
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. Section 481-9.5, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "~~§~~481-9.5~~§~~ Automatic renewal clauses. (a) Any
4 person who sells or offers to sell any products or services to a
5 consumer pursuant to a consumer contract that has a specified
6 term of more than one month and an automatic renewal clause
7 under which the contract will automatically renew for a
8 specified term of more than one month unless the consumer
9 cancels the contract, shall disclose the automatic renewal
10 clause and the procedure by which the consumer can cancel
11 automatic renewal of the consumer contract clearly and
12 conspicuously in the consumer contract.
13 (b) Any person who sells or offers to sell any products or
14 services to a consumer pursuant to a consumer contract that has
15 a specified contract term of twelve months or more, under which
16 the contract will automatically renew for a specified term of



1 more than one month unless the consumer cancels the consumer
2 contract, shall notify the consumer clearly and conspicuously:

3 (1) That the consumer contract will automatically renew
4 unless the consumer cancels the contract;

5 (2) How to cancel the contract; and

6 (3) The deadline by which the consumer shall respond to
7 cancel the consumer contract and prevent automatic
8 renewal.

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

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

15 (1) Transaction for sale of products or services was
16 conducted electronically at the election of the
17 consumer and in compliance with the requirements of
18 chapter 489E, the uniform electronic transactions act;
19 or

20 (2) Consumer elects to receive electronic communications
21 and provides a valid electronic-mail address for the



1 purpose of receiving the notice required by this
2 section.

3 (d) No person shall charge the credit or debit card or the
4 account with a third party of a consumer for an automatic
5 renewal or continuous service without first obtaining the
6 acknowledgment and affirmative consent to such acknowledgement
7 of the consumer to the automatic renewal or continuous service
8 offer terms.

9 (e) Any person who sells or offers products for an
10 automatic renewal or continuous service shall provide an
11 acknowledgment under subsection (d) that includes the automatic
12 renewal or continuous service offer terms, cancellation policy,
13 and information regarding how to cancel the agreement in a
14 manner that facilitates retention by the consumer. If the offer
15 includes a free trial, the person shall also clearly and
16 conspicuously disclose in the acknowledgment the method by which
17 the consumer may cancel the agreement before the consumer pays
18 for the offered goods or services.

19 (f) A person making automatic renewal or continuous
20 service offers shall provide a toll-free telephone number,
21 electronic mail address, or other cost-effective, timely, and



1 easy-to-use mechanism for cancellation that shall be clearly and
2 conspicuously described in the acknowledgment specified in this
3 section. For persons making automatic or continuous service
4 offers that directly bill the consumer, the person, in addition
5 to the above, may also provide a postal address to satisfy the
6 requirements of this subsection.

7 (g) In the case of a material change in the terms of the
8 automatic renewal or continuous service offer that has been
9 accepted by a consumer in Hawaii, the person shall provide the
10 consumer with a clear and conspicuous notice of the material
11 change and provide information regarding how to cancel in a
12 manner that facilitates retention by the consumer.

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

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



1 (1) Financial institution subject to chapter 412 to the
2 extent that the financial institution is engaged in
3 activities regulated pursuant to chapter 412; and

4 (2) Insurer subject to chapter 431, 432, or 432D to the
5 extent that the insurer is engaged in activities
6 regulated pursuant to those chapters.

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

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

16 "Consumer" shall have the same meaning as in section 480-
17 1."

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



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

3 SECTION 4. This Act shall take effect on July 1, 2112.



Report Title:

Unfair and Deceptive Practices; Free Trial Offers

Description:

Requires persons charging a consumer's credit or debit card or account for automatic renewal or continuous service offers under a consumer agreement to first obtain acknowledgment and affirmative consent of the consumer. Establishes notice, disclosure and contact information requirements for such consumer agreements. Requires for free trial offers that include automatic renewal or continuous service offers, disclosure of method of cancellation and opportunity to cancel before commencing automatic billing. (HB1219 HD1)

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