

# HB663, HD2

**Measure Title:** RELATING TO CONTRACTS.

**Report Title:** Contracts; Automatic Renewal Clauses

**Description:** 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. Requires additional notice to consumers of automatic renewal for consumer contracts of a term of twelve months or more. Effective July 1, 2020. (HB663 HD2)

**Companion:**

**Package:** None

**Current Referral:** CPN, JDL



NEIL AMBERCROMBIE  
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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Tuesday, March 15, 2011  
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 663, H.D. 2, RELATING TO CONTRACTS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND BRIAN T. TANIGUCHI,  
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. 2, 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. 2, 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. 2. I will be happy to answer any questions that the committee members may have.



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Testimony to the Senate Committee on Commerce and Consumer Protection  
Tuesday, March 15, 2011, at 9:00 a.m.

Testimony in opposition to HB 663 HD2, Relating to Contracts

To: The Honorable Rosalyn Baker, Chair  
The Honorable Brian Taniguchi, Vice-Chair  
Members of the Committee of Commerce and Consumer Protection

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to HB 663 HD2, Relating to Contracts, as drafted. This bill requires clear and conspicuous language disclosing any automatic renewal clauses, and language explaining how to cancel the contract. It also requires additional notice to consumers of automatic renewal for consumer contracts for a term of twelve months or more.

Financial institutions are already subject to regulations such as the ones set forth in this bill. Credit unions are subject to all federal regulations for financial institutions, and are supervised by the National Credit Union Administration. The provisions in HB 663 HD2 would be duplicitous, since similar provisions already appear in federal law.

If the bill were amended to its original form, which exempted banks and credit unions, we would withdraw our opposition to the measure.

Thank you for the opportunity to testify.



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March 15, 2011

Senate Committee on Commerce & Consumer Protection

Senator Rosalyn . Baker, Chair  
Senator Brian T. Taniguchi, 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 HD2 RELATING TO CONTRACTS

Chairs & Committee Members:

We do not disagree in principle with the purpose and intent of HB 663, HD2, just in the mechanics.

We have attached our recommendations for amendments and further discussion.

## LISH Proposed changes to HB 663-HD2

"§481-\_\_\_ Automatic renewal clauses. (a) Any person that sells or offers to sell any products or services to a consumer pursuant to a consumer 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 cancel automatic renewal of the consumer contract clearly and conspicuously in the consumer contract.] :

(i) the cancellation policy for automatic renewal of the consumer contract; and

(ii) before the consumer pays for the contract, the procedure by which the consumer may cancel the automatic renewal.

(b) Any person that 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 in writing:

- (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 must respond, should the consumer decide to cancel the consumer contract to 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 must respond under paragraph (3).

(c) A person, firm, or corporation that fails to comply with the requirements of this section is in violation of this section unless the person, firm, or corporation demonstrates that all of the following are its routine business practice;

It has established and implemented written procedures to comply with this section and enforces compliance with the procedures.

Any failure to comply with this section is the result of error.

Where an error has caused the failure to comply with this section, it provides a full refund or credit for all amounts billed to or paid by the consumer from the date of renewal until the date of the termination of the contract, or the date of the subsequent notice of renewal, whichever occurs first.

(d) A violation of this section renders the automatic renewal clause void and unenforceable.

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

[(d)] (e) For purposes of this section "consumer" shall have the same meaning as in section 480-1."