

# 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 address 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), select court cases closed in 2012 and 2013 following DATCP investigations or referrals for prosecution (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 one 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, weight reduction, dating service, and other future service contracts; (4) unfair mail order sales practices; (5) motor vehicle parts and vehicle rust-proofing warranties; (6) time share and campground ownership; (7) prepaid maintenance liens; (8) unsolicited prize notices or sales under pretense of a prize; (9) pay-per-call or "900" telephone number abuses; (10) ticket refunds; (11) cable television subscriber rights; (12) charitable solicitation; and (13) telecommunications services. Rule-making authority, enforcement authority or both now generally rests with DATCP for most of these sections. The Department can bring actions in state courts for alleged violations under its own authority or by referring cases to local district attorneys or DOJ. 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) the telemarketer no-call program; (2) prohibitions against using consumer loan information for solicitation; (3) allowing consumers via security freezes to restrict access to personal credit reports; (4) provisions concerning the privacy of certain consumer information; (5) requiring businesses with a statewide franchise for video services to provide sufficient consumer access; (6)

soliciting contracts using checks or money orders; (7) regulation of foreclosure consultants; (8) a prohibition on using bisphenol A [BPA] in certain children's products; (9) various prohibitions on unfair billing for consumer goods or services; and (10) regulation of residential contractors.

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 these authorities after consulting with or petitioning 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.

DATCP's consumer protection activities rely significantly on administrative rules adopted under the statutory authorities described in the following paragraphs. The administrative rules are intended to reduce the possibility of arbitrary or inconsistent state regulation of businesses by providing detailed, industry-wide standards of conduct for specific consumer protection issues. 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.

In addition to enforcing state consumer protection law, a significant part of the Bureau's consumer protection role is educating consumers about potential fraudulent or unfair activity periodically reported to DATCP, law enforcement agencies or other regulatory entities. Consumer awareness, both of ongoing suspicious practices and of consumers' rights in certain dealings with businesses, is therefore intended to prevent violations of consumer protection law from occurring. (The following sections also note provisions under which private parties may pursue legal action against alleged violations of consumer protec-

tions laws.) In response to violations, however, the Bureau generally uses dispute mediation and progressively more stringent enforcement of violations to ensure compliance with the state's consumer protection laws. Education, mediation and enforcement efforts are discussed later in greater detail.

The sections following discuss the broad statutory authorities that form the basis for much of DATCP's consumer protection programming. Certain other sections of the statutes identify industry- or product-specific activities that have been deemed fraudulent representations or unfair methods of conducting business, and the statutes may ban such activities, require certain disclosures or attestations by sellers to protect consumer well-being, or both. Examples of these provisions are laws pertaining to food labeling and marketing, and to the substantiation of a product's energy efficiency or safety. Although these laws may be considered part of DATCP's consumer protection responsibilities, they are not discussed in significant detail in this paper.

### **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 on behalf of the state to 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. Persons alleging a pecuniary loss due to a fraudulent representation also may bring suit for recovery of the loss and certain allowable court costs. In addition to halting the fraudulent actions for most infringements, the court can impose 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. Victims of an injunction violation also may sue for restitution of double their pecuniary loss.

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 made in writing as a letter or a contract. The as-

surance 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 filed in court and 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 is 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," 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, many of which were 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.

#### *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.

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 statutes, includes the sale of services conveying voice communication, including 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 (PSC). 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 and the PSC, has the authority to promulgate rules related to the provision of electronic communications services in the state. ATCP 123 regulates subscription and billing practices related to electronic communication 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 electronic communications services. A district attorney, upon informing DATCP, may also commence such actions.

Any person who violates the consumer protection statutes related to electronic communications 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 do-not-call registry. Aside from several exceptions listed in statute and administrative rule, such as solicitations by nonprofit organizations or solicitations to clients or persons who have specifically opted to receive phone solicitations, the do-not-call registry prohibits most tele-

phone solicitations to numbers on the list. Violations are punishable by forfeitures of up to \$100 per violation. 2007 Act 226 made mobile-phone numbers eligible for the no-call list beginning in June, 2008, and 2011 Act 197 also expanded prohibited telemarketing practices to include unsolicited text messages.

