



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #144

Consumer Protection Reductions (Agriculture, Trade and Consumer Protection)

[LFB 2009-11 Budget Summary: Page 92, #13]

CURRENT LAW

The Bureau of Consumer Protection in the Department of Agriculture, Trade and Consumer Protection (DATCP) has investigation, enforcement and rule-making responsibilities related to: (a) product safety; (b) telecommunications, including administration of the state's telemarketer no-call registry; (c) unfair trade practices; and (d) fraudulent advertising and representations. In addition to services provided out of DATCP offices in Madison, the Bureau operates regional offices in Eau Claire, Green Bay and Wauwatosa. Madison offices include the Office of Privacy Protection (OPP), created in 2006 and funded by both GPR and a payment from the Office of the Commissioner of Insurance (OCI). The OPP provides education and assistance to consumers and victims of identity theft, and it works with law enforcement to investigate complaints of identity theft. DATCP is currently authorized \$5,924,700 in annual funding with 68.6 positions.

GOVERNOR

Delete \$529,500 GPR in 2009-10 and \$833,500 GPR in 2010-11 with 10.0 positions from consumer protection operations.

DISCUSSION POINTS

1. The administration's intent is to delete GPR funding and positions from consumer protection to benefit the general fund balance, while preserving DATCP resources for other vital program responsibilities. Although it could be argued that consumer protection responsibilities are

important to the public, it may also be that reductions in areas such as food safety or animal health could be more detrimental to the public by comparison.

2. The Bureau of Consumer Protection received 231,474 contacts from consumers in 2008. These contacts include both general inquiries and complaints, with about 138,000 being received by phone and about 92,000 coming in by e-mail or other means. The Bureau opened 15,903 formal (written) complaints, including 745 DATCP-initiated complaints. The top 10 written complaint issues are listed in Table 1.

TABLE 1

Consumer Protection Complaints – 2008

<u>Rank</u>	<u>Product</u>	<u>Complaints</u>	<u>Formal Contacts</u>
1	Telemarketing (No-Call)	2,225	2,542
2	Landlord/Tenant	1,646	15,095
3	Telecommunications	1,328	1,807
4	Home Improvement	1,163	3,216
5	Satellite Dish	979	231
6	Internet Service Provider	570	91
7	Credit Cards	537	819
8	Gasoline/Non-Heating Fuels	519	300
9	Motor Vehicle Repair	517	569
10	Travel/Tourism	509	630
--	All Other Products	<u>5,910</u>	<u>206,174</u>
	Total	15,903	231,474

3. Of all the complaints opened by the Bureau, approximately one-quarter related to alleged no-call list (telemarketing) violations or other telecommunications practices. Approximately 20% of complaints require some form of investigation, and the Bureau performed 246 in-depth investigations in 2008. The Department indicates that most written complaints are resolved by mediation or by providing information to consumers on the rights and responsibilities of the parties involved in a dispute. Mediated cases may include some investigation before or after a case or series of related cases is resolved. If mediation fails to resolve a complaint, and investigation shows a need for further action, DATCP may pursue various enforcement actions against violators. These actions include: (a) warning letters (1,649 issued in 2008); (b) assurances of compliance, under which the alleged violator agrees to comply with fair business practices, and may face stricter consequences for subsequent violations (84 secured in 2008); (c) special orders to bar practices not specifically covered by administrative rules but which are ruled unfair by an independent examiner (13 cases in 2008); and (d) formal prosecutions by district attorneys, the Department of Justice, U.S. attorneys, or other agencies (106 cases referred in 2008, with 39 cases filed in court).

4. The Bureau's work confers monetary benefits to state residents through both Bureau-mediated refunds and court-ordered restitution to consumers. Fines, forfeitures and surcharges assessed by courts against violators of consumer protection laws are also deposited to various state funds. Table 2 shows the estimated amounts since 2003. DATCP reports that consumers who contacted the Bureau's consumer protection hotline with questions or alleged violations saved an average of \$968 in 2008. An annual follow-up survey indicated these contacts had a 90% satisfaction rate.

