section 481-9.5 to require various disclosures from any person who sells or offers products for an automatic renewal or continuous service, including the cancellation policy, contact information and any changes in the material terms of an offer.

Oceanic continues to be supportive of the intent of providing information to consumers so that those consumers may make informed and reasoned decisions, and SB 464, SD1, HD1, as amended by the House Committee on Consumer Protection & Commerce, reasonably limits the applicability of the required disclosures to consumer contracts that have a specified term of more than one month and automatic renewals of more than one month. Accordingly, Oceanic supports SB 464, SD1, HD1 in its current form and requests the House Committee on Judiciary's favorable consideration of this measure. Thank you.

Sincerely,
Gregg Fujimoto,
President of Oceanic Time Warner Cable

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Consumer Data Industry Association**

DATE: March 30, 2015

TO: Representative Karl Rhoads
Chair, Committee on Judiciary
Submitted via JUDtestimony@capitol.hawaii.gov

RE: **S.B. 464, S.D.1, H.D.1 – Relating to Consumer Protection**
Hearing Date: Tuesday, March 31, 2015 at 2:00 p.m.
Conference Room: 325

Dear Chair Rhoads and Members of the Committee on Judiciary:

We offer this testimony on behalf of the Consumer Data Industry Association (CDIA). Founded in 1906, CDIA is an international trade association that represents about 150 data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, fraud prevention, risk management, employment screening, tenant screening and collection services.

CDIA submits **comments** regarding S.B. 464, S.D.1, H.D. 1, which, among other things, would require entities who charge a consumer's credit or debit card or account for automatic renewal or continuous service offer to provide the consumer an acknowledgement containing the automatic renewal offer terms or continuous service offer terms.

CDIA has a technical concern with the phrase "providing the consumer an acknowledgement" on page 3, lines 12-14 and would respectfully request that the bill be amended as set forth below.

Although this bill was intended to mirror a 2010 California law, in its current form, it deviates in one aspect. The California law includes two key principles -- notice and consent -- by requiring that: 1) acknowledgement be provided to the consumer and 2) affirmative consent of the consumer be obtained.

Gary M. Slovin
Mihoko E. Ito
C. Mike Kido
Tiffany N. Yajima

999 Bishop Street, Suite 1400
Honolulu, HI 96813
(808) 539-0840

S.B. 464, S.D.1 currently aligns with the California law, except for the term “providing the consumer an acknowledgement” at page 3, line 13. By the inclusion of the additional term “acknowledgement,” this bill could be read to require an additional acknowledgment, besides the one already provided for in subsection (f) (page 3, lines 15-20).

To conform the bill to existing federal and state notice and consent laws and to avoid creating additional confusion in the law, CDIA respectfully suggests that bill be amended at page 3, line 4 as follows:

(e) No person shall charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service pursuant to a consumer contract subject to subsection (a) or (b) without first obtaining the consumer's affirmative consent to the agreement providing the consumer an acknowledgement containing the automatic renewal offer terms or continuous service offer terms.

Thank you for the opportunity to testify on this measure.



LATE

The Honorable Gilbert Keith-Agaran
Hawaii State Senate
State Capitol, Room 221
415 South Beretania St.
Honolulu, HI 96813

RE: SB 464 – OPPOSE UNLESS AMENDED

Dear Senator Keith-Agaran:

Thank you for your quick response and excellent staff follow up on the issues surrounding your bill, SB 464. While we appreciate the effort you are making to protect consumers, and share your concerns about any vendors that are misusing collected information to improperly bill Hawaii's residents, the current language in the bill raises serious concerns for companies that are trying to clearly and directly serve the needs of their customers.

For the record, TechNet (www.technet.org) represents the nation's leading technology companies in the fields of information technology, high tech manufacturing, networking, clean energy, Internet media, e-commerce, and venture finance. We are writing in the hopes that the important consumer protection ideals of SB 464 can be implemented without needlessly created concern and confusion for the good actors that communicate clearly and directly with their customers.

As the bill is currently written, we have multiple concerns that can be addressed without compromising the focus of the bill, which is to make sure that individuals are only enrolled in renewal agreements when they want to be.

The first concern is that the bill is not clearly delimited to agreements where there is a financial obligation. In other words, if consumers agree to terms and conditions to accept free services, this bill should not apply to that scenario.

The second concern is that the deadline provisions in the bill do not make sense in many contractual arrangements. Specifically, agreements that allow the consumer to cancel any time up to the point that they are charged for the next installment do not need a deadline and the language in the bill creates confusion about how to

communicate with the customer in that instance. While it could work to have this requirement when advance notice to cancel is required, in other situations it creates more confusion than protection.

The third concern is that the notice provisions make sense in a yearly contract, and perhaps in a slightly shorter contract, but not in a monthly, or bi-monthly agreement. As written, the bill would seem to require separate notices of the right to cancel, simultaneously with the request to continue or charge. This could create a great deal of customer frustration, given the number of renewal contracts individuals are now entering into.

A fourth concern is liability. While intentional bad actors should certainly be pursued, it is also easy for companies with high standards to be targeted. Language is needed to promote the idea that bad actors should be held accountable, but that an occasional mistake does not produce unnecessarily high penalties.

Our final concern is that notice provisions will need to keep pace with technology as new devices are adopted by willing consumers. As screens and customer interfaces are simplified and made more convenient, unobtrusive and portable, policy will have to adapt. New statutory requirements are not suited for this task.

Given the late date, TechNet supports continued movement on the bill, but would request additional time to work out agreeable amendments that support your efforts while not penalizing consumer-focused companies.

We appreciate the efforts of the author and the many co-author's on this legislation for their work to find a sensible solution to the presented issues and hope to engage to find a productive solution.

Thank you in advance for your time and do not hesitate to call me at (916) 207-7852 or e-mail at jdoherty@technet.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'JD' or 'JDoherty', written in a cursive style.

John Doherty
Vice President and General Counsel
TechNet