



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #140

Transfer Consumer Protection Functions (Agriculture, Trade and Consumer Protection)

[LFB 2005-07 Budget Summary: Page 56, #2 & Page 318, #2]

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 product samples, and the inspection and copying of business records.

Under the marketing and trade practices statutes (Chapter 100), the Department of Justice (DOJ) has concurrent authority with DATCP to determine violations and to initiate prosecutorial proceedings relating to: (1) fraudulent representations prohibited under s. 100.18; and (2) 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, although 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: (1) initiate administrative proceedings with DATCP relating to such allegations; (2) appear before DATCP in such proceedings; and (3) 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.

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. DATCP indicates that it follows this course of action not because it lacks court enforcement authority under the consumer protection laws that it administers, but rather because it lacks the necessary legal staff to bring prosecution itself. 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.

In 2004-05, DOJ has budgeted \$543,100 GPR and 6.5 GPR positions for consumer protection functions. These staff include 3.0 attorneys, 2.0 consumer investigators, 1.0 legal secretary and 0.5 paralegal.

GOVERNOR

Effective on October 1, 2005, 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. Transfer \$1,354,600 GPR and 28.0 GPR positions in 2005-06, and \$1,806,200 GPR and 28.0 GPR positions in 2006-07 from DATCP to DOJ for the administration of these consumer protection responsibilities and functions. Further, transfer \$500,200 PR and 6.5 PR positions in 2005-06 and \$666,900 PR and 6.5 PR positions in 2006-07 from DATCP to DOJ for the administration and maintenance of the telephone solicitation (no-call) program. In addition, create a PR annual consumer protection, information, and education appropriation under DOJ and authorize the agency to expend funds

credited to the appropriation for consumer protection and consumer information and education. Authorize DOJ expenditures of \$175,000 PR annually from this appropriation.

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. The bill would result in a net increase of \$350,000 PR for the biennium as shown in the following table.

	<u>2005-06</u>		<u>2006-07</u>		<u>Positions</u>	
	<u>GPR</u>	<u>PR</u>	<u>GPR</u>	<u>PR</u>	<u>GPR</u>	<u>PR</u>
DATCP	-\$1,354,600	-\$500,200	-\$1,806,200	-\$666,900	-28.00	-6.50
DOJ	<u>1,354,600</u>	<u>675,200</u>	<u>1,806,200</u>	<u>841,900</u>	<u>28.00</u>	<u>6.50</u>
Total	\$0	\$175,000	\$0	\$175,000	0.00	0.00

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 trade practices 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
Chap 136	Future service plans
Chap 344	Vehicle financial responsibility
Chap 704	Landlord and tenant; self-service storage facilities
Chap 707	Timeshares
Chap 779	Prepaid maintenance liens

The authority to enforce these laws would be 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), s. 100.30 (unfair sales act) and s. 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, 2005, (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, records, 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 broker to furnish written 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 of trade practices in the dairy industry are 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 nonrecyclable materials
100.295	Labeling of recycled, recyclable or degradable products
100.297	Plastic container recycled content
100.30	Unfair sales act (minimum markup)
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

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.

4. In his 2003-05 budget recommendations, the Governor recommended transferring most consumer protection duties, along with administration and maintenance of the telephone solicitation (no-call) program from DATCP to DOJ. This provision involved the following: (a) deleting \$2,369,800 GPR annually and 39.35 GPR positions from DATCP associated with consumer protection efforts; (b) deleting \$283,500 PR and 5.5 PR positions from DATCP associated with the no-call program; (c) deleting \$104,500 (\$36,600 GPR and \$67,900 PR) associated with DATCP's Trade and Consumer Protection Division administrator; (d) providing DOJ \$1,408,800 GPR annually and 26.0 GPR positions for the administration and enforcement of most consumer protection functions; (e) providing DOJ \$283,500 PR annually and 5.5 PR positions for no-call program administration and maintenance; and (f) providing DOJ an additional \$155,000 GPR in 2003-04 and \$55,000 GPR in 2004-05 for moving costs and supplies related to the transfer

of consumer protection functions. This would have resulted in a net reduction of \$1,921,000 (-\$1,785,200 GPR and -\$135,800 PR) and 14.35 (-13.70 GPR and -0.65 PR) positions over the biennium.

