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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Monday, January 31, 2011
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 663, RELATING TO CONTRACTS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify regarding House Bill No. 663, 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 proposes to require that clear and conspicuous language be contained in all commercial contracts' automatic renewal clauses, which describe the terms and conditions of the automatic renewal including cancellation provisions.

While the Department is in support of the policy underlying this measure it has concerns with the manner in which it would be implemented.

Contracts with automatic renewal provisions are designed to continuously renew unless a party takes an action to cancel the contract. The burden is generally placed on the consumer, who may not always notice the provisions, to terminate the contract. Therefore, in many instances, consumers may ultimately contract for a period longer than anticipated or unwittingly find them 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.

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.

In order to adequately address these concerns the Department believes that this measure should be amended since as drafted it does not fully protect Hawaii consumers.

An examination of the measure reveals significant problems. Its description is inconsistent with the actual text. The description refers to commercial contracts, yet the text appears to focus on consumer contracts. If the intent of the measure is to regulate

automatic renewal clauses in consumer contracts, it would appear to be more appropriate to place the provision in Chapter 481 rather than Chapter 490, which contains the Uniform Commercial Code. Additionally, the bill does not contain any provision which would require that written notice be sent to the consumer prior to the automatic renewal, as several other states have mandated. The reason that this additional requirement is often necessary is because some contracts have initial terms of up to 5 years, which cause consumers to forget about the renewal clause, even if it had been conspicuously disclosed in the first instance.

In view of the foregoing, the Department believes that the following language would provide superior consumer protection for Hawaii consumers who enter into contracts containing automatic renewal clauses.

"§ 481 Automatic renewal clauses.

- (a) Any person that sells or offers to sell any products or services to a consumer pursuant to a contract, where such contract automatically renews unless the consumer cancels the contract, shall disclose the automatic renewal clause clearly and conspicuously in the contract, including the cancellation procedure.
- (b) Any person that sells or offers to sell any products or services to a consumer pursuant to a contract, where such contract term is a specified term of 12 months or more, and where such contract automatically renews for a specified term of more than one month

unless the consumer cancels the contract, shall notify the consumer in writing of the automatic renewal. Written notice shall be provided to the consumer no less than 30 days and no more than 60 days before the cancellation deadline pursuant to the automatic renewal clause. Such written notice shall disclose clearly and conspicuously that unless the consumer cancels the contract it will automatically renew.

(c) Violation. Any person who 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 with the meaning of section 480-2."

Thank you for providing me with the opportunity to testify on House Bill No. 663.

I will be happy to answer any questions that the committee members may have.