

**Consumer Protection Programs**

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# Consumer Protection Programs

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# Consumer Protection Programs

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

The paper is divided into four sections: (1) the statutory authority governing consumer protection activities of DATCP and DOJ; (2) the consumer protection program and operations of DATCP; (3) the consumer protection program and operations of DOJ; and (4) appendices which briefly describe the consumer protection activities of other state agencies (Appendix I), the trade and consumer protection administrative rules of DATCP (Appendix II), a description of Wisconsin's minimum markup law (Appendix III), assurances of compliance secured by DATCP for cessation of certain practices (Appendix IV), and select consumer protection cases prosecuted by DOJ (Appendix V).

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## Consumer Protection Statutory Authority

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Prior to the 1995 biennial budget act, both DATCP and DOJ were provided broad authority under state trade practice statutes to regulate and prosecute fraudulent advertising and representations and unfair trade practices. DATCP was also provided authority to regulate product safety. On

July 1, 1996, most of the state's consumer protection authority was consolidated in DATCP.

Prior to 1996, the statutes authorized either or both of the Departments to enforce violations of many consumer protection laws, including those related to: (1) fraudulent drug and food advertising; (2) the substantiation of energy savings or safety claims; (3) fitness center and weight reduction contracts; (4) unfair mail order sales practices; (5) motor vehicle rust-proofing warranties; (6) time share and campground ownership; (7) prepaid maintenance liens; (8) unsolicited prize notices; (9) pay-per-call or "900" telephone number abuses; (10) ticket refunds; (11) cable television subscriber rights; (12) charitable solicitation; (13) dating services contracts; (14) telecommunications services; (15) the sale of cleaning agents and water conditioners containing phosphorous; (16) products containing ozone-depleting substances. Rule-making authority, enforcement authority or both now generally rests with DATCP for these sections, and the Department can bring actions in state courts with the assistance of local district attorneys. The sections under which DOJ and other agencies have enforcement authority include those pertaining to pay-per-call abuses, charitable solicitation and telecommunications services.

DATCP has rule-making authority, enforcement authority or both under other consumer protection provisions added since 1996, including: (1) prohibitions against using consumer loan information for solicitation; (2) allowing consumers via security freezes to restrict access to personal credit reports; (3) privacy of consumer information held by tax preparers; (4) requiring businesses with a statewide franchise for video services to provide sufficient consumer access; and (5) prohibition of price gouging during emergencies.

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

### **Fraudulent Advertising and Representations**

DATCP, and DOJ after consulting with DATCP, may commence an action in circuit court under s. 100.18 of the statutes, to prohibit advertising and other representations that are "untrue, deceptive or misleading." This statute, originally adopted in 1913 and often referred to as the Fraudulent Representations Law, prohibits fraudulent advertising or representations made by businesses. Specific actions which are prohibited under this statute include: (1) inadequate price or condition-of-sale disclosures related to combination sales, which are sales conditioned upon the purchase of another product or service; (2) false representation by a business to be a private party; (3) deceptive close-out sales; (4) failure of business owners to properly identify their business; (5) inadequate gasoline price disclosures; (6) advertising made without a good or service being offered to the consumer, known as bait-and-switch advertising; (7) misrepresentation of local energy resource systems such as wind or solar power; (8) deception in the use of terms such as wholesaler or manufacturer for price advertising; and (9) misrepresentation as a local business if a business operates outside a community or region.

DATCP, district attorneys and DOJ, after consulting with DATCP, may commence actions in circuit court to bring an action on behalf of the state and receive a temporary or permanent injunction. An injunction is an order issued by a circuit court to restrain a business' untrue, deceptive or misleading practices. In addition to halting the

fraudulent actions for most infringements, the court can include in an injunction a civil forfeiture of not less than \$50 nor more than \$200 for each violation and require restitution be paid to the victim of the business' fraudulent activities. Businesses found to be misrepresenting themselves as local or regional may be ordered to forfeit not less than \$100 and not more than \$10,000. Bait-and-switch advertising is punishable by up to \$10,000 in fines and up to nine months in jail.

DATCP, any district attorney and DOJ, after consulting with DATCP, have authority to commence an action to recover a civil forfeiture to the state for each violation of a court-ordered injunction issued under the state's fraudulent advertising statutes. For each violation of an injunction, the DOJ or a district attorney may bring an action to recover additional civil forfeitures of not less than \$100 and not more than \$10,000.

In lieu of an injunction, DATCP or any district attorney may attempt to obtain a voluntary assurance of discontinuance of fraudulent or deceptive consumer practices from the businesses involved in such activities. Such assurances are not filed in court and may take the simple form of a letter or the more official form of a contract. In any case, the assurance is made in writing and specifies that, from that point forward, the conduct in question will be stopped. A voluntary assurance differs from an injunction in that such agreements are not admissible as evidence of a previous violation should the business later be brought to court on the same charges of fraudulent representation. However, a violation of the assurance is treated as a violation of state fraudulent representation statutes and subject to the remedies and penalties associated with such violations. Violations of voluntary assurances, however, do not carry possible additional civil penalties as injunction violations do.

Although DATCP has authority to bring actions, DATCP requests that court actions be taken by district attorneys or the Department of Justice due to the general role both offices have in representing the state in court.



## **Unfair Trade Practices**

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

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

### *Administrative Rules*

Generally, DATCP exercises its rulemaking authority to govern unfair business practices that have become common. Appendix II lists DATCP rules promulgated under the general unfair trade practices statute. The DATCP Consumer Protection Bureau administers these rules.

The 1995-97 budget act eliminated DOJ's rulemaking authority in the area of consumer protection. However, in areas related to unfair business practices where no DATCP rule exists, DOJ may: (1) file a written complaint with DATCP relating to allegations of unfair methods of competition in business or unfair trade practices in business or both; (2) require DATCP to proceed, after proper notice, to the hearing and adjudication of the allegations; (3) permit a representative of DOJ, designated by the Attorney General, to appear before DATCP in such proceedings; and (4) entitle DOJ to judicial review of the decisions and orders of DATCP.

## *Special Orders and Injunctions*

The unfair trade practices statute also authorizes DATCP to issue special orders enjoining unfair practices and requiring a business to adopt business practices specified by the Department. The special order authority represents significant administrative power to prohibit business practices not otherwise regulated by specific statutes or rules. A special order applies to a single party named in the order. However, the Department may follow special orders with the adoption of administrative rules affecting the entire industry if the unfair practice is found to be common. In calendar year 2007, the Department issued nine special orders.

### *Penalties*

DATCP or any district attorney has authority to commence an action in the name of the state to recover civil forfeitures for each violation of a DATCP rule or order issued under the state unfair trade practices statutes. DOJ, after consulting DATCP or at the request of DATCP, has authority to commence an action to recover a civil forfeiture for each violation of a court-ordered injunction issued under the state's unfair trade practices statutes. However, DOJ does not have the authority to recover a civil forfeiture for violation of an injunction issued under a DATCP rule or order.

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

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

### **Telecommunications Services**

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

The statutes specifically prohibit advertising and sales representations that in any manner make false, misleading or deceptive statements or representations in regard to the provision of telecommunication services, including the rates, terms or conditions for service. In addition, persons may not engage in "negative option billing" or negative enrollment for telecommunication services. That is, a person may not bill anyone for any telecommunication service that was not affirmatively ordered, unless the service is required to be provided by law, by the Federal Communication Commission or by the state Public Service Commission. Further, it is not considered an affirmative request if a person fails to refuse a proposal to provide a telecommunication service. Lastly, a person must provide written confirmation of any services ordered through oral solicitation and a person may not charge a customer for any services a customer has canceled.

DATCP, in consultation with DOJ, has the authority to promulgate rules related to the provision of telecommunication services in the state. ATCP 123 regulates subscription and billing

practices related to cable and telecommunication services provided to consumers primarily for personal, household or family use. DOJ is required to consult with DATCP prior to commencing a court action to restrain, by temporary or permanent injunction, any violation of consumer protection statutes related to telecommunication services. A district attorney, upon informing DATCP, may also commence such actions.

Any person who violates the consumer protection statutes related to telecommunication services shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Such forfeitures are enforced by DOJ, only after consulting DATCP, or by any district attorney, after informing DATCP. Also, persons adversely affected by such violations have claims to appropriate relief and to the recovery of costs and disbursements related to such violations.

### *Telemarketing No-call List*

2001 Act 16 created a program to register telemarketers and prohibit them from calling consumers who had their residential phone number listed on a no-call directory. The 2007-09 budget adjustment act (2007 Act 226) made mobile-phone numbers eligible for the no-call list beginning in June, 2008.

The first no-call list was published on December 1, 2002, and took effect on January 1, 2003. This list contained over one million residential telephone numbers. The list is updated and published quarterly by DATCP. Most telemarketers are prohibited from calling numbers on the list. Violations are punishable by forfeitures of up to \$100 per violation. On December 1, 2008, there were about 1.6 million numbers on the no-call list. DATCP attributes approximately 500,000 listings to new registrations of mobile-phone numbers.

### **Product Safety**

DATCP is also responsible for the identification and regulation of consumer products that may pre-

sent an unreasonable risk of injury to the public. In addition, the Department establishes packaging standards for household products to prevent hazards such as poisoning. Under s. 100.42, DATCP has general authority to ban the sale or distribution of any consumer product determined to present an unreasonable risk or imminent hazard to the public health, welfare or safety. The Department also has specific statutory responsibilities related to several issues, which are listed under "Regulation and Safety Section" under the following description of DATCP's consumer protection program.

