



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #156

### **Transfer Consumer Protection Functions (Agriculture, Trade & Consumer Protection and Justice)**

[LFB 2003-05 Budget Summary: Page 53, #9 and Page 285, #2]

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#### **CURRENT LAW**

Consumer protection staff in the Department of Agriculture, Trade and Consumer Protection (DATCP) review and respond to consumer inquiries, complaints received through the agency's toll-free hotline, telephone calls to regional offices, written complaints and referrals from other state agencies. Further, DATCP is authorized significant investigative authority under general agency powers provided by Chapter 93 of the statutes, in addition to specific authority in unfair trade practices and deceptive advertising laws. This authority includes the subpoena of documents and testimony, the conduct of investigative hearings, the collection and analysis of samples, and the inspection and copying of business records.

The Department of Justice (DOJ) has concurrent authority with DATCP to determine violations of, and initiate prosecutorial proceedings to: (1) restrain by temporary or permanent injunction any fraudulent representation; (2) restrain by temporary or permanent injunction any violation of telecommunication trade practices and enforce forfeitures; and (3) recover a civil forfeiture for violation of a fraudulent representation, fraudulent drug advertising, unfair methods of competition or unfair trade practices injunction. However, DOJ can only commence these proceedings and enforce the above forfeitures in circuit court after consulting with DATCP.

DOJ must furnish all legal services required by DATCP relating to the enforcement of the above consumer protection statutory provisions, as well as other consumer protection statutory provision and chapters, together with any other services necessarily connected to those legal services.

For allegations of unfair methods of competition in business or unfair trade practices in business, DOJ may do any of the following: (1) initiate administrative proceedings in regards to

such allegations with DATCP; (2) appear before DATCP in regards to such proceedings; (3) appeal DATCP decisions and orders to a court of law; (4) accept a written assurance of discontinuance of any act or practice alleged to be a violation of the fraudulent representation laws; (5) bring an action enjoining any corporation, or limited liability company, foreign or domestic, which violates any order regarding unfair methods of competition or unfair trade practices from doing business in this state and revoking or canceling its certificate of authority, incorporation or organization; and (6) join the Federal Communications Commission and the Federal Trade Commission in bringing actions in federal court under the federal telecommunications act and federal marketing laws. Finally forfeitures under the self-service storage facilities law are enforced by DOJ or by the district attorney of the county where the violation occurred. A representative from DOJ must be a member of the advisory group that DATCP must form before preparing any proposed rule on telecommunication services.

In 2002-03, DOJ is budgeted \$881,300 GPR and 9.3 GPR positions for consumer protection functions. These staff include 4.8 attorneys, 2.0 consumer protection investigators, 1.0 legal secretary, 1.0 paralegal and 0.5 legal assistant.

## **GOVERNOR**

Effective on October 1, 2003, or on the first day of the third month beginning after publication, whichever is later, transfer most consumer protection functions to the Department of Justice (DOJ) Division of Legal and Regulatory Services. Delete \$2,369,800 GPR annually and 39.35 GPR positions from DATCP. Further, transfer \$283,500 PR and 5.5 PR positions annually from DATCP to DOJ for the administration and maintenance of the telephone solicitation (no-call) program. In addition, reduce the number of DATCP division administrators (which are unclassified positions) from six to five and delete the Division of Trade and Consumer Protection Administrator (0.35 GPR, 0.65 PR) position and \$104,500 (\$36,600 GPR, \$67,900 PR) annually.

The bill would also provide the Department of Justice \$1,408,800 GPR annually and 26.0 GPR positions for the administration and enforcement of most consumer protection functions. The bill does not identify the specific positions to be transferred, but rather specifies that DATCP and DOJ determine which former DATCP positions would be transferred to DOJ, and which would be new positions. If an agreement cannot be reached, the Secretary of Administration would resolve the disagreement. Provide that the incumbent DATCP employees who are transferred to DOJ maintain all their civil service and other employee rights held prior to transfer. Also, provide DOJ an additional \$155,000 GPR in 2003-04 for moving costs and supplies, and \$55,000 GPR in 2004-05 for supplies and services costs. The bill would result in a net reduction of \$1,921,000 (-\$1,785,200 GPR and -\$135,800 PR) for the biennium as shown in the following table.