TABLE 2

Consumer Protection Monetary Recoveries

<u>Year</u>	<u>Court-Ordered Restitution</u>	<u>Consumer Refunds</u>	<u>Penalties</u>	<u>Total</u>
2003	\$809,200	\$2,009,300	\$2,441,600	\$5,260,100
2004	1,644,900	5,143,100	1,250,000	8,038,000
2005	410,300	1,409,300	3,611,200	5,430,800
2006	276,500	14,443,600	412,600	15,132,700
2007	1,551,900	6,946,100	930,500	9,428,500
2008	181,500	2,289,500	2,053,900	4,524,900

5. The authorized funding and positions under the bill for the Bureau of Consumer Protection are shown in Table 3. Changes in funding and positions from the base reflect: (a) standard budget adjustments; (b) the transfer of \$420,000 GPR and 6.0 positions associated with telecommunications complaints and investigations from GPR to PR; (c) the 10.0 GPR position reduction discussed in this paper; (d) expenditure reductions recommended by the administration to improve the general fund balance; and (e) minor position realignments within the Department.

TABLE 3

Consumer Protection Funding and Positions -- AB 75

<u>Fund</u>	<u>Base</u>	<u>Positions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>Positions</u>	<u>Position Change</u>
GPR	\$2,446,100	35.0	\$1,642,000	\$1,338,700	19.0	-16.0
PR	2,822,800	27.6	3,436,800	3,436,800	33.8	6.2
SEG	<u>655,800</u>	<u>6.0</u>	<u>787,200</u>	<u>787,200</u>	<u>6.0</u>	<u>0.0</u>
Total	\$5,924,700	68.6	\$5,866,000	\$5,562,700	58.8	-9.8

6. The Bureau's staffing levels for the second year of recent biennia are shown in the attachment. Under the bill, total adjustments to Consumer Protection would result in 58.8 positions being allocated to the Bureau. Since 1994, DATCP reports the Bureau has operated with a high of 77.05 positions, which occurred in 2001-02 following the creation of the no-call telemarketing list

and associated administrative positions. The Bureau's lowest staffing level since 1994 was 51.5 positions in 1993-1994, which was before the consolidation of certain Department of Justice consumer protection functions in DATCP.

7. DATCP and the administration have not indicated where specific positions reductions would be made. The 10.0 GPR positions to be eliminated would come from a total of 35.0 GPR positions in the Bureau. These positions are distributed as follows: (a) 13.0 in the central office, (b) 4.0 in the Eau Claire regional office; (c) 6.5 in the Green Bay regional office; (d) 8.0 in the Wauwatosa regional office; (e) 2.0 positions with the weights and measures program; and (f) 1.5 positions with the Office of Privacy Protection. Central office positions include: (a) 3.75 in the consumer information center, which receives phone complaints by consumers, responds to violations of consumer protection laws by out-of-state businesses, and provides educational services to consumers and informational services to the Department; (b) 4.65 for the consumer protection hotline; (c) 3.55 on the investigation unit; (d) 0.75 for a bureau director; and (e) 0.3 for other administration.

8. As shown in Table 3, the Bureau of Consumer Protection is funded by PR and SEG sources in addition to GPR. A weights and measures PR appropriation has a base expenditure authority of \$1,296,400 with 13.05 positions, and a PR appropriation for regulation of mobile air conditioners and ozone-depleting substances has a base expenditure authority of \$501,800 with 6.05 positions. The Bureau also has base authority of \$655,800 petroleum inspection SEG with 6.0 positions. The no-call list administration PR appropriation has a base expenditure authority of \$735,300 with 7.0 positions.

9. The Committee could consider adopting the Governor's recommendation for deleting 10.0 GPR positions and associated funding (Alternative 1). The proposed reductions may result in DATCP fielding and responding to fewer consumer contacts. Although one may assume that local law enforcement could field general complaints, or agencies such as the Public Service Commission could respond to specific utility-related complaints, DATCP reports that other state agencies and local law enforcement already refer numerous complaints to the Bureau each year.

10. It may also be that the Bureau could absorb the recommended reductions with no layoffs required of existing personnel. The Bureau is currently holding 4.8 GPR positions vacant. In addition, the Bureau is holding 4.5 PR positions vacant, for a total of 9.3 vacant positions. DATCP reports that it may be able to convert certain positions to non-GPR funding to avoid layoffs, provided that the responsibilities of current GPR positions align with the non-GPR vacancies. Department officials, however, also report that no decisions on such conversions have been made, and that converting funding for similar positions would occur after a review of consumer protection programs to focus available resources on the most critical program areas.

11. Given the current vacancies in the Bureau, the Committee could consider restoring \$21,300 GPR in 2009-10 and \$47,500 GPR in 2010-11 with 0.7 GPR positions (Alternative 2). This would delete the 9.3 positions currently vacant, and allow DATCP to adjust positions within the Department at its discretion. This may also result in no layoffs in the Bureau.

