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Consumer Protection Programs

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Consumer Protection Programs

This paper describes the consumer protection activities carried out by the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Justice (DOJ). The two agencies provide services that relate to individual consumer complaints and consumer education. Other state regulatory programs also assist consumers. However, this paper focuses primarily on consumer protection programs that relate to consumer complaints of unfair or unlawful treatment or provide information and education to assist consumers in future transactions.

The paper is divided into four sections: (1) the statutory authority governing consumer protection activities of DATCP and DOJ; (2) the consumer protection program and operations of DATCP; (3) the consumer protection program and operations of DOJ; and (4) appendices which briefly describe the consumer protection activities of other state agencies (Appendix I), the trade and consumer protection administrative rules of DATCP (Appendix II) and select consumer protection cases prosecuted by DOJ (Appendix III).

Consumer Protection Statutory Authority

Prior to the 1995 biennial budget act, both DATCP and DOJ were provided broad authority under state trade practice statutes to regulate and prosecute fraudulent advertising and representations and unfair trade practices. DATCP was also provided authority to regulate product safety. On July 1, 1996, most of the state's consumer protection authority was consolidated in DATCP.

Prior to 1996, the statutes authorized either or both of the Departments to enforce violations of consumer protection laws, including those related to: (1) fraudulent drug and food advertising; (2) the substantiation of energy savings or safety claims; (3) fitness center and weight reduction contracts; (4) unfair mail order sales practices; (5) motor vehicle rustproofing warranties; (6) time share and campground ownership; (7) prepaid maintenance liens; (8) unsolicited prize notices; (9) "900" telephone number abuses; (10) ticket refunds; (11) cable television subscriber rights; (12) charitable solicitation; (13) dating services contracts; (14) telecommunications services; (15) the sale of cleaning agents and water conditioners containing phosphorous; and (16) products containing ozone-depleting substances.

The Department of Justice retains much of its concurrent authority to determine violations of, and initiate prosecutorial proceedings on, cases relating to fraudulent representation, unfair trade practices and telecommunications trade practices. However, DOJ can only commence an action in circuit court under this authority after consulting with DATCP. As the state's attorney, DOJ can also represent the state in court on consumer protection cases referred for adjudication by DATCP or other state agencies.

Fraudulent Advertising and Representations

DATCP, and DOJ after consulting with DATCP, may commence an action in circuit court under s. 100.18 of the statutes, (originally adopted in 1913) to prohibit advertising and other representations that are "untrue, deceptive or misleading." This statute, often referred to as the Fraudulent Representations Law, prohibits fraudulent advertising or representations made by businesses.

Specific actions which are prohibited under this statute include: (1) inadequate price or condition of sale disclosures related to the sale of products or services which are conditioned upon the purchase of any other product or service, referred to as combination sales; (2) false representation by a business to be a private party; (3) deceptive close-out sales; (4) failure of business owners to properly identify their business; (5) inadequate gasoline price disclosures; (6) bait and switch advertising; (7) misrepresentation of local energy resource systems (such as wind or solar power); and (8) deception in the use of terms such as wholesaler or manufacturer for price advertising.

DATCP, district attorneys and DOJ, after consulting with DATCP, may commence actions in circuit court to bring an action on behalf of the state and receive a temporary or permanent injunction. An injunction is an order issued by a circuit court to restrain a business' untrue, deceptive or misleading practices. (Although DATCP is authorized to bring actions, DATCP requests that court actions be taken by district attorneys or the Department of Justice due to DOJ's general role in representing the state in court.) Through such a court order, in addition to putting a halt to the fraudulent actions for most infringements, the court can order a civil forfeiture of not less than \$50 nor more than \$200 for each violation and require restitution be paid to the victim of the business' fraudulent activities.

DATCP, any district attorney and DOJ, after consulting with DATCP, have authority to commence an action to recover a civil forfeiture to the state for each violation of a court ordered injunction issued under the state's fraudulent advertising statutes. In lieu of an injunction, DATCP or any district attorney may attempt to obtain a voluntary assurance of discontinuance of fraudulent or deceptive consumer practices from the businesses involved in such activities. Such assurances are not filed in court and may take the simple form of a letter or the more official form of a contract. In any case, the assurance is made in

writing and specifies that, from that point forward, the conduct in question will be stopped.

A voluntary assurance differs from an injunction in that such agreements are not admissible as evidence of a previous violation should the business later be brought to court on the same charges of fraudulent representation. However, a violation of the assurance is treated as a violation of state fraudulent representation statutes and subject to the remedies and penalties associated with such violations.

In comparison, if the conditions of an injunction are violated, there are additional civil penalties that may be sought. For each violation of an injunction, the prosecutor (DOJ or a district attorney) may bring an action to recover additional civil forfeitures of not less than \$100 nor more than \$10,000 for each violation.

Unfair Trade Practices

Under s. 100.20 of the statutes, adopted in 1921, DATCP requires business methods of competition and trade practices to be "fair." DATCP is provided broad authority to define fair methods and practices, including the authority to: (1) specify, by administrative rule, unfair business methods and practices; and (2) issue special orders enjoining unfair business practices.

The statutory requirement for businesses to use fair methods and practices is intended to promote free and open competition. Under the unfair trade statute, the Department also regulates many forms of advertising and sales claims. This law is often termed the "Little FTC Act" by DATCP, in reference to its similarity to the Federal Trade Commission Act, on which it was based.

Administrative Rules

Generally, DATCP exercises its rulemaking authority to govern unfair business practices that have become common. The consumer issues

regulated by DATCP rules (the general unfair trade practices statute) and administered by its Consumer Protection Bureau are listed in Appendix II.

The 1995-97 budget act eliminated DOJ's rulemaking authority in the area of consumer protection. However, in areas related to unfair business practices where no DATCP rule exists, DOJ may: (a) file a written complaint with DATCP relating to allegations of unfair methods of competition in business or unfair trade practices in business or both; (b) require DATCP to proceed, after proper notice, to the hearing and adjudication of the allegations; (c) permit a representative of DOJ, designated by the Attorney General, to appear before DATCP in such proceedings; and (d) entitle DOJ to judicial review of the decisions and orders of DATCP.

Special Orders

The unfair trade practices statute also authorizes DATCP to issue special orders enjoining unfair practices and requiring a business to adopt business practices specified by the Department. The special order authority represents significant administrative power to prohibit business practices not otherwise regulated by specific statutes or rules. A special order applies to a single party named in the order. However, the Department may follow special orders with the adoption of administrative rules affecting the entire industry if the unfair practice is found to be common. In calendar year 2005, the Department issued nine special orders.

Penalties

DATCP or any district attorney has authority to commence an action in the name of the state to recover civil forfeitures for each violation of a DATCP rule or order issued under the state unfair trade practices statutes. DOJ, after consulting DATCP or at the request of DATCP, has authority to commence an action to recover a civil forfeiture

for each violation of a court ordered injunction issued under the state's unfair trade practices statutes. However, DOJ does not have the authority to recover a civil forfeiture for violation of an injunction issued under a DATCP rule or order.

Violators of the unfair trade practices statute are subject to: (1) criminal penalties for each violation of not less than \$25 nor more than \$5,000 and imprisonment in a county jail for not more than one year, or both; or (2) civil penalties of not less than \$100 nor more than \$10,000 per violation, in addition to the potential for an order to be issued requiring restitution to be paid to the consumer. Criminal prosecutions are brought by district attorneys; civil prosecutions have generally been brought by DOJ for cases having statewide impact.

In addition, the statutes provide authority to private parties to take legal actions in any court with jurisdiction to recover losses due to violations of administrative rules or special orders. Private parties may recover twice the amount of damages plus costs, including attorney fees.

Telecommunications Services

DATCP, DOJ and district attorneys regulate the advertising, sales representations and practices related to telecommunication services. Telecommunication service, as defined by section 196.01 of the Wisconsin Statutes, includes the sale of services related to the conveyance of voice, data or other information at any frequency over any electromagnetic spectrum including sale of service for the collection, storage, forwarding and switching of the regulated service as well as any needed equipment. A telecommunications service does not include cable television or broadcast services.

The statutes specifically prohibit advertising and sales representations that in any manner make false, misleading or deceptive statements or representations in regard to the provision of telecommunication services, including the rates,

terms or conditions for service. In addition, persons may not engage in "negative option billing" or negative enrollment for telecommunication services. That is, a person may not bill anyone for any telecommunication service that person did not affirmatively order, unless the service is required to be provided by law, the Federal Communication Commission or the state Public Service Commission. Further, a person's failure to refuse another person's proposal to provide a telecommunication service is not considered an affirmative request for that telecommunication service. Lastly, a person must provide written confirmation of any services ordered through oral solicitation and a person may not charge a customer for any services that customer has canceled.

DATCP, in consultation with DOJ, has the authority to promulgate rules related to the provision of telecommunication services in the state. ATCP 123 regulates subscription and billing practices related to cable and telecommunication services provided to consumers primarily for personal, household or family use. DOJ is required to consult with DATCP prior to commencing a court action to restrain, by temporary or permanent injunction, any violation of consumer protection statutes related to telecommunication services. A district attorney, upon informing DATCP, may also commence such actions.

Any person who violates the consumer protection statutes related to telecommunication services shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Such forfeitures are enforced by DOJ, after consulting DATCP, or by any district attorney, after informing DATCP. DOJ may only commence such an action in court after consulting with DATCP. Also, persons adversely affected by such violations have a claim for appropriate relief and to recover any costs and disbursements that occur related to such violations.

Telemarketing No-call List

The 2001-03 biennial budget act (2001 Act 16) created a program to register telemarketers and prohibit them from calling consumers who had their residential phone number listed on a no-call directory.

The first no-call list was published on December 1, 2002, and took effect on January 1, 2003. This list contained over one million residential telephone numbers. The list is updated and published quarterly by DATCP. Most telemarketers are prohibited from calling numbers on the list. Violations are punishable by forfeitures of up to \$100 per violation. On September 1, 2006, there were about 1.1 million numbers on the no-call list. However, Department officials expect this number to increase to approximately 1.4 million numbers for the January 1, 2007, list (due to the two-year renewal process beginning in September, 2006).

Product Safety

DATCP is also responsible for the identification and regulation of consumer products that may present an unreasonable risk of injury to the public. In addition, the Department establishes packaging standards for household products to prevent hazards such as poisoning. Under s. 100.42, DATCP has general authority to ban the sale or distribution of any consumer product determined to present an unreasonable risk or imminent hazard to the public health, welfare or safety. In addition, specific statutory responsibilities relate to the following issues:

- Hazardous household substances
- Flammable fabrics
- Poison prevention packaging

DATCP Consumer Protection Program

Consumer Protection Bureau activities rely significantly on the administrative rules adopted under the authority of the unfair trade practices statute. The administrative rules provide detailed, industry-wide standards of conduct related to specific consumer protection issues. In addition the Department practices progressive enforcement of the state's consumer protection laws through the use of warning letters, assurances of compliance, special orders and formal prosecutions, when necessary.

The Department uses a program of prevention, education, mediation and enforcement to maintain compliance with DATCP rules. In addition, administrative rules are intended to reduce the possibility of arbitrary or inconsistent state regulation of businesses. Generally, rules have been adopted for those consumer issues for which unfair business activities had, at one time, become common. The Department adopts new rules and modifies current rules in response to new practices.