	2003-04		2004-05		Positions	
	GPR	PR	GPR	PR	GPR	PR
DATCP	-\$2,406,400	-\$351,400	-\$2,406,400	-\$351,400	-39.70	-6.15
DOJ	<u>1,563,800</u>	<u>283,500</u>	<u>1,463,800</u>	<u>283,500</u>	<u>26.00</u>	<u>5.50</u>
Total	-\$842,600	-\$67,900	-\$942,600	-\$67,900	-13.70	-0.65

Transfer Department of Health and Family Services' authority and related administrative rules for fitness center staff requirements under s. 100.178 of the statutes and all of DATCP's statutory authority and related administrative rules for the following sections to DOJ:

100.15	Regulation of trading stamps
100.16	Selling with pretense of prize; in-pack chance promotion exception
100.17	Guessing contests
100.171	Prize notices
100.173	Ticket Refunds
100.174	Mail-order sales regulated
100.175	Dating service contracts
100.177	Fitness center and weight reduction center contracts
100.18	Fraudulent representations
100.182	Fraudulent drug advertising
100.20	Methods of competition and trade practices
100.205	Motor vehicle rust-proofing warranties
100.207	Telecommunications services
100.208	Unfair trade practices in telecommunications
100.209	Cable television subscriber rights
100.2095	Labeling of bedding
100.28	Sale of cleaning agents and water conditioners containing phosphorus
100.31	Unfair discrimination in drug pricing
100.37	Hazardous substances act
100.38	Antifreeze
100.41	Flammable fabrics
100.42	Product Safety
100.43	Packaging standards; poison prevention
100.44	Identification and notice of replacement part manufacturer
100.46	Energy consuming products
100.50	Products containing or made with ozone-depleting substances
100.52	Telephone solicitations
Chapter 136	Future service plans
Chapter 344	Vehicle financial responsibility
Chapter 704	Landlord and tenant; self-service storage facilities
Chapter 707	Timeshares
Chapter 779	Prepaid Maintenance Liens

The authority to enforce these laws is transferred to DOJ or jointly to DOJ and district attorneys. Also, remove DATCP's authority to be represented by its attorneys or to appoint

special counsel to prosecute or assist in the prosecution of all cases arising under Chapter 100 of the statutes, except for s. 100.206 (music royalty collections; fair practices), s. 100.21 (substantiation of energy savings or safety claims), 100.30 (unfair sales act) and 100.51 (motor fuel dealerships). Further, transfer the authority to commence a court action for milk payment audits, discrimination in the payment of milk and unfair trade practices in the dairy industry from DATCP to DOJ (under the bill DATCP would continue to administer these rules, except that any court action would have to be commenced by DOJ).

Extend the consumer protection assessments (in an amount equal to 25% of the fine or forfeiture imposed) for violations of Chapter 133 of the statutes (such as creating a monopoly or an unfair or discriminatory business practice that hampers competition) beginning with violations that occur on the general effective date of the budget. Require that DOJ, instead of DATCP, be awarded consumer protection assessments on all fines and forfeitures for violations under Chapters 100 (marketing; trade practices) and 133 (trusts and monopolies) or corresponding rules or ordinances. Provide DOJ with a new, annual PR appropriation and require that any revenue received from consumer protection assessments under Chapters 100 and 133 be deposited into it, with revenue in excess of \$375,000 per fiscal year being deposited into the general fund. Under the bill, assessment amounts imposed for violations of weights and measures regulation under Chapter 98 (or rules or ordinances promulgated under Chapter 98) would continue to be deposited in DATCP's consumer protection information and education PR appropriation, with assessments in excess of \$185,000 per fiscal year being deposited in the general fund.

On October 1, 2003 (or on the first day of the third month beginning after publication, whichever is later), transfer the assets, liabilities and obligations primarily associated with the transferred consumer protection functions from DATCP to DOJ. Further, transfer all tangible personal property, record, pending matters, contracts and contract responsibilities relating to transferred consumer protection provisions and specify that all rules and orders relating to the transferred consumer protection provisions remain in effect until their specified expiration date or until modified or rescinded by DOJ. Provide that if the Departments are unable to agree on an equitable division, the Secretary of Administration settle the dispute.