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 most numbers ever included on the Wisconsin list was 2,310,300 on July 1, 2011, while the fewest included since the list's creation was 779,700 on July 1, 2007. DATCP estimates mobile phones have constituted 50% or more of lines registered in each quarterly period since January, 2011.

Beginning August 1, 2014, the state do-not-call registry ceased to be administered solely by DATCP. Instead, under 2013 Act 234, the state no-call list consists of those landline and cellular phone numbers originating from Wisconsin area codes and appearing on the national do-not-call registry, which is administered by the FTC. Act 234 effectively allows Wisconsin residents to register once for the national do-not-call registry and have the registration be permanent; the federal registry considers registrations permanent, whereas state statutes previously provided a phone number was to be deleted two years after listing unless subsequently renewed. The federal registry also updates daily, as opposed to quarterly updates of the state registry. With the state do-not-call list being administered by the FTC, DATCP will no longer distribute to telemarketers the list of Wisconsin phone lines registered under the program. Most other state telemarketing provisions continue to apply, however, including more stringent limits on continued contacts after do-not-call registration and on solicitations by subsidiaries and affiliates.

As of August 1, 2014, 1,342,200 numbers registered with DATCP were transferred to the fed-

eral do-not-call list. The FTC reports approximately 4.37 million active and registered Wisconsin phone lines on the federal do-not-call list as of September 30, 2014. As of late 2014, no information was available as to the proportions of all Wisconsin lines on the federal do-not-call list that were landlines or mobile numbers.

## **Product Safety**

DATCP is responsible for administering multiple product-safety laws regulating hazardous substances and other consumer products that may present an unreasonable risk of injury to the public. DATCP has general authority to ban the sale or distribution of hazardous substances (s. 100.37 of the statutes) or of any consumer product determined to present an unreasonable risk or imminent hazard to the public health, welfare or safety (s. 100.42). In addition, DATCP is responsible for administering several laws intended to address products or packages that, though not necessarily immediately toxic or dangerous to consumers, if at all, may have cumulative detrimental impacts on the environment. These various product-safety laws include the following:

- Labeling and Content of Bedding (s. 100.2095)
- Mercury-Containing Dry Cell Batteries (s. 100.27)
- Sale of Detergents Containing Phosphorus (s. 100.28)
- Reductions of Toxics in Packaging (s. 100.285)
- Labeling of Recycled, Recyclable or Degradable Consumer Products (s. 100.295)
- Plastic Container Recycled Content and Labeling (s. 100.297 and s. 100.33)
- Bisphenol A Prohibitions in Children's Products (s. 100.335)
- Antifreeze Content (s. 100.38)
- Flammable Fabrics (s. 100.41)
- Poison Prevention in Packaging (s. 100.43)
- Energy Efficiency Standards (s. 100.46)
- Products Containing or Made with Ozone-Depleting Substances (s. 100.50)

## **Security of Personal Information**

In recent biennia, a number of statutory provisions have been created to address the ability of

consumers to secure personal information. These provisions intend to address and mitigate potential damages to consumers, as the proliferation of electronically stored personal information in recent years generally has been associated with thefts of such data and the misappropriation of personal information, commonly referred to as identity theft.

Among the provisions limiting distribution of personal information are allowances for persons to restrict access to their credit reports, also known as a "security freeze." Security freezes may also be requested for protected individuals, meaning those under age 16 or a person for whom a guardian or conservator has been appointed. Other provisions limit the release of personal information: (1) in "trigger leads," which may be provided by credit reporting agencies to third parties following consumer applications for credit; (2) by tax preparers; and (3) contained in records of telephone calls generated by telephone service providers. For most of these provisions, DATCP, DOJ or both have authority to commence court actions in response to violations of the law. DATCP also has rule-making authority with regard to clarifying the procedure for placing security freezes. However, the agencies' administrative responsibilities for these statutes are otherwise fewer than for other consumer protection subject areas. These laws generally allow persons incurring losses due to violations of the provisions to file court actions to recover losses and certain other amounts.

