



## **PROTECTING CONSUMERS 2007 INITIATIVES**

Since taking office in 2002, the Lingle-Aiona Administration has made great strides in strengthening protections for Hawai'i's consumers. The Administration has updated regulatory laws regarding insurance, financial institutions, and securities with nationally recognized best practices; introduced and passed tough new identity theft laws; and put into place financial incentives for homeowners to fortify their homes against wind damage.

This year the Administration offers a number of initiatives that continue the drive to ensure Hawai'i's consumers are afforded the best protections and advantages possible under the law. These include proposals to require full disclosure to consumers entering into contracts, increasing the State's ability to investigate and prosecute fraud, and strengthen and fund the monitoring and reporting requirements of the Petroleum Industry Information and Reporting Act.

### **Expanding Consumer Protections**

#### **Prescription Drug Plans**

Currently, most companies selling drugs as prescription drug plans in Hawai'i are operating solely as stand-alone prescription drug plans under a limited authorization from the federal government pursuant to Medicare Part D. These plans must become authorized under state law and be licensed by December 31, 2009, unless the State chooses not to have a licensing process for prescription drug plans.

The Lingle-Aiona Administration believes that establishing licensing and solvency requirements for prescription drug plans is the best way to protect the public. The Administration is proposing legislation to establish requirements for licensing and oversight of financial solvency to bring these entities under regulatory oversight. A certificate of authority issued by the insurance commissioner would be required for prescription drug plan businesses in Hawai'i.

Information required would include the organizational documents of the business, its bylaws, a list of its principal officers or partners, comprehensive financial statements, a financial feasibility plan, and copies of the forms used by the plan for contracts and coverage. A copy of the grievance process to be used by customers to resolve complaints would be required as well as a description of the plan's proposed quality assurance program. Additionally, a list of the pharmacists with which the plan has agreements would be filed with the insurance commissioner.

Finally, to protect consumers against insolvent plans, a certificate would not be issued unless the prescription drug plan has – and maintains – a minimum net worth of \$2,000,000 and file a quarterly net solvency report for review by the commissioner.

## **Regulated Industries Complaints Office**

In 1982, the Regulated Industries Complaints Office was created as a temporary office in the Department of Commerce and Consumer Affairs. The office was tasked with assisting the public through education and enforcement of the State's licensing laws for professions ranging from acupuncture to veterinary services. The Legislature made the office permanent in 1997, however, the majority of staff positions remain on the books as "temporary" positions. Because the Administration only reports to the Legislature on permanent positions, it is proposing to convert the 50 existing and filled "temporary" positions to permanent status.

## **Insurance Fraud**

Since 2003, Hawai'i law has recognized and defined insurance fraud to cover not only motor vehicle insurance but also health insurance. Unfortunately, the power of the insurance fraud investigations unit to investigate insurance fraud has remained limited to motor vehicle insurance matters. As a result, although the Legislature passed various laws creating insurance fraud penalties, little or no investigation or prosecution has occurred in non-motor vehicle fraud cases.

The Administration has introduced two bills to extend the unit's ability to investigate and prosecute insurance fraud for all lines of insurance.

The first bill would provide for both criminal and civil penalties and, unlike the current insurance fraud law which limits the offense of insurance fraud to claims only, the Administration's proposal includes all forms of fraud, including fraudulent activities occurring in applications and sales of insurance. The end result will be that policyholders will save money from the reduction of fraudulent claims and policies.

Complementing the proposal to expand investigations and prosecutions of insurance frauds, the Administration is proposing a bill to toughen penalties against individuals who repeatedly commit felony insurance fraud by subjecting them to repeat offender increased sentencing guidelines if they have a previous conviction for felony insurance fraud. Insurance fraud is currently a Class C Felony, however, the Administration's initiative to add insurance fraud to the repeat offender statute will ensure that repeat fraud offenders will now be sentenced to a mandatory minimum period of imprisonment without possibility of parole of 20 months for a first repeat; 40 months where there are two prior felony convictions; and five years when there have been three or more prior convictions. Again, this will result in employers, insurers, and consumers saving more money by reducing the amount paid out for fraudulent claims and policies.

## **Mortgage Rescue Fraud Prevention Act**

The Lingle-Aiona Administration is proposing a new law to protect Hawai'i consumers from scammers who prey on homeowners facing foreclosure. The "Mortgage Rescue Fraud Prevention Act" targets so-called mortgage rescuers who promise to help homeowners, taking a fee of thousands of dollars for supposedly negotiating with the homeowners' creditors. After collecting the money, many do little or no work and abandon the homeowners. In some cases the homeowners wind up as tenants who are then evicted.

The Administration's proposal would require mortgage rescue consultants to provide homeowners with a written contract spelling out their services and giving homeowners the right to cancel at any time before the services are performed. The measure would also limit the amount a mortgage rescuer can make if the homeowner is successful in saving their home or require the rescuer to pay a minimum percentage of the home's value to the homeowner if they lose their home.

## **Funerary Services**

The Administration propose to provide for additional protections for consumers of cemetery or funeral services by establishing procedures for the cancellation, termination, and refund of pre-need funeral and pre-need interment services contracts. The proposal also would require that a cemetery file and maintain a map that identifies each plot, crypt, or niche and maintain a permanent and accurate record of the identity of each person located in the cemetery. Finally, the measure would increase the fine from \$1,000 to \$5,000 for violations by cemetery or pre-need funeral authorities. These proposals would substantially advance and improve the level of consumer protection afforded to Hawai'i's cemetery and funeral services consumers.

## **Oversight of the Utility Industry**

### **Gasoline Price Gouging Act of 2007**

Price gouging by businesses is reprehensible under any circumstances. Because Hawai'i's geographic isolation has made residents particularly vulnerable to high gasoline prices, the Administration is proposing additional protection for Hawai'i consumers from gasoline price gouging during periods of abnormal marketplace disruption.

The "Gasoline Price Gouging Act of 2007" would make it an unfair or deceptive trade practice for any gasoline-related business to sell or offer to sell any gasoline product for an amount that represents an unconscionably excessive price during any abnormal disruption of the market, whether that disruption occurred in Hawai'i or in other parts of the world. This measure will deter local gasoline businesses from raising gasoline prices to unconscionably high levels while not requiring a natural disaster or a formal declaration of emergency by the Governor to be effective as current price gouging laws require.

### **Public Utilities**

The Division of Consumer Advocacy in the Department of Commerce and Consumer Affairs is tasked with representing and protecting the interests of consumers of public utility services. The field of utility regulation is highly complex and specialized, and requires an equally high level of expertise to ensure that consumers are well represented and protected. The Administration is proposing to increase the number of utility analysts exempt from civil service requirements from four to ten, and to provide funding for two permanent utility analysts. Adding and funding these positions will improve the division's ability to work on utility matters and will also increase the quality of work it produces in its mission to effectively represent consumers.

### **Petroleum Industry Transparency**

Last year, the Legislature established the "Petroleum Industry Monitoring, Analysis, and Reporting Program and Special Fund" which tasked the Public Utilities Commission (PUC) with developing and maintaining an automated petroleum industry information reporting system. The program was intended to bring about greater market transparency and provide useful information to the general public and those agencies that are authorized to conduct oversight of the petroleum industry and ensure compliance with all relevant laws. Unfortunately, the Legislature only appropriated \$1 for the reporting program.

While the Lingle-Aiona Administration is known for making every penny count, the Administration is proposing to appropriate \$1.2 million from the general fund to the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund to enable the PUC to do the job required of them by the Legislature.

This proposal would also clarify and strengthen the PUC's authority and powers to collect information from the petroleum industry, which will facilitate the reporting program. The proposal strengthens the PUC's authority to investigate, subpoena, and compel testimony and provides the PUC with latitude to determine the specific data required and the specific time periods for reporting.

The Administration's bill would make it a violation of law to willfully make false statements or representations in filings to the PUC and would require the PUC to refer to the Attorney General any violation they find of the "Unfair Trade Practices by Petroleum Industry" law. This initiative also requires the PUC to make the information they collect available to the public to the greatest extent possible, while ensuring necessary confidentiality for businesses.