Further, delete the requirement that two of the nine members on the DATCP Board be consumer representatives. Instead, specify that the board shall consist of nine members with an agricultural background. Allow that any member who is serving as a consumer representative on the DATCP board the day before the effective date be allowed to continue to serve as a board member until his or her successor is appointed and qualified.

Rename the Department of Agriculture, Trade and Consumer Protection the Department of Agriculture, Trade and Rural Resources, and require the necessary changes in the statutes to reflect this name change.

DATCP would retain authority for regulation of various trade practices under Chapter 100 of the statutes, including the following:

100.01	Produce wholesalers, unfair conduct, liability for damages
100.02	Commission merchants, duties, must account
100.025	Classification of dairy heifer calves
100.04	Livestock productions contracts
100.05	Butter and cheese manufacturers; accounts accessible
100.057	Wisconsin cheese logotype
100.07	Milk payments; audits
100.12	Refusal of commission merchant to furnish without statement of transaction prima facie evidence of gambling
100.14	Uniform labels and trademarks
100.183	Fraud, advertising foods
100.184	Advertising foods for sale
100.186	Linseed oil, white lead zinc oxide, turpentine; standards; sale
100.19	Distribution methods and practices
100.201	Unfair trade practices in the dairy industry
100.202	Contracts in violation void
100.206	Music royalty collections; fair practices
100.21	Substantiation of energy savings or safety claims
100.22	Discrimination in purchase of milk prohibited
100.23	Contract to market agricultural products; interference prohibited
100.235	Unfair trade practices in procurement of vegetable crops
100.24	Revocation of corporate authority
100.265	List of gasohol and alternative fuel refueling facilities
100.27	Dry cell batteries containing mercury
100.285	Reduction of toxics in packaging
100.29	Sale of non-recyclable materials
100.295	Labeling of recycled, recyclable or degradable products
100.297	Plastic container recycled content
100.30	Unfair sales act (minimum mark-up)
100.33	Plastic container labeling
100.35	Furs to be labeled
100.36	Frauds; substitute for butter; advertisement
100.45	Mobile air conditioners
100.47	Sales of farm equipment
100.48	Hour meter tampering
100.51	Motor fuel dealerships

## DISCUSSION POINTS

### 1995 Act 27

1. Under 1995 Act 27 (the 1995-97 budget act), \$1,411,900 GPR and 26.6 GPR positions were deleted or transferred from DOJ in 1996-97 to reflect the move of most consumer protection functions from DOJ to DATCP on July 1, 1996. Under the act, 12.8 DOJ positions were eliminated and the remaining 13.8 positions, and the incumbents were transferred from DOJ to DATCP. After the change, DOJ retained 9.3 legal services staff for consumer protection functions.

2. Under Act 27, the following DOJ responsibilities were transferred to DATCP:

- Fraudulent representations;

- Fraudulent drug advertising;
- Penalties for violations of DATCP rules relating to methods of competition and trade practices;
- Motor vehicle rust proofing warranties;
- Substantiation of energy savings and safety claims;
- Penalties: marketing and trade practices;
- Sale of cleaning agents and water conditioners containing phosphorus;
- Products containing or made with ozone-depleting substances;
- Ticket refunds;
- Cable television subscriber rights;
- Dating service contracts;
- Fitness center and weight reduction contracts;
- Pawnbrokers and secondhand article and jewelry dealers;
- Prize notices;
- Mail-order sales regulated;
- Motor fuel dealerships;
- Future service plans;
- Vehicles-financial responsibility: damage waivers and penalties;
- Self-service storage facilities;
- Time share ownership deposits, escrow requirements remedies and penalties; and
- Prepaid maintenance liens.

3. Act 27 required that DOJ consult with DATCP prior to commencing an action: (a) for violations of the state's fraudulent advertising laws; (b) for violations of telecommunications trade practices; and (c) to recover civil forfeitures for violations of an injunction issued under the state's fraudulent advertising statutes, drug pricing statutes and unfair trade practices.

