

ACT 200

S.B. NO. 464

A Bill for an Act Relating to Consumer Protection.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

(b) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that has a specified contract term of twelve months or more, under which the contract will automatically renew for a specified term of more than one month unless the consumer cancels the consumer contract, shall notify the consumer clearly and conspicuously:

- (1) That the consumer contract will automatically renew unless the consumer cancels the contract;
- (2) How to cancel the contract; and
- (3) The deadline by which the consumer shall respond to cancel the consumer contract and prevent automatic renewal.

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

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

- (1) Transaction for sale of products or services was conducted electronically at the election of the consumer and in compliance with the requirements of chapter 489E, the uniform electronic transactions act; or
- (2) Consumer elects to receive electronic communications and provides a valid electronic-mail address for the purpose of receiving the notice required by this section.

(d) Any person who sells or offers to sell any products or services to a consumer pursuant to a consumer contract that contains a continuous service clause shall clearly and conspicuously disclose the continuous service clause and the procedure by which the consumer can cancel the contract.

(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 a continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

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

(g) A person making automatic renewal or continuous service offers pursuant to a consumer contract shall include a toll-free telephone number, electronic mail address, postal address if the seller directly bills the consumer, or a clearly and conspicuously described cost-effective, timely, and easy-to-use alternative means to communicate the cancellation.

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

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

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

- (1) Financial institution subject to chapter 412 to the extent that the financial institution is engaged in activities regulated pursuant to chapter 412; ~~and~~
- (2) Insurer subject to chapter 431, 432, or 432D to the extent that the insurer is engaged in activities regulated pursuant to those chapters[-];
- (3) Telecommunications provider subject to chapter 269; and
- (4) Cable operator subject to chapter 440G or 440J to the extent that the provider is engaged in activities regulated pursuant to those chapters or the Federal Communications Commission.

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

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

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

“Consumer” shall have the same meaning as in section 480-1.

“Continuous service” means a plan or arrangement in which a paid subscription or purchasing agreement continues until the consumer cancels the service.”

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

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

SECTION 4. This Act shall take effect on July 1, 2015.
(Approved July 2, 2015.)