

# State AGs and Consumer Protection: What We Learned From ... Hawaii

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As part of our AG webinar series, we had the opportunity to speak with consumer protection enforcers from the State of Hawaii. Our guests—Christopher J.I. Leong, Supervising Deputy Attorney General in the Commerce and Economic Development Division of the Hawaii Attorney General's Office, and Mana Moriarty, Executive Director of the Office of Consumer Protection—represent two distinct state entities that both hold enforcement authority under Hawaii's consumer protection laws.

## Shared Authority

The dual-entity structure in Hawaii is unique compared to most other states, causing an interesting perspective on coordinated consumer protection efforts. Both the Department of the Attorney General and the Office of Consumer Protection (OCP), which operates within the Department of Commerce and Consumer Affairs (DCCA), share enforcement authority over state consumer protection laws. Note that while in some states, localities also have jurisdiction to bring actions under state consumer protection laws, that is not the case in Hawaii.

The attorney general, appointed by the governor with senate confirmation, serves as the state's chief legal officer and leads the Department of the Attorney General—one of Hawaii's executive departments. Consumer protection is one of several areas to which the AG's office dedicates staff resources, with the current AG placing particular emphasis on initiatives aimed at protecting youth in the state. The DCCA is a separate executive department, also led by a governor-appointed, senate-confirmed director, and includes state divisions and offices with oversight over many areas such as insurance and banking, in addition to the OCP. The OCP, established by statute, is headed by an executive director who does not report to the attorney general, given the separation between the two departments. The OCP includes two sections, legal and investigations, to carry out its duties, with enforcement and legislation being priorities. It maintains a clearinghouse of consumer complaints, investigating reported and suspected violations of consumer protection laws, and acts in an informal complaint resolution role in appropriate circumstances.

Although independently structured, both departments are empowered to enforce consumer protection laws. A key distinction lies in their legislative roles; the OCP may propose and advocate for legislation, serving as a voice for consumers, while the AG's office refrains from advocacy and instead provides legal counsel to the legislature regarding the legality of proposed measures. Due to the overlapping statutory authority, it is incumbent upon the AG's office and the OCP to coordinate and determine their respective roles in enforcement efforts. According to our webinar presenters, the relationship between them is good, largely attributed to the strong working relationships

between personnel, which have fostered a cooperative and productive enforcement environment.

## Hawaii Consumer Protection Law

Hawaii enforces both an Unfair or Deceptive Acts and Practices (UDAP) law and a Uniform Deceptive Trade Practices Act. The UDAP statute, often referred to as a “little FTC Act,” is considered the state’s primary consumer protection law, according to Director Moriarty. Neither statute imposes a statute of limitations on enforcement actions brought by the state. Under the OCP’s investigatory authority, subpoenas may be issued, documents requested, statements taken, and witness appearances compelled. Courts have permitted challenges to these subpoenas, applying the same procedural rules and timeframes as those governing subpoenas issued by the Clerk of the Circuit Courts in civil actions. Likewise, to enforce compliance, the state may initiate an enforcement action in court, where the rules of civil procedure also apply. If the state proceeds with litigation, no pre-suit notice is required. Available remedies include civil penalties, restitution, and disgorgement. Per Director Moriarty, civil penalties may be assessed per violation or per day, with multiple violations potentially occurring within a single day.

Hawaii also has a statute governing automatic renewals in consumer contracts. This law applies to agreements with a specified term exceeding one month that also include a clause under which the contract will automatically renew for a specified term of more than one month. It requires affirmative consent, clear and conspicuous disclosures in the contract informing consumers of the renewal provision and cancellation procedures, and notice before renewal for certain contracts, among other requirements. Additionally, Hawaii has a price gouging law that is automatically triggered upon a gubernatorial declaration of a state of emergency. According to Director Moriarty, the law functions as a price freeze, locking in prices that were in effect immediately prior to the emergency declaration. Any increase above the frozen price may constitute actionable price gouging. Violations of both Hawaii’s automatic renewal law and price gouging law are deemed per se unfair or deceptive acts or practices.

## Pleading UDAP in Hawaii State and Federal Courts

Strategic considerations often influence the decision to pursue consumer protection actions in state versus federal court. In Hawaii, the distinction between the two forums is particularly significant. The Hawaii Supreme Court has affirmed that the state follows a notice pleading standard, explicitly rejecting the plausibility pleading requirement on the grounds that it restricts access to the courts. In contrast, the federal court requires claims of unfair or deceptive acts and practices—often characterized as sounding in fraud—to be pleaded with particularity. In light of this, the state has typically and consistently been careful in drafting pleadings in matters to make it clear that its claims are founded on state law and not on federal law.

The full webinar is available to watch [here](#). To catch up and read the coverage of all our previous state AG webinars, click [here](#). And please [join us](#) for our next webinar with the Office of the Massachusetts Attorney General on October 9, at 3 p.m. ET, in regard to its new regulations applicable to “junk fees” and automatic renewals.