Further, to provide ongoing support in response to identity theft, the Office of Privacy Protection was created in DATCP in 2006. The office is discussed later in greater detail. It should be noted that the Department does not have statutory authority to conduct its own investigations of identity theft. However, the statutes contain general requirements that entities operating in the state notify any state resident that may be the subject of a data breach or other unauthorized access to personal information, provided the ac-

cess presents a material risk of identity theft or fraud to the subject. Although no state agency is directly responsible for administering the statute, DATCP reports it assists entities in complying with the requirement. The Department also conducts other education campaigns and outreach to law enforcement agencies investigating identity theft, and to consumers seeking to recoup financial losses or restore credit histories following suspected identity theft.

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### **DATCP Consumer Protection Program**

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The Bureau of Consumer Protection operates alongside two other bureaus in the Division of Trade and Consumer Protection. All three broadly address allowable conduct in commercial transactions or the quantity, quality and purity of certain products marketed in the state. Although other programs throughout the Division may regulate "business-to-business" transactions more so than "business-to-consumer" transactions, programs generally are intended to ensure efficiency in markets to the benefit of all commerce in the state.

The following paragraphs primarily describe the structure and operations of the Bureau of Consumer Protection. Brief descriptions are provided for additional programs relating to business trade practice regulation, weights and measures inspections, and petroleum products and storage systems regulation.

#### **Consumer Protection Program Funding**

Funding for the Bureau of Consumer Protection is provided primarily from general purpose revenues (GPR) and program revenues (PR). In 2014-15, the Bureau is authorized 33.0 positions. Total funding budgeted for consumer protection programming in 2014-15 is approximately \$3.1

million, consisting of \$1,464,600 GPR with 18.65 positions and \$1,660,500 PR with 18.9 positions. This funding includes staffing and support costs of division-level administrative positions for the portion of this staff's workload attributable to consumer protection programs. Division-level administrative staff account for 4.55 positions with \$201,900 GPR and \$135,800 PR. The Bureau also customarily receives revenues from purchase orders made by the United States Consumer Product Safety Commission (CPSC) for consumer protection staff to conduct investigations or monitor Wisconsin businesses' compliance with CPSC regulations. In 2013-14, the Bureau received \$5,800 for these purposes. Activities under federal contract are described later in greater detail.

Bureau of Consumer Protection program revenue consists of various fees: (1) telemarketer licensing and other fees under the no-call program; (2) assessments on telecommunications utilities levied by the Public Service Commission and transferred to DATCP; (3) a 25% surcharge on fines and forfeitures for consumer protection violations; (4) sale of supplies and other materials; and (5) surcharges for violations of the state prohibition on bisphenol A use in children's products, although this appropriation has not received any deposits as of June 30, 2014.

#### **Consumer Protection Bureau Organization**

The Bureau of Consumer Protection operates from a centralized office in Madison. Prior to 2010, the Bureau operated with a central office in Madison and regional offices in Madison, Wauwatosa, Eau Claire and Green Bay. Staff persons in regional offices were primarily responsible for receiving, investigating and resolving complaints or developing cases for further enforcement action. However, regional offices were closed in December, 2009, due in part to program staffing and funding reductions under 2009 Act 28, the 2009-11 biennial budget act. Regionally based positions were consolidated in Madison and re-

structured into several work units. The current organizational structure is described in the following paragraphs, and the number of positions assigned to each area is shown in Table 1.

**Table 1: DATCP Consumer Protection Staff (2014-15)**

Work Unit/Area	Positions
Administration and Outreach	3.00
Consumer Information (Hotline)	6.00
Complaint Administration	11.00
Investigation	10.00
Privacy Protection	<u>3.00</u>
Total	33.00

*Administration and Outreach*

Administrative positions within the Bureau of Consumer Protection include a Director and a compliance specialist assigned primarily to supporting investigative and enforcement activities. Also included is a Spanish-language outreach specialist, which translates consumer complaints and factsheets and works with Spanish-speaking communities to publicize consumer issues that are most pertinent to these persons.