12. Alternatively, 5.2 GPR positions could be retained, with the 4.8 currently vacant GPR positions in the Bureau being deleted (Alternative 3). This alternative would restore \$176,800 GPR in 2009-10 and \$353,100 GPR in 2010-11.

13. The Committee could consider retaining some level of staffing, but consider alternative funding sources, including petroleum inspection fund SEG and no-call telemarketer PR.

Weights and Measures

14. The segregated petroleum inspection fund is funded by the petroleum inspection fee. Under Chapter 168 of the statutes, the Department of Commerce is responsible for inspecting petroleum products brought in to the state to assure that the product meets minimum product grade and environmental specifications. The grade specifications are established by administrative rule and are based on nationally recognized standards, specifications and classifications. A petroleum inspection fee is imposed on all of the inspected petroleum products. The Department of Revenue (DOR) collects the fee at the same time it collects the motor vehicle fuel tax at petroleum company terminals. The current fee is 2¢ per gallon, and is collected on approximately 3.7 billion gallons of gasoline, diesel and heating oil inspected annually. The petroleum inspection fund also receives revenues from inspection and plan review fees for bulk petroleum tanks, and interest income on the fund balance.

15. The Committee could consider restoring \$67,900 annually with 1.0 position from petroleum inspection SEG (Alternative 4). This would result in DATCP having 7.0 petroleum inspection SEG positions in 2009-11. DATCP currently has 6.0 petroleum inspection positions. DATCP reports that weights and measures personnel devote time to petroleum-related inspections, such as those for gasoline pumps and other fuel delivery devices, equivalent to 6.0 full-time equivalent (FTE) annually. Further, by moving an existing GPR position to SEG, a full year of GPR savings can be realized. This would be an additional \$30,500 GPR reduction in 2009-10. The bill would provide six months of funding for the deleted GPR staff in 2009-10.

16. Consumer complaints related to heating fuel and other petroleum products have averaged approximately 557 complaints per year since 2005, out of an average of 15,000 complaints annually over the same time. This is approximately 3.7 percent of all complaints. Because the 6.0 petroleum inspection SEG positions are primarily associated with weights and measures inspections, and not consumer complaints, it may be appropriate to retain 2.0 positions from petroleum inspection SEG at a cost of \$135,800 annually (Alternative 5). These positions would constitute 3.4% of the Bureau's staffing under the bill.

Telemarketing No-Call List

17. The telemarketing no-call list was created in 2001 Act 16 to register firms that engage in telemarketing, as well as create a registry for households that did not wish to receive calls from the registered firms. Mobile phones were made eligible to register for the no-call list under 2007 Act 226. As of May, 2009, the no-call list contained 1,504,000 phone numbers, including

481,300 mobile phones. A consumer registration lasts for two years, and consumers are not charged for registration. Additionally, 561 registered telemarketing firms are registered with DATCP.

18. The program revenue appropriation created for administration of the no-call program currently includes 7.0 positions, of which 6.0 are associated with program administration, and 1.0 is a program and policy analyst in the central office. The Department contracts for maintenance of the list of phone numbers to be excluded from telemarketing calls, but performs other administrative duties for the no-call program, including telemarketer registration, consumer complaints related to telemarketing and enforcement of program rules and regulations.

19. Under the program, telemarketers pay initial fees of \$700 for registration and \$500 each year thereafter. Telemarketing firms must also pay \$75 per phone line used for telemarketing, except the firm's first three phone lines are exempt. Firms must also pay \$25 for every e-mail or compact disc copy of the no-call list sent to it, or \$1,000 for each hard copy of the list. Fees are capped at \$20,000 annually, and firms may make payments quarterly. Fees are set in administrative rule ATCP 127.

20. Under the rule, DATCP must waive one or more quarterly payments if the estimated end-of-fiscal-year balance of the appropriation exceeds estimated expenditures for the year by 15% or more, or approximately \$125,000 currently. The rule specifies a reduction is to apply to all registered firms, and is to be in a uniform percentage reduction of the amount the registrant would normally pay. DATCP last waived a quarterly payment in 2006-07. No quarterly waiver is planned for 2008-09.

21. 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. However, DATCP has continued to maintain balances well in excess of the amounts specified under the ruling. The Department has not begun a process to revise the administrative rule to set lower fees.

22. Funds have been lapsed from the no-call appropriation to the general fund on several occasions, including \$2,038,000 in 2007-08 and \$83,400 planned for 2008-09. The administration also plans to lapse approximately \$2.3 million from the appropriation balance in 2009-11, consisting of \$1,297,300 in 2009-10 and \$993,300 in 2010-11.

