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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.** (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



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 subject  
5 to subsection (a) or (b) that contains a continuous service  
6 clause, shall clearly and conspicuously disclose the continuous  
7 service clause and the procedure by which the consumer can  
8 cancel the contract.

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

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



1 how to cancel and allow the consumer to cancel before the  
2 consumer pays for the goods or services.

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

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

18 ~~(d)~~ (i) Any person who knowingly violates this section  
19 or who knowingly fails to cancel an automatic renewal contract  
20 upon consumer request shall be deemed to have engaged in an  
21 unfair method of competition and unfair or deceptive act or



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

3 [~~(e)~~] (j) 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)~~] (k) 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 480-1.



1        "Continuous service" means a plan or arrangement in which a  
2 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 July 1, 2112.



**Report Title:**

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

**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)

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