In addition to the three Bureau staff identified in Table 1, GPR and PR funding budgeted for consumer protection supports 4.55 other Division of Trade and Consumer Protection positions for: (1) program, policy and budget analysis; (2) executive staff assistance; and (3) a public information officer, which has primary responsibilities of issuing press releases and disseminating information to consumers via mass media for questionable business practices of which the Bureau is aware. Duties of these staff persons include, but are not necessarily limited to, support of DATCP consumer protection programs. The positions therefore are supported in part by funds appropriated for consumer protection programs, but they are not considered part of the Bureau of Consumer Protection and do not, therefore, appear in Table 1.

*Consumer Information Hotline*

The consumer information and education unit is often the first point of contact between the Bureau and consumers. The unit includes 5.0 positions for the consumer protection hotline and a supervisor of the unit. The primary responsibility of the hotline staff is receiving phone calls and e-mails from individuals reporting potential violations of consumer protection laws. In addition to live assistance offered through the hotline, the Bureau also responds to inquiries through an automated answering service known as interactive voice response (IVR), which has been operated by DATCP since being transferred from DOJ in 1996. All contacts are cataloged in a database kept by the Bureau to identify trends and emerging issues in the state and to establish program priorities and direction. The database also helps hotline staff persons answer consumer inquiries as to whether complaints have been filed against particular businesses.

*Complaint Administration*

The Bureau has allocated 11.0 positions, consisting of 1.0 unit manager, 9.0 consumer protection investigators and 1.0 licensing program associate, under its complaint administration unit for receiving, processing and initiating responses to formal, written complaints. This unit also administers the telemarketer no-call program. Whereas the consumer information unit receives and responds to consumers' initial inquiries, complaint administration is responsible for resolving disputes for which consumers have submitted a formal complaint. As opposed to the more general questions received on the hotline or IVR, formal complaints describe an alleged improper business action, and include detailed information on the alleged violation. Complaints may result in further investigation, mediation or one or more types of enforcement, which are discussed later in greater detail. Duties of the complaint administration unit include responding to complaints made against businesses headquarter-

tered outside Wisconsin but whose operations within the state are alleged to have violated state laws. The complaint administration unit includes 2.0 positions associated with the Office of Privacy Protection, which is discussed in greater detail in a separate section.

Under the Bureau's previous organizational structure, complaint administration was partly decentralized, as some complaints were handled in regional offices outside Madison. The persons handling complaints are now all located in Madison. However, DATCP reports each consumer specialist is assigned a geographic area to monitor consumer protection trends in the assigned area.

*Telemarketer Do-Not-Call List.* DATCP administers the do-not-call program under s. 100.52 of the statutes and administrative rule ATCP 127, which establishes terms for the licensing of telemarketers, specifies provisions for maintaining and distributing the do-not-call registry and clarifies allowable actions for making telephone solicitations. Telemarketers pay initial licensing 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 per registered telemarketer, and fees may be paid on a quarterly basis. Consumers are not charged for registering.

Fees are mostly deposited to a program revenue continuing appropriation for DATCP administration of the program. For 2014-15, DATCP is provided \$750,500 and 7.2 positions from the appropriation. As of July 1, 2014, DATCP allocates 5.2 positions for administration of the no-call program and handling of complaints of alleged do-not-call violations. Another 2.0 positions are for program and policy analysts funded from no-call list revenues but counted among central staff for the Division of Trade and Consumer Protection. In addition, the Department is budgeted \$248,300 telephone solicitation PR with 4.2 positions in 2014-15 in an annual appro-

priation for general consumer protection and consumer education, which supports positions divided among the Bureau's complaint administration, consumer information and outreach, and investigation units.

