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# 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 ~~[-]~~ and  
4 continuous service clauses. (a) Any person who sells or offers  
5 to sell any products or services to a consumer pursuant to a  
6 consumer contract that has a specified term of more than one  
7 month and an automatic renewal clause under which the contract  
8 will automatically renew for a specified term of more than one  
9 month unless the consumer cancels the contract, shall disclose  
10 the automatic renewal clause and the procedure by which the  
11 consumer can cancel automatic renewal of the consumer contract  
12 clearly 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 that  
5 contains 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 a continuous service without first  
11 obtaining the consumer's affirmative consent to the agreement  
12 containing the automatic renewal offer terms or continuous  
13 service offer terms.

14           (f) Any person who sells or offers to sell products or  
15 services subject to this section shall provide the consumer with  
16 an acknowledgment that the consumer may retain the automatic  
17 renewal or continuous service offer terms, cancellation policy,  
18 and procedure by which the consumer may cancel the contract. If  
19 the offer includes a free trial, the acknowledgement shall also  
20 clearly and conspicuously disclose the right of the consumer to



1 cancel before payment is made for the goods or services and the  
2 cancellation procedure.

3 (g) An acknowledgment required by subsection (f) shall  
4 include a toll-free telephone number, electronic mail address,  
5 postal address if the seller directly bills the consumer, or a  
6 clearly and conspicuously described cost-effective, timely, and  
7 easy-to-use alternative means to communicate the cancellation.

8 (h) Clear and conspicuous notice of any material change to  
9 the terms of an automatic renewal or continuous service offer  
10 that is subject to this section and accepted by a consumer in  
11 Hawaii, along with notice of the consumer's right to cancel and  
12 the procedure to cancel, shall be provided to the consumer in a  
13 form that the consumer can retain prior to the implementation of  
14 the material change.

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

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

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

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

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



1           "Continuous service" means a plan or arrangement in which a  
2 paid subscription or purchasing agreement continues until the  
3 consumer cancels the service."

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

7           SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 4. This Act shall take effect on March 15, 2038.



**Report Title:**

Unfair and Deceptive Practices; Free Trial Offers; Automatic Renewals; Continuous Service Offers

**Description:**

Requires disclosure in a form that may be retained by a consumer of terms, conditions, and cancellation procedures for automatic and continuous service offer contracts. Requires a means for cancelling a contract prior to the expiration of a free trial period. (SB464 HD2)

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