### **Consumer Protection in DATCP**

4. DATCP's Division of Trade and Consumer Protection consists of two bureaus, the Bureau of Business Trade Practices, and the Bureau of Consumer Protection. The Bureau of Consumer Protection is made up of 75.8 employees, 44.85 of which primarily administer DATCP's consumer protection responsibilities. The remaining 30.95 staff in this Bureau include weights and measures inspection staff, the regulation and safety section and certain administrative and legal staff associated with these functions. Weights and measures inspectors are located in the regional offices and perform technical inspection work and enforce compliance with weights and measures laws. The regulation and safety section enforces a number of laws and 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. The Bureau of Trade Practices, which has a total of 99.5 positions, handles some of the workload related to the Unfair Sales Act and unfair trade practices. This 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).

5. In addition, the bill eliminates the division administrator. The removal of 45.85

positions would result in a 26% staff reduction to DATCP's Division of Trade and Consumer Protection.

6. In 2002, DATCP received 15,800 written complaints, 4,639 of which were resolved through mediation, returning \$2.7 million to consumers. In 2001, 3,953 cases were resolved by DATCP through mediation, returning \$2.7 million to consumers. Also in 2002, DATCP's consumer protection efforts led to about \$2.7 million in fines and forfeitures that were deposited into the common school fund (this amounted to \$4.7 million in 2001), and due in large part to the "Miss Cleo" case (a telephone psychic service that was taken to court for unlawful charges and collection efforts), \$13.8 million in court ordered restitution to consumers (\$1.3 million in 2001).

7. As part of its consumer protection efforts, DATCP operates a consumer protection internet web-site. This site provides consumers with consumer protection facts and information, business and product alerts, and offers an on-line complaint form for consumers to register their problems with the Department. In 2002, DATCP's consumer protection web site received nearly 280,000 hits, and almost 2,000 of the 15,800 complaints received by DATCP in 2002 were received by e-mail through the web-site.

8. DATCP's Consumer Protection Bureau relies significantly on its administrative rules. The administrative rules provide detailed, industry-wide standards of conduct related to specific consumer protection issues. In addition, DATCP practices progressive enforcement of the state's consumer protection laws through the use of warning letters, assurances of compliance, special orders and formal prosecution, when necessary.

9. DATCP 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. DATCP adopts new rules and modifies current rules in response to new practices.

### **Consumer Protection in DOJ**

10. DOJ retains concurrent authority to determine violations of, and initiate proceedings on, cases relating to fraudulent representation, fraudulent drug advertising, unfair methods of competition, unfair trade practices and telecommunications trade practices. However, DOJ can only commence such an action in circuit court after consulting with DATCP. Under current practice, DOJ informs DATCP prior to filing these types of cases. DATCP does not have statutory authority to prevent DOJ from initiating these types of actions. After consulting with DATCP, DOJ is permitted to exercise its independent discretion.

11. In addition to its authority to bring cases independently relating to fraudulent representation, fraudulent drug advertising, unfair methods of competition, unfair trade practices and telecommunications trade practices (following consultation with DATCP), DOJ may represent the state in court on other types of consumer protection cases referred for adjudication by DATCP

or other state agencies. DATCP indicates that it refers most consumer protection cases to district attorneys or DOJ for court enforcement, not because it lacks court enforcement authority under the consumer protection laws it administers, but rather because it lacks the necessary legal staff to prosecute those cases itself. District attorneys generally prosecute criminal cases at the trial level, but may bring civil actions under the state's consumer protection laws. DATCP indicates that the type of case it generally refers to DOJ involves a civil action with multi-county implications.

12. Under the federal telecommunications act and the federal marketing laws, the "state officer responsible for enforcement" has authority to bring actions under those acts. DOJ has traditionally exercised this authority without the requirement of consultation with DATCP. DOJ indicates, however, that as a practical matter there are situations under these acts where consultation occurs both formally and informally between DOJ and DATCP. In addition, under current law, only DOJ may initiate administrative proceedings before DATCP relating to allegations of unfair methods of competition in business or unfair trade practices in business.

13. A total of 282 consumer protection files were opened by DOJ during calendar years 2001 and 2002. These included cases filed in court, investigations, correspondence and mediation. Of the 282 new files opened, 74 were referrals from DATCP.