In July, 2014, DATCP repealed by emergency rule other supplemental fees on telemarketers that had been in effect since 2002. These fees included \$25 for each compact disc copy or additional electronic copy of the no-call list, and \$1,000 for each hard copy of the no-call list; each fee is obsolete following 2013 Act 234 due to DATCP no longer maintaining and distributing the state do-not-call list. As these fees were seldom incurred by registered telemarketers, the fiscal effect of the fees' repeal is expected to be minimal.

Prior to Act 234, DATCP contracted for maintenance of the residential no-call phone listing. The contractor was responsible for receiving resident registrations by phone and Internet, as well as distributing the full no-call list each quarter to licensed telemarketers and DATCP. Payments to the contractor were on the basis of successful Web- or phone-based sign-ups of phone lines to the do-not-call list. Total DATCP payments to the contractor were \$172,200 in 2012-13 and \$59,200 in 2013-14.

Following the enactment of Act 234, DATCP ceased receiving resident registrations for the do-not-call list. Information on the state do-not-call website and the toll-free registration hotline was revised to alert consumers to the changes under Act 234 and to redirect consumers to the FTC for sign-up. By August 1, 2014, the Department had transferred to the FTC all registration information for persons with valid registrations on the state do-not-call list as of that date, and DATCP reports the FTC added all non-duplicative phone numbers to its existing list of registered state phone numbers. DATCP also elected to terminate the contract for the state do-not-call program effective December 1, 2014. For contractor services in 2014-15 from July 1 through

November 30, DATCP has budgeted \$40,000.

DATCP reports most telemarketers historically have registered with both the state and the FTC. As a result, most would not be expected to see a significant change in regulatory oversight. The primary changes would be telemarketers receiving lists of registered phone lines from the FTC instead of DATCP, which would occur at least every 31 days under federal law. FTC administrative rules charge telemarketers an annual do-not-call list access fee of \$60 per area code accessed, although there is no charge for accessing up to five area codes. Therefore, DATCP estimates telemarketers that had registered only with the Department prior to Act 234 would have to pay \$60 annually to the FTC, in addition to charges assessed by DATCP, to access all six active area codes in Wisconsin as of 2015.

DATCP indicated that consumers registered for the do-not-call list would notice little change under Act 234, with the primary difference being permanent registration under the federal list. Further, state law also is more stringent in some respects than federal law governing the do-not-call list; for instance, telemarketers under federal law may contact a registered number up to 18 months following the completion of a customer's transaction or contractual relationship, while DATCP rules permit only one contact by a seller to determine whether the lapsing of a contract was inadvertent. Federal law allows states to administer and enforce telemarketing laws that are more stringent than federal provisions.

Revenues under administrative rule ATCP 127 were initially estimated at approximately \$550,000 annually beginning in 2003-04. However, actual annual revenues have consistently exceeded the initial estimates. 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%. In the past, 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, but has collected all quarterly payments since 2007. Through 2014, the cumulative amount of waived quarterly payments is estimated at \$4.76 million.

DATCP also has transferred a total of \$8.6 million from the appropriation balance to the general fund since 2003-04 under multiple yearly lapse requirements. These amounts are shown in Table 2. On July 1, 2014, the telephone solicitation appropriation had a balance of \$581,100. No-call revenues were \$1.81 million in 2012-13 and \$1.72 million in 2013-14.

**Table 2: Transfers of Telemarketer Registration Fees to the General Fund**

2003-04	\$666,700
2004-05	62,000
2006-07	402,000
2007-08	2,038,000
2008-09	83,400
2009-10	1,424,600
2010-11	1,917,800
2011-12	665,000
2012-13	556,600
2013-14	<u>777,700</u>
Total	\$8,593,800

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 in excess of the 15% specified under ATCP 127.81(5).



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. This clarified language in ATCP 127, which contains a reference to the state's "Little FTC Act" that imposes a \$10,000 maximum forfeiture for unfair trade practices.