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### DATCP Consumer Protection Program

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

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

#### Program Funding and Staffing

DATCP implements its consumer protection duties through the Bureau of Consumer Protection within the Division of Trade and Consumer Protection. Funding is provided from general

purpose revenues (GPR), program revenues (PR) and segregated (SEG) revenues. In 2008-09, the Bureau is authorized \$5,673,700 and 68.6 positions. This includes \$2,353,500 GPR with 35.0 GPR positions, \$2,675,300 PR with 27.6 PR positions, and \$644,900 SEG with 6.0 SEG positions. The Bureau consists of a director and central administrative staff that includes a consumer information center made up of consumer hotline and consumer information staff. The Bureau also operates regional offices in Eau Claire, Green Bay, Madison and Milwaukee. Table 1 categorizes DATCP's consumer protection staff.

**Table 1: DATCP Consumer Protection Staff (2008-09)**

|                               |              |
|-------------------------------|--------------|
| Central Office:               |              |
| Administration and Outreach   | 5.40         |
| Consumer Information Center   | 9.65         |
| Regulation and Safety Section | 23.25        |
| Regional Offices              | <u>30.30</u> |
| <br>Total                     | <br>68.60    |

Bureau of Consumer Protection program revenue derives from various fees: (1) weights and measures inspections; (2) automobile repair shops conducting mobile air conditioner installation, removal or repair work; and (3) a 25% surcharge on fines and forfeitures for consumer protection violations. The bureau uses segregated funding from the petroleum inspection fund for enforcement of the unfair sales act and weights and measures activities related to fuel dispensing facilities.

DATCP also has a Trade Practices Bureau that handles some of the workload related to the Unfair Sales Act and unfair trade practices. The Trade Practices Bureau is primarily concerned with complaints of unfair industry competition and practices, which are "business-on-business" complaints as opposed to "consumer-on-business" complaints. Examples of Trade Practice Bureau programs include regulation of product pricing practices known as minimum markup laws and the dairy producer security program, which attempts

to ensure that dairy, grain, and fruit and vegetable plants and producers have enough financial security in the event of default or other financial pressure to meet their contractual obligations with individual producers. Appendix II contains a list of administrative rules related to trade practices. Appendix III summarizes the state's minimum markup law.

#### *Central Office Staff*

Central office staff totals 38.3 positions, which includes a director and 4.4 administrative and outreach staff, as well as a 0.5 Hispanic and 0.5 Hmong outreach specialist. The remaining 32.9 central office staff members are located within the Bureau's consumer information center, regulation and safety section, and telemarketing no-call list administration.

*Consumer Information Center (CIC).* The CIC consists of a supervisor and 8.65 staff. Included among these staff are two units, the hotline unit and the special projects unit. Hotline personnel are primarily responsible for responding to consumer complaints via the toll-free hotlines, and working with the Department's automated telephone response system, known as an interactive voice response (IVR) system, and complaint tracking database to retrieve information on complaints. Remaining staff also include no-call list administrators for the telemarketing no-call list program.

One of the primary functions of the CIC is to respond to potential violations of the state's consumer protection laws by out-of-state businesses, which have no physical presence in the state. Prior to 1996, DATCP referred most out-of-state complaints to DOJ. Now, the special projects unit staff is responsible for: (1) providing advice; (2) mediating complaints; (3) making recommendations for warnings letters, compliance assurances, or more in-depth investigations; and (4) making referrals for DATCP special orders or to DOJ for formal litigation on out-of-state business activities.

The CIC is also responsible for: (1) education and

compliance activities; (2) market research and trend analysis; and (3) enhancement and maintenance of the automated complaint-tracking system. The center also provides information through the Internet. The Web site contains consumer information, services, fact sheets and publications as well as extensive lists of resource and referral information used by DATCP hotline staff when responding to inquiries and complaints. It also provides links to other Web sites and electronic complaint forms. In 2007, DATCP's consumer protection Web site had approximately 72,400 visitors through August, at which point the Department of Administration took responsibilities for operating and maintaining the server and tracking visitors.

*Regulation and Safety Section.* The Bureau's regulation and safety section enforces a number of laws and Department rules related to environmental regulation of consumer products and product safety as well as providing rulemaking, educational, training and technical support to the Department's weights and measures staff. In 1998, the former environmental and product safety section was combined with the weights and measures technical section to form the regulation and safety section. As part of Bureau restructuring initiated in response to 2003 Act 33 consumer protection reductions, DATCP transferred supervision of weights and measures investigation field staff, who are regionally located throughout the state and work out of their homes, from the regional offices to the regulation and safety section in Madison. This restructuring included the creation of a field supervisor position in the regulation and safety section to oversee these staff. The new combined section consists of a section chief, a supervisor and 21.25 staff, including 15 field inspectors, who carry out Department responsibilities related to the following statutes:

- Labeling of Bedding (s. 100.2095)
- Dry Cell Batteries Containing Mercury (s. 100.27)
- Sale of Detergents Containing Phosphorus (s. 100.28)
- Reductions of Toxics in Packaging (s. 100.285)
- Sale of Nonrecyclable Materials (s. 100.29)
- Labeling of Recycled, Recyclable or Degradable Consumer Products (s. 100.295)

- Plastic Container Recycled Content and Labeling (s. 100.297 and s. 100.33)
- Hazardous Substances (s. 100.37)
- Antifreeze Content (s. 100.38)
- Flammable Fabrics (s. 100.41)
- Product Safety (s. 100.42)
- Poison Prevention Packaging (s. 100.43)
- Recycling of Mobile Air Conditioner refrigerants (s. 100.45)
- Energy Efficiency Standards (100.46)
- Products Containing or Made with Ozone-Depleting Substances (s. 100.50)

In addition, the Department is responsible for assisting municipalities and other governmental agencies and private sector service organizations in conducting weights and measures regulatory work under Chapter 98 of the statutes. Further, this section maintains and staffs the state's metrology lab, which deals with the calibration of scales and other measuring devices, and motor vehicle testing equipment. Prior to 2007, when the metrology lab closed from January through June to move to a new facility, the Department tested and certified the accuracy of about 8,300 standard weights and measures each year. In the second half of 2007, the Department tested about 5,500 weights and measures.

*Regional Offices*

DATCP's regional personnel respond to consumer complaints and conduct investigations or other inspection-related work within their geographic areas. Cases may be received through local

consumer complaint lines or referred from the Department's central toll-free hotline. In addition, regional personnel have certain assigned 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. Regional staff also provide educational and outreach services within their regions. The office located in Wauwatosa includes a Hispanic consumer specialist who provides consumer protection services to the Hispanic community in the Milwaukee area.

In 2003, 4.0 positions were transferred to the central office in Madison, and Eau Claire became a satellite office with 2.5 staff. In 2008, 4.5 consumer protection positions were transferred from the central office and Eau Claire again became a full regional office. In 2009, the four regional offices have a combined 30.3 staff, or about 44% of total bureau staff. Table 2 shows regional staff organization.

*Office of Privacy Protection*

The Madison regional office houses the Department's Office of Privacy Protection (OPP), which was created by executive order of the Governor in April, 2006. The office contains three positions: 1.0 regulatory specialist, 1.0 investigator and 1.0 victim assistance specialist. The positions were administratively created by DATCP and the Department of Administration under a federal appropriation, but DATCP now receives general

**Table 2: Regional Consumer Protection Staff**

| Madison*                         | Green Bay                    | Wauwatosa                    | Eau Claire                      |
|----------------------------------|------------------------------|------------------------------|---------------------------------|
| 1.0 Supervisor                   | 1.0 Supervisor               | 1.0 Supervisor               |                                 |
| 5.8 Investigators                | 3.0 Investigators            | 3.0 Investigators            | 1.0 Supervisor                  |
| 1.0 Consumer Specialist          | 2.0 Consumer Specialists     | 3.0 Consumer Specialists     | 3.5 Investigators               |
| <u>1.0</u> Regulatory Specialist | <u>0.5</u> Program Assistant | <u>1.0</u> Program Assistant | <u>2.5</u> Consumer Specialists |
| 8.8                              | 6.5                          | 8.0                          | 7.0                             |

\*Madison staff members are in the same building as DATCP's central office. Madison staff includes the Office of Privacy Protection, which has 1.0 investigator and the consumer specialist and regulatory specialist positions.

purpose revenue (GPR) and program revenue (PR) transferred from the Office of Commissioner of Insurance to fund the OPP.

The office's duties include: (1) providing identity theft victim assistance; (2) providing education on identity theft to individuals, government agencies, law enforcement agencies and businesses; 3) receiving and mediating complaints related to identity theft; and (4) investigating instances of identity theft, individually and in conjunction with local law enforcement agencies. In addition, the OPP: (1) provides consumer education through its Web site and in-person training; (2) investigates all identity theft complaints received by DATCP or referred by local law enforcement agencies; and (3) works with district attorneys and other prosecutors when an identity theft complaint or investigation leads to a prosecution.

In 2007, the OPP received 27,425 Web site visits, 1,752 telephone contacts, 15 walk-in visits and 699 inquiries by other means such as e-mail for a total of 29,891 inquiries. The office filed 445 complaints and initiated 112 investigations, with 31 prosecutions resulting. OPP also provided support on 22 different data breaches in 2007.

#### *Telemarketer No-Call List*

2001 Act 16 provided DATCP with 5.5 staff and \$230,900 in program revenues in a continuing appropriation to administer the telemarketer no-call program. The Legislature has increased expenditure authority and associated positions in subsequent years in response to greater costs of program administration. For 2008-09, DATCP is allocated \$725,100 and 7.0 positions from its telephone solicitation regulation appropriation. DATCP allocates 6.0 positions for administration of the no-call program. The remaining 1.0 position is for a program and policy analyst position funded from no-call list revenues but counted among central office staff.

The Department has contracted out the maintenance of the residential no-call phone listing at a cost of about \$120,600 annually. DATCP registers

telemarketers, handles consumer complaints relating to telemarketing, and enforces the provisions of the no-call law.

The Department administers the program under administrative rule ATCP 127. Telemarketers pay initial fees of \$700 per year and annual fees of \$500 for renewal, and the Department collects annual fees of \$75 per phone line over three. The annual sum of fees is capped at \$20,000, and fees may be paid on a quarterly basis. Other possible fees include \$25 for each additional e-mail or compact disc copy of the no-call list, and \$1,000 for each additional hard copy of the no-call list. Consumers must renew their listing every two years, but are not charged.

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

ATCP 127 allows DATCP to reduce or waive one or more of the quarterly fee payments by telemarketers if the Department projects a year-end balance in the telephone solicitation appropriation account that exceeds projected fiscal year expenditures by at least 15%. This provision would allow DATCP to maintain a year-end balance of approximately \$109,000 based on 2007-08 expenditure authority. DATCP has waived quarterly payments due to large balances in the account, beginning with the quarterly payment due September 1, 2003. The Department collected one quarterly payment in each of fiscal years 2004-05 and 2005-06. The Department waived one quarterly payment in 2006-07 and collected a full year of payments in 2007-08. Through December 2008, the cumulative amount of waived quarterly payments is estimated at approximately \$4.76 million. The Department of Administration and DATCP also transferred

\$2,038,000 to the general fund as part of statewide lapse requirements under 2007 Acts 20 and 226. On June 30, 2008, the telephone solicitation appropriation had a balance of \$631,500.

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.

In addition, the court ruled that the statutes set the maximum fine for a violation under the telephone solicitation program at \$100, and that DATCP may not administratively set a higher maximum fine. DATCP officials indicate they did not intend to increase the \$100 statutory maximum fine, although ATCP 127 contained a reference to the state's "Little FTC Act" that imposes a \$10,000 maximum fine for unfair trade practices.

### **Complaint Intake and Response**

The primary function of the consumer protection staff is to review and respond to consumer inquiries and complaints received through the DATCP toll-free hotline, telephone calls to regional offices, written complaints or referrals from other state agencies. In 2007, the Department received 123,275 initial inquiries and contacts, including 40,251 consumer telephone inquiries, 937 "walk-in" complaints, and 82,087 other contacts such as e-mail.

DATCP subsequently opened 14,160 written complaints in response to these consumer contacts, and initiated another 716 complaints on its own, for a total of 14,876 written complaints in 2007. In 2007, approximately one-third of the written complaints

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

### *Consumer Information Center*

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

The database is intended to provide current data to assist the Department in making programmatic decisions and in compiling reports on types of complaints. DATCP staff uses the information available on the complaints database to identify trends and emerging issues in the marketplace and to establish program priorities and direction. In addition, consumers call DATCP to determine whether complaints have been filed against particular businesses.

Generally, the contact with the consumer on the toll-free hotline involves a short telephone conversation during which the consumer receives a description of his or her rights in the matter of concern. The complainant may also be referred to another state agency with jurisdiction on the subject of the complaint. Past estimates by DATCP show that approximately two thirds of consumer inquiries are resolved upon the initial communication.

If a violation is apparent, the consumer is encouraged to: (1) pursue the resolution of the complaint privately based on a better understanding of their rights and the responsibilities of the business, which is provided by Department; and (2) submit a written complaint form provided by DATCP which

will initiate a written response by the Department to both the consumer and the affected business, and possible investigatory or enforcement actions, if warranted. If no violation of current rules is apparent, the consumer is provided information on private actions that he or she could pursue, such as filing a case in small claims court. Department officials indicate, where appropriate, they attempt to complete their role in the consumer complaint at the stage of the initial telephone contact with the consumer, avoiding more time-consuming, subsequent written correspondence.

### *Written Complaints*

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

### **Investigations**

In some instances, the Department further investigates complaints to determine whether a violation of administrative rules has occurred and how significant the violation is. The Department possesses substantial investigative authority under general agency powers provided by Chapter 93, as well as specific investigative authority in the unfair trade practices (s. 100.20) and deceptive advertising (s. 100.18) laws. These include the authority to subpoena documents and testimony, conduct investigative hearings, collect and analyze samples, and inspect and copy business records.

Most complaints are handled through mediation.

However, an estimated 20% of all complaints require investigation, including interviews, data collection, case evaluations and, at times, undercover investigation. DATCP officials have instituted a "tier" system that rates potential investigations.

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

Tier 2: Routine issues of statewide/regional importance that impact a large number of Wisconsin consumers and/or businesses.

Tier 3: Routine issues that impact an individual complainant and/or business.

Serious violations with a significant impact on affected consumers merit the use of staff for these investigations. Generally, in-depth investigations occur when the Department receives numerous unresolved complaints about a single business or issue over a short period of time. The Department also begins investigations and studies of consumer protection issues identified by staff.

Investigations generally result in complete reports and supporting evidence used by prosecuting attorneys to draft complaints and file court cases. In 2007, DATCP performed 250 in-depth investigations related to general consumer complaints.

### **Information and Education**

The Bureau of Consumer Protection conducts a consumer and business information program to promote voluntary compliance by businesses and to reduce the likelihood that consumers will subject themselves to harmful situations. The Department's consumer protection educational and informational activities include: (1) press releases warning of new or existing consumer fraud schemes and seasonal consumer issues; (2) regular presentations and speeches by staff to consumers and businesses; (3) educational and training programs for consumers, in cooperation with consumer groups, educational



institutions, and state and local agencies; (4) requests that television stations provide the consumer protection hotline telephone number before broadcasting advertisements for business opportunity plans, such as work-at-home schemes; and (5) informational brochures describing consumer rights and businesses' responsibilities. The most widely distributed brochure describes landlord and tenant rights, and it is available in Spanish and English. The Department also provides information to local law enforcement agencies to increase their knowledge of consumer protection laws and rules. Staff members also regularly lecture at technical school law enforcement classes.

### **Complaint Mediation**

DATCP has stated that its primary statutory mission is to identify and prevent unfair business practices, not to represent individual consumers. However, as a result of its handling of consumer complaints, many complaints are resolved to the satisfaction of consumers. For example, the Department believes that providing information on the rights and responsibilities of the parties in a dispute may facilitate the resolution of a complaint. DATCP estimates that approximately 92% of written complaints were mediated by the Department in 2007.

### **Surveys**

In addition to on-site inspections, DATCP also conducts surveys to measure compliance with administrative rules. In 2007, the Department performed approximately 5,400 surveys, checking approximately 187,000 devices. As part of this process, DATCP may inspect business premises, copy records, or sample and analyze consumer products. DATCP staff may perform the following types of surveys:

1. Regular inspections of auto repair businesses to determine compliance with ATCP 132, the motor vehicle repair rule.

2. Surveys of retail stores to check for hazardous household substances or products.

3. Surveys of retail stores for scanner accuracy and price verification.

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

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

### **Enforcement Actions**

The Department enforces consumer protection rules or statutes in several ways, including: (1) warning letters; (2) assurances of compliance; (3) special orders; and (4) formal prosecutions.

#### *Warning Letters*

Warning letters are issued to businesses under the authority of s. 93.06 (10) for minor violations of rules or statutes, or in cases of more significant violations but for which there is no previous history of violations by the business. Each letter specifies the violation that has occurred and indicates an expectation that such violations will cease. DATCP issued 1,922 warning letters to businesses in 2007. If further enforcement actions are not warranted, the warning letter is usually the final step in a consumer complaint by the Department. Possible noncompliance is generally identified through subsequent complaints or through Department surveys.

#### *Assurance of Compliance*

The Department requires an assurance of compliance (written assurance) when the severity of the violation or the history of the violator indicates that a warning letter may not achieve compliance, but the Department considers formal prosecution unwarranted. The violating business must sign a statement assuring compliance, which the Depart-

ment can use to facilitate compliance by other means, if necessary. Issuing an assurance of compliance typically involves an in-person meeting with the affected business. DATCP obtained 149 assurances of compliance in 2007, as shown in Appendix IV.

### *Special Orders*

Special orders attempt to achieve compliance with fair business practices that are not specifically addressed by current law or rules. DATCP generally views a special order as a precursor to a new administrative rule. The Department exercised special order authority in nine cases in 2007.

Issuance of a special order generally takes six to eight months. The Department first identifies a potentially unfair business practice that is not regulated by specific rules or statutes. DATCP, DOJ or both agencies review the practice. If it appears to be unfair, an independent examiner hears the case in a quasi-judicial proceeding and rules whether the practice is unfair. Finally, the DATCP Secretary issues a special order enjoining the unfair business practice.

### *Formal Prosecutions*

The Department prepares cases for formal prosecution by district attorneys or DOJ attorneys. Violations of consumer protection statutes and rules are prosecuted if they are considered to be serious, have a major adverse impact on consumers or are recurring by the business. The Department referred 84 cases for prosecution in calendar year 2007, of which 53 were referred to district attorneys, 16 to DOJ, one to a U.S. attorney, six to federal agencies and eight to other authorities. The Department reported 99 court cases filed

Telecommunications, automotive repair, home improvement and telemarketing cases represent the majority of investigations. Consumer protection-related prosecutions initiated by DATCP may result in civil forfeitures, penalties and restitution to Wisconsin consumers. In 2007, 53

actions were filed on behalf of DATCP. Fifteen cases reportedly resulted in an arrest or criminal prosecution, but the Department was not able to produce a listing of all formal prosecutions and outcomes for 2007.

Fines or forfeitures obtained in state courts by law include a 25% consumer protection surcharge that is deposited to a DATCP program revenue continuing appropriation for consumer education. Although DATCP has expenditure authority of \$175,000 from this appropriation, revenues totaled \$66,800 in 2006-07 and \$54,100 in 2007-08. Revenues exceeding \$185,000 in a fiscal year are deposited to the state's general fund.

### **Product Safety Activity**

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

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

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

DATCP officials indicate that their most

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

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

*In-depth Investigations.* In-depth investigations provide basic information for CPSC to use in assessing product safety hazards. The investigations are simple and factual with no interpretation. CPSC analyzes these investigations from around the country in making their own determinations regarding product hazards. The Department carried out nine CPSC product safety investigations in federal fiscal year 2006-07 and no such investigations in federal fiscal year 2007-08. In addition to product safety in-depth investigations performed for the CPSC, DATCP also performs in-depth investigations related to general consumer complaints such as telecommunications and telephone solicitation, as previously discussed. Recent in-depth investigations have been performed on all-terrain vehicle (ATV) deaths, carbon monoxide deaths and pool drownings.

*Recall Effectiveness Checks.* DATCP staff members inspect retail stores on assignment from CPSC to

gather information on the effectiveness of CPSC recalls. The Department performed 30 recall effectiveness checks in federal fiscal year 2006-07 and 40 in federal fiscal year 2007-08. Recent recall effectiveness checks have been conducted on products such as bicycles, ATVs, candles, ovens, clothes dryers, toys, baby products and children's clothing. In addition, the Department has also performed recalls for such products as stuffed/plush toys, matches, books, riding lawnmowers and electric scooters. The Department also initiated two recalls on children's clothing in 2007, which led to issuance of a federal recall.

*ATV Dealer Monitoring/Undercover Inspections.* DATCP performs undercover surveillance of ATV dealers to ensure compliance with a consent decree regarding sales of ATVs for use by children. The Department completes such inspections at the request of the CPSC.

*Consumer Product Safety Surveys.* DATCP has performed several consumer product safety surveys in past years, either under contract from the CPSC or sharing departmental findings with the CPSC. In 1999, consumer protection staff surveyed records at 30 fire departments throughout the state. Investigators collected information about fires caused by consumer products and shared findings with CPSC. In 2002, under contract with CPSC, DATCP surveyed cigarette lighters to collect information on the presence of required child safety mechanisms. In 2003, Department surveyed second-hand stores and educated store employees on various items that have been recalled or made illegal to sell in the state but have been found for sale at second-hand stores. DATCP has not performed any surveys for the CPSC since due to federal reorganization and budget decisions. DATCP did perform surveys of its own volition, as previously noted.

In recent years, DATCP has initiated a cooperative planning effort to strengthen its relationship with CPSC and other state and local agencies. For example, DATCP works with local fire departments on fire prevention and with the

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

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

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

DATCP also cooperates with the standards organization ASTM International, and holds a seat on the ASTM Committee on Consumer Products. ASTM International is a voluntary organization for standards development in a variety of products. It was formerly known as the American Society for Testing and Materials, and was founded in 1898.

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## Department of Justice Consumer Protection Program

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Following the 1996 transfer of most consumer protection functions to DATCP, DOJ retained a small consumer protection unit in its Division of Legal Services. In 2008-09, this function consists of 7.7 positions, including: (1) 4.0 attorneys; (2) 2.0 consumer investigators; (3) 1.0 legal secretary; and (4) a 0.7 paralegal. In 2008-09, DOJ estimates the consumer protection unit budget at \$769,000 GPR. The Department of Justice indicates that units within its Division of Legal Services are not separately budgeted.

*Consumer Protection Enforcement Authority.* Under the marketing and trade practices statutes (Chapter 100), DOJ has concurrent authority with DATCP to determine violations and to initiate prosecutorial proceedings relating to: (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;

however, DATCP does not have statutory authority to preclude DOJ from initiating these types of actions. Once the agency has consulted with DATCP, DOJ is permitted to exercise its independent discretion in pursuing the matter.

For allegations of unfair methods of competition or unfair trade practices in business in violation of s. 100.20 of the statutes and associated administrative rules, DOJ has the following authority. The agency may: (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.

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

*Enforcement Actions.* During 2006-08, a total of 98 consumer protection cases and investigations were either referred to or developed by DOJ's consumer protection unit. Of this total, 56 cases were referrals from other state agencies, as follows: (1) DATCP referred 47 cases; and (2) the Department of Financial Institutions (DFI) referred nine cases. The

remaining 42 cases were developed internally by DOJ. Of these latter cases, 20 were multi-state in nature and 22 were Wisconsin-specific.

For 2006-08, the consumer protection unit has re-defined what it considers to be cases "developed" by DOJ because the category, as previously defined, was not a reliable indicator of either the unit's workload or of significant enforcement activity and, therefore, the number of identified cases has declined.

Appendix V identifies the 31 consumer protection cases completed by DOJ's consumer protection unit during 2007-08. These cases included investigations, litigation, and negotiated settlements. For each listed case, the following information is provided: (1) case name; (2) case type; (3) source of the case; (4) case description; (5) resolution of the case; and (6) restitution or other monetary recovery, if any.

In addition to the cases identified in Appendix V, the consumer protection unit addresses other matters. Among these may be investigations or cases referred from other agencies that are resolved through: (1) coordination with federal or local law enforcement authorities; (2) mediation; or (3) deferral to actions brought by other states. In addition, some matters are determined to be inappropriate for enforcement or are returned to the referring agency for further investigation.

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

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

specific method by which restitution is made.

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

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

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

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

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

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

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

In addition to providing refunds and restitution payments, consumer protection court judgments and settlements secured by DOJ often include amounts for: (1) attorney fees and case costs; (2) criminal fines and civil forfeitures; (3) court fees, assessments and surcharges, including a 25% consumer protection surcharge on most state fines and forfeitures; and (4) award amounts for multiple purposes. The Wisconsin Constitution requires any state fines and forfeitures secured by DOJ to be deposited to the common school fund.

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

tion. The funds credited to this appropriation (under s. 100.263 and other statutory provisions) may be utilized by DOJ to provide funding for the expenses of investigations and prosecutions of alleged consumer protection and other violations pursued by the agency. In 2007-08, \$298,000 was credited to the appropriation account.

*Report on Restitution Payments.* Under s. 165.25(10) of the statutes, DOJ is required to submit a semiannual report to DOA and to the Joint

Committee on Finance on the amounts received pursuant to a court order or settlement agreement to provide restitution to victims. DOJ's report is required to specify: (1) the amount of restitution received by the agency during the reporting period; (2) the persons to whom the agency paid restitution; (3) the amount paid by the agency to each recipient during the reporting period; and (4) the agency's methodology for selecting recipients and determining the amount paid to each recipient.





## APPENDIX I

### Summary of State Agency Programs Providing Consumer Protection Services

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

**Department of Administration - Energy Issues.** The Department of Administration's Office of Energy Independence and its Division of Energy Services provides general consumer education on energy matters.

The Office of Energy Independence publishes a limited supply of the complete book of Wisconsin Energy Statistics as well as a book of energy statistics highlights. The complete book and the highlights can also be found on the Office's website. The books are annually updated to present data from the prior year.

The Division of Energy Services also provides heating assistance and weatherization benefits to low-income residents under the Home Energy Plus program. The Home Energy Plus website offers a toll-free number to provide program information.

In 2007-08, Home Energy Plus distributed approximately 250,000 copies of its program brochure to local agencies and low-income heating and weatherization service providers. Local providers may download and duplicate these brochures. Local providers must conduct their own outreach ac-

tivities, which may include radio, television and newspaper advertisements and providing information to local community-based agencies.

**Board on Aging and Long-Term Care.** The Board on Aging and Long-Term Care monitors federal, state, and local long-term care policy, offers recommendations to the Governor, the Legislature, and the Wisconsin congressional delegation, advocates for the interests of individuals who need long-term care, and provides information to the general public.

In calendar year 2007, regional ombudsmen responded to and closed 3,161 complaints, provided information and counseling to 14,356 individuals, and made 471 public presentations. The Board's ombudsman staff and trained volunteers also made numerous unannounced visits to nursing homes and community care facilities and provided consulting and education services to these facilities as well as to resident and family councils. Finally, the Board provides consumers with information and assistance on insurance policies through printed materials, a website, and the toll-free Medigap helpline. In calendar year 2007, the helpline received 8,566 calls.

**Department of Children and Families.** The child care regulatory program in the Department of Children and Families (DCF) licenses and regulates child care programs, children's residential programs, and child placing agencies in order to promote the health, safety, and welfare of children in regulated community care arrangements. Child care and out-of-home care providers and facilities are required to meet health and safety standards before receiving a license to operate. Once a license is issued, DCF may regularly inspect the facilities for compliance with these standards. In addition,

DCF investigates complaints it receives regarding these providers and facilities. Violations can result in DCF assessing forfeitures, issuing correction orders, and other disciplinary actions.

DCF also provides consumers with licensed child care provider information. Through the DCF website, an individual can access a licensed child care search, which contains information on the location and regulatory history of the child care facilities licensed by DCF. Facilities can be searched by county, city, zip code, or facility name, and the result of the search shows the licensing information, including compliance history and enforcement actions.

Prior to July 1, 2008, the Department of Health and Family Services (DHFS), now known as the Department of Health Services (DHS), was responsible for regulation of licensed child care providers and child welfare out-of-home care facilities. These responsibilities were transferred to DCF under provisions of 2007 Wisconsin Act 20 (the 2007-09 biennial budget bill), which created this new Department.

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

**Department of Financial Institutions.** The Department of Financial Institutions (DFI) was

created as part of the 1995-97 biennial budget to consolidate regulatory functions related to financial institutions. DFI consists of four divisions: the Division of Corporate and Consumer Services, the Division of Banking, the Division of Securities, and the Division of Administrative Services and Technology. The Bureau of Consumer Affairs administers the Wisconsin Consumer Act and the Office of Financial Literacy provides information to the public on matters of personal finance. The Office of Credit Unions is attached to the Department for administrative purposes and is responsible for regulating the 260 credit unions chartered by the state.

DFI serves as the public custodian of charter documents creating Wisconsin corporations and other business entities, annual reports, and other documents submitted by those entities. There are over 389,000 businesses on file with the Department. DFI also examines and files documents under the Uniform Commercial Code, filing 173,700 documents in 2007.

The Department regulates state-chartered banks (220), savings and loan associations (three), and savings banks (13). The Department also licenses approximately 14,100 adjustment service companies, collection agencies, community currency exchanges, insurance premium finance companies, loan companies, sales finance companies, sellers of checks, and mortgage banking professionals. In carrying out its regulatory duties, DFI conducts safety and soundness and compliance examinations, informs the public and regulated industries of their rights and obligations under the law, and responds to complaints filed against firms and individuals regulated by DFI.

The Department is also responsible for regulating the offer and sale of securities, franchise investment offerings, and corporate takeovers. It does this by requiring registration of securities and franchise offerings (or by allowing certain exemptions from registration), and by licensing and monitoring broker-dealers, securities agents, and investment advisers. In 2007, the Division of

Securities responded to 141 complaints, associated with both licensed and unlicensed entities. As a result of those investigations, 10 warning letters and 110 administrative orders were issued, seven matters were referred for criminal prosecution, and \$2,901,300 was offered or returned to investors.

DFI administers the Wisconsin Consumer Act, which governs consumer credit transactions. During 2007, the Bureau of Consumer Affairs received approximately 8,600 consumer complaints or inquiries. Subsequent investigations revealed 108 compliance problems under the Wisconsin Consumer Act, resulting in orders requiring merchants to correct their violations. A total of \$264,000 was returned to consumers as refunds, credits, or adjustments.

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

DHS develops and distributes health-related information that is used primarily by consumers. For example, DHS has created a variety of consumer guides that can be used by individuals who are considering long-term care options. The DHS Division of Public Health produces consumer information on topics ranging from communicable diseases, injury prevention and environmental health resources. This type of information is available on the department web site. For example, the DHS sport fish consumption program examines the health effects of consuming chemical contaminants in sport fish and, with the Department of Natural Resources, issues fish consumption advisories.

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

**Office of the Commissioner of Insurance.** The Office of the Commissioner of Insurance (OCI) regulates insurance companies and agents. OCI protects the public by ensuring that insurance companies are solvent and by enforcing insurance consumer protection laws. In 2007, OCI's Bureau of Market Regulation investigated and resolved approximately 8,200 written consumer complaints and inquiries, and answered 35,000 telephone, written, and "walk-in" inquiries. Most complaints involve claim handling, although the Bureau also receives other types of complaints, such as complaints about service to policyholders, marketing and sales practices and underwriting. Following its investigation of a complaint, OCI may order license disciplines, demand restoration of benefits or rights to policyholders and levy forfeitures.

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

**Office of Lawyer Regulation.** The Office of Lawyer Regulation (OLR) investigates alleged violations of the rules of professional conduct for attorneys licensed to practice law in Wisconsin and includes the Board of Administrative Oversight, and the Preliminary Review Committee. The Board of Administrative Oversight, a 12-person board composed of eight lawyers and four non-lawyers, is responsible for monitoring the fairness, effectiveness, and efficiency of the attorney regulation system, while the Preliminary Review Committee, a 14-person committee composed of

nine lawyers and five non-lawyers, determines whether there is cause to file a complaint with the Supreme Court concerning lawyer misconduct, following the procedures outlined below.

The inquiry and grievance process concerning attorney conduct is designed to: (1) make the lawyer regulation process more accessible to the general public; (2) quickly address grievant concerns and, where possible, resolve them; (3) offer lawyers who have minor practice problems alternatives designed to enhance the quality of their services; and (4) promptly refer for full investigation those matters that may involve serious misconduct. The OLR is responsible for receiving, screening, investigation and prosecuting grievances that include allegations of such things as neglect, lack of communication, dishonesty and conflicts of interest. The OLR has established a central intake unit, which receives inquiries and grievances concerning the conduct of an attorney in writing or by telephone. Intake staff takes information about the alleged conduct, check for other grievances against the attorney, and inform the grievant that the matter will be assigned to an intake investigator who will contact the grievant within a few days to discuss the matter further.

After screening, a grievance may be closed if: (1) the allegations are not within the OLR's jurisdiction; (2) the grievance can be reconciled between the grievant and attorney if it is a minor dispute; or (3) the grievance is diverted to an alternatives to discipline program.

Grievances that cannot be resolved are referred for investigation, conducted by the OLR staff or with the assistance of 16 regionally-based Court-appointed committees. After an investigation is completed, the grievance may be: (1) dismissed for lack of sufficient evidence to proceed; (2) diverted to an alternatives to discipline program; (3) disposed through a consensual reprimand; or (4) presented to the Preliminary Review Committee for a determination of whether there is a cause to file a complaint with the Supreme Court, which makes the final disposition.

On July 1, 2007, 619 matters were pending disposition in the OLR. The OLR received 2,066 new grievances in the 2007-08 fiscal year. In 2007-08, 38 attorneys were publicly disciplined and 36 attorneys received private reprimands. Private reprimands are generally imposed for an isolated act of misconduct, which causes relatively minor harm. These reprimands may be used as aggravating factors in future disciplinary matters. Further, 85 attorneys entered the alternatives to discipline program. Finally, 33 cases were dismissed with an advisory letter. On June 30, 2008, 651 matters were pending disposition in the OLR.

The OLR office is in Madison with a total staff of 27.5 positions: 1.0 director, 2.0 deputy directors, 13.0 investigators, 8.5 administrative and support staff, 1.0 litigation counsel, and 2.0 assistant litigation counsels. Total expenditures for the OLR were \$2,861,400 PR in 2007-08 and are budgeted at \$2,957,200 PR in 2008-09. Funding for the OLR is generated from assessments on attorney members of the State Bar of Wisconsin, costs recovered from attorneys disciplined under formal proceedings, and fees on attorney petitions for reinstatement.

**Public Service Commission.** The Commission regulates public utilities to ensure the reasonable and adequate delivery of service to the public. The Commission's consumer protection activities are the responsibility of the Division of Water, Compliance and Consumer Affairs. The Division's complaints concern adequacy of service, installation, disconnection and billing issues. The Division's Consumer Services section reported 7,672 complaints during calendar year 2007 and estimates that 7,800 complaints were received during calendar year 2008. Most complaints concern adequacy of service, installation, disconnection, and billing issues.

Currently, approximately 59% of all complaints involve combined electric and gas service, 20% involve telecommunications service, 11% involve electric service, 4% involve natural gas service, and 6% involve either water, combined water and sewerage service, or combined water and electric service matters. Actions taken by the Division to re-

solve complaints include investigation, mediation, and the issuance of binding decisions by investigators. Decisions by investigators may be appealed to the Commission, which may issue cease and desist orders or refer a matter to the Department of Justice for civil prosecution. This Division monitors large gas and electric utilities' early identification programs for customers facing energy hardships and seeks to resolve such hardships before they become heating crises in winter. All consumer matters are handled through the Commission's offices in Madison.

**Department of Regulation and Licensing.** The Department's Division of Enforcement provides centralized investigative and prosecutorial services relating to the licensed professions under the jurisdiction of 26 regulatory boards or the Department's direct licensing authority. The Department and its boards license and regulate an estimated 351,500 credential holders in 142 different professions, occupations and businesses. The Department receives approximately 2,600 complaints annually involving regulated persons or entities. Outcomes of a complaint investigation may include dismissal of the complaint, informal resolution or formal disciplinary action. The Department and its regulatory boards have the authority to limit, suspend or revoke any credential. The Department has one state office, located in Madison.

**Department of Transportation.** The Division of Motor Vehicles of the Department is responsible for the licensing of new and used motor vehicle dealers, recreational vehicle dealers, motor vehicle manufacturers and distributors, and salvage dealers. The Department investigates an average of about 1,100 complaints annually related to sales and lease practices, warranties, product quality and the lemon law; most involve insufficient disclosure of used vehicle condition. The Department's investigations may result in informal mediation, formal warnings requiring a written assurance that the business will discontinue a practice, license suspension or revocation, or the administrator of the Division of Hearings and Appeals may

issue a special order against specific licensee practices. The Department conducts public appearances, publishes brochures and provides information on its website regarding vehicle purchasing and consumer protection. The agency employs regional investigators and operates a consumer assistance hotline.

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

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

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

## APPENDIX II

### Summary of DATCP Trade and Consumer Protection Administrative Rules

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#### Consumer Protection Administrative Rules

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

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

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

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

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

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

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

*Credit Report Security Freezes (ATCP 112).* Defines the identification requirements for placing and removing a freeze on a credit report.

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

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

*Fair Packaging and Labeling (ATCP 90).* Regulates the packaging and labeling of products, including the accuracy and location of package or label descriptors that identify the product and list product origin, content, quantity and nutritional qualities.

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

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

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

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

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

changes in rental terms or park rules.

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

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

*Price Gouging During an Emergency (ATCP 106).* Prohibits sellers from charging excessive prices during emergencies, including natural disasters, civil disorder or hostile actions, as declared by the governor. Unless otherwise shown to be justified, prices are unlawful during emergencies if they are more than 10% above the highest price at which the seller sold like consumer goods or services during the 60 days preceding the declared emergency.

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

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

*Residential Rental Practices (ATCP 134).* Requires disclosure of known housing code violations and other conditions affecting habitability prior to rental. Establishes standards and procedures for the return of security deposits and earnest monies, and requires landlords to comply with repair

promises. Prohibits certain unfair rental practices, including the advertising and rental of condemned premises, unauthorized entry during tenancy, confiscation of personal property and unfair retaliatory eviction. Prohibits certain practices from inclusion in rental agreements, such as eviction other than by judicial procedures, the acceleration of rent payments, the imposition of liabilities on tenants or the removal of landlord liabilities.

*Telecommunications and Cable Television Services (ATCP 123)*. Regulates subscription and billing practices related to cable and telecommunication services provided to consumers primarily for personal, household or family use. Also establishes requirements for provision of video services for providers such as cable operators receiving a statewide franchise.

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

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### **Trade Practice Administrative Rules**

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

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

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

buying leaf tobacco.

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

*Sales Below Cost (ATCP 105)*. Prohibits selling tobacco products, alcoholic beverages or motor vehicle fuel without required markups between wholesalers and retailers. See Appendix III for further details.

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

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### **Other Administrative Rules**

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

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

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



*Weighing and Measuring Devices (ATCP 92)*. Sets regulatory standards and permit requirements for commercial weighing and measuring devices

including vehicle and livestock scales, gas pump volume/price indicators and liquefied petroleum gas specifications.

## APPENDIX III

### Unfair Sales Act/Minimum Markup Law

The Unfair Sales Act under s. 100.30 of the statutes generally prohibits selling products below cost. Although the law intends to ensure fair competition among business, the section also contains a policy statement identifying below-cost sales as a form of deceptive advertising that "misleads the consumer." The provision is also known as the minimum markup law, as it requires certain products, namely motor vehicle fuel, tobacco products and alcoholic beverages, to be sold at certain levels or percentages above invoice cost. All other products may not be sold below cost. DATCP, in conjunction with district attorneys, has responsibility for enforcing the act. The Unfair Sales Act took effect in the 1930s with the intent of preventing predatory pricing by large firms. It was feared that large firms could reduce prices below cost to levels smaller firms could not match. Larger firms would incur short-term losses but drive smaller firms out of business. After most smaller firms left the market, it was thought the remaining large firms would use near-monopoly power to charge exorbitant prices.

Alcoholic beverages and tobacco products are sold at a markup of 3% to wholesalers and 6% to retailers. Due to compounding, these markups yield a 9.18% increase over the price set by manufacturers. Motor vehicle fuel sales similarly require a minimum markup of 3% to wholesalers and 6% to retailers. This also yields a total minimum markup of 9.18% of the statutorily defined cost of the fuel. In the case of a refiner or wholesaler of motor vehicle fuel selling directly at retail, the minimum markup is 9.18%. The statutes include applicable taxes and fees as well as transportation costs prior to imposing the minimum markup.

The table below shows how the minimum markup requirement for motor vehicle fuel sales is calculated, given average posted terminal prices, under current law. Transportation costs may vary based on factors including distance between a retail station and fuel terminal, but DATCP staff generally assumes a cost of about 2¢ per gallon in calculating the minimum required markup. The table below uses 51.3¢ for total taxes and fees, which includes the following: (1) a state tax of 30.9¢ per gallon of fuel; (2) a federal tax of 18.4¢ per gallon of gasoline (24.4¢ per gallon of diesel); and (3) a state petroleum inspection fee of 2¢ per gallon.

Below-cost sales are allowed under certain circumstances, including: (1) bona fide clearance sales; (2) sales of perishable merchandise; (3) sales of damaged or discontinued merchandise; (4) liquidation sales; (5) sales for charitable purposes; (6) contract sales to government bodies; (7) prices set to meet a competitor's documented price; and (8) court-ordered sales. For adjustments of motor vehicle fuel prices to match those of a competitor, the person making the adjustment must notify DATCP the day on which an action is taken. This exempts the person from enforcement actions otherwise taken in response to below-cost sales.

DATCP or a district attorney may seek forfeitures of not less than \$50 nor more than \$500 for the first below-cost sale and not less than \$200 nor more than \$2,500 for each subsequent violation.

**Table 1: Current Minimum Markup Law Calculations**

| Average Terminal Price | Transportation Cost | Taxes and Fees | Subtotal | Minimum Markup (9.18%) | Minimum Pump Price |
|------------------------|---------------------|----------------|----------|------------------------|--------------------|
| \$1.00                 | \$0.02              | \$0.513        | \$1.53   | \$0.14                 | \$1.67             |
| 2.00                   | 0.02                | 0.513          | 2.53     | 0.23                   | 2.76               |
| 3.00                   | 0.02                | 0.513          | 3.53     | 0.32                   | 3.85               |
| 4.00                   | 0.02                | 0.513          | 4.53     | 0.42                   | 4.95               |

DATCP has authority to issue special orders under this section, any violation of which may incur a forfeiture of not less than \$200 nor more than \$5,000.

In addition, any parties harmed or threatened with harm by sales of motor vehicle fuel or tobacco products that violate minimum markup requirements may also seek injunctions and damages against sellers. These parties may bring claims of \$2,000 or three times the amount of any monetary loss, whichever is greater, for each day of a continued violation. Claims may include accounting and attorney costs. They must also be made within 180 days of a violation.

The enforceability of the minimum markup law is in question due to a decision by the United States District Court for the Eastern District of Wisconsin.

The court ruled in 2007 that the minimum markup law restrains trade in violation of the federal Sherman Act and does not meet criteria for state immunity.

In addition to protections against below-cost sales, s. 100.305 attempts to protect consumers against excessive pricing. The statute prohibits sales of consumer goods at "unreasonably excessive prices" during "abnormal economic disruptions." Periods of disruption must be declared by the governor, and they include natural disasters, hostile actions, energy supply disruptions, or labor or civil unrest. DATCP promulgated administrative rule ATCP 106 in 2008 to specify unreasonably excessive prices. DATCP or DOJ, after consulting with DATCP, may issue warnings to violating sellers or prosecute excessive pricing. Violations are subject to forfeitures up to \$10,000.

## APPENDIX IV

### DATCP Consumer Protection Assurances of Compliance Obtained in 2007

|  |                                      |
|--|--------------------------------------|
| A & G Publications                               | Misrepresentation                    |
| AAA Cook County Consolidation Co                 | No Call - Telemarketing              |
| Academic Financial Solutions                     | No Call - Telemarketing              |
| Ace Holding Co. LLC                              | No Call - Telemarketing              |
| Aegon Direct Marketing Services                  | No Call - Telemarketing              |
| Affordable Moving and Storage c/o Daniel Berczyk | Service - Failure to Honor           |
| Allied Publishers Service Mid Atlantic States    | No Call - Telemarketing              |
| American Association of Labor                    | Contracts Misrepresentation          |
| American Financial Inc                           | No Call - Telemarketing              |
| Ameritree National Mortgage                      | No Call - Telemarketing              |
| Arizona Center of Faith II                       | No Call - Telemarketing              |
| Ashworth University                              | No Call - Telemarketing              |
| Aspenair   | No Call - Telemarketing              |
| Asset Appraisal Services                         | No Call - Telemarketing              |
| Auto One Warranty Specialists                    | No Call - Telemarketing              |
| Be Fitness & Wellness Center                     | No Call - Telemarketing              |
| Bigler Cleaning Services                         | Misrepresentation                    |
| Blackhawk Fitness                                | No Call - Telemarketing              |
| Blain's Farm & Fleet                             | Misrepresentation                    |
| Blair  | No Call - Telemarketing              |
| Bridge Way Marketing Inc                         | No Call - Telemarketing              |
| Budget Readers Service Inc                       | No Call - Telemarketing              |
| Bullseye Telecom Inc                             | No Call - Telemarketing              |
| Bureau of Collection Recovery                    | No Call - Telemarketing              |
| Cambridge Who's Who Registry                     | No Call - Telemarketing              |
| Cashfast 123                                     | No Call - Telemarketing              |
| Choice American Publications                     | No Call - Telemarketing              |
| Clearvision International Inc                    | No Call - Telemarketing              |
| College Prep Center                              | No Call - Telemarketing              |
| Colque, Judene                                   | Failure to Return Deposit            |
| Communications Plus                              | Repair/Improvement                   |
| Consumer Protection Services                     | No Call - Telemarketing              |
| Consumers Health Benefits Association            | Customer Service Dissatisfaction     |
| Cornerstone Building Restoration Inc             | Unauthorized Contract Price Increase |
| Credit Account Solutions                         | No Call - Telemarketing              |
| David's Bridal Inc                               | No Call - Telemarketing              |
| Debt School LLC                                  | No Call - Telemarketing              |
| Dialamerica Marketing Inc                        | No Call - Telemarketing              |
| Direct Check Marketing                           | No Call - Telemarketing              |
| Dreamland Investors Inc                          | No Call - Telemarketing              |

**APPENDIX IV (continued)**

**DATCP Consumer Protection Assurances of Compliance Obtained in 2007**

|                                       |                                   |
|---------------------------------------|-----------------------------------|
| Duluth Trading Co                     | Misrepresentation                 |
| Easysaver                             | No Call - Telemarketing           |
| Ebsco TeleServices LLC                | No Call - Telemarketing           |
| Electronic Transaction Supplies Inc   | No Call - Telemarketing           |
| Energy Center of Wisconsin            | Solicitation - Fax                |
| Enterprise Technology Group           | No Call - Telemarketing           |
| Exclusive Media Services, Inc         | Telemarketing                     |
| Express Transaction Services Inc      | No Call - Telemarketing           |
| Fagen, Dave                           | No Call - Telemarketing           |
| Family Care                           | No Call - Telemarketing           |
| FBK Products LLC                      | No Call - Telemarketing           |
| Fidelity Debt Consultants             | No Call - Telemarketing           |
| Fiduciary Real Estate Development Inc | Failure To Return Deposit/Payment |
| First American Reserve                | No Call - Telemarketing           |
| First Class Vacations Inc             | No Call - Telemarketing           |
| First Freedom Alliance                | No Call - Telemarketing           |
| FMS Inc                               | No Call - Telemarketing           |
| Fox Valley Mortgage Services Inc      | No Call - Telemarketing           |
| General Revenue Corp                  | No Call - Telemarketing           |
| Goodwill Industries of Orange County  | Misrepresentation                 |
| Grand Casino Mills Lacs               | No Call - Telemarketing           |
| Grand Central Reservations            | No Call - Telemarketing           |
| Great Atlantic Warranty Inc           | No Call - Telemarketing           |
| Great Lakes Mortgage Corp             | No Call - Telemarketing           |
| Great Time Vacations                  | No Call - Telemarketing           |
| Greatbizsites                         | Telecommunications                |
| Hall Group Inc                        | No Call - Telemarketing           |
| Handi-Tech Co                         | No Call - Telemarketing           |
| Hanson Products                       | No Call - Telemarketing           |
| Harley-Davidson Motor Co Inc          | No Call - Telemarketing           |
| Health Center Inc                     | No Call - Telemarketing           |
| Hess, Robert                          | Sales General                     |
| Hewlett Industries                    | Solicitation                      |
| Hill Office Supplies Inc              | Telemarketing                     |
| I Glo Workshop Inc                    | No Call - Telemarketing           |
| Idearc Media Corp                     | No Call - Telemarketing           |
| Infousa Inc                           | No Call - Telemarketing           |
| International Marketing Solutions LLC | No Call - Telemarketing           |
| J & R Enterprises                     | Failure To Return Deposit/Payment |
| Jewish News                           | Unauthorized Service              |

## APPENDIX IV (continued)

### DATCP Consumer Protection Assurances of Compliance Obtained in 2007

|   |   |
|---|---|
| Just Benefits                                       | No Call - Telemarketing                       |
| Kordus Co   | No Call - Telemarketing                       |
| Lactoprot USA Inc                                   | Packaging/Labeling - W&M Packaging & Labeling |
| Lands End Direct Merchants                          | Solicitation - Spam                           |
| Lapage, David                                       | Damage/Loss-Property                          |
| Leath Furniture                                     | Price Comparison                              |
| Life Sales LLC                                      | No Call - Telemarketing                       |
| List-CorpCom Inc                                    | Billing - Billing Dispute                     |
| Magazines of America                                | No Call - Telemarketing                       |
| Mechanic in a Can                                   | No Call - Telemarketing                       |
| Mistwood Apartments                                 | Failure To Return Deposit/Payment             |
| Morgan Mint, Inc                                    | No Call - Telemarketing                       |
| Mountain Area Communications                        | No Call - Telemarketing                       |
| Music Archives                                      | No Call - Telemarketing                       |
| My Magazine Club                                    | No Call - Telemarketing                       |
| National Auto Warranty Services                     | No Call - Telemarketing                       |
| National Certification Board of Therapeutic Massage | Failure To Return Deposit/Payment             |
| National Family Financial Solutions Inc             | No Call - Telemarketing                       |
| National Magazine Exchange                          | Inadequate Disclosure                         |
| Nationwide Mortgage & Realty Corp                   | No Call - Telemarketing                       |
| New Line Platinum Card                              | No Call - Telemarketing                       |
| North American Services Inc                         | No Call - Telemarketing                       |
| North Star Steaks                                   | Sales General                                 |
| Owens Corning                                       | Billing Dispute                               |
| Pacific Webworks Inc                                | Billing - Unauthorized Charge                 |
| Papa Johns International Inc                        | No Call - Telemarketing                       |
| Pioneer Commodities Inc                             | No Call - Telemarketing                       |
| Possiblenow.com Inc (2)                             | No Call - Telemarketing                       |
| Readers Choice of the Central Coast Inc             | No Call - Telemarketing                       |
| Reliable Color                                      | No Call - Telemarketing                       |
| Sauvey & Sauvey Inc                                 | No Call - Telemarketing                       |
| Second Source Funding                               | No Call - Telemarketing                       |
| Ski Supply Kit International                        | Unsolicited Goods                             |
| Southern Magazine Promotions                        | No Call - Telemarketing                       |
| Southern Residential                                | No Call - Telemarketing                       |
| Special Friends of America                          | No Call - Telemarketing                       |
| Stored Value Marketing Inc                          | No Call - Telemarketing                       |
| Student Financial Solutions                         | No Call - Telemarketing                       |
| Subscriber Services Inc                             | No Call - Telemarketing                       |
| Superstar Properties                                | No Call - Telemarketing                       |

**APPENDIX IV (continued)**

**DATCP Consumer Protection Assurances of Compliance Obtained in 2007**

|                                     |                                     |
|-------------------------------------|-------------------------------------|
| Supply Support Network Inc          | No Call - Telemarketing             |
| T6 Broadband                        | No Call - Telemarketing             |
| Teleducando                         | No Call - Telemarketing             |
| Terramarmedia                       | No Call - Telemarketing             |
| The CBE Associates Inc              | No Call - Telemarketing             |
| Ticon                               | Billing Dispute                     |
| Timeshares Only                     | No Call - Telemarketing             |
| Trans World Animal Health           | No Call - Telemarketing             |
| Trident Marketing International Inc | No Call - Telemarketing             |
| Trudyann's Smartmart                | Sales General                       |
| US Cellular Corp                    | Cramming-Telecommunications         |
| US Land Services                    | No Call - Telemarketing             |
| US Merchant Systems                 | No Call - Telemarketing             |
| US Vet Workshop                     | No Call - Telemarketing             |
| USMSI Service Division              | No Call - Telemarketing             |
| Vacation Property Services          | No Call - Telemarketing             |
| Vaya Media                          | No Call - Telemarketing             |
| Virgin Mobile USA                   | Telecommunications - Not as Ordered |
| Voice Marketing Inc                 | No Call - Telemarketing             |
| Wallace's Furniture Inc             | Price Comparison                    |
| Web Data Publishing Inc             | No Call - Telemarketing             |
| Wenzel, Troy                        | Misrepresentation                   |
| WHK Property Management Inc         | No Call - Telemarketing             |
| Winmoreclients.com                  | No Call - Telemarketing             |
| World Securites Inc                 | No Call - Telemarketing             |
| World Timeshare Inc                 | No Call - Telemarketing             |
| Yellow Pages Directories            | Misrepresentation                   |
| Zuelsdorf, Gladys                   | No Call - Telemarketing             |

APPENDIX V

DOJ Consumer Protection Cases Completed in 2007-08

| Case Name  | Case Type           | Source of Case  | Case Description  | Resolution   | Restitution* | Other Monetary Recovery | Total**  |
|--|---------------------|-----------------|---|--|--------------|-------------------------|----------|
| Robert Stuart and Lin Farquhar-Stuart v. Weisflog's Showroom Gallery, Inc., and Ronald R. Weisflog | Amicus Curiae Brief | DOJ             | Although DOJ was not a direct litigant in the case, DOJ (as an interested party) requested leave with the Court to file an amicus curiae brief.   | The Department of Justice filed an amicus curiae brief supporting the consumers' position. The Wisconsin Supreme Court issued a decision in the consumers' favor.  |              |                         |          |
| Tremont Financial, LLC   | Consumer Protection | DFI             | The case involved an investigation into internet payday loan lenders whose practices were alleged to violate numerous provisions of the Wisconsin Consumer Act.   | The Department of Justice and the Consumer Law Clinic reached a settlement with Tremont Financial, LLC. The terms of the settlement: included a \$60,000 payment to settle claims (less attorneys' fees and costs) of affected Wisconsin consumers.  |              | \$60,000                | \$60,000 |
| Kolve, Duane J., et al.  | Fraud               | DATCP           | The defendant was alleged to have failed to file income tax returns, and to have also filed fraudulent income tax returns.  | The defendant was convicted of income tax fraud after a jury trial and was sentenced to six months in jail. (See related case against the defendant under the Telephone & Charitable Solicitation case type.)  |              |                         |          |
| MoneyGram  | Fraud               | Multistate      | The case involved a multistate investigation of the business practices of MoneyGram wire transfer services.   | While a multistate settlement was reached between MoneyGram and prosecuting Attorneys General in the participating states, DOJ determined that the provisions of section 778.027 of the Wisconsin statutes precluded the state from accepting the settlement funds. Under this statutory provision, a state attorney may not, in exchange for a person's payment of money (other than restitution) to any organization or agency, dismiss or amend a citation or complaint alleging a violation that provides for a forfeiture or elect not to initiate an action or special proceeding based on such a violation. |              |                         |          |
| Goldberg, Jaime  | Fraud--Internet     | Public Referral | The case involved allegations of E-Bay fraud.   | The Department of Justice referred the case to the Office of Privacy Protection at DATCP. No follow-up was needed.   |              |                         |          |
| Elite Service  | Identify Theft      | DOJ             | The case involved possible fraudulent business activity and identify theft.   | The findings of the investigation did not warrant further follow-up.   |              |                         |          |
| America Online   | Internet            | Multistate      | The case involved an investigation into alleged problems with America Online's cancellation policy and potentially inadequate consumer disclosures.   | Wisconsin consumers will receive refunds under the terms of a multi-state settlement. The company has begun contacting consumers directly by mail. The Department of Justice will receive copies of and monitor all correspondence. The company has also agreed to pay the participating states \$3 million for costs and fees. Wisconsin's share of the settlement is expected to be approximately \$45,000.  | \$2,700      | 45,000                  | 47,700   |
| Garroni, Andrew M. and Herd, Easton A.   | Internet            | DATCP           | The individuals operated websites to sell subscription-based entertainment services. Their websites allegedly also installed an unauthorized spyware program that took control of consumers' computers by launching aggressive and persistent pop-up ads that demanded payment. | The case was referred back to DATCP because of a Federal Trade Commission settlement with some defendants for the same practices.  |              |                         |          |
| LexisNexis   | Internet            | Multistate      | The case involved a multistate investigation of a data breach at LexisNexis.  | The investigation produced no leads; no follow-up was needed.  |              |                         |          |



| Case Name   | Case Type                   | Source of Case | Case Description  | Resolution   | Restitution* | Other Monetary Recovery | Total**   |
|---|-----------------------------|----------------|---|--|--------------|-------------------------|-----------|
| Ebert, Timothy Michael<br>d/b/a/ Cooper DUCS<br>a/k/a Cooper Ducks, et<br>al. | No-Call                     | DATCP          | The case involved an investigation into consumer complaints against Cooper DUCS for alleged illegal solicitation calls.   | Timothy M. Ebert was required to pay \$7,089 in forfeitures, fees, surcharges, and restitution. Timothy Ebert is also enjoined from conducting direct marketing (such as telephone solicitations) to Wisconsin residents and is forbidden to engage in any type of duct cleaning.  | \$2,000      | \$5,100                 | \$7,100   |
| Godfrey, George P., III<br>d/b/a/ Envarion<br>Corporation<br>("Envarion")     | No Call                     | DATCP          | No call violations were allegedly committed in the course of "pumping" stock to artificially inflate stock values. The solicitation was allegedly a phony pre-recorded stock tip. | The case was closed without filing a complaint. A federal criminal investigation was opened into this alleged nationwide fraud, and the federal Securities and Exchange Commission brought a civil enforcement action. The case involved a small number of Wisconsin victims and losses.   |              |                         |           |
| Sunshine Travel<br>Escapes, Inc.  | No Call                     | DATCP          | The travel company allegedly violated Wisconsin's no call law over 130 times.   | The defendant, William Robert Waldorf, was the owner and operator of Funtime Getaway, Inc. His company was alleged to have taken over Sunshine Travel Escapes' Wisconsin sales. The defendant is enjoined from soliciting Wisconsin residents or businesses, by any means, to purchase goods or services. This injunction extends to any business entity controlled by the defendant, William Robert Waldorf, or any business entity in which he has an ownership interest or is an officer. | 1,000        |                         | 1,000     |
| Merck and Co., Inc.   | Pharmaceutical<br>Marketing | Multistate     | The case involved alleged misrepresentations in the marketing of a pharmaceutical (Vioxx).  | A stipulated judgment against Merck Pharmaceutical was filed by the Attorney General resolving a three-year investigation into the company's marketing of Vioxx. The terms of the settlement include: (1) \$58 million in monetary recovery to the participating states, with Wisconsin's share being \$1,558,914; and (2) limiting Merck's ability to deceptively promote any Merck product.  |              | 1,558,900               | 1,558,900 |
| Ameritrade Holding<br>Group   | Privacy                     | DOJ            | The case involved the alleged loss of personal information by Ameritrade.   | There was no further activity to investigate.  |              |                         |           |
| Bank of America   | Privacy                     | DOJ            | The case involved an investigation of an alleged security breach at Bank of America.  | There was no further activity to investigate.  |              |                         |           |
| Guidant Corporation   | Product Safety              | Multistate     | The case involved a multistate investigation of a recall of Guidant Corporation pacemakers.   | Thirty-seven states including Wisconsin reached a settlement with Guidant Corporation regarding the sale of heart defibrillators they allegedly knew were defective. Guidant will pay the states \$16,750,000, of which Wisconsin will receive \$390,000. Approximately 49 Wisconsin consumers were recipients of the faulty product.  |              | 390,000                 | 390,000   |
| H Z Tires   | Product Safety              | Multistate     | The case involved a multistate investigation into alleged defective tires manufactured in China.  | The U.S. importer, Foreign Tire Sales, Inc., has been working with the National Highway Traffic Safety Administration in assisting consumers to follow the recall procedures.  |              |                         |           |
| Second Chance   | Product Safety              | Multistate     | The case involved an investigation into the manufacturing of allegedly defective bulletproof vests (Zylon).   | There were several civil lawsuits in federal court naming the manufacturers and distributors of Zylon body armor as defendants. Some of the defendants filed for bankruptcy. Hundreds of officers and some agencies received partial restitution or credit toward new body armor.  |              |                         |           |

| Case Name   | Case Type                           | Source of Case  | Case Description  | Resolution  | Restitution* | Other Monetary Recovery | Total**  |
|---|-------------------------------------|-----------------|---|---|--------------|-------------------------|----------|
| Elliott, Terry L. d/b/a A Lighter Than Air Affair   | Sales                               | DATCP           | The case involved an investigation into alleged misrepresentations and fraud in the sale of hot air balloon rides.  | A default judgment was entered against the defendants, A Lighter Than Air Affair and Terry Lee Elliott, Sr., that they are enjoined from conducting business operations in Wisconsin and that they owe Wisconsin consumers \$10,114.  | \$10,100     |                         | \$10,100 |
| iMergent, Inc. and StoresOnline Inc.  | Sales                               | DATCP           | The case involved an investigation into alleged unfair trade practices and misrepresentations in the solicitation and sale of internet marketing seminars and software by iMergent, Inc., subsidiary StoresOnline, Inc. | The Department of Justice reached a settlement with StoresOnline. The terms of the settlement included: (1) a monetary recovery of \$50,000; and (2) required disclosures in its solicitations of the identity of the seller, and the purpose and nature of the services being offered.   |              | \$50,000                | 50,000   |
| Krist Oil Co., d/b/a/ Citigo Quality Food Mart  | Sales                               | DATCP           | Retail gas stations were alleged to have increased pump prices more than once in a 24 hour period.  | Krist Oil Co., must comply with state law regarding the frequency of pump price changes, and will implement reasonable policies to ensure that future violations do not occur.  | 800          | 3,100                   | 3,900    |
| Liberty Publishing, Inc., d/b/a/ Booster Club Productions   | Sales                               | Law Enforcement | The case involved alleged misrepresentations in the sale of calendars and events posters to community groups.   | The case was closed without filing a complaint. The Department tried to obtain more information through a civil investigative demand but was unsuccessful.  |              |                         |          |
| ILD Telecommunications (State v. Radical Persson, Inc., d/b/a/ EChurch Network and iLab Technologies) | Telecommunications                  | DATCP           | The case involved allegations that eChurch Network and iLab Technologies violated the state's direct marketing and telecommunications laws.   | A settlement agreement was reached imposing an injunction requiring numerous practices designed to avoid, detect and terminate cramming by merchants using ILD's billing services. The Department of Justice reached a settlement with California Internet Service Provider, Radical Persson, Inc., and its owner and operator, Lars Persson. The state received a monetary recovery of \$100,000 under the settlement. | 1,900        | 100,000                 | 101,900  |
| Backen, Brian S.  | Telephone & Charitable Solicitation | DATCP           | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. A plea agreement was reached in which the defendant pled guilty to two misdemeanor thefts by fraud. The defendant received a sentence of two years probation.   |              |                         |          |
| Deprey, Stacy L.  | Telephone & Charitable Solicitation | DATCP           | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. Charges against the defendant were dismissed in exchange for cooperation.   |              |                         |          |
| Dixson, William E.  | Telephone & Charitable Solicitation | DATCP           | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. Charges against the defendant were dismissed in exchange for cooperation.   |              |                         |          |
| Keen, Christopher M.  | Telephone & Charitable Solicitation | DATCP           | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. Under a plea agreement, the defendant pled guilty to one felony fraudulent writing charge and three charges of misdemeanor theft by fraud. The defendant received a sentence of two years probation.  |              |                         |          |

| Case Name               | Case Type                           | Source of Case | Case Description  | Resolution   | Restitution* | Other Monetary Recovery | Total**     |
|-------------------------|-------------------------------------|----------------|---|--|--------------|-------------------------|-------------|
| Kolve, Duane J., et al. | Telephone & Charitable Solicitation | DATCP          | A criminal complaint was filed in Eau Claire County Circuit Court charging eight individuals with using deceptive solicitations to raise money on behalf of questionable charitable entities. | Duane Kolve pled guilty to racketeering but the sentence was withheld. The defendant's sentence included six years probation and 10 months in jail with Huber privileges. The defendant was also ordered to pay \$20,000 as a financial penalty, with the initial portion being reimbursement of the cost of the prosecution, and the remaining amount, up to the total of \$20,000, being a fine. (See related case against the defendant under the Fraud case type.) |              | \$20,000                | \$20,000    |
| Lynch, Michael A.       | Telephone & Charitable Solicitation | DATCP          | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. Charges against the defendant were dismissed in exchange for cooperation.  |              |                         |             |
| Ranta, Steven J.        | Telephone & Charitable Solicitation | DATCP          | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. The trial judge dismissed the case following a preliminary hearing based on a finding of lack of probable cause.   |              |                         |             |
| Rider, Michael J.       | Telephone & Charitable Solicitation | DATCP          | The defendant was alleged to have utilized deceptive solicitations to raise money on behalf of questionable charitable entities.  | The defendant was charged with racketeering (fundraising fraud) as part of the Kolve prosecution. Under a plea agreement, the defendant pled guilty to two misdemeanor thefts by fraud and was sentenced to two years probation. A local district attorney was the prosecutorial lead in the case, while DOJ staff assisted in the prosecution.  |              |                         |             |
| <b>Totals</b>           |                                     |                |   |  | \$18,500     | \$2,232,100             | \$2,250,600 |

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

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