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Presentation to the Committee Commerce and Consumer Protection
Tuesday, March 15, 2011 at 9:00 a.m.
Testimony on HB 663 HD2 Relating to Contracts

TO: The Honorable Chair Rosalyn H. Baker
The Honorable Vice Chair Brian T. Taniguchi
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. As presently drafted, HBA opposes this bill.

This bill requires clear and conspicuous language disclosing any automatic renewal clauses and language explaining how to cancel the contract in all consumer contracts and offers where the contract automatically renews. It also requires additional notice to consumers of automatic renewal for consumer contracts of a term of twelve months or more.

The original draft of HB 663 exempted banks and credit unions and if an amendment to exempt federally insured banks and credit unions, HBA would support this bill.

Including federally insured banks and credit unions is not necessary since numerous federal consumer protection laws cover contract renewal disclosure requirements in great detail. **Additionally, federal consumer protection laws governing banks would preempt conflicting state law and thus this law would only serve to cause confusion in case of conflicts.**

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.

Examples of two common automatic renewals are time certificates of deposit (TCD) and credit cards. See only portions of federal regulations covering just these two types of products.

Time Certificate of Deposit-Truth In Savings (Reg DD)

§ 230.4 Account disclosures.

(iv) Renewal policies. A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account must be stated.

§ 230.5 Subsequent disclosures.

(b) Notice before maturity for time accounts longer than one month that renew automatically. For time accounts with a maturity longer than one month that renew automatically at maturity, institutions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) Maturities of longer than one year. If the maturity is longer than one year, the institution shall provide account disclosures set forth in § 230.4(b) of this part for the new account, along with the date the existing account matures. If the interest rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the institution shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number consumers may call to obtain the interest rate and the annual percentage yield that will be paid for the new account.

(2) Maturities of one year or less but longer than one month. If the maturity is one year or less but longer than one month, the institution shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; or

(ii) Disclose to the consumer:

(A) The date the existing account matures and the new maturity date if the account is renewed;

(B) The interest rate and the annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the consumer may call to obtain the interest rate and the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account.

(c) Notice before maturity for time accounts longer than one year that do not renew automatically. For time accounts with a maturity longer than one year that do not renew automatically at maturity, institutions shall disclose to consumers the maturity date and whether interest will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

(a) Inconsistent Requirements

State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

Credit Cards Truth in Lending (Reg Z)

§ 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.

§ 226.28 Effect on State laws.

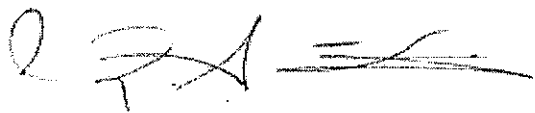
*(a) Inconsistent disclosure requirements. (1) Except as provided in paragraph (d) of this section, **State law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the act and the implementing provisions of this regulation are preempted to the extent of the inconsistency.** A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item. A creditor, State, or other interested party may request the Board to determine whether a State law requirement is inconsistent. After the Board determines that a State law is inconsistent, a creditor may not make disclosures using the inconsistent term or form*

The examples above show 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 superfluous 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.



Gary Y. Fujitani
Executive Director



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance

To: The Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

From: Mark Sektnan, Vice President

Re: HB 663 HD2 – Relating to Contracts
PCI Position: Oppose

Date: Tuesday, March 15, 2011
9:00 a.m.; Conference Room 229

Aloha Chair Baker and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) PCI opposes HB 663 HD2 as currently written. HB 663 HD2 would require clear and conspicuous language disclosing any automatic renewal clauses and language explaining how to cancel the contract. The bill would also require additional notice to consumers of automatic renewal for consumer contracts of a term of twelve months or more.

As introduced, the original version of HB 663 HD2 excluded insurance contracts. PCI supports the exclusion of insurance contracts from the bill because insurance contracts are different from the types of contracts the bill is seeking to address. Insurance companies do not offer automatic renewal clauses. The policyholder must pay the premium before the policy renews. Some insurers, however, as a consumer convenience offer automatic bill payment systems and so insurers may find themselves under this bill. Policyholders also receive a copy of their policy along with the premium before the coverage is set to expire. Insurance consumers also have an opportunity to cancel their policy at any time and the policy clearly states how a consumer would cancel their policies. Finally, insurance consumers are already protected by comprehensive notice requirement for the renewal of contracts.

In their testimony on this bill, the Department of Commerce and Consumer Affairs testified that the bill is intended to deal with instances where a “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 contracts mentioned in the department’s testimony are not insurance contracts. In addition, many of the states who have enacted this type of legislation, such as California, have expressly excluded insurance contracts.

For these reasons, PCI respectfully asks the committee to amend this bill in committee to ensure it would not apply to insurance contracts as provided for in the original version of this bill.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII
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Senate Committee on Commerce & Consumer Protection
Conference Room 229 State
Tuesday, March 15, 2011, 9:00 a.m.
HB 663 HD2 Related to Contracts

Chair Baker, Vice Chair Taniguchi and Members of the Committee:


My name is Timothy Dayton, General Manager for GEICO. GEICO is Hawaii's largest motor vehicle insurer. **GEICO opposes House Bill 663 HD2** as currently drafted. The original Bill would have exempted insurers licensed under Chapter 431, HRS. This exemption was not included in HD1. This may have been the result of a drafting error as the House Consumer Protection Committee Report (399) fails to mention this substantive change to the original legislation.

The current version fails to exempt insurers. This creates an ambiguity in that it seems to conflict with the motor vehicle insurance renewal requirements in **§431:10C-111**

Cancellation and nonrenewal of policies.

GEICO respectfully requests the Committee either modify this bill to restore the exemption for insurers or hold this bill.

Thank you for the opportunity to submit this testimony.


Timothy M. Dayton, CPCU

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LATE TESTIMONY

March 15, 2011

Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

RE: HB663 HD2 - Relating to Contracts - Comment requesting an amendment
CPN Committee – March 15, 2011, Conference Room 229, 9:00AM

Aloha Chair Baker and members of the committee:

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to nearly 350,000 households, schools and businesses and currently employs more than 900 highly-trained individuals, we appreciate the opportunity to express our concerns regarding HB663 HD2 – Relating to Contracts.

We understand the underlying concern this bill is trying to address comes from a smaller issue relating to contracts regarding home security monitoring. However, this bill has very broad implications.

This bill would require written notice disclosing any automatic renewal clauses and language explaining how to cancel the contract in all consumer contracts and offers where the contract automatically renews and would require additional notice to consumers of automatic renewal for consumer contracts of a term of 12 months or more.

With more and more people preferring to communicate via email because it's quicker, can be more reliable and is easier to save for future use, more businesses send email confirmations to customers such as airlines, car rentals, hotels, and the like.

Additionally, many businesses use audio as an effective tool for confirming contracts for service, like in the case of a recorded conversation. Because a customer may forget that they received a written document or misplaced it, hearing in their own voice in a recorded conversation is an effective tool to help

them recollect the confirmation of the order and effectively refreshes their memory.

Furthermore, the federal E-SIGN law preempts state laws to the extent that they allow written and not electronic disclosures.

As such, we offer an amendment to replace a "written notice" requirement with a requirement for "clear and conspicuous" notice from the California law to help bridge these concerns:

"Clear and conspicuous" or "clearly and conspicuously" means in larger type than the surrounding text, or 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" means in a volume and cadence sufficient to be readily audible and understandable.

For these reasons, we respectfully urge the chair and members to consider our proposed amendment to this bill.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF CONSUMER PROTECTION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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March 15, 2011

Hand Delivered

The Honorable Rosalyn H. Baker
Chair, Commerce and Consumer Protection
State Capitol, Room 230
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: House Bill No. 663, H.D. 2

Dear Senator Baker:

Thank you for providing the Department of Commerce and Consumer Affairs (Department) with the opportunity to comment on the various proposals offered by Oceanic TimeWarner Cable/State Privacy and Security Coalition, the Banks and Credit Unions, the Insurance Industry, and LISH/Publishers Direct to amend H.B. 663, H.D. 2, concerning automatic renewal clauses in consumer contracts.

Oceanic TimeWarner Cable/State Privacy and Security Coalition

The Department is not in accord with Oceanic and the State Privacy and Security Coalition's proposed definition of "clear and conspicuous". Instead, it believes that if a definition of "clear and conspicuous" is adopted it should be consistent with one of those already codified in the Hawaii Revised Statutes. In reviewing the applicable statutory provisions that define the term, section 431:3A-102 appears to be particularly suitable.

In pertinent part, it states:

“Clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information in the notice.”

We are concerned that the definition proposed by Oceanic and the State Privacy and Security Coalition would allow for the requisite disclosure by use of a footnote. Language, such as, “or set off from the surrounding text of the same size by symbols or other marks...” would appear to authorize such a disclosure and go against the spirit of the measure.

The Department also has grave concerns with expanding the disclosure to include audio. It believes that the audio disclosure proposed by Oceanic and the State Privacy and Security Coalition is inadequate and would undermine the disclosure policies underlying this measure. The Office of Consumer Protection (OCP) has found that in many instances audio disclosures do not fully inform consumers of their rights since they are generally included with more elaborate advertising presentations and, as such, get lost amongst all of the marketing hype. The disclosures should be in writing.

The Department does not believe that the disclosure period should be changed from 30 days to a month. Contrary to the assertions of the proponents, the Department believes that a specific day requirement is less confusing and easier to discern for affected consumers.

With respect to the suggestion, made at the hearing, that the notice provision be available also via email, the Department is not in opposition, so long as, it is limited to contracts which were originally entered into electronically.

Banks and Credit Unions

As noted at Tuesday’s hearing, several states have carved out financial institutions from the requirements of their automatic renewal laws. Amongst these are California, North Carolina, Wisconsin and Illinois. While the financial community is, in fact, highly regulated, it is unclear to the Department, at this time, whether those restrictions would make application of the provisions of H.B. 663 inapposite.

Insurance Industry

Although the Department acknowledges that several states have excluded the insurance industry from the requirements of the automatic renewal laws, it is

The Honorable Rosalyn H. Baker
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unaware of any specific statutory provisions governing its conduct that would preempt application of the provisions of this Bill.

LISH/Publishers Direct

The Department believes that the current language of the HD2 offers superior consumer protection to that proposed by LISH/Publishers Direct. Consequently, it does not believe that their proposed amendments should be adopted.

If you or your staff has any concerns or questions regarding the foregoing, please do not hesitate to contact me at your convenience.

We truly appreciate your commitment in protecting Hawaii consumers.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen H. Levins", written in a cursive style.

Stephen H. Levins