*Securities.* The complaint administration unit also holds statutorily required securities for fitness clubs and firms providing weight-loss and dating services. Generally, these businesses must provide a security of \$25,000 before being allowed to collect certain fees from clients prior to providing services. This is partly intended to prevent clients from losing money from operators that may accept payments without delivering services promised under a contract. The Department also holds surety bonds for time shares, which may be filed by time-share developers to protect purchaser deposits in such projects. As of June 30, 2014, the Bureau held securities of \$18.8 million for 420 businesses, including \$9.2 million for fitness centers, \$8.75 million in time-share sureties, \$275,000 for dating services, \$400,000 for future service plans and \$212,200 for weight-loss centers.

### *Investigation*

The investigation unit consists of 1.0 unit supervisor and 9.0 investigators and is responsible for gathering further information on complaints and assessing whether violations of law have occurred and require further enforcement action. Investigators previously were located in each regional office, but, as with the complaint administration unit, a centralized staff is intended to better collaborate on cases and better determine which consumer laws may have been violated in each case. Investigators work with DATCP's attorneys and the Department of Justice in developing investigative methods and evidence for cases and determining the appropriateness of potential enforcement actions. The procedures for investi-

gating and closing cases are discussed later in greater detail.

### *Office of Privacy Protection*

The Office of Privacy Protection (OPP) was created at the direction of the Governor in April, 2006. The Office's duties include: (1) providing education on identity theft to individuals, government agencies, law enforcement agencies and businesses, both through the DATCP website and in-person training sessions; (2) receiving complaints related to identity theft; and (3) providing identity-theft victim assistance. Victim-assistance activities may involve both individuals and businesses, including state agencies, that possess personally identifiable information of customers. If a business or state agency has experienced a data breach in its customers' personally identifiable information, and the incident created a "material risk of identity theft or fraud," OPP assistance may include supervision of statutorily required notices to potential victims.

The Office was authorized three positions upon its creation, which were administratively created by DATCP and the Department of Administration under a federal appropriation. Beginning in 2007-08, OPP funding was changed from \$170,500 FED annually to \$102,300 annually from each of general purpose revenue (GPR) and program revenue (PR) transferred from the Office of Commissioner of Insurance (OCI). Under the Bureau's 2009 reorganization, 4.0 PR positions were added to OPP for an anticipated increase in workload, but staffing has since reverted to 3.0 positions. Total funding for 2014-15 is budgeted at \$102,300 GPR with 1.5 positions and \$102,300 OCI PR with 1.5 positions. (DATCP anticipates additional OCI PR of about \$12,700 will be available from unexpended funds from previous years.) Positions include 1.0 agency liaison and 2.0 consumer protection investigators.

In 2012 and 2013 respectively, DATCP received 2,373 and 2,471 contacts relating to cases

of suspected identity theft. In 2012, 508 complaints were filed related to identity theft, and in 2013, 398 such complaints were filed. The OPP posted information on its website pursuant to nine data breaches in 2012 and 14 in 2013. Postings in 2014 through June totaled eight. The postings primarily alert consumers to data breaches as they are announced by companies or other entities possessing sensitive personal information, such as health care providers. A posting typically includes the nature of the compromised data, suggested steps potentially affected consumers should take to mitigate the effects of the data breach, and any assistance available to potentially affected consumers, such as temporary credit monitoring. In some instances, but not necessarily all, data custodians consult with OPP on suitable responses for the enterprise in mitigating the impact of the data breach.

### **Other Trade and Consumer Protection Programs**

The Business Trade Practices Bureau handles regulatory duties related to unfair trade practices and is primarily concerned with potential instances of unfair industry competition. Examples of Business Trade Practices Bureau programs include: (1) regulation of product pricing under the Unfair Sales Act, which is commonly known as the "minimum markup" law, as it generally prohibiting merchants from selling products below cost, or specifies certain minimum additional pricing for certain products such as motor vehicle fuel, tobacco products and alcoholic beverages; (2) the agricultural producer security program, which attempts to ensