

# SB464

Measure Title: RELATING TO CONSUMER PROTECTION.

Report Title: Unfair and Deceptive Practices; Free Trial Offers

Description: Prohibits agreements for purchase of periodic delivery of merchandise, services, or internet access from including an introductory free trial period unless the agreement includes an explicit affirmative consent from the purchaser for automatic renewal, continuous delivery, or service beyond the last date of the free trial period.

Companion: [HB1219](#)

Package: None

Current Referral: CPN

Introducer(s): KEITH-AGARAN, BAKER, DELA CRUZ, ENGLISH, Kahele, Ruderman

<u>Sort by Date</u>		Status Text
1/23/2015	S	Introduced.
1/26/2015	S	Passed First Reading.
1/26/2015	S	Referred to CPN.
2/13/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-19-15 9:00AM in conference room 229.



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 SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

FEBRUARY 19, 2015  
9:00 AM

TESTIMONY ON SENATE BILL NO. 464, RELATING TO CONSUMER PROTECTION.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

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

Senate Bill No. 464 would prohibit agreements that include introductory free trial periods for the purchase of periodic delivery of goods, services, or internet access unless the consumer explicitly and affirmatively consents to being billed for automatic renewal, continuous delivery, or service beyond that last date of the free trial period. Agreements that fail to include such a consent provision will be void and unenforceable.

The purpose of this measure is laudable. 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 slip in binding contractual language without the knowledge of consumers and no consumer should be laden with a legal obligation that they don't understand or affirmatively accept.

The underlying policies of Senate Bill No. 464 however would be more appropriately achieved if appropriate language were added to section 481-9.5 of the Haw. Rev. Stat. instead of Chapter 481B, as offered in the Bill. For the Committee's convenience, the OCP has prepared a proposed Senate Draft 1 to reflect its suggested amendments. These amendments will help to ensure that Hawaii consumers will be made fully aware of all of the terms and conditions of a free offer, offer an easy way to cancel a consumer contract, and provide superior protection for transactions involving the use of credit and debit cards.

Thank you for the opportunity to support the intent of Senate Bill No. 464. I am available for any questions you have regarding this legislation and the OCP's proposed amendments.

---

---

# 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 clauses.** (a) Any  
4 person who sells or offers to sell any products or services to a  
5 consumer pursuant to a consumer contract that has a specified  
6 term of more than one month and an automatic renewal clause  
7 under which the contract will automatically renew for a  
8 specified term of more than one month unless the consumer  
9 cancels the contract, shall disclose the automatic renewal  
10 clause and the procedure by which the consumer can cancel  
11 automatic renewal of the consumer contract clearly and  
12 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  
17 more than one month unless the consumer cancels the consumer  
18 contract, shall notify the consumer clearly and conspicuously:

19           (1) That the consumer contract will automatically renew  
20           unless the consumer cancels the contract;

1 (2) How to cancel the contract; and

2 (3) The deadline by which the consumer shall respond to  
3 cancel the consumer contract and prevent automatic  
4 renewal.

5 The notice provided to the consumer under this subsection shall  
6 be sent to the consumer no less than thirty days and no more  
7 than sixty days before the date upon which the consumer shall  
8 respond under paragraph (3).

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

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

16 (2) Consumer elects to receive electronic communications  
17 and provides a valid electronic-mail address for the  
18 purpose of receiving the notice required by this  
19 section.

20 (d) No person shall charge the consumer's credit or debit  
21 card or the consumer's account with a third party for an  
22 automatic renewal or continuous service without first obtaining  
23 the consumer's acknowledgment and affirmative consent to the  
24 agreement containing the automatic renewal offer terms or  
25 continuous service offer terms.

1       (e) No person shall fail to provide an acknowledgment that  
2 includes the automatic renewal or continuous service offer  
3 terms, cancellation policy, and information regarding how to  
4 cancel in a manner that is capable of being retained by the  
5 consumer. If the offer includes a free trial, the person shall  
6 also clearly and conspicuously disclose in the acknowledgment  
7 how to cancel and allow the consumer to cancel before the  
8 consumer pays for the goods or services.

9       (f) A person making automatic renewal or continuous  
10 service offers shall provide a toll-free telephone number,  
11 electronic mail address, a postal address only when the seller  
12 directly bills the consumer, or another cost-effective, timely,  
13 and easy-to-use mechanism for cancellation that shall be clearly  
14 and conspicuously described in the acknowledgment specified in  
15 this section.

16       (g) In the case of a material change in the terms of the  
17 automatic renewal or continuous service offer that has been  
18 accepted by a consumer in Hawaii, the person shall provide the  
19 consumer with a clear and conspicuous notice of the material  
20 change and provide information regarding how to cancel in a  
21 manner that is capable of being retained by the consumer.

22       ~~(d)~~ (h) Any person who knowingly violates this section or  
23 who knowingly fails to cancel an automatic renewal contract upon  
24 consumer request shall be deemed to have engaged in an unfair  
25 method of competition and unfair or deceptive act or practice in

1 the conduct of any trade or commerce within the meaning of  
2 section 480-2.

3 ~~(e)~~ (i) This section shall not apply to any:

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

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

10 ~~(f)~~ (j) For purposes of this section:

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  
20 480-1."

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

24 SECTION 3. Statutory material to be repealed is bracketed  
25 and stricken. New statutory material is underscored.

**1** SECTION 4. This Act shall take effect upon its approval.



**S.B. NO.** 464  
Proposed SD1

**Report Title:**

Unfair and Deceptive Practices; Free Trial Offers; Automatic Renewals

**Description:**

Amends section 481-9.5 to require persons charging a consumer's credit or debit card or account for automatic renewal or continuous service offers in connection with a consumer agreement to first obtain acknowledgment and affirmative consent of the consumer. Requires the provision of notice, disclosures and contact information connected with automatic renewal or continuous service offers in consumer agreements. For free trial offers that include automatic renewal or continuous service offers, disclosure of the method of cancellation and an opportunity to cancel before automatic billing shall be given to consumers. (SB464 Proposed SD1)

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