23. The condition of the no-call list appropriation is shown in Table 4. The program initially was expected to generate revenues of \$550,000 annually, but revenues from a full year of collections exceeded \$2 million in 2007-08. For 2008-09, DATCP has collected fees of \$1.76 million through April 30. Further, the last quarterly installment for the fiscal year is due June 1 for registrants with outstanding payments. However, DATCP believes minimal revenue will be received from the June 1 quarterly payment. Officials indicate economic conditions have affected

revenues, and total 2008-09 revenues are estimated at \$1.84 million.

TABLE 4

No-Call List Appropriation Condition

	Actual <u>2007-08</u>	Estimated <u>2008-09</u>	AB 75 <u>2009-10</u>	AB 75 <u>2010-11</u>
Opening Balance	\$1,422,800	\$631,500	\$1,663,000	\$1,424,500
Revenues	2,057,400	1,840,000	1,900,000	1,900,000
Expenditures	810,700	725,100	841,200	841,200
Transfer to General Fund	<u>2,038,000</u>	<u>83,400</u>	<u>1,297,300</u>	<u>993,300</u>
Closing Balance	\$631,500	\$1,663,000	\$1,424,500	\$1,490,000

24. Due to the substantial balances in the no-call list appropriation, the Committee could consider retaining 4.2 positions under no-call telemarketer PR. The estimated cost would be \$285,200 annually (Alternative 6). This would set the expenditure authority for the no-call appropriation at \$1,126,400 annually. Further, \$128,000 GPR in 2009-10 could be deleted.

25. Telemarketing firms that pay the fees may oppose increasing no-call PR staffing, and may argue that the transfer of GPR staff to PR is an improper use of the fee revenues. However, telemarketing complaints since 2004 have averaged 2,800 per year, or 19% of an average 14,800 complaints annually over the same time frame. Transferring 4.2 positions to the no-call administration would authorize 11.4 positions for the appropriation, which would be approximately 19% of the positions authorized for the Bureau. One could therefore argue that transferring these positions to no-call administration PR would amount to funding a similar proportion of positions from this source as the Bureau handles annually in telemarketing complaints.

26. To date, DATCP has not revised rule provisions or implemented the 2004 court decision on the no-call appropriation balance by substantially reducing fees to bring revenues in line with authorized expenditure levels. Therefore, the Committee could consider setting telemarketing registry fees in the statutes. If annual expenditures of \$1.1 million were authorized, the appropriation could operate with revenues of approximately \$1.25 million or less, which would be at least a 33% fee reduction. Although revenues would exceed expenditures in the 2009-11 biennium, the expenditure levels would be expected to increase in subsequent biennia as the costs of the positions authorized for the appropriation increase. Table 5 shows the effect of this option (Alternative 7). The table includes the general fund transfers planned by the administration. Further, the balance at the close of 2008-09 could also allow for an additional transfer to the general fund of perhaps \$100,000 or more to maintain a June 30, 2011, balance within the current 15% of annual expenditures limit (approximately \$165,000).

TABLE 5

No-Call Condition with Additional 4.2 Positions and Fee Reduction

	Actual <u>2007-08</u>	Estimated <u>2008-09</u>	Estimated <u>2009-10</u>	Estimated <u>2010-11</u>
Opening Balance	\$1,422,800	\$631,500	\$1,663,000	\$1,139,300
Revenues	2,057,400	1,840,000	1,900,000	1,260,000
Expenditures	810,700	725,100	1,126,400	1,126,400
Transfer to General Fund	<u>2,038,000</u>	<u>83,400</u>	<u>1,297,300</u>	<u>993,300</u>
Closing Balance	\$631,500	\$1,663,000	\$1,139,300	\$279,600

27. An across-the-board 33% reduction for registered telemarketing firms could be considered for fees assessed with the license year beginning December 1, 2010. Maximum fees could be: (a) \$465 for an initial annual registration (\$700 currently); (b) \$335 for an annual registration in a second or subsequent year (\$500 currently); and (c) \$50 for each phone line over three that is used in telemarketing activities (\$75 currently). Phone number lists, which generally do not accumulate charges in the manner that registrations do, could remain in administrative rule. (These fees are \$25 for each e-mail or compact disc copy and \$1,000 for each hard copy.) Total maximum annual fees, which are \$20,000 currently, could also be set at \$13,500. The Committee could authorize DATCP to continue collecting fees quarterly (Alternative 7). Further, it could be specified that DATCP reduce or waive fees if the appropriation balance exceeds 15% of annual expenditures (Alternative 7.a).

28. The Committee could also consider deleting the Governor’s recommendation, and restore 10.0 positions with associated funding (Alternative 8). Due to the varied nature of consumer protection complaints and the Bureau’s responsibilities for product safety, weights and measures inspection and enforcement, one could argue that the Bureau of Consumer Protection provides a broad public service that should be funded by GPR.

ALTERNATIVES

1. Adopt the Governor’s recommendation to delete \$529,500 GPR in 2009-10 and \$833,500 GPR in 2010-11 with 10.0 positions from consumer protection operations.

2. Restore \$21,300 GPR in 2009-10 and \$47,500 GPR in 2010-11 with 0.7 position. (This would delete 9.3 positions, to correspond to the current vacancies in the Bureau of Consumer Protection.)

ALT 2	Change to Bill	
	Funding	Positions
GPR	\$68,800	0.70

3. Restore \$176,800 GPR in 2009-10 and \$353,100 GPR in 2010-11 with 5.2 positions.

ALT 3	Change to Bill	
	Funding	Positions
GPR	\$529,900	5.20

4. Restore \$67,900 annually with 1.0 position from petroleum inspection fund SEG. Further, delete \$30,500 GPR in 2009-10.

ALT 4	Change to Bill	
	Funding	Positions
GPR	- \$30,500	0.00
SEG	<u>135,800</u>	<u>1.00</u>
Total	\$105,300	1.00

5. Restore \$135,800 annually with 2.0 positions from petroleum inspection fund SEG. Further, delete \$60,900 GPR in 2009-10.

ALT 5	Change to Bill	
	Funding	Positions
GPR	- \$60,900	0.00
SEG	<u>271,600</u>	<u>2.00</u>
Total	\$210,700	2.00

6. Restore \$285,200 annually with 4.2 positions from no-call program revenue. Further, delete \$128,000 GPR in 2009-10.

ALT 6	Change to Bill	
	Funding	Positions
GPR	- \$128,000	0.00
PR	<u>570,400</u>	<u>4.20</u>
Total	\$442,400	4.20

7. Specify the following fees for telephone solicitors with the license year beginning December 1, 2010: (a) \$465 for an initial annual registration (\$700 currently); (b) \$335 for an annual registration in a second or subsequent year (\$500 currently); (c) \$50 for each phone line over three that is used in telemarketing activities (\$75 currently). Specify that total maximum annual fees are \$13,500 per registrant. Specify that DATCP may collect fees in one or more installments. (DATCP currently collects quarterly payments).

ALT 7	Change to Bill	
	Revenue	
PR	- \$640,000	

a. In addition, specify that DATCP uniformly lower fees or waive a portion of payments for the following year if revenues exceed expenditures by 15% or more in a fiscal year.

8. Delete provision. (This would restore all 10.0 GPR positions.)

ALT 8	Change to Bill	
	Funding	Positions
GPR	\$1,363,000	10.00

Prepared by: Paul Ferguson
Attachment

ATTACHMENT

Consumer Protection Positions by Appropriation

<u>Appropriation</u>	<u>Fund Source</u>	<u>2000-01</u>	<u>2002-03</u>	<u>2004-05</u>	<u>2006-07</u>	<u>2008-09</u>	<u>2010-11</u>
Auto Repair Regulation		6.00	--	--	--	--	--
General Consumer Protection		38.10	40.35	31.00	31.50	31.50	15.50
Weights and Measures		6.50	6.50	2.50	2.00	2.00	2.00
Office of Privacy Protection		--	--	--	--	1.50	1.50
GPR Subtotal	GPR	<u>44.60</u>	<u>46.85</u>	<u>33.50</u>	<u>33.50</u>	<u>35.00</u>	<u>19.00</u>
Mobile Air Conditioner/Ozone	PR	5.40	5.90	5.90	5.90	6.05	6.05
Weights & Measures	PR	12.55	11.55	11.55	12.70	13.05	13.05
Telecommunications Utility Trade Practices	PR	--	--	--	--	--	6.00
Weights & Measures-Petroleum Inspection Fund	SEG	4.00	6.00	6.00	6.00	6.00	6.00
No-Call Administration	PR	--	5.50	5.50	6.50	7.00	7.20
Office of Privacy Protection (DFI)	PR	--	--	--	3.00	--	--
Office of Privacy Protection (OCI)	PR	--	--	--	--	1.50	1.50
Total - Bureau of Consumer Protection		72.55	75.80	62.45	64.60	68.60	58.80