5. However, under 2003 Act 33 (the 2003-05 biennial budget act) none of DATCP's consumer protection duties or its telephone solicitation responsibilities were transferred to DOJ. Ultimately, there were no changes to prior law related to consumer protection other than a reduction of \$961,000 GPR annually (for a total of \$1,922,000 over the biennium) and 13.35 GPR positions related to DATCP's administration and enforcement of its consumer protection duties. While these reductions coincided with a restructuring of Department consumer protection staff, a majority of the reductions resulted in the removal of regional consumer protection office positions. In addition, prior budget reductions have resulted in DOJ reducing its consumer protection unit to 6.5 staff (from 9.3 in 1996).

Consumer Protection in DATCP

6. 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 62.45 employees. This includes a director and administrative staff (3.25), consumer information center staff (13.15), regulation and safety staff (22.25), and regional office staff (23.8). The consumer information center includes a hotline unit (that is primarily responsible for responding to consumer complaints via the toll-free hotlines, and working with the Department's automated telephone response system), a special projects unit (that handles special consumer protection topics), and telephone solicitation staff (who administer the state's no-call program). The regulation and safety section includes weights and measures inspection staff that 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, education, training and technical support to the Department's weights and measures staff. These staff are located throughout the state, but report to central office staff. The Bureau of Trade Practices, which has a total of 75.77 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). The bill would transfer 34.5 positions, which is an approximately 25% staff reduction to DATCP's Division of Trade and Consumer Protection. As discussed later in the paper, DATCP has identified the 13.15 consumer information center positions, 21.05 of the 23.8 regional and satellite office positions, and 0.3 Bureau Director position as the positions that would likely be eliminated from the Department under the bill.

7. In 2004, DATCP received 13,987 written complaints, 5,306 of which were resolved through mediation, returning an estimated \$5.1 million to consumers. In 2003, approximately \$2 million was returned to consumers through mediation. Also in 2004, DATCP's consumer protection efforts led to about \$1.2 million in fines and forfeitures that were deposited into the common school fund (this amount was \$2.4 million in 2003), and \$1.6 million in court ordered restitution to

consumers (\$0.8 million in 2003).

8. In 2004, DATCP referred 118 cases for enforcement. Of these, a total of 66 cases were filed, 42 of which were handled by district attorneys, 13 by DOJ, seven by the federal government, and four by DATCP.

9. 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 2004, DATCP's consumer protection web-site received over 138,000 hits, and over 1,800 of the 13,987 complaints received by DATCP in 2004 were received by email.

10. DATCP's Bureau of Consumer Protection's primary role is to enforce more than 50 consumer protection statutes and rules. In this endeavor, the Bureau relies significantly on its administrative rules. These 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.

11. DATCP uses a program of education, prevention, mediation and enforcement to maintain compliance with DATCP rules. The Bureau's education and information efforts attempt to give consumers and businesses the tools to protect themselves and compete fairly. Bureau prevention efforts include providing background information on businesses requested by consumers, and activities such as conducting surveys and investigations to ensure the safety of products on the market. Bureau mediation efforts aid consumers and provide information about activities in the marketplace to Bureau enforcement staff. Finally, when necessary, enforcement efforts by the Bureau allow it to ensure compliance with consumer protection laws, and ensure a healthy marketplace for both the buyer and the seller.

12. 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.

13. DATCP's consumer protection philosophy is that the marketplace works when consumers are provided with information that is truthful, and is presented in a way that is fair to both buyers and competing businesses. To that end, the Bureau of Consumer Protection enforces the fraudulent representations law and numerous rules that are intended to prohibit trade practices that are unfair.

Consumer Protection in DOJ

14. During 2002-03 and 2003-04, a total of 174 consumer protection cases were either referred to, or developed by, DOJ's consumer protection unit. Of this total, 115 cases were referrals from other state agencies as follows: (a) DATCP referred 87 cases; (b) the Public Service

Commission referred 26 cases; and (c) the Department of Financial Institutions referred two cases. The remaining 59 cases were developed internally by DOJ. Of these latter cases, 34 were multi-state in nature and 25 were Wisconsin-specific.

15. DOJ's consumer protection unit completed 54 significant consumer protection cases during the 2002-03 and 2003-04 fiscal years. These cases included investigations, litigation, and negotiated settlements. DOJ deems these cases significant based on the seriousness of the violation or the amount of restitution or other remedy provided. The monetary recovery from these cases totaled \$16,167,100, which includes \$12,414,500 in restitution.

16. In addition to these cases, at least 90 other matters were closed by the consumer protection unit 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.

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

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

18. 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 their incumbents, were transferred from DOJ to DATCP. As opposed to the Governor's recommendation to transfer most of DATCP's consumer protection responsibilities and positions to DOJ, 2003 Act 33 (the 2003-05 budget act) eliminated 13.35 positions and associated funding from DATCP. Under the current bill, the remaining 34.5 consumer protection positions (which includes 6.5 telephone solicitation positions) and associated funding would be transferred from DATCP to DOJ. Under the bill, there would be no net reduction in positions, and expenditure authority would be increased by \$175,000 PR annually (a total of \$350,000 over the biennium).

19. DOJ has not yet determined what positions would be created (and what positions would be transferred from DATCP) under the bill. As discussed earlier, the Governor's intent is 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 34.5 positions granted to DOJ under the bill would be new positions. The following table depicts the positions that DATCP has identified as the most likely to be eliminated were the consumer protection transfer provisions in the bill adopted. This would likely correspond with the elimination

of DATCP's consumer information center (13.15 positions), all but 2.75 of the regional and satellite office positions (21.05 of 23.8 positions), and 0.3 Bureau Director position.

<u>Position Title</u>	<u>Number</u>
Consumer Protection Specialist	13.00
Consumer Protection Investigator	11.80
Program Assistant	5.15
Consumer Protection Supervisor	2.25
Consumer Complaint Supervisor	1.00
Program and Planning Analyst	1.00
Bureau Director	<u>0.30</u>
Total	34.50

20. In the past, the agencies have had potentially conflicting views as to the administration of the consumer protection functions by the state. DATCP has stated that its primary statutory mission is to identify and prevent unfair business practices, not to directly represent individual consumers. However, DATCP 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.

21. As a result, it could be argued these agencies sometimes work at cross-purposes in carrying out the consumer protection function. Further, 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.

22. It could be argued that the consumer protection transfers and cuts between these two agencies (12.8 FTE deleted under 1995 Act 27, 13.35 FTE under 2003 Act 33) have negatively impacted consumer protection in the state by reducing the resources available to investigate and pursue consumer protection complaints. However, agency surveys indicate that consumers have generally been satisfied with the current consumer protection duties of the two agencies and there has been limited public demand for changes in consumer protection administration at the state level. Therefore, the Committee could consider maintaining current law.

23. Further, as discussed earlier, the bill would transfer the authority for 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 promulgated under the listed statutes to DOJ, even if they 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.

24. 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. Providing an expanded consumer protection function at Justice (with additional 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.

25. 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, when the Department commenced the telephone solicitation program, DATCP used 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.

Regional Offices

26. DATCP utilizes three regional offices and one satellite office in its consumer protection efforts. Staff located at these offices 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. These offices are located in Green Bay, Madison and Wauwatosa, with the satellite office located in Eau Claire. 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.