Program Funding and Staffing

DATCP implements its consumer protection duties through the Bureau of Consumer Protection within the Division of Trade and Consumer Protection. Funding is provided from general purpose revenues (GPR), program revenues (PR) and segregated (SEG) revenues. In 2006-07, the Bureau is authorized \$5,024,600 and 67.6 positions (\$2,136,600 GPR and 33.5 GPR positions, \$2,340,400 PR and 25.1 PR positions, and \$547,600 SEG and 6.0 SEG positions and 3.0 FED positions). The Bureau consists of a director and central administrative staff that includes a consumer information center made up of consumer hotline and consumer information staff. The Bureau also operates regional offices in Green Bay, Madison and

Milwaukee, and a satellite office in Eau Claire. Table 1 categorizes DATCP's consumer protection staff.

Table 1: DATCP Consumer Protection Staff (2006-07)

Central Office:	
Director, Administrative and Legal	4.40
Consumer Information Center	13.15
Regulation and Safety Section	23.25
Regional Offices	<u>26.80</u>
Total	67.60

Bureau of Consumer Protection program revenue is derived from various fees collected from: (a) weights and measures inspections; (b) automobile repair shops conducting mobile air conditioner installation, removal or repair work; and (c) a consumer protection 25% surcharge on fines and forfeitures for consumer protection violations. Segregated funding is provided from the petroleum inspection fund for enforcement of the unfair sales act and weights and measures activities related to fuel dispensing facilities.

DATCP also has a Trade Practices Bureau that handles some of the workload related to the Unfair Sales Act and unfair trade practices. The Trade Practices Bureau is primarily concerned with complaints related to unfair industry competition or practices (that is, "business on business" complaints) as opposed to "consumer on business" complaints). Examples of Trade Practice Bureau programs include regulation of product pricing practices (minimum mark-up laws) and the dairy producer security program, which attempts to ensure that dairy, grain, and fruit and vegetable plants and producers have enough financial security, in the event of default or other financial pressure, to meet their contractual obligations with individual producers. Administrative rules related to trade practices are found in Appendix II.

Central Office Staff

Central office staff total 40.8 positions, which includes a director and 3.4 budget and policy staff. The remaining 36.4 central office staff are located within the Bureau's consumer information center, regulation and safety section, and telemarketing no-call list administration.

Consumer Information Center (CIC)

The CIC consists of a supervisor and 12.15 staff. Included among these staff are two units, the hotline unit and the special projects unit. Hotline staff are primarily responsible for responding to consumer complaints via the toll-free hotlines, and working with the Department's automated telephone response system, known as an interactive voice response (IVR) system, and complaint tracking database to retrieve information on complaints. Remaining staff also include no-call list administrators for the telemarketing no-call list program.

One of the primary functions of the CIC is to respond to potential violations of the state's consumer protection laws by out-of-state businesses (those that do not have a physical presence in the state). Prior to 1996, DATCP referred most out-of-state complaints to DOJ. Now, the special projects unit staff is responsible for providing advice, mediating complaints, making recommendations for warnings letters, compliance assurances, or more in-depth investigations and making referrals for DATCP special orders or formal litigation to DOJ on out-of-state business activities.

The CIC is also responsible for:

- Education and compliance activities
- Market research and trend analysis
- Enhancement and maintenance of the automated complaint tracking system

Consumer Protection also provides information through an Internet web page. This page contains

consumer information, services, fact sheets and publications as well as extensive lists of resource and referral information used by DATCP hotline staff when responding to inquiries and complaints. It also provides links to other web sites and electronic complaint forms. In 2005, DATCP's consumer protection web site had approximately 24,600 visitors.

Regulation and Safety Section

The Bureau's regulation and safety section enforces a number of laws and Department rules related to environmental regulation of consumer products and product safety as well as providing rulemaking, educational, training and technical support to the Department's weights and measures staff. In 1998, the former environmental and product safety section was combined with the weights and measures technical section to form the regulation and safety section. As part of Bureau restructuring initiated in response to 2003 Act 33 consumer protection reductions, DATCP transferred supervision of weights and measures investigation field staff, who are regionally located throughout the state and work out of their homes, from the regional offices to the regulation and safety section in Madison. This restructuring included the creation of a field supervisor position in the regulation and safety section to oversee these staff. The new combined section consists of a supervisor and 22.25 staff who carry out Department responsibilities related to the following statutes:

- Labeling of Bedding (s. 100.2095)
- Dry Cell Batteries Containing Mercury (s. 100.27)
- Sale of Detergents Containing Phosphorus (s. 100.28)
- Reductions of Toxics in Packaging (s. 100.285)
- Sale of Nonrecyclable Materials (s. 100.29)
- Labeling of Recycled, Recyclable or Degradable Consumer Products (s. 100.295)
- Plastic Container Recycled Content and Labeling (s. 100.297 and s. 100.33)
- Hazardous Substances (s. 100.37)

Table 2 : Regional Consumer Protection Staff

Madison*	Green Bay	Wauwatosa	Eau Claire**
1.0 Supervisor	1.0 Supervisor	1.0 Supervisor	2.0 Investigators
6.8 Investigators	3.0 Investigators	3.0 Investigators	<u>0.5</u> Cons. Specialists
1.0 Auditor	2.0 Cons. Specialist	3.0 Cons. Specialists	
<u>1.0</u> Regulatory Spec.	<u>0.5</u> Program Asst.	<u>1.0</u> Program Asst.	
9.8	6.5	8.0	2.5

*Madison staff, which includes the Office of Privacy Protection, are located in the same building as DATCP's central office.

**Eau Claire satellite staff are supervised by the Madison regional office.

- Antifreeze Content (s. 100.38)
- Flammable Fabrics (s. 100.41)
- Product Safety (s. 100.42)
- Poison Prevention Packaging (s. 100.43)
- Recycling of Mobile Air Conditioner refrigerants (s. 100.45)
- Energy Efficiency Standards (100.46)
- Products Containing or Made with Ozone Depleting Substances (s. 100.50)

In addition, the Department is responsible for assisting municipalities and other governmental agencies and private sector service organizations in conducting weights and measures regulatory work under Chapter 98 of the statutes. Further, this section maintains and staffs the state's metrology lab (a lab that deals with the calibration of scales and other measuring devices) and motor vehicle testing equipment. The Department estimates testing and certifying the accuracy of about 8,300 standard weights and measures annually.

Regional Offices

DATCP's regional office staff respond to consumer complaints and conduct investigations or other inspection-related work within their geographic areas that may have been received through local consumer complaint lines or referred from the Department's centrally located toll-free hotline. In addition, regional staff are assigned to

certain statewide and national complaint areas. Investigations of complaints that may require further action are initiated by regional staff and then referred to central office staff for formal action.

In response to consumer protection reductions in 2003 Act 33, DATCP restructured its regional consumer protection offices. As discussed earlier, this restructuring included the transfer of oversight of all weights and measures investigators from the regional offices to the regulation and safety section in the central office. In addition, 4.0 consumer protection positions were removed from the Eau Claire regional office, and the office was made a satellite office overseen by a supervisor in the Madison regional office. In 2005, the three regional offices, along with the satellite office in Eau Claire, have 26.8 staff (40% of total bureau staff), as outlined in Table 2.

Office of Privacy Protection

Madison regional office houses the Department's Office of Privacy Protection (OPP), which includes the following three federal positions: 1.0 regulatory specialist; 1.0 investigator; and 1.0 auditor. The office was created by executive order of the Governor in April, 2006, and is a joint partnership between DATCP and the Department of Financial Institutions (DFI). While

the three positions were administratively created by DATCP and the Department of Administration under a federal appropriation, DATCP has an agreement with DFI to reimburse DATCP for the costs of this office with program revenue, which DATCP estimates to be \$225,000 for 2006-07. An ongoing source of funding for the OPP has not yet been determined. The office's duties include: networking with government agencies, law enforcement and business industries on privacy issues; receiving complaints related to privacy issues; and investigating instances of identity theft. In addition, the OPP attempts to educate consumers through its web site, investigates all identity theft complaints received by DATCP, and works with district attorneys and other prosecutors when an identity theft complaint or investigation leads to a prosecution.

Telemarketer No-Call List

2001 Act 16 provided DATCP with 5.5 staff and \$230,900 in program revenues in a continuing appropriation to administer the telemarketer no-call program. Expenditure authority for the program was increased to \$582,600 in 2004-05 in response to increased costs of administering the program. However, as part of 2005 Act 25 (the 2005-07 biennial budget act), the funding source for a consumer protection budget analyst position was transferred to no-call list registration revenues (\$59,500 and 1.0 position). As a result, in 2006-07 DATCP is authorized expenditure authority of \$666,900 and 6.5 positions from its telephone solicitation regulation appropriation, with 5.5 positions used specifically for administration of the no-call program (the 1.0 budget analyst position is reflected in the total for central office staff).

The Department has contracted out the maintenance of the residential no-call phone listing and the development of the licensing software at a cost of about \$210,000 annually. DATCP registers telemarketers, handles consumer complaints relating to telemarketing and enforces the

provisions of the no-call law.

The Department, under administrative rule ATCP 127, administers the program. Telemarketers pay initial fees of \$700 per year and annual renewal fees of \$500 plus \$75 per phone line over three (capped at \$20,000) thereafter. Fees may be paid on a quarterly basis. Other possible fees include \$25 for each additional e-mail or compact disc copy of the no-call list, and \$1,000 for each additional hard copy of the no-call list. Consumers must renew their listing every two years, but are charged no fee.

Revenues under administrative rule ATCP 127 were initially estimated at approximately \$470,000 in 2002-03 and \$550,000 annually thereafter. However, actual revenues were \$1.7 million in 2002-03 and \$1.5 million in 2003-04 (based on three quarters of fee collection). Due to a large balance in the telephone solicitation appropriation account that resulted from higher than expected revenues, 2003 Act 33 transferred \$600,000 from the account to the state's general fund in 2003-04.

ATCP 127 requires DATCP to reduce or waive one or more of the quarterly payments made by telemarketers that fund the program if the Department projects a year-end balance in the telephone solicitation appropriation account that exceeds projected fiscal year expenditures by at least 15%. This provision would allow DATCP to maintain a year-end balance of approximately \$100,000. On June 30, 2006, the account had a balance of \$748,000. Due to the existence of a large balance in the account, DATCP waived the quarterly payment that was due September 1, 2003. Further, DATCP has only collected one quarterly payment in each of the last three fiscal years (2004-05 through 2006-07). Through December of 2006, the cumulative amount of waived quarterly payments is estimated at approximately \$4 million.

In June, 2004, in response to a lawsuit filed by a group of businesses, a Dane County Circuit Court upheld the legality of ATCP 127, except for the

contention that the rule allowed DATCP discretion on whether to reduce or eliminate quarterly payments based on the program's fiscal outlook. The court ruled that DATCP did not have discretion when program revenues exceeded projected expenditures by the specified amount, but rather must reduce or eliminate fee payments when this is the case. In addition, the court ruled that the statutes set the maximum fine for a violation under the telephone solicitation program at \$100, and that DATCP may not administratively set a higher maximum fine (although DATCP officials indicate they did not intend to increase the maximum fine from the \$100 set in the statutes; ATCP 127 contained a reference to the state's "Little FTC Act", violations of which have a maximum fine of \$10,000).

Complaint Intake and Response

The primary function of the consumer protection staff is to review and respond to consumer inquiries and complaints received through the DATCP toll-free hotline, telephone calls to regional offices, written complaints or referrals from other state agencies. In 2005, the Department received 167,147 initial inquiries and contacts, including 139,962 consumer telephone inquiries, 24,555 website visits, 1,241 "walk-in" complaints, and 1,134 other contacts (such as email). DATCP subsequently opened 14,172 written complaints in response to these consumer contacts, and initiated another 953 complaints on its own, for a total of 15,125 written complaints in 2005.

In 2005, over one-third of the written complaints opened by DATCP were related to either no-call list (telemarketing) violations or related to telecommunications, which were the top two sources of written complaints. The Department also receives a large number of inquiries on landlord/tenant issues, investment schemes and home improvement contracts and projects.

Consumer Information Center

DATCP uses an automated telephone response

system known as an interactive voice response (IVR) system, which was transferred from DOJ in 1996. The Department also has a complaint tracking system to track consumer inquiries and requests for assistance, as well as written and verbal complaints, investigations, and DATCP, DOJ, District Attorney or Federal court actions.

The database provides current data to assist the Department in making programmatic decisions and in compiling reports on types of complaints. DATCP staff use the information available on the complaint tracking database to identify trends and emerging issues in the marketplace and to establish program priorities and direction.

Generally, the contact with the consumer on the toll-free hotline involves a short telephone conversation in which the consumer receives a description of their rights in the matter of concern, or the complainant is referred to another state agency with jurisdiction on the subject of the complaint. DATCP estimates that in half of the calls received on the hotline and at regional offices, the consumer's question is answered with the initial telephone call.

If a violation is apparent, the consumer is encouraged to: (1) pursue the resolution of the complaint privately based on a better understanding of their rights and the responsibilities of the business, which is provided by Department; and (2) submit a written complaint form provided by DATCP which will initiate a written response by the Department to both the consumer and the affected business, and possible investigatory or enforcement actions, if warranted. If no violation of current rules is apparent, the consumer is provided information on private actions that he or she could pursue, such as small claims court. Department officials indicate, where appropriate, they attempt to complete their role in the consumer complaint at the stage of the initial telephone contact with the consumer, avoiding more time-consuming, subsequent written correspondence.

Written Complaints

Consumer complaints received by mail are initially handled through mediation, with most complaints where no violation of the law exists being initially answered with standard letters informing the consumer and the affected business of their rights or responsibilities and proposing possible solutions to both parties. The Department also requests a consumer to file an official complaint form for complaints which: (1) do not involve violations of current rules or specific statutes, but involve recurring and serious complaints which DATCP wishes to review for potential further actions; or (2) upon review by an investigator, a series of similar complaints is identified warranting further investigation.

Investigations

In some instances, further investigative work is performed on consumer complaints to determine whether a violation of DATCP rules has occurred and what the relative significance of the violation is. The Department is authorized significant investigative authority under general agency powers provided by Chapter 93 in addition to specific authority in the unfair trade practices (s. 100.20) and deceptive advertising (s. 100.18) laws. These include the authority to subpoena documents and testimony, conduct investigative hearings, collect and analyze samples, and inspect and copy business records.

Typically, the majority of complaints are handled through mediation. However, an estimated 20% of all complaints require investigation, including interviews, data collection, case evaluations and, at times, undercover investigation. DATCP officials have instituted a "tier" system where potential investigations are rated.

Tier 1: Issues of statewide/national importance that have a significant level of impact to Wisconsin consumers and/or businesses.

Tier 2: Issues of statewide/regional importance that are routine in nature and impact a large number of Wisconsin consumers and/or businesses.

Tier 3: Issues that are routine in nature and impact an individual complainant and/or business.

The use of staff for these investigations occurs for serious violations having a significant impact on affected consumers. Generally, in-depth investigations are made when numerous unresolved complaints about a single business or issue are received over a short period of time. Investigations and studies are also begun as a Department initiative based on consumer protection issues identified by staff.

Investigations generally result in a complete investigative report and supporting evidence that are used by the prosecuting attorney to draft the court complaint documents and file the court case. In 2005, DATCP performed 116 in-depth investigations related to general consumer complaints.

Information and Education

The Bureau of Consumer Protection conducts a consumer and business information program to assist in achieving voluntary compliance with consumer protection laws by businesses and to reduce the likelihood that consumers will subject themselves to harmful situations. The Department's consumer protection educational and informational activities include: (1) press releases including information regarding new and current consumer fraud schemes and seasonal consumer issues; (2) presentations and speeches regularly made by staff to consumers and businesses; (3) educational and training programs for consumers, in cooperation with consumer groups, educational institutions, and state and local agencies; (4) informational brochures describing consumer rights and businesses' responsibilities (The most widely distributed brochure describes landlord and tenant rights and is available in Spanish and English.); and (5) requests that television stations provide the consumer protection hot-

line telephone number before broadcasting advertisements for business opportunity plans, such as work-at-home schemes. The Department provides information to local law enforcement agencies to increase their knowledge of consumer protection laws and rules, and lectures at technical school law enforcement classes on a regular basis.

Complaint Mediation

DATCP has stated that its primary statutory mission is to identify and prevent unfair business practices, not to represent individual consumers. However, as a result of its handling of consumer complaints, many complaints are resolved to the satisfaction of consumers. For example, the Department believes that providing information on the rights and responsibilities of the parties in a dispute may facilitate the resolution of a complaint. In 2005, DATCP estimates that approximately 86% of written complaints were mediated by the Department.

Surveys

In addition to on-site inspections performed by the Department, DATCP also conducts "surveys," to measure compliance with administrative rules. In 2005, the Department performed approximately 6,100 surveys, checking approximately 191,000 devices. As part of this process, DATCP may inspect business premises, copy records, or sample and analyze consumer products. DATCP staff may perform the following types of surveys:

1. Inspections of auto repair businesses are completed on a regular basis to determine compliance with ATCP 132, the motor vehicle repair rule.
2. Surveys of retail stores to check for hazardous household substances or products.
3. Surveys of retail stores for scanner accuracy and price verification.

4. Review of advertisements, employment offers and residential leases on a random basis to identify possible law violations.

5. Mail surveys to monitor price comparison advertising, initiated due to consumer complaints and Department oversight.

Enforcement Actions

The Department employs different methods to rectify identified violations of consumer protection rules or statutes, including: (1) warning letters; (2) assurances of compliance; (3) special orders; and (4) formal prosecutions.

Warning Letters

Warning letters are issued to businesses under the authority of s. 93.06(10) for minor violations of rules or statutes, or in cases involving more significant violations but for which there is no previous history of violations by the business. Each letter specifies the violation that has occurred and indicates an expectation that such violations will cease. Approximately 3,248 warning letters were issued to businesses in 2005. If further enforcement actions are not warranted, the warning letter is usually the final step in a consumer complaint by the Department; possible noncompliance is generally identified through subsequent complaints received or by Department surveys.

Assurance of Compliance

The Department requires an assurance of compliance by a business when the severity of the violation or the history of the violator indicates that a warning letter may not be adequate to achieve compliance, but for which formal prosecution is not considered to be warranted. The violating business is required to sign a statement assuring compliance, which can be subsequently used to facilitate compliance by other means, if necessary. The process of issuing an assurance of compliance

typically involves an in-person meeting with the affected business. DATCP obtained approximately 167 assurances of compliance in 2005.

Special Orders

Special orders are used to achieve compliance of fair business practices that are not specifically addressed by current law or rules. The special order is generally viewed by DATCP as a precursor to a new administrative rule. The Department exercised special order authority in nine cases in 2005.

The process of issuing a special order generally occurs over a six- to eight-month period and usually involves the following process. First, a business practice that is not regulated by specific rules or statutes would be identified as a potentially unfair practice. If, upon review by DATCP, DOJ or both agencies, the practice appears to be unfair, the case would be brought before an independent hearing examiner in a quasi-judicial proceeding for a ruling on whether the practice is unfair. Finally, the DATCP Secretary would issue the special order enjoining the unfair business practice.

Formal Prosecutions

The Department prepares cases for formal prosecution by district attorneys or DOJ attorneys. Violations of consumer protection statutes and rules are prosecuted if they are considered to be serious, have a major adverse impact on consumers or are recurring by the business. The Department referred approximately 53 cases for prosecution in calendar year 2005, of which 25 were referred to district attorneys, 20 to DOJ and eight to U.S. attorneys.

Telecommunications, automotive repair, home improvement and telemarketing cases represent the majority of investigations. Consumer protection related prosecutions initiated by DATCP may result in civil forfeitures, penalties and restitution to Wisconsin consumers. In 2005, 44

actions were filed on behalf of DATCP, and the Department assisted in obtaining a final sentence of jail or prison time for the offender in four of these cases.

Fines or forfeitures obtained in state courts are required to include a 25% consumer protection assessment that is deposited to a DATCP program revenue appropriation for consumer education. While DATCP is authorized expenditures of \$175,000 from this appropriation, revenues totaled \$32,700 in 2004-05 and \$60,600 in 2005-06. If revenue exceeds \$185,000 in a fiscal year the excess is deposited to the state's general fund.

Product Safety Activity

Ensuring safe products for consumers is a key element of the Department's consumer protection mission. As the principal product safety agency in the state, the Department attempts to protect consumers from unreasonable risk of illness or injury from consumer products by:

- Identifying product hazards
- Eliminating unsafe products or reducing risks of exposure to them
- Providing the public with information they need to identify product hazards
- Providing the public with information they need to compare and use products safely

The Department has various compliance tools at its disposal. The Department may require special labels, order recalls or other corrective actions, restrict the method of sale for products or summarily ban particularly hazardous products. Administrative rule ATCP 139 regulates the labeling of hazardous household products, sets standards for toys and other articles intended for use by children and establishes standards to ban the sale of certain products.

DATCP officials indicate that their most powerful compliance tool is public information. The Department collects information from consumer complaints, news reports, and other public and professional contracts. The Department also disseminates product safety information through the news media, information technology and presentations to other organizations that further spread the information. In keeping with the Department's regulatory philosophy of voluntary compliance and progressive enforcement, staff work with manufacturers and retailers to identify and correct problems without formal enforcement where possible or practical and often mediate between consumers and companies.

The Department works closely with the United States Consumer Product Safety Commission (CPSC). The agencies cooperate in hazard identification, marketplace monitoring, investigations, research, compliance actions and public information. DATCP has a memorandum of understanding with CPSC and performs a number of functions for CPSC on a cooperative contract basis as described below.

- *In-depth Investigations.* In-depth investigations provide basic information for CPSC to use in assessing product safety hazards. The investigations are simple and factual with no interpretation. CPSC analyzes these investigations from around the country in making their own determinations regarding product hazards. The Department carried out nine CPSC product safety investigations in federal fiscal year 2004-05 and nine investigations in federal fiscal year 2005-06. In addition to product safety in-depth investigations performed for the CPSC, DATCP also performs in-depth investigations related to general consumer complaints such as telecommunications and telephone solicitation, as previously discussed. Recent in-depth investigations have been performed on ATV deaths, carbon monoxide deaths, stove fires, scooters and children's toys.

- *Recall Effectiveness Checks.* DATCP staff

inspect retail stores on assignment from CPSC to gather information on the effectiveness of CPSC recalls. The Department performed 20 recall effectiveness checks in both federal fiscal year 2004-05 and 2005-06. Recent recall effectiveness checks have been conducted on products such as electric heaters, cigarette lighters, snowmobiles, cribs, candles, and toys. In addition, the Department has also performed recalls for such products as stuffed/plush toys, matches, books, riding lawnmowers and electric scooters.

- *ATV Dealer Monitoring/Undercover Inspections.* DATCP staff perform undercover surveillance of ATV dealers to ensure compliance with a consent decree regarding sales of ATVs for use by children. Department staff perform approximately seven to 10 undercover checks annually.

- *Consumer Product Safety Surveys.* In 1999, DATCP staff surveyed records at 30 fire departments located throughout the state. Information was collected about fires caused by consumer products, and then shared with CPSC. In 2002, under contract with CPSC, DATCP conducted a survey on cigarette lighters. This survey collected information on the presence of required child safety mechanisms on cigarette lighters. In 2003, Department performed a thrift store poster project survey where DATCP staff educated thrift and second hand stores on various items that have been recalled or are now illegal to sell in the state that have been found for sale at second hand stores. However, due to federal reorganization and budget decisions, DATCP did not perform any surveys for the CPSC in 2005 (although, as previously discussed, DATCP did perform surveys of its own volition).

In recent years, DATCP has initiated a significant cooperative planning effort aimed at strengthening its relationship with CPSC and other state and local agencies. For example, DATCP works with local fire departments on fire prevention and the Department of Health and Family Services on investigations and

outreach concerning products such as siding, air purifiers and portable heaters. Department staff also participate in local safety organizations. In addition, staff work with trade associations to disseminate information about product safety regulations. For example, the national association representing resale shops recently agreed to publish an article in their newsletter to inform their constituents about Wisconsin's ban on the sale of children's clothing with drawstrings.

The Department receives CPSC press releases, consumer alerts, research articles and other information via e-mail. Approximately 30 states actively share information on their state programs through a system coordinated by CPSC. The Department regularly uses e-mail to alert CPSC to serious product hazards or incidents so that state and federal agencies can respond quickly in a coordinated fashion. The product safety section also electronically distributes directly to 400 recipients a monthly newsletter that summarizes and highlights all of the recalls related to children called "Keep Your Kids Safe".

Department staff were involved in the establishment of the International Consumer Product Health and Safety Organization (ICPHSO). ICPHSO was established in 1993 to provide an international forum for the exchange of information on consumer product health and safety programs, policies and issues. Its members include manufacturers and distributors of consumer products from around the world, product liability experts and government officials from the Americas, Asia and Europe. One DATCP representative serves on the Board of Directors and another serves as Chair of the Rapid Information Exchange Committee.

**Department of Justice
Consumer Protection Program**

Following the 1996 transfer of most consumer

protection functions to DATCP, DOJ retained a small consumer protection unit in its Division of Legal Services. In 2006-07 this function consists of 7.5 positions, including: (a) 1.0 attorney supervisor; (b) 3.0 attorneys; (c) 2.0 consumer investigators; (d) 1.0 legal secretary; and (e) a 0.5 paralegal. In 2006-07, DOJ estimates the consumer protection unit budget at \$709,100 GPR. The Department of Justice indicates that units within its Division of Legal Services are not separately budgeted.

Consumer Protection Enforcement Authority. Under the marketing and trade practices statutes (Chapter 100), DOJ has concurrent authority with DATCP to determine violations and to initiate prosecutorial proceedings relating to: (a) fraudulent representations prohibited under s. 100.18; and (b) telecommunication trade practices violations under s. 100.207. For each type of prohibited practice, DOJ may seek to restrain the activity by a temporary or permanent injunction and may enforce forfeitures. If DOJ brings an enforcement action under either of these statutory provisions, a court may take any necessary action to make whole any person who has suffered a financial loss because of the prohibited practice, provided that satisfactory proof has been submitted by the agency to the court.

Under the marketing and trade practices statutes, DOJ also has concurrent authority with DATCP to determine violations and to initiate prosecutorial proceedings to recover civil forfeitures for violations relating to fraudulent representation, fraudulent drug advertising, unfair methods of competition, or noncompliance with an unfair trade practices injunction.

However, before DOJ may commence any of these actions in circuit court, the agency must consult with DATCP. Under current practice, DOJ informs DATCP prior to filing these types of cases; however, DATCP does not have statutory authority to preclude DOJ from initiating these types of actions. Once the agency has consulted with DATCP, DOJ is permitted to exercise its independent discretion in pursuing the matter.

For allegations of unfair methods of competition or unfair trade practices in business in violation of s. 100.20 of the statutes and associated administrative rules, DOJ has the following authority. The agency may: (a) initiate administrative proceedings with DATCP relating to such allegations; (b) appear before DATCP in such proceedings; and (c) appeal any resulting DATCP decisions and orders to a court of law.

Under the federal telecommunications act and federal marketing laws, a "state officer responsible for enforcement" has authority to bring actions under those acts. DOJ has traditionally exercised this authority. While these federal acts do not require DOJ to consult with DATCP, as a practical matter there are enforcement situations under the federal provisions where consultation occurs both formally and informally between the two agencies.

Representing the State in Court. In addition to its authority to bring cases independently, DOJ may represent the state on other types of consumer protection cases referred for adjudication by DATCP or by other state agencies. DATCP typically refers most consumer protection cases either to a district attorney or to DOJ for court enforcement. District attorneys generally prosecute criminal cases at the trial level but may also bring civil actions under the state's consumer protection laws. DATCP generally refers to DOJ those types of civil actions with multi-county implications.

Enforcement Actions. During 2004-05 and 2005-06, a total of 165 consumer protection cases and investigations were either referred to or developed by DOJ's consumer protection unit. Of this total, 77 cases were referrals from other state agencies, as follows: (a) DATCP referred 70 cases; and (b) the Department of Financial Institutions (DFI) referred seven cases. The remaining 88 cases were developed internally by DOJ. Of these latter cases, 35 were multi-state in nature and 53 were Wisconsin-specific.

Appendix III identifies consumer protection cases completed by DOJ's consumer protection unit during the 2004-05 and 2005-06 fiscal years. These cases included investigations, litigation, and negotiated settlements. For each listed case, the following information is provided: (a) case name; (b) case type; (c) source of the case; (d) case description; (e) resolution of the case; and (f) restitution or other monetary recovery, if any.

In addition to the cases identified in Appendix III, the consumer protection unit closed other cases during this two-year period. Among these were investigations or cases referred from other agencies that were resolved through: (a) coordination with federal or local law enforcement authorities; (b) mediation; or (c) deferral to actions brought by other states. In addition, some matters were determined to be inappropriate for enforcement or were returned to the referring agency for further investigation.

Restitution Payments, Investigation Costs, and Related Recoveries. Funds awarded in consumer protection cases are distributed under several different procedures, in accordance with the statutes or the court orders involved. Restitution funds are typically collected and distributed either through DOJ, directly by the defendant(s), or through a third party administrator.

In many cases, it is possible to identify specific consumers to whom refunds or restitution can be made. In such cases, payments are made, whenever possible, to those directly injured. Frequently, a court order or a settlement agreement outlines the specific method by which restitution is made.

However, in other cases, victims are not as easily identified, or the magnitude of the dollar amount or the type of violations involved makes it impractical to attempt to identify and return a specific sum to individual consumers. In these instances, a court judgment or settlement agreement may authorize the Attorney General to distribute the restitution funds at his or her

discretion for designated purposes consistent with the underlying nature of the violation.

In other instances, a court judgment or settlement agreement may simply provide that all or a portion of the restitution funds are to be distributed at the discretion of the Attorney General. In these cases, funds from multiple judgments or settlements may be pooled together for subsequent allocation at the discretion of the Attorney General.

Further, a court judgment or settlement agreement may authorize the Attorney General to apply judgment or settlement funds to court costs, attorney fees, consumer protection and education efforts, or other lawful purposes at his or her discretion.

A program revenue, continuing appropriation has been created under DOJ to receive and expend court-ordered restitution funds for victims of medical assistance fraud and violations relating to marketing and trade practices, environmental law, and federal antitrust law. In addition, DOJ utilizes this appropriation to receive and allocate restitution funding in cases where there are specific parties identified to receive restitution awards. Under a continuing appropriation, funds are expendable until fully depleted or until the appropriation is modified or repealed.

If funds remain in the DOJ restitution appropriation after all reasonable attempts have been exhausted to identify eligible recipients, the residual funds are used for any of the other designated purposes provided by the terms of the settlement agreement or court order.

The Department utilizes its Division of Administrative Services' gifts, grants and proceeds continuing appropriation to receive and allocate restitution funds that are distributed at the discretion of the Attorney General.

In multi-state cases, court-ordered restitution may be allocated by a third party administrator rather than by DOJ. Where a third party administrator is used, each Attorney General's Office is typically responsible for notifying the administrator of the names of recipients of the restitution amounts. The administrator is then responsible for disbursing the funds and reporting to the court and the parties on that process. In cases involving the allocation of restitution awards directly from defendants or through third party administrators, the restitution funds do not pass through DOJ's restitution or gifts, grants and proceeds appropriations.

In addition to providing refunds and restitution payments, consumer protection court judgments and settlements secured by DOJ often include amounts for: (a) attorney fees and case costs; (b) criminal fines and civil forfeitures; (c) court fees, assessments and surcharges (including a 25% consumer protection surcharge on most state fines and forfeitures); and (d) award amounts for multiple purposes. The Wisconsin Constitution requires any state fines and forfeitures secured by DOJ to be deposited to the common school fund.

A state court may award reasonable and necessary costs of investigation to DATCP and reasonable and necessary expenses of prosecution, including attorney fees, to DOJ. When a person who violates the marketing and trade practices statutes is ordered to make these types of payments, these amounts are not deposited to the common school fund. Under s. 100.263 of the statutes, both agencies must credit these types of payments (and any such general payments to the state) to the state's general fund. However, DOJ is specifically authorized to credit 10 percent of the monies received for such costs, including attorney fees, to a program revenue, continuing investigation and prosecution appropriation. The funds credited to this appropriation (under s. 100.263 and other statutory provisions) may be utilized by DOJ to provide funding for the expenses of investigations and

prosecutions of alleged consumer protection and other violations pursued by the agency. In 2005-06, \$481,800 was credited to the appropriation account.

Report on Restitution Payments. Under s. 165.25(10) of the statutes, DOJ is required to submit a semiannual report to DOA and to the Joint Committee on Finance on the amounts received pursuant to a court order or settlement agreement

to provide restitution to victims. DOJ's report is required to specify: (a) the amount of restitution received by the agency during the reporting period; (b) the persons to whom the agency paid restitution; (c) the amount paid by the agency to each recipient during the reporting period; and (d) the agency's methodology for selecting recipients and determining the amount paid to each recipient.

APPENDIX I

Summary of State Agency Programs Providing Consumer Protection Services

A number of state agencies perform functions that may be viewed as ensuring that products and services are provided to consumers in a safe, fair and lawful manner. Consumer protection, for the purposes of this informational paper, has generally focused on the response of the state to consumer complaints relating to dissatisfaction with products or services. In addition to the DATCP and DOJ consumer protection programs, a variety of state agencies respond to consumer complaints and provide information to consumers. The following is a listing of these agencies and a brief description of each agency's consumer protection activities.

Department of Administration - Energy Issues. The Department of Administration's Division of Energy provides general consumer education on energy matters. The Department's Focus on Energy program maintains a website and toll-free number to provide information on energy saving rebates, home energy programs, commercial and industrial energy improvements, environmental research and development and renewable energy activities. Further, in 2005-2006, the Division published and distributed approximately 3,400 copies of Wisconsin Energy Statistics and Highlights. The Division also provides energy conservation and heating assistance benefits to low income residents under the Home Energy Plus program. The Home Energy Plus website offers a toll-free number to provide program information. In 2005-2006, Home Energy Plus distributed approximately 190,000 copies of its program brochure.

Board on Aging and Long-Term Care. The Board on Aging and Long-Term Care monitors federal, state, and local long-term care policy, offers recommendations to the Governor, the Legislature,

and the Wisconsin congressional delegation, advocates for the interests of individuals who need long-term care, and provides information to the general public.

In federal fiscal year 2005, regional ombudsmen responded to 4,012 complaints, provided information and counseling to 12,224 individuals, and made 576 public presentations. The Board's ombudsman staff and trained volunteers made 3,788 unannounced visits to nursing homes and community care facilities. The Board provides consumers with information and assistance on insurance policies through printed materials, a website, and the toll-free Medigap helpline. In calendar year 2005, the helpline received 11,520 calls.

Educational Approval Board. The Educational Approval Board (EAB) licenses and oversees all for-profit postsecondary schools (other than schools of cosmetology), all out-of-state nonprofit colleges and universities and in-state nonprofit postsecondary institutions incorporated after December 31, 1991. The EAB also approves and oversees all programs under federal Veterans Administration regulations for the education and training of veterans and war orphans at any Wisconsin institution. The EAB monitors and periodically reviews approved institutions and programs and investigates consumer complaints regarding facilities, quality of instruction, course content, financial practices and misrepresentations by a school. The Board attempts to resolve complaints through mediation and may also hold hearings, suspend or revoke a school's license, make a demand upon a school's surety bond or bring action in any court in Wisconsin. The Board

manages student and financial records in the event of a school closing.

Department of Financial Institutions. The Department of Financial Institutions (DFI) was created as part of the 1995-97 biennial budget to consolidate regulatory functions related to financial institutions. DFI consists of four divisions: the Division of Corporate and Consumer Services, the Division of Banking, the Division of Securities, and the Division of Administrative Services and Technology. The Office of Consumer Affairs administers the Wisconsin Consumer Act and the Office of Financial Literacy provides information to the public on matters of personal finance. The Office of Credit Unions is attached to the Department for administrative purposes and is responsible for regulating the 280 credit unions chartered by the state.

DFI serves as the public custodian of charter documents creating Wisconsin corporations and other business entities, annual reports, and other documents submitted by those entities. There are over 352,000 businesses on file with the Department. DFI also examines and files documents under the Uniform Commercial Code, filing 185,400 documents in 2005.

The Department regulates state-chartered banks (233), savings and loan associations (4), and savings banks (14). The Department also licenses approximately 18,900 adjustment service companies, collection agencies, community currency exchanges, insurance premium finance companies, loan companies, sales finance companies, sellers of checks, and mortgage banking professionals. In carrying out its regulatory duties, DFI conducts safety and soundness and compliance examinations, informs the public and regulated industries of their rights and obligations under the law, and responds to complaints filed against firms and individuals regulated by DFI.

The Department is also responsible for regulating the offer and sale of securities, franchise investment offerings, and corporate takeovers. It does this by requiring registration of securities and franchise offerings (or by allowing certain exemptions from registration), and by licensing and monitoring broker-dealers, securities agents, and investment advisers. In 2005, the Division of Securities responded to 239 complaints, associated with both licensed and unlicensed entities. As a result of those investigations, 18 warning letters and 196 administrative orders were issued, five matters were referred for criminal prosecution, and \$164,400 was offered or returned to investors.

DFI administers the Wisconsin Consumer Act, which governs consumer credit transactions. During 2005, the Office of Consumer Affairs received approximately 9,400 consumer complaints or inquiries. Subsequent investigations revealed 140 compliance problems under the Wisconsin Consumer Act, resulting in orders requiring merchants to correct their violations. A total of \$466,000 was returned to consumers as refunds, credits, or adjustments.

Department of Health and Family Services. The Department of Health and Family Services (DHFS) licenses and regulates certain types of health care facilities and providers (such as nursing homes, hospitals, community-based residential facilities, adult family homes, home health agencies and hospices), and child care facilities. As part of its regulatory function, DHFS conducts surveys of certain types of facilities to ensure that they meet health and safety standards. In addition, DHFS investigates complaints it receives regarding the operation of these types of facilities. Violations can result in DHFS assessing forfeitures, issuing correction orders, and other disciplinary actions.

DHFS develops and distributes health-related information that is used primarily by consumers. For example, DHFS has created a variety of consumer guides that can be used by individuals

who are considering long-term care options. The DHFS Division of Public Health produces consumer information on topics ranging from communicable diseases, injury prevention and environmental health resources. This type of information is available on the DHFS web site. [For example, under the DHFS sport fish consumption program, DHFS staff examine the health effects of consuming chemical contaminants in sport fish and, together with the Department of Natural Resources, issues fish consumption advisories.]

The DHFS Bureau of Health Information and Policy collects and makes available health statistics, demographic and vital records information for public and private users. The Bureau produces data files that may be purchased by the public. For example, the Bureau collects information on physician visits, including information on the types of services physicians provide, physicians' charges, and patient demographics.

Office of the Commissioner of Insurance. The Office of the Commissioner of Insurance (OCI) regulates insurance companies and agents. OCI protects the public by ensuring that insurance companies are solvent and by enforcing insurance consumer protection laws. In 2005, OCI's Bureau of Market Regulation investigated and resolved approximately 8,200 written consumer complaints and inquiries, and answered 35,000 telephone inquiries. Most complaints involve claim handling, although the Bureau also receives other types of complaints, such as complaints about service to policyholders, marketing and sales practices and underwriting. Following its investigation of a complaint, OCI may order license disciplines, demand restoration of benefits or rights to policyholders and levy forfeitures.

As part of its public information activities, OCI develops and distributes brochures on selected insurance topics, buyer's guides and other materials in response to requests from citizens, agents and insurers. These publications are also

available through OCI's Internet web site.

Office of Lawyer Regulation. The Office of Lawyer Regulation (OLR) investigates alleged violations of the rules of professional conduct for attorneys licensed to practice law in Wisconsin and includes the Board of Administrative Oversight, and the Preliminary Review Committee. The Board of Administrative Oversight, a 12-person board composed of eight lawyers and four non-lawyers, is responsible for monitoring the fairness, effectiveness, and efficiency of the attorney regulation system, while the Preliminary Review Committee, a 14-person committee composed of nine lawyers and five non-lawyers, determines whether there is cause to file a complaint with the Supreme Court concerning lawyer misconduct, following the procedures outlined below.

The inquiry and grievance process concerning attorney conduct is designed to: (a) make the lawyer regulation process more accessible to the general public; (b) quickly address grievant concerns and, where possible, resolve them; (c) offer lawyers who have minor practice problems alternatives designed to enhance the quality of their services; and (d) promptly refer for full investigation those matters that may involve serious misconduct. The OLR is responsible for receiving, screening, investigation and prosecuting grievances that include allegations of such things as neglect, lack of communication, dishonesty and conflicts of interest. The OLR has established a central intake unit, which receives inquiries and grievances concerning the conduct of an attorney in writing or by telephone. Intake staff take information about the alleged conduct, check for other grievances against the attorney, and inform the grievant that the matter will be assigned to an intake investigator who will contact the grievant within a few days to discuss the matter further.

After screening, a grievance may be closed if: (a) the allegations are not within the OLR's jurisdiction; (b) the grievance can be reconciled

between the grievant and attorney if it is a minor dispute; or (c) the grievance is diverted to an alternatives to discipline program.

Grievances that cannot be resolved are referred for investigation, conducted by the OLR staff or with the assistance of 16 regionally-based Court-appointed committees. After an investigation is completed, the grievance may be: (a) dismissed for lack of sufficient evidence to proceed; (b) diverted to an alternatives to discipline program; (c) disposed through a consensual reprimand; or (d) presented to the Preliminary Review Committee for a determination of whether there is a cause to file a complaint with the Supreme Court, which makes the final disposition.

On July 1, 2005, 855 matters were pending disposition in the OLR. The OLR received 2,061 new grievances in the 2005-06 fiscal year. In 2004-05, 62 attorneys were publicly disciplined. In addition, 16 attorneys received private reprimands. Private reprimands are generally imposed for an isolated act of misconduct, which causes relatively minor harm. These reprimands may be used as aggravating factors in future disciplinary matters. Further, 95 attorneys entered the alternatives to discipline program. Finally, 55 cases were dismissed with an advisory letter. On June 30, 2006, 817 matters were pending disposition in the OLR.

The OLR office is in Madison with a total staff of 27.5 positions: 1.0 director, 2.0 deputy directors, 13.0 investigators, 8.5 administrative and support staff, 1.0 litigation counsel, and 2.0 assistant litigation counsels. Total expenditures for the OLR were \$2,244,800 PR in 2005-06 and are budgeted at \$2,638,000 PR in 2006-07. Funding for the OLR is generated from assessments on attorney members of the State Bar of Wisconsin, costs recovered from attorneys disciplined under formal proceedings, and fees on attorney petitions for reinstatement.

Public Service Commission. The Commission

regulates public utilities to ensure the reasonable and adequate delivery of service to the public. The Commission's consumer protection activities are the responsibility of the Division of Water, Compliance and Consumer Affairs. The Division's complaints concern adequacy of service, installation, disconnection and billing issues. The Division's Consumer Services section reported 9,621 complaints during calendar year 2005 and projects that 9,000 complaints will be received during calendar year 2006. Most complaints concern adequacy of service, installation, disconnection, and billing issues.

Currently, approximately 60% of all complaints involve combined electric and gas service, 24% involve telecommunications service, 10% involve electric service, 3% involve natural gas service, and 3% involve either water, combined water and sewerage service, or combined water and electric service matters. Actions taken by the Division to resolve complaints include investigation, mediation, and the issuance of binding decisions by investigators. Decisions by investigators may be appealed to the Commission, which may issue cease and desist orders or refer a matter to the Department of Justice for civil prosecution. This Division monitors large gas and electric utilities' early identification programs for customers facing energy hardships and seeks to resolve such hardships before they become heating crises in winter. All consumer matters are handled through the Commission's offices in Madison.

Department of Regulation and Licensing. The Department's Division of Enforcement provides centralized investigative and prosecutorial services relating to the licensed professions under the jurisdiction of 25 regulatory boards or the Department's direct licensing authority. The Department and its boards license and regulate an estimated 317,900 credential holders in 100 different professions, occupations and businesses. The Department receives approximately 2,400 complaints annually involving regulated persons

or entities. Outcomes of a complaint investigation may include dismissal of the complaint, informal resolution or formal disciplinary action. The Department and its regulatory boards have the authority to limit, suspend or revoke any credential. The Department has one state office, located in Madison.

Department of Transportation. The Division of Motor Vehicles of the Department is responsible for the licensing of new and used motor vehicle dealers, recreational vehicle dealers, motor vehicle manufacturers and distributors, and salvage dealers. The Department investigates an average of about 1,500 complaints annually related to sales and lease practices, warranties, product quality and the lemon law; most involve insufficient disclosure of used vehicle condition. The Department's investigations may result in informal mediation, formal warnings requiring a written assurance that the business will discontinue a practice, license suspension or revocation, or the administrator of the Division of Hearings and Appeals may issue a special order against specific licensee practices. The Department conducts public appearances, publishes brochures and provides information on its website regarding vehicle purchasing and consumer protection. The agency employs regional investigators and operates a consumer assistance hotline.

Department of Workforce Development. The Equal Rights Division of the Department enforces both civil rights and labor standards law. Under civil rights the division enforces anti-discrimination

laws affecting housing, employment and public accommodations. The Department receives approximately 4,800 discrimination complaints annually, most of which involved allegations of discrimination in employment (approximately 90% of the discrimination cases are employment related). Cases are investigated and may be conciliated or brought before an administrative law judge for a formal hearing. Although the family and medical law (FMLA) is not technically a discrimination statute FMLA is enforced by the Civil Rights Bureau.

Under labor standards the division enforces the labor standards laws, including laws governing minimum wage, overtime and child labor. The Department receives approximately 4,600 cases annually most of which involved unpaid wage claims from employees (about 4,000 cases). Labor standards also annually determines the prevailing wage rates and hours of labor for local and state building construction projects, and requires the department to investigate any alleged violations of such wage rates and hours of labor.

The Department conducts a public awareness program regarding anti-discrimination and labor standards laws that includes publishing brochures and conducting public information presentations. The Equal Rights Division also has a website that can be access that provides information related to both civil rights and labor standards programs and laws. The Equal Rights Division has five offices located throughout the state.

APPENDIX II

Summary of DATCP Trade and Consumer Protection Administrative Rules

Consumer Protection Administrative Rules

Academic Material Unfair Trade Practices (ATCP 128). Prohibits the sale of academic material (such as term papers) purchased to be submitted as original work for the purpose of fulfilling requirements of any learning institution in the state.

Art Prints and Multiple Art; Sales Practices (ATCP 117). Prohibits the misrepresentation of multiple artwork (artwork produced from a master in multiple copies), including: its status as an original reproduction; bearing of the artist's signature; status as a limited edition; the methods of reproduction; other elements of the artwork affecting the buyer's evaluation; the market value of the artwork; disclosure and warranty statements; and required records. The rule requires a disclosure and warranty statement for multiple artwork sold at a price exceeding \$800.

Basement Waterproofing Practices (ATCP 111). Prohibits contractors from using the pressure pumping method to waterproof basements without a seller's and engineer's analysis, and regulates the guarantee of basement waterproofing services.

Car Rentals; Notice of Renter Liability (ATCP 118). Specifies the form and content of a notice which car rental companies that offer and sell damage waivers are required to provide to customers.

Chain Distributor Schemes (ATCP 122). Prohibits chain distributor schemes, in which a person, upon a condition that he or she makes an investment, is granted a license to recruit, for profit, additional investors who in turn further perpetuate the chain of investors.

Consumer Product Safety (ATCP 139). Establishes labeling requirements for hazardous substances and bans the use of extremely hazardous products, including unsafe toys and children's clothing.

Coupon Sales Promotions (ATCP 131). Prohibits misrepresentation in the sale of coupon books, requires written agreements between coupon book promoters and participating merchants and requires full disclosure of restrictions on coupon redemption.

Direct Marketing and No-Call List (Chapter ATCP 127). Establishes disclosure requirements, including the initial identification of the soliciting business firm and its products or services offered for sale. Prohibits unfair practices, such as false claims to be part of a survey or research project, false special offers or deceptive free gifts and unauthorized payments. Requires direct marketers to maintain sales records. Also, effective January 1, 2003, ATCP 127 establishes a program requiring most telephone solicitors to register and purchase a list of residential telephone customers that do not wish to be solicited by telephone. Residential customers may sign up for two years at no charge.

Environmental Labeling of Products (ATCP 137). Establishes standards for advertising and labeling that makes environmental claims for consumer products (for example, products that are advertised as recycled, recyclable or degradable). Further establishes labeling requirements for plastic containers and provides information to operators of materials recovery programs needed to facilitate recycling or reuse of the containers.

Fair Packaging and Labeling (ATCP 90). Regulates the packaging and labeling of products, including the accuracy and location of package or label

descriptors that identify the product and list product origin, content, quantity and nutritional qualities.

Freezer Meat and Food Service Plans (ATCP 109). Prohibits misrepresentation in the advertising and sale of freezer meats and food service plans including bait-and-switch selling, false representations of savings from advertised food service plans and misrepresentation of special offers or price concessions, guarantees, identity of the seller, price or financing. Establishes contract requirements, and creates a three day right-to-cancel.

Gasoline Advertising (ATCP 113). Prohibits misrepresentation relating to octane rating or octane value of gasoline and prohibits misrepresenting gasoline as aviation fuel when the product is not suitable for aviation use.

Home Improvement Practices (ATCP 110). Prohibits deceptive practices, including model home misrepresentations, product misrepresentations bait and switch selling, deceptive gift offers, price and financing misrepresentation, and misleading guarantees. Establishes written guarantee and contract requirements and requires timely performance, except where delay is unavoidable and timely notice is given.

Mobile Air Conditioners; Reclaiming or Recycling Refrigerant (ATCP 136). Regulates motor vehicle repair shops that install or repair mobile air conditioners that contain ozone-depleting substances.

Mobile Home Parks (ATCP 125). Prohibits tie-in sales, which require the purchase of a mobile home or any other payment to qualify or receive preferential status for a mobile home park site. Establishes rental agreement and disclosure requirements, including utility charge limitations. Regulates termination of tenancy, mobile home resale practices, mobile home relocations and changes in rental terms or park rules.

Motor Vehicle Repairs (ATCP 132). Establishes the regulation of motor vehicle repair transactions and practices for the repair of autos, motorcycles and small trucks. Prohibits unauthorized repairs, and generally requires shops to give customers a written repair order and written estimate of cost prior to commencing repairs and requires the return of used parts to customers upon request.

Price Comparison Advertising (ATCP 124). Prohibits misleading price comparisons and establishes standards for fair price comparisons, including standards establishing the seller's actual or offered price, the seller's future price for the product and the competitor's price.

Real Estate Advertising, Advance Fees (ATCP 114). Prohibits misrepresentation in the solicitation of real estate advance fees collected for listing or advertising the sale or lease of property, and requires that copies of all contracts be given to contracting property owners.

Referral Selling Plans (ATCP 121). Prohibits referral-selling plans, which induce a consumer sale based on an offer of compensation to a prospective buyer, unless the compensation is paid prior to the sale.

Residential Rental Practices (ATCP 134). Requires disclosure of known housing code violations and other conditions affecting habitability prior to rental. Establishes standards and procedures for the return of security deposits and earnest monies, and requires landlords to comply with repair promises. Prohibits certain unfair rental practices, including the advertising and rental of condemned premises, unauthorized entry during tenancy, confiscation of personal property and unfair retaliatory eviction. Prohibits certain practices from inclusion in rental agreements, such as eviction other than by judicial procedures, the acceleration of rent payments, the imposition of liabilities on tenants or the removal of landlord liabilities.

Telecommunications and Cable Television Services (ATCP 123). Regulates subscription and billing practices related to cable and telecommunication services provided to consumers primarily for personal, household or family use.

Work Recruitment Schemes (ATCP 116). Prohibits misrepresentations and other misleading practices by employment recruiters that require employment recruits to make an investment or purchase. Requires the disclosure of purchases or investments required to be made by potential recruits as a condition of employment and the basis, source and form of potential earnings to be made by such recruits.

Trade Practice Administrative Rules

Dairy Plant Payments to Milk Producers; Security (ATCP 100). Provides reasonable assurance that producers will be paid for their milk and prohibits price discrimination between individual producers.

Dairy Trade Practices (ATCP 103). Establishes a uniform system of accounting to determine whether selected dairy products are being sold below cost, which is prohibited.

Fruit and Vegetable Contractors; Security Requirements (ATCP 98). Regulates and licenses fruit and vegetable contractors and establishes guidelines for payment to producers.

Leaf Tobacco, Buying and Selling (ATCP 104). Prohibits a tobacco buyer or agent from engaging in any unfair trade practices in the business of buying leaf tobacco.

Price Discrimination and Related Practices (ATCP 102). Prohibits price discrimination by sellers of fermented malt beverages, soft drinks or motor fuels to prevent unfair trade practices.

Sales Below Cost (ATCP 105). Prohibits selling tobacco products, alcoholic beverages or motor vehicle fuel without required markups between wholesalers and retailers.

Vegetable Procurement Practices (ATCP 101). Regulates vegetable procurement contracts to ensure producers receive compensation for their labors.

Other Administrative Rules

Grain Warehouse Keepers and Grain Dealers (ATCP 99). Requires warehouse contents be insured and that grain inventories of sufficient quantity and quality be maintained to meet all outstanding obligations to grain depositors and to be returned to individual depositors on demand. Grain dealers are also required to truthfully measure type, weight, grade and quality of grain when determining purchase price.

Selling Commodities by Weight, Measure or Count (ATCP 91). Prescribes standards for measuring product volume (by weight, measure or count) to achieve greater uniformity in methods of sale used in the state, increase the accuracy of quantity information, prevent consumer deception and promote fair competition.

Public Warehouse Keepers (ATCP 97). Ensures public warehouse facilities are suited to reasonably protect the products in storage. Requires warehouse contents be insured and storage contents be disclosed by warehouse keepers.

Weighing and Measuring Devices (ATCP 92). Sets regulatory standards and permit requirements for commercial weighing and measuring devices including vehicle and livestock scales, gas pump volume/price indicators and liquefied petroleum gas specifications.

APPENDIX III

DOJ Consumer Protection Cases Completed in
2004-05 and 2005-06

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
ADT Security Systems, Inc. and Tyco International Fire and Security, Inc.	Advertising	DATCP	The company operates and leases home alarm security systems which offer customers intruder detection and protection, fire protection, closed circuit television monitoring, and other services. ADT representatives allegedly made misrepresentations, primarily by letter, and also by phone. The misrepresentations allegedly targeted customers who leased home alarm systems from competitors.	All complaints were resolved. No violation of Wisconsin law was identified.			
Blockbuster Video Ads	Advertising	Other	The case involved possible deceptive advertising in the company's television advertisements.	The company was required to change its advertising.		\$12,508	\$12,508
Drusilla Anna Jones, Metropolitan Paralegal, Associates, Inc., Office of Procurement Monitoring & Performance Compliance LLC	Advertising	DATCP	The case involved allegedly making false representations and allegedly making false, deceptive, or misleading representations in a mail transaction.	Default judgment against Metropolitan Paralegal Associates and Office of Procurement Monitoring; summary judgment against Drusilla Anna Jones		40,337	40,337
Invenergy LLC	Advertising	DOJ	The case involved alleged misrepresentations in solicitations about a wind farm.	A final response was sent to the consumer stating that because this is a private disputed matter, and because there does not appear to be any misrepresentation about whether Invenergy already has leases with some WI farmers, DOJ cannot become involved in the matter. No further inquiries were received.			
Kraft Foods, Inc./MPC	Advertising	Other	Investigation into misrepresentations regarding the milk content of cheese.	The Department evaluated the facts and law and determined that there were no violations. Department staff notified Family Farm Defenders and explained options.			
Level Propane Gases, Inc.	Advertising	Multistate	Multistate investigation of deceptive advertising and marketing practices.	Company entered bankruptcy after settlement.			
Menards, Inc.	Advertising	Other	Menards allegedly manufactured an outdoor landscaping mulch product containing shredded wood treated with chromated copper arsenate ("CCA"). CCA-treated wood contains arsenic and chromium, toxic chemicals and known carcinogens.	There was not enough evidence to prosecute; treated wood chips were legally sold at the time the mulch was advertised.			
Sears Roebuck and Company	Advertising	DATCP	Sears allegedly failed to honor its "satisfaction guaranteed or your money back" representation.	Assurance of Voluntary Discontinuance requiring more explicit notices to customers.			
U.S. Grant Resources, LLC; Rodgers, John and Laurel	Advertising	DATCP	The company advertises free grants. The company allegedly failed to disclose in their advertising the fees they charge a customer to obtain a list of available grants.	Settled by Stipulation and Consent Judgment	4,844	5,000	9,844

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
Yellow Pages, Inc.	Advertising	DATCP	The case involved allegations that the company solicited subscribers through deceptive advertisement.	Consent judgment	\$224,237	\$10,000	\$234,237
Eastman, Daniel R., et al. v. Conesco Finance Servicing Corp, f/k/a Greentree Financial Servicing	Amicus Brief	Other	Request to file an amicus brief in a court case. The Department was not a party to the lawsuit, but filed a legal brief regarding an issue in the case. The brief challenged the validity of an arbitration clause.	The Wisconsin Supreme Court dismissed the case as moot, based on a bankruptcy filing by the company.			
Gallego, Miguel v. Wal-Mart Stores, Inc. and Wal-Mart Stores, East, Inc.	Amicus Brief	DATCP	The Department was not a party to the lawsuit, but sought to file a legal brief regarding the scope of Chapter 97 of the statutes.	The case was dismissed. The Department was not permitted to file an amicus brief.			
Kollupar v. Wilde Pontiac, Inc.	Amicus Brief	Other	Joined in Amicus Brief. The Department was not a party in the case, but filed a legal brief regarding an issue in the case.	Appellate court did not rule in the Department's favor.			
Biz Opp Sweep	Business Opportunities- Investments	Other	The case was a multistate investigation of alleged fraudulent business opportunities.	The investigation was completed, but state court action was not appropriate.			
International Profit Associates, Inc.	Business Opportunities - Investments	DATCP	The business provides consultation services to small businesses in Wisconsin. Complaints alleged a pattern of fraudulent representations.	Settled with an Assurance of Voluntary Compliance in which the company agreed to change its practices and cease collection of outstanding bills from victims.	23,120		23,120
Alderwoods Group Inc.	Cemeteries	Other	Investigation of possible missing funds, high-pressure sales tactics and fee increases.	The Department of Regulation and Licensing is investigating the case under its own statutory authority.			
Ameriquest Mortgage Co.	Credit	Multistate	The company allegedly engaged in predatory lending practices.	Injunctive relief and restitution		330,000	330,000
Capital One Bank	Credit	DFI	The case involved a suit against a state-chartered credit card bank for allegedly failing to register with DFI under the Consumer Act.	Judgment		80,032	80,032
First Financial Bank USA	Credit	DFI	The case involved an alleged failure to register under section 426.201 of the statutes.	Judgment		43,143	43,143
SunTrust Bank	Credit	DFI	The case involved an alleged failure to register under section 426.201 of the statutes.	Judgment		10,107	10,107
JBC Legal Group, PC	Debt Collection	DFI	Referral for enforcement of debt collection statutes against out-of-state debt collection.	The state investigation was closed. The parallel multistate case remains open and pending.			
Trilegant Corporation	Direct Marketing- Mail Order	DATCP	This case involved alleged unauthorized charges on credit card statements and mail solicitations. Trilegant is the successor to Cendant Membership Services, Incorporated. Trilegant offers trial memberships to programs such as Travelers Advantage, Shoppers Advantage, Autovantage, Privacy Guard and Buyers.	Assurance of Voluntary Compliance			
Universal Syndications, Inc. d/b/a United States Monetary Exchange ("USME")	Direct Marketing - Mail Order	DATCP	The case involved alleged misleading solicitations for "free" coins.	Assurance of Voluntary Compliance prohibiting misleading representations.			
Abbott Laboratories, Inc., et al.	Drugs	Multistate	It was alleged that manufacturers of certain prescription drugs misrepresented the average wholesale price, wholesale acquisition cost, and other pricing activities.	The case was remanded back to state court. The federal case was dismissed. The Department received attorneys fees.		6,240	6,240

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
Abbott Laboratories, Inc., et al	Drugs	Multistate	Investigation into manufacturers of certain prescription drugs as to the average wholesale price, wholesale acquisition cost, and other pricing activities. The company sold herbal supplement programs but consumers allegedly could not cancel memberships.	The case was remanded back to state court. The federal case was dismissed.	\$1,170		\$1,170
Berkeley Premium Nutraceuticals, Inc.	Drugs	DATCP	Investigation into whether or not providers of flu vaccines were misrepresenting and deceptively inflating wholesale and retail prices. The company is alleged to be boycotting the importation of prescription drugs from Canada. The company has allegedly stopped supplying prescription drugs to Canadian companies that have not complied with their request. The company's action allegedly constitutes an illegal conspiracy between it and other drug companies. The case involved an alleged misrepresentation of drug prices.	Injunctions, restitution and costs	13,164	25,000	38,164
Flu Vaccines	Drugs	Multistate		The shortage of flu vaccines subsidized due to the manufacturing of more vaccine.			
GlaxoSmithKline Inc.	Drugs	Multistate		Multistate work completed.			
Lupron Marketing and Sales Practices Litigation, In Re: European Health Concepts (EHC)	Drugs	Multistate		Consent judgment filed in federal court.		833,750	833,750
Fitness America North, LLC, d/b/a Fitness America	Fitness Centers	DATCP	The company was engaged in the business of marketing, advertising, selling and providing information pertaining to its magnetic therapy products. The company allegedly made untrue, deceptive, and misleading statements as a part of its sales presentation.	The president and owner of the company could not be located. The affected consumers were contacted.			
Fitness America North, LLC, d/b/a Fitness America	Fitness Centers	DATCP	The owner of Fitness America was alleged to have violated laws concerning fitness center requirements for establishing proof of financial responsibility under state statute.	Judgment		81,930	81,930
New Fitness	Fitness Centers	DATCP	Fitness centers must establish proof of financial responsibility under state law.	Summons and complaint filed (i.e., legal proceedings initiated).		4,470	4,470
Dells Clinic	Fraud	Other	Dells Clinic contacted DOJ about a fax it received asking for personal information on a supposed patient.	On further investigation it was learned that the faxed request for a patient's personal information was valid and that there was a miscommunication between the insurance company and the clinic.			
Liberty Milk	Fraud	Other	The reimbursement rates for the milk producers affected by the Dixie Dairy financial problems proposed by Liberty Milk were not acceptable to the dairy producers.	Negotiated deal with Liberty Milk in which participating dairies received refunds.			
National School Fitness Foundation (NSFF)	Fraud	Other	Investigation into alleged fraud and allegedly inducing school systems to enter into sports equipment agreements.	Response sent to Kimberly Area School District advising them that their school district may be eligible to receive restitution under a lawsuit that was filed against NSFF by a United States Attorney in Minneapolis.			
Progressive Business Publications, Inc.	Fraud	DATCP	The case involved the alleged sale of business newsletters via telemarketing solicitation without an option to cancel - fraudulent representations.	Action was voluntarily dismissed based upon information obtained from the company.			
Truesdell Furs	Fraud	DATCP	The company was allegedly operating as a public warehouse after their license expired, and was allegedly not maintaining the required security.	The Green Lake County District Attorney is handling the case as a theft. No further Department action is necessary.			
Tsunami Relief Scams	Fraud	Other	Investigation into possible phony tsunami relief scams.	Press release warning consumers issued on 1/5/2005 and no further follow-up received.			

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
Western Union	Fraud	Multistate	Some wire transfers to Canada have allegedly been the result of fraudulent telemarketers' instructions to consumers to send them money via Western Union. Discussions were initiated between the company, representatives of the states and the Federal Trade Commission to determine what steps Western Union could take to reduce the frequency of fraud-related wire transfers.	Agreement		\$40,000	\$40,000
Wisconsin Singles, Inc. d/b/a Renaissance for Singles, Wisconsin Singles, Inc., Madison Singles, Inc., and LaCrosse Singles, Inc.	Fraud	DATCP	This case involved an alleged misrepresentation of the number of matches consumers have contracted for with this dating service, and the company allegedly not providing required refunds.	Assurance of Voluntary Compliance/Discontinuance	11,625		11,625
A. Goen Seminars Institute, Inc.	Health Fraud	DATCP	It was alleged that the company made untrue, deceptive, or misleading representations regarding weight loss and smoking cessation.	The company is no longer doing business in Wisconsin. The company's website has been pulled, and the company is out of the seminar business altogether.			
Body Solutions Working Group	Health Fraud	Multistate	The case involved an investigation of Mark Nutritionals, Inc., a company marketing products on the Internet under the name of Body Solutions. The studies provided to back up their claims allegedly did not provide competent, reliable scientific evidence to substantiate the claims being made for the products.	The Federal Trade Commission and the Texas Attorney General sued. The company is in bankruptcy.			
Go-rayeb Seminars, Inc.	Health Fraud	DATCP	The case involved alleged untrue, deceptive, or misleading representations in the marketing of weight loss and smoking cessation hypnosis programs.	The company and its CEO signed a voluntary assurance governing its future advertisements in Wisconsin for smoking cessation and weight loss seminars.			
Jungle MD Inc.	Health Fraud	Other	The case involved alleged false claims that products cured baldness and psoriasis and caused rapid weight loss. The company also allegedly failed to honor its money back guarantee, and allegedly charged consumer credit cards for unauthorized amounts.	Full restitution for consumers.			
Rent A Patient	Health Fraud	Other	The case involved an alleged health insurance fraud scheme. Poor immigrants from all over the country (including Wisconsin) were allegedly being hired and paid to have unnecessary surgical procedures conducted on them in California clinics.	The FBI is investigating this scam in many other states, but it appears that the FBI is not investigating in Wisconsin because of the small number of Wisconsin patients. The FBI is arresting the owners of the clinics, the doctors, and the runners who recruited people.			
The Right Solution	Health Fraud	Multistate	The company was allegedly selling a topically applied hormone containing cream as an effective treatment for osteoporosis and other conditions. The product, Y-Motion cream has already been found to be an unapproved new drug by the FDA. The product was also allegedly marketed in a deceptive manner by the company.	The company is prohibited from selling or marketing the cream. In addition, restitution was provided to consumers.	1,335	5,550	6,885
Alyon Technologies, Inc.	Internet	Multistate	The case involved a multistate investigation into alleged unauthorized telephone charges.	Court judgment including an injunction		15,000	15,000
King, W. Thomas and GroceryBiz, Inc.	Internet	DATCP	Alleged fraudulent representations, mail order and chain distributor scheme.	Settlement requiring restitution.	\$15,950		\$15,950

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
Travis, Chalmer Otis	Internet	DATCP	The case involved allegations that the individual had committed violations of fraudulent representations and methods of competition and trade practices provisions. Complainants allegedly paid the individual for products purchased on an auction site on the internet. The individual has refunded a portion to complainants and still has an alleged outstanding balance.	DATCP is pursuing matter through the cybercrime unit of the Milwaukee County District Attorney's Office. DATCP requested that the referral be returned so that it could be worked by the Milwaukee County District Attorney's Office.			
WebXites, L.P.	Internet	DATCP	This company solicits the sale, purchase and use of its services which include web hosting, Internet service provider, web site design and promotion, among other services. It was alleged that the company's solicitation was untrue, deceptive, or misleading and that it failed to deliver expected informational materials relating to the solicitation.	Consent order		7,960	7,960
Comprehensive Management Services Inc. d/b/a Ridgewood Country Club Apartments	Landlord/Tenant	DATCP	Comprehensive Management Services Inc. and Ridgewood Country Club Apartments allegedly violated laws concerning the failure to make promised cleaning, repairs or improvements, and the failure to make required disclosures.	The file was closed with no formal action. The Department monitored the situation.			
Sherard, Will J.	Landlord/Tenant	DATCP	This landlord/tenant case involved allegations of renting properties with substantial building code violations.	Consent judgment	500		500
Ameri-Source Publications, Inc.	No Call List	DATCP	This Canadian-based telemarketer allegedly made unsolicited phone calls to consumers to procure orders from consumers to pay for a listing in one of the company's regional directories.	This company is no longer selling or distributing products to Wisconsin consumers. The company has been warned that if DOJ receives further evidence that they continue to do business in the state of Wisconsin, formal enforcement action will be taken.			
AT&T	No Call List	DATCP	AT&T was alleged to have violated laws concerning telephone solicitations.	No actionable no-call violations were found. Educational letters regarding the law were sent to consumers.			
Creative Improvements, Inc. and Milwaukee Window and Door Co.	No Call List	DATCP	The company allegedly made numerous illegal solicitations to persons on the No Call list.	The case was dismissed as the state was unable to serve the defendants.			
First American Funding Co. ("FAFC")	No Call List	DATCP	The case involved an alleged violation of the state's No Call law.	Consent judgment		2,384	2,384
FirstBanc Mortgage LLC	No Call List	DATCP	The case involved allegations that FirstBanc Mortgage telemarketers called individuals who were registered on the No Call list.	Assurance of Voluntary Compliance obtained			
Lifeline Industries, Inc.	No Call List	No Call	The company was alleged to be making prohibited telephone solicitations to individuals on the state's No Call List.	Assurance of Voluntary Compliance			
M.A.R. & Associates, Inc.	No Call List	DATCP	The company was alleged to be making prohibited telephone solicitations to individuals on the state's No Call List.	Default judgment		17,453	17,453
MCI Wireless, Multistate	No Call List	DATCP	Complaints against MCI Wireless regarding billing, customer service, solicitation techniques, and quality of service.	Complaints were mediated.			
Strategic Marketing Innovations and Solutions, Inc.	No Call List	DATCP	This case involved allegations of making prohibited telephone solicitations to individuals identified on the state's No Call list.	Default judgment		4,734	4,734

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
Time, Inc.	No Call List	DATCP	Time, Inc. and Strategic Marketing Innovations and Solutions representatives allegedly made numerous illegal solicitations to persons on the No Call list.	Assurance. Time Inc. acknowledges the application of Wisconsin's no call law to telemarketing calls made by Time Inc. to Wisconsin residents and Time Inc. commits to fully comply with the requirements of that law, as it is now or as it may be amended in the future.			
Warrior Custom Golf	No Call List	DATCP	The company was alleged to be making prohibited telephone solicitations to individuals identified on the state's No Call list.	Assurance of Voluntary Compliance received. The company agrees to comply with Wisconsin law.			
Wholesale Connection Company (WCC)	No Call List	DATCP	The company was alleged to be making unregistered telephone solicitations and telephone solicitations to individuals identified on the state's No Call list.	Default judgment	\$624	\$5,423	\$6,047
WI Realtors, et al. v. DATCP	No Call List	Other	"Do Not Call" litigation. Realtors challenged the validity of the state's Do Not Call rule.	Decision and declaratory judgment (Wis. Admin. Code secs. ATCP 127.80-84 valid except insofar as the rules authorize a private cause of action & establish penalties greater than those established by sec. 100.52(10); DATCP lacks authority to refuse to waive or reduce registration fees when program revenues exceed projected expenditures; in other respects, DATCP did not exceed its statutory authority in promulgating no-call rules)			
National Research Center for College and University Admissions (NRCCUA)	Privacy	Multistate	The case involved an alleged misrepresentation of the use of surveys sent to and completed by high school students.	Assurance of Discontinuance/Assurance of Voluntary Compliance--42 states including WI entered into a consumer protection settlement with National Research Center for College and University Admissions ("NRCCUA") concerning NRCCUA's collection of personal information through high school student surveys.		10,370	10,370
Access CardioSystems, Inc.	Product Safety	Other	Recall of automatic defibrillators.	The company filed for bankruptcy.			
Adventure Sky Diving	Sales	DATCP	It was alleged that Adventure Sky Diving engaged in a deceptive marketing scheme to misrepresent where sky diving would take place.	The case was returned to DATCP pending further case development.			
Fairfield Communities	Sales	DATCP	The case involved the promoting and selling of vacation packages.	The company's practices were monitored and complaints mediated.			
Ford Motor Credit Corp.***	Sales	Multistate	The case involved an alleged practice under which dealers inflate the amount consumers must pay if they wish to terminate their leases, prior to lease expiration, and purchase the vehicles.	Consent judgment - Companies are prohibited from using untrue or misleading language in motor vehicle leases relative to early termination of leases.	10,300		10,300
Gasoline Prices	Sales	Other	Following the events of September 11, 2001, it was alleged that several gas stations owners unfairly/illegally raised their gasoline prices within a short period after the terrorist activity took place. This case was opened to conduct interviews and review price surveys to determine if any criminal or consumer laws had been violated as they pertained to alleged gas price gouging.	No prosecutorial action was taken because only violation resulted in quick reduction of price. There was no evidence to support antitrust claims.			
Gateway Companies, Inc.	Sales	DATCP	The company allegedly misrepresented the services that were offered when purchasing a company computer.	No basis to proceed.			
GATS-2000 Negotiations	Sales	Multistate	Negotiations on the General Agreement on Trade in Services (GATS).	State signed on to the GATS trade negotiations letter - "General Agreement on Trade in Services"			

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
Geckler Companies	Sales	Other	Concern over Geckler's practices of promoting fund-raising by students for school organizations. It was alleged that Kohl's Department Stores located in Wisconsin violated Wisconsin's Price Comparison Law; majority of items have allegedly not been offered and/or sold at what Kohl's claims to be their "regular price."	The Department did not identify any violations. Determined no basis to proceed.			
Kohl's Department Stores, Inc.	Sales	DATCP	The case involved allegations that the individual continued to sell manufactured homes without a retail license.	A Department of Agriculture, Trade and Consumer Protection investigator, a sheriff's deputy, and a DOJ investigator all concluded this was a civil contractual dispute and that there was insufficient evidence for prosecution. A letter summarized this matter and requested any additional evidence. No further response was received from the Department of Commerce which originally referred the matter.			
O'Leary, Kevin J.	Sales	Other	Unfair trade practices	Investigation and review of documents revealed no violations.			
Onyx Waste Services	Sales	DATCP	The company confirmed that it had improperly titled vehicles it had assumed ownership of from policyholders due to damage or theft.	Assurance of Voluntary Compliance	\$2,518,186	\$15,000	\$2,533,186
State Farm Mutual Automobile Insurance Company	Sales	Multistate	The case involved an investigation into the marketing and billing practices of Time, Inc. Many complaints dealt with the automatic renewal of magazine subscriptions and alleged negative option promotions for products and magazines.	Assurance of Voluntary Compliance		75,000	75,000
Time Billing Practices	Sales	Multistate	Newport is a professional fundraiser for a variety of charities nationwide. The company was alleged to have mailed out deceptive sweepstakes solicitations to induce consumers to donate funds to various charities.	Injunction obtained with costs and attorneys fees.		21,000	21,000
Newport Creative Communications	Sweepstakes	Multistate	The company allegedly sent notices to consumers through the mail stating that they had won large sums of money. In order to receive the "prize" the consumers had to mail a processing fee. None of the consumers allegedly ever received any prize money.	Default judgment and order	1,761	333,213	334,974
Panas, Richard James and Leisure International, State v.	Sweepstakes	DATCP	The case involved alleged deceptive sweepstakes mailings.	Consent judgment. Consumers received over \$1 million in restitution. Injunctive relief was granted as well.		111,073	111,073
Publishers Clearing House***	Sweepstakes	Multistate	The case involved allegations that consumers were being billed for unordered merchandise, subscriptions and billing practices. The case involved a further allegation that renewals were being billed even though consumers did not order a renewal.	Assurance of Voluntary Compliance which included \$75,000 for costs, fees & consumer refunds of which \$21,069.28 was used for consumer refunds. An additional \$185,894 in restitution funding was administered by a third party administrator.	185,894	75,000	260,894
Reader's Digest***	Sweepstakes	Multistate	This is a Milwaukee-based local phone service provider that sells prepaid local phone services. This company allegedly "slammed" Milwaukee residential customers and switched their service without permission.	The company ceased business prior to referral. All complaints were resolved.			
Amerivoice Telecommunications	Telecommunications	DATCP	Consumers alleged that AT&T violated laws concerning unauthorized charges, and made misrepresentation regarding long distance telephone services.	Referred to address billing error was apparently caused by computer and human error. The company refunded all money and instituted safeguards to prevent a recurrence. Per agreement by DATCP, further action is not warranted.			
AT&T	Telecommunications	DATCP					

Case Name	Case Type	Source of Case	Case Description	Resolution	Restitution*	Other Monetary Recovery	Total**
AT&T Corporation (Detariffing)	Telecommunications	DATCP	DATCP referral regarding AT&T consumer service agreement--detariffing	After litigation, remaining claims were settled.		\$150,000	\$150,000
CoreComm Wisconsin	Telecommunications	DATCP	The internet service provider allegedly changed key terms of its subscriber contracts without adequate disclosure, including the means of cancellation and the commencement of automatic renewal.	Judgment requiring refunds and termination of collection efforts against affected subscribers.			
DirectTV	Telecommunications	DATCP	The case involved alleged inadequate disclosure of contract provisions by DirectTV.	Stipulated judgment		115,000	115,000
Sprint Spectrum L.P. d/b/a Sprint Personal Communications Services (Sprint PCS)	Telecommunications	DATCP	This case involved allegations of possible violations of fraudulent representations, methods of competition and trade practices, telecommunications services and cable television service.	Determined not actionable.			
Wireless Telephone Advertising	Telecommunications	Multistate	Multistate investigation into cellular/wireless telephone advertising claims of "free long distance."	Assurance of Voluntary Compliance against Verizon, Cingular, and Sprint		106,667	106,667
WorldxChange Communications	Telecommunications	DATCP	WorldxChange Communications a/k/a Acceris Communications Partners are alleged to have violated laws concerning telecommunication services and fraudulent representations.	DATCP referred this internet scam operated out of California, involving popup ads that connected users to overseas porn sites. California and other states are deferring to the FCC. DATCP agrees to do likewise.			
Multi-Plays of America	Telemarketing	DATCP	The case involved alleged unauthorized debiting of consumers' bank accounts by a firm selling a lottery publication, which purported to identify "likely winning" lottery numbers.	Negotiated Assurance of Voluntary Compliance. The company went out of business but agreed to refund money to Wisconsin complainants.	1,782		1,782
Operation Roaming Charge	Telemarketing	Other	Telemarketing fraud sweep hosted by the U.S. Postal Inspector's Office and National Association of Attorneys General.	Investigation reported to the U.S. Postal Office.			
ConocoPhillips	Tobacco	Multistate	Retail efforts to prohibit the sale of tobacco to minors.	Assurance of Voluntary Compliance		3,248	3,248
CVS Pharmacy	Tobacco	Multistate	Negotiated agreement to ensure decreased tobacco sales to minors.	Assurance of Voluntary Compliance		5,444	5,444
American Travel and Management, LLC, Kevin B. Raines, Francine Bauer	Travel Scams	DATCP	The case involved alleged misrepresentations regarding the sale of memberships to Wisconsin consumers to join travel clubs.	Court judgment	100,000	200,000	300,000
ITS International Tours	Travel Scams	Other	The case involved a consumer complaint regarding a Louisiana travel company. The case was a referral from the South Dakota Attorney General's Office.	The South Dakota Attorney General referred information about consumers in several states who paid ITS (based in Louisiana) for a tour that was later canceled and the consumers were not refunded. The South Dakota Attorney General mediated a refund for the only affected Wisconsin consumer, who received a credit card chargeback. There have been no other Wisconsin complaints against the company.			
Total					\$3,114,500	\$2,802,000	\$5,916,500

*Due to third party administration of some settlement recoveries, DOJ cannot always determine the full amount of restitution received by Wisconsin consumers.

**Total amounts recovered include funds awarded under default judgments. Default judgments are entered against defendants who fail to contest the Department's case, often by failing to appear.

***The case was reported in the January, 2005, informational paper, but additional funds under the case have been received.