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TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 2, 2011
2:05 p.m.

TESTIMONY ON HOUSE BILL NO. 663, H.D. 1, RELATING TO CONTRACTS.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR, AND KARL RHOADS,
VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in support of House Bill No. 663, H.D. 1, Relating to Contracts.

My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP"), representing the Department.

House Bill No. 663, H.D. 1, requires the clear and conspicuous disclosure of automatic renewal clauses in consumer contracts. Contracts containing such clauses are designed to continuously renew unless a party takes an action to cancel. The burden is generally placed on the consumer, who may not always notice the termination

provisions. Because of this, consumers may contract for a period longer than anticipated or unwittingly find themselves bound to something they do not want. To address this issue, at least 11 states have enacted legislation requiring clear disclosure both at the inception of the contract and immediately prior to the renewal.

The point of these requirements is simple; ensure that consumers are fully apprised of this important contractual obligation. This measure will satisfy those requirements by helping consumers at two critical junctures. It will ensure that consumers understand the contract at the inception and also at the time of renewal.

The OCP periodically receives complaints from Hawaii consumers who are shocked to learn that they are locked into a contract that they don't want or need. Many have stated that if they were aware of the automatic renewal provision they would have opted to not renew.

It is not unusual for companies to hide automatic renewal clauses from consumers. For example, recently a home security company was found to have buried its automatic renewal clause on the back of its contract under a section entitled "Limited Warranty". If this measure becomes law, it will help to deter this kind of conduct.

Thank you for providing me with the opportunity to testify on House Bill No. 663, H.D. 1. I will be happy to answer any questions that the committee members may have.



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March 2, 2011

House Committee on Judiciary

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

By: Richard C. Botti, President
On behalf of DeHart and Darr Associates representing publishers direct marketers
in Hawaii and throughout the country

Re: HB 663 HD1 RELATING TO CONTRACTS

Chairs & Committee Members:

Automatic renewal is a blessing when a consumer wants to continue delivery of a product or service without interruption. A problem occurs only when the consumer did not know the product or service would be automatically renewed, or did know and simply forgot to cancel. To solve any problems connected with automatic renewal, we propose the following solution:

1. Clearly and conspicuously disclose the automatic renewal at the time of the original order;
2. Disclose the terms that apply if the consumer wishes to cancel the automatic renewal; and
3. If the consumer is committed to a specific term of renewal, say for one year, send a notice to the consumer reminding them of the automatic renewal and how to cancel.

If the consumer may cancel at any time and receive a refund for products not yet sent, or services not provided, the seller should be able to inform the consumer how to cancel at a meaningful time, but in any event, before the consumer pays. This affords the seller the opportunity to inform the consumer of the cancel option at a point more meaningful to the consumer. For example, the consumer orders a health newsletter from an advertisement which discloses that the subscription will automatically renew. The seller sends a welcome letter to the consumer giving them useful information such as how to cancel, change of address, how to get a missing issue, etc.

We are more than happy to work with the sponsor as this legislation evolves. We represent publishers and distributors of books, magazines, newsletters, newspapers, videos, recordings, and other multimedia products, and direct marketers.

We have attached our proposed amendments to the measure for your consideration.

PROPOSED DRAFT BY LISH

Brackets = deletions
Double Underlines = additions

A BILL FOR AN ACT

RELATING TO CONTRACTS.

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

SECTION 1. Chapter 481, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§481- Automatic renewal clauses. (a) Any person that sells or offers to sell any products or services to a consumer pursuant to a contract that has an automatic renewal clause under which the contract will automatically renew unless the consumer cancels the contract, shall disclose the automatic renewal clause and the [procedure by which the consumer can] option to cancel automatic renewal of the contract clearly and conspicuously in the contract.

(b) Any person that sells or offers to sell any products or services to a consumer pursuant to a contract that has a specified contract term of twelve months or more and will automatically renew for a specified term of more than one month

unless the consumer cancels the contract, shall notify the consumer clearly and conspicuously in writing:

1. That the contract will automatically renew unless the consumer cancels the contract; [and]
2. How to cancel; and
3. The deadline by which the consumer must respond, should the consumer decide to cancel the contract to prevent automatic renewal.

The notice provided to the consumer under this subsection shall be [received by] sent to the consumer no less than fifteen [thirty] days and no more than sixty days before the date when the renewal period begins [upon which the consumer must respond under paragraph [(2)](3).

(c) The provisions of Section 481(b) shall not apply to a person who offers to cancel products or services at any time and will refund payment for product not mailed or services not provided; except that the person will clearly and conspicuously disclose to the consumer how to cancel before accepting payment for automatic renewal.

(d) Any person who fails to cancel an automatic renewal contract upon consumer request as directed by the person [Any person that violates this section] 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."

Presentation to the Committee on Judiciary
Wednesday, March 2, 2011 at 2:05 p.m.
Testimony on HB 663 HD1 Relating to Contracts

TO: The Honorable Chair Gilbert S.C. Keith-Agaran
The Honorable Vice Chair Karl Rhoads
Members of the Committees

I am Gary Fujitani testifying on behalf of the Hawaii Bankers Association (HBA), which is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill requires clear and conspicuous language disclosing any automatic renewal clauses and language explaining how to cancel the contract in all contracts.

HBA would support this bill if HB 663 HD1 was amended to add back the language in the original HB 663 that exempted "banks, trust companies, savings and loan associations, savings banks, credit unions, finance or credit companies, industrial loan companies, or any other financial institution licensed or organized under the laws of any state or the United States, or any foreign bank maintaining a branch or agency licensed under the laws of the United States, or any subsidiary or affiliate thereof".

Financial institutions are highly regulated entities and are held to a much higher standard than most business in contract disclosures. If our regulators believed clear and concise disclosure was not being provided, they would insure that we take the appropriate steps to remedy the situation.

An example of federal regulations covering automatic renewals is Truth in Lending (Reg Z) as follows:

§ 226.9 Subsequent disclosure requirements.

e) Disclosures upon renewal of credit or charge card. (1) Notice prior to renewal. A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to §226.5a, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under §226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under §226.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:

(i) The disclosures contained in §226.5a(b)(1) through (b)(7) that would apply if the account were renewed; and

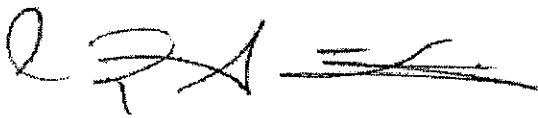
(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

The example above shows that federal banking regulations provided for proper disclosure to protect the consumer and regulators do periodic examinations to insure compliance with these rules.

We are unaware of any automatic renewal clause violations that would necessitate including financial institutions in this regulation, which just places another unnecessary regulation on an already highly regulated industry.

Amending this bill to include the exemption for financial institutions is urged.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', followed by a horizontal line.

Gary Y. Fujitani
Executive Director

Testimony for HB663, Relating to Contracts

Gerald Sada [sadag001@hawaii.rr.com]

Sent: Tuesday, March 01, 2011 7:16 PM

To: JUDtestimony

I support HB 663 relating to contracts since I recently had a negative experience involving the installation of a home security system.

Although I all ready had a security system installed, I was approached by a salesman of another company to install what I felt was a more effective system. I agreed so I had the new system installed. I then called the company of the original system to cancel my arrangement with them but was informed that I had four years remaining on a five year extended contract and that I would have to pay for the service for the remaining four years. This was a surprise to me since it was six years since I had the original system installed and did not think there was a continuing contract which was automatically extended - without notice - every five years. I don't believe I was informed of this provision when I signed the original contract. Since I did not want to pay for the remaining four years of service, I had to have the other company uninstall it's system and pay for the reinstallation of the original system.

I do not believe this practice of extending contracts automatically without notice of the extension is a fair business practice. I am therefore in support of HB663 and request your support in it's passage.

Aloha,

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TESTIMONY BY ALICIA MALUAFITI
ON BEHALF OF THE DIRECT MARKETING ASSOCIATION

HOUSE JUDICIARY COMMITTEE
MARCH 2, 2011 – 2:05 P.M., ROOM 325
HB 663 HD 1 - RELATING TO AUTOMATIC RENEWAL CONTRACTS

Aloha Chair Keith-Agaran, Vice Chair Rhoads, and members of the committee,

Mahalo for the opportunity to testify on HB 663 HD 1 on behalf of the more than 2,400 members of the Direct Marketing Association (DMA), the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing.

DMA has concerns with the current version of this bill. We believe that automatic renewal contract provisions should indeed be clearly disclosed so that consumers are fully aware of what they are obligating themselves to when the contract is entered into. Further, consumers should be made aware that there are steps to prevent such automatic renewals if the consumer so chooses. However, specifying timelines for when notices must be provided is complicated given that other states may contemplate different timeframes from the 30-day/60-day notice in this bill.

The proverbial patchwork quilt of applying different requirements to the delivery of the same product or service depending on the geographic location is a real concern for companies, especially ones with regional and national customer bases. At a minimum, requiring only a timely notice so that consumers have the opportunity to avail themselves of the cancellation process still serves consumers, while also allowing for a streamlined internal process at companies.

The bill would penalize a company for missing the required notice delivery timeframe. This is troublesome because either unforeseeable or uncontrollable circumstances encountered by a company otherwise intending to be in compliance with the provisions of the bill can put the business at jeopardy. Compounding this, the bill provides no safe harbor to indemnify a company for such unforeseeable or uncontrollable circumstances. The as-introduced version of HB 663, the version prior to it being amended in the Consumer Protection and Commerce committee, was much less problematic.

Mahalo again for the opportunity to testify and I would be happy to answer any questions.