27. In response to consumer protection reductions in 2003 Act 33 (the 2003-05 biennial budget act), DATCP restructured its regional consumer protection offices. 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 23.8 staff (38% of total Bureau of Consumer Protection staff).

28. Currently, DATCP maintains two separate regional offices and the satellite office: Green Bay (6.5 FTE); Wauwatosa (8.0 FTE); and Eau Claire (2.5 FTE). Further, the Madison regional office (6.8 FTE) is located at the Department's central office. Under the bill, 21.05 regional office positions would likely be eliminated or transferred to DOJ, leaving 2.75 regional positions in DATCP. All of these positions are located in DATCP's main office in Madison, and include 2.0 consumer protection investigators and 0.75 consumer protection investigator supervisor. As a result, no staff that are currently located outside of Madison would remain under AB 100.

Therefore, DATCP would likely close all three of the regional and satellite offices.

29. 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 \$29,700 annually), and the Eau Claire and Wauwatosa offices are rented from private entities. The Eau Claire satellite office's current lease expires July 1, 2007, with an optional five-year renewal, and has an annual cost of \$33,600. The Wauwatosa office's current lease expires May 31, 2007, with two optional one-year extensions at the state's discretion. Rent for this office is \$43,700 annually. It appears unlikely that the state would be able to obtain a release from either the Eau Claire or Wauwatosa lease.

30. Regarding the state-owned office space in Green Bay, DOA is responsible to ensure that all space in DOA owned and state lease facilities is kept in productive service to the maximum extent possible and to assist state agencies in reducing facility costs. DATCP pays approximately \$29,700 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 rent 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.

31. As a result, the Department could face lease costs of \$107,000 in 2005-06 and \$73,700 in 2006-07. Thus, even if DATCP closes two or all three of the regional offices, it may still face lease costs of \$180,700 over the biennium for the regional offices.

32. In the past, Justice has maintained that savings could be realized if the state made greater efforts to centralize the administration of consumer protection in Madison. However, were the bill adopted, DOJ officials indicate they would examine the possibility of continuing one or more regional offices through consolidation with existing DOJ offices.

33. 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 (email, 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.

34. The bill provides no funding to cover any one-time costs incurred by DOJ with the transfer of consumer protection functions. Such one-time costs would likely include moving, remodeling, and information technology costs. If the Committee approved the transfer of consumer protection under the bill, DOJ would be required to reallocate base level resources to fund any additional costs or request a supplementation from the Committee under s. 13.10 of the statutes (Joint Finance quarterly meeting). Alternatively, the Committee could deny the proposed transfer, thereby eliminating the need for these one-time costs.

35. 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 must also impose a consumer protection assessment equal to 25% of the fine or forfeiture. This revenue is then credited to 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 \$175,000 in expenditure authority from this appropriation. Current law restricts revenues credited to 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 of approximately \$3.7 million the last two years, revenues deposited into this account have totaled \$77,000 in 2003-04 and \$31,000 in 2004-05, through March.

ALTERNATIVES

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. Transfer \$1,354,600 GPR and 28.0 GPR positions in 2005-06, and \$1,806,200 GPR and 28.0 GPR positions in 2006-07 from DATCP to DOJ for the administration of these consumer protection responsibilities and functions. Further, transfer \$500,200 PR and 6.5 PR positions in 2005-06 and \$666,900 PR and 6.5 PR positions in 2006-07 from DATCP to DOJ for the administration and maintenance of the telephone solicitation (no-call) program. In addition, create a PR annual consumer protection, information, and education appropriation under DOJ and authorize DOJ expenditures of \$175,000 PR annually from this appropriation.

2. Maintain current law (administration of most consumer protection functions would remain in DATCP).

Alternative 2	PR
2005-07 FUNDING (Change to Bill)	- \$350,000

Prepared by: Paul Onsager and Christopher Pollek