14. During this same time period, DOJ's consumer protection group closed 341 files. The monetary recovery from completed cases in 2001 totaled \$5,154,500, while the monetary recovery from completed cases in 2002 totaled \$14,552,700. It should be noted, however, that these figures do not completely capture the monetary recovery from these completed cases. In many of these cases restitution to consumers did not flow directly through DOJ. As a result, in these cases the Department cannot identify the monetary value of this restitution to affected consumers.

15. The most notable cases completed by DOJ during calendar years 2001 and 2002 included: (a) a consent judgment against Publishers Clearinghouse regarding alleged fraudulent representations to consumers of almost \$2.8 million; (b) a court judgment against Bridgestone/Firestone regarding alleged product safety violations and fraudulent representations of approximately \$1.2 million; (c) a consent judgment against Household International, Inc., regarding alleged predatory lending practices of approximately \$5.4 million; (d) a court judgment against Rent-A-Center regarding alleged fraudulent representations totaling \$8.4 million; and (e) a judgment against "Miss Cleo" prohibiting the collection of \$11.4 million in unpaid bills for so-called "psychic services" provided to Wisconsin residents. Of these five cases, only the Rent-A-Center case was not a multi-state case in which the Department joined with other Attorneys General to investigate and litigate. It should be noted, however, that DOJ took a lead role in the Publishers Clearinghouse case by being the first state to take Publishers Clearinghouse to trial, and that Wisconsin was one of seven states on the steering committee that led the negotiations and ultimate settlement with Firestone.

**Governor's Recommendation to Transfer DATCP's Consumer Protection Responsibilities to DOJ**

16. DOA indicates that the provision to transfer DATCP consumer protection responsibilities to DOJ was included in the bill to increase coordination and efficiency. Under the transfer of consumer protection functions from DOJ to DATCP under 1995 Act 27 (the 1995-97 biennial budget act), 12.8 DOJ positions were eliminated and 13.8 positions, and the incumbents, were transferred from DOJ to DATCP. Under the current recommendations, an additional 14.35 DATCP positions would be eliminated and the remaining position authority of 31.50 FTE (including 5.5 telephone solicitation staff) would be transferred to DOJ. Under the bill, there would be a net reduction in funding for consumer protection of \$1,921,000 (-\$1,785,200 GPR and -\$135,800 PR) over the biennium primarily resulting from the decreased position authority provided for consumer protection.

17. The following table details the position changes under the bill and identifies the position types in DATCP that are preliminarily designated for deletion or transfer. A net reduction of 14.35 positions would be realized.

	<u>Eliminated DATCP</u>	<u>Created DOJ</u>	<u>Current DOJ</u>
Consumer Protection Positions			
Administrative Assistant			1.00
Attorney			4.80
Bureau Director	-0.30		
Consumer Protection Investigator	-13.65		
Consumer Specialist	-12.00		
Division Administrator	-1.00		
Executive Staff Assistant	-0.75		
Legal Secretary			1.50
Program & Planning Analyst	-0.75		
Program Assistant	-8.65		
Regional Compliance Investigator			2.00
Supervisor	-3.25		
Unspecified Positions		26.00	
Telephone Solicitation	<u>-5.50</u>	<u>5.50</u>	_____
Total Positions	-45.85	31.50	9.30

18. DOJ is currently analyzing what additional positions would be created (and what positions would be transferred from DATCP) under the bill. The attachment, however, presents one depiction of the consumer protection division that DOJ is considering should the Governor's recommendation be approved. As discussed earlier, the Governor's intent was to allow the DATCP Secretary and the Attorney General to reach an agreement over what current consumer protection positions in DATCP would be transferred to DOJ, and how many of the 26.0 positions granted to

DOJ under the bill would be new positions.

19. In the past, the agencies have had conflicting views as to the administration of the consumer protection function by the state. DATCP has stated in the past that its primary statutory mission is to identify and prevent unfair business practices, not to directly represent individual consumers. However, DATCP in the past has also noted that as a result of its handling of consumer complaints, many complaints are resolved to the satisfaction of consumers. By contrast, DOJ has viewed its role as one of representing the state's consumers.

20. As a result, it could be argued these agencies sometimes work at cross-purposes in carrying out the consumer protection function. It could be argued that consolidating the consumer protection function in DOJ would permit the state to operate the function more efficiently, as there would be one agency setting the consumer protection priorities for the state. Further, consolidation would reduce the number of consumers who may currently call upon the wrong agency with a complaint.

21. It could be argued that the consumer protection transfers between these agencies, with the accompanying loss of position authority (12.8 FTE deleted under 1995 Act 27 and an additional 14.35 FTE would be eliminated under SB 44) will negatively impact consumer protection in the state, by reducing the resources available to investigate and pursue consumer protection complaints. In addition, agency surveys indicate that consumers have generally been satisfied with the current consumer protection duties of the two agencies. Further, there has been limited public demand for changes in consumer protection administration at the state level. The Committee could, therefore, consider maintaining current law.

22. Moreover, as discussed earlier, the Governor's proposal transfers the authority of a number of rules from DATCP to DOJ. Some have argued that one concern with the Governor's proposal is that it transfers consumer protection authority for all rules passed under the listed statutes to DOJ, even if the laws passed are agricultural in nature. Specifically, administrative rules ATCP 83 (Dairy Product Licensing and Labeling) and ATCP 100 (Milk Procurement and Price Discrimination) were passed under the authority DATCP has under s. 100.20 of the statutes (methods of competition and trade practices), and under the bill, authority for administration of these rules would be transferred to DOJ.

23. DOJ has maintained that one of the most effective and powerful tools the state has in enforcing consumer protection laws is the role of the Attorney General in multi-state litigation. Of the five major cases completed by DOJ in calendar years 2001 and 2002, four were multi-state cases (Publishers Clearing House, Bridgestone/Firestone, "Miss Cleo" and Household International, Inc.) in which the state joined with other Attorneys General. Providing an expanded consumer protection function at Justice (with more attorneys and consumer protection investigators) it is argued, could permit the Department to expand its involvement in multi-state litigation with the possible outcome of more judgments and settlements in favor of Wisconsin's consumers.

24. On the other hand, in the past DATCP has emphasized prevention and voluntary

compliance in its administration of consumer protection. In its consumer protection efforts, DATCP uses resources to educate businesses about new rules, and help bring them into compliance in order to prevent future problems. For example, with the start-up of the telephone solicitation program, DATCP uses one of the three consumer specialists authorized for the program exclusively to encourage registration and licensing of businesses that are required to register under the program. If the Committee wished to continue to place an emphasis on prevention and voluntary compliance in consumer protection, it could choose to maintain current functions at DATCP.

25. In 2002, DATCP filed a total of 95 cases, 60 of which were handled by DA's, 16 by DATCP, 13 by DOJ, five by the federal government and one by the Milwaukee Corporate Counsel. Citing these numbers, some have argued that consumer protection's current placement in DATCP encourages the prosecution of many cases with smaller monetary value through the use of district attorneys. They argue that were consumer protection transferred to DOJ, many of these cases may not be prosecuted. Others argue that it makes more sense to have one agency in charge of the prosecution of all consumer protection cases.

### **Regional Offices**

26. DATCP utilizes four regional offices whose 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 compliant lines or referred from the Department's centrally located toll-free hotline. These offices are located in Eau Claire, Green Bay, Madison and Wauwatosa. 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 2003, the four regional offices have 46.15 staff.

27. Currently, DATCP maintains three separate regional consumer protection offices: Eau Claire (10.5 FTE); Green Bay (10.5 FTE); and Wauwatosa (12.0 FTE). Further, the Madison regional office (13.15 FTE) is located at the Department's central office. Under the bill, 33.15 regional positions would be eliminated or transferred to DOJ, leaving 13.0 positions in DATCP. All 13 of these positions are related to the Department's weights and measures responsibilities, and three of these positions are located in DATCP's main office in Madison. As a result, 10.0 staff that are currently located outside of Madison would remain under SB 44. Therefore, DATCP may find it necessary to close or significantly reduce two or all three of the regional offices.

28. While the Madison regional office is located in the same building as DATCP's central office, the Green Bay office is located in a state-owned building (with rent of \$28,900 annually), and the Eau Claire and Wauwatosa offices are rented from private entities. The Eau Claire regional office's current lease expires July 31, 2007, with an annual cost of \$31,600. The Wauwatosa office's current lease expires May 31, 2004, with an optional three-year extension at the state's discretion. Rent for this office is \$54,000 annually, with an additional \$2,000 annually in operating costs. It appears unlikely that the state would be able to obtain a release from either the Eau Claire or Wauwatosa lease.

29. Regarding the state owned office space in Green Bay, DOA is responsible to ensure that all space in DOA owned and state leased facilities is kept in productive service to the maximum extent possible and to assist state agencies in reducing facility costs. DATCP pays approximately \$28,900 annually for its Green Bay office. When a state agency wishes to vacate space within a state-owned office building, written notice must be provided to the DOA Bureau of Leasing and Space Management a minimum of 12 months in advance for affected space of 5,000 square feet or less, and 24 months in advance for affected space of more than 5,000 square feet. The vacating agency is responsible for all rentals and associated occupancy costs until the space is re-occupied and the Division of Buildings and Police Services releases the agency from its obligation to pay.

30. As a result, the Department could face lease costs of \$111,800 in 2003-04 and \$31,600 in 2004-05. Thus, even if DATCP closes two or all three of the regional offices, it may still face lease costs of \$143,400 over the biennium for the regional offices.

31. Justice maintains that savings could be realized if the state made greater efforts to centralize the administration of consumer protection in Madison. DOJ has indicated that if consumer protection were transferred to Justice they would reduce the regional consumer protection presence to a few investigators working out of Department office space in Milwaukee, Appleton, Eau Claire and Wausau.

32. However, if consumer protection were transferred to Justice there would be reduced opportunity for the public to utilize the regional office presence to file and pursue consumer protection complaints. All consumer specialist and program assistant staff currently existing in the regional offices would be removed from regional offices under the Justice plan.

33. The bill includes the elimination of all 39.35 GPR consumer protection staff, and the 5.5 PR telephone solicitation staff, from DATCP. Further, the bill also includes the elimination of DATCP's Division of Trade and Consumer Protection administrator (0.35 GPR, 0.65 PR). This equals a 26% reduction in the Division of Trade and Consumer Protection. Should the bill be adopted, DATCP's remaining trade, weights and measures and regulation sections would be consolidated into other DATCP Divisions.

34. DATCP officials indicate one-time costs would be incurred relating to renaming the agency the Department of Agriculture, Trade and Rural Resources. These costs include information technology costs (e-mail, server, database and web-site migration, and network changes) and printing costs. Under the bill, DATCP would be required to reallocate base level resources for any costs incurred.

35. Senate Bill 44 provides \$100,000 GPR in 2003-04 to DOJ to cover one-time costs associated with the transfer of consumer protection to Justice. DOJ staff indicate, however, that the one-time costs associated with this transfer could exceed the \$100,000 GPR provided under the bill. One-time costs could include not only moving and remodeling costs but also information technology costs associated with: (a) replacing an outdated integrated voice response system that was transferred from DOJ to DATCP during the last consumer protection transfer under 1995

Wisconsin Act 27; and (b) migrating DATCP consumer protection data to an upgraded, supportable IT system. According to DOJ staff, DATCP's current consumer protection system is built on a platform that can no longer be purchased or supported.

36. The Committee could approve the transfer of consumer protection under SB 44, understanding that DOJ may not be able to accomplish the transfer with the level of resources provided. Should this occur, DOJ would have to reallocate base level resources to fund the additional costs or request a supplementation from the Committee under s. 13.10 procedures. Alternatively, the Committee could deny the proposed transfer, thereby eliminating the need for these one-time costs.

37. Further, the Committee could decide to leave the consumer protection responsibilities that the bill transfers to DOJ in DATCP, but require reductions equal to those in the bill. This would also allow the Committee to eliminate an additional \$155,000 in 2003-04 and \$55,000 in 2004-05 that the bill provides DOJ for the moving, supplies and services costs. Should the Committee leave consumer protection responsibilities in DATCP, restoring the division administrator position could be considered. Compared to current law, this alternative would eliminate \$961,000 GPR annually and 13.35 positions. Compared to the bill, this would reduce GPR by \$118,400 in 2003-04 and \$18,400 in 2004-05 and increase PR by \$67,900 annually, along with increasing position authority by 1.0 position. This would result in a net reduction of \$1,000 from the amount authorized in the bill (a reduction of \$136,800 GPR and an increase of 0.35 GPR position and an increase of \$135,800 PR and 0.65 PR position). Alternative 2 presents this option.

38. Were DATCP left with consumer protection responsibilities and the resource reductions under the bill, the Department would consider a number of options. These could include, but would not be limited to: reducing or eliminating the toll-free consumer hotline service (a savings of about \$30,000 annually for complete elimination); reduction of Department information and education efforts; and closure or reduction of regional offices.

39. Current law specifies that if a court imposes a fine or forfeiture for a violation of chapter 98 or 100 of the statutes, or a rule promulgated under these chapters, the court also impose a consumer protection assessment equal to 25% of the fine or forfeiture imposed. This revenue is then deposited into a program revenue appropriation that DATCP uses to fund consumer protection information and education. The bill would transfer assessments for fines and forfeitures resulting from violations of chapter 100, or rules promulgated under chapter 100, to DOJ, and authorize DOJ \$375,000 in expenditure authority from this appropriation. Current law restricts revenues deposited into DATCP's consumer protection, information and education appropriation to \$185,000 annually. Any additional revenue from the consumer protection assessment would be deposited into the general fund. Despite consumer protection fines and forfeitures in excess of \$4 million the last two years under Chapter 100 of the statutes, revenues deposited into this account have totaled \$77,200 in 2001-02 and \$74,700 in 2002-03, through April. If DATCP ensured that courts imposed the required consumer protection assessment for fines and forfeitures imposed for violations of chapters 98 and 100 (or rules promulgated under these chapters), and the annual amount of revenue allowed to be deposited into this appropriation was increased, revenues available from this appropriation

could increase substantially. As a result, the Committee could increase the amount of revenue credited to the appropriation to \$375,000 annually. This would allow the Department to seek additional position authority from the appropriation under future legislation or the s. 16.505 passive review procedure, once sufficient revenues began accruing to the appropriation. Any revenues in excess of \$375,000 annually would accrue to the state's general fund (alternative #4).

**ALTERNATIVES**

**Consumer Protection**

1. Approve the Governor's recommendation to transfer most consumer protection functions and the telephone solicitation program from DATCP to DOJ's Division of Legal and Regulatory Services and eliminate \$4,812,800 GPR (\$2,406,400 annually) and 39.70 GPR positions, and \$702,800 PR (\$351,400 annually) and 6.15 PR positions from DATCP that the Department uses for its consumer protection and telephone solicitation responsibilities and efforts. Further, provide DOJ with \$1,563,800 GPR and 26.0 GPR positions, and \$283,500 PR and 5.5 PR positions in 2003-04, and \$1,463,800 GPR and \$283,500 PR in 2004-05 for the administration and enforcement of the consumer protection and telephone solicitation duties transferred to it from DATCP.

2. Delete the Governor's recommendation. Instead, delete \$961,000 GPR annually and 13.35 GPR positions from DATCP (same as the net reductions under the bill, except for the division administrator). (This would restore \$1,445,400 and 26.35 GPR positions annually to DATCP.)

<u>Alternative 2</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	- \$136,800	\$135,800	- \$1,000
<b>2004-05 POSITIONS</b> (Change to Bill)	0.35	0.65	1.00

3. Delete provision (administration of most consumer protection functions would remain in DATCP).

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
<b>2003-05 FUNDING</b> (Change to Bill)	\$1,785,200	\$135,800	\$1,921,000
<b>2004-05 POSITIONS</b> (Change to Bill)	13.70	0.65	14.35

4. Specify that the amount of surcharge revenue that may be credited to DATCP's consumer protection, information and education PR appropriation may not exceed \$375,000 annually. Revenue in excess of \$375,000 annually would accrue to the general fund.

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# ATTACHMENT

## Department of Justice Office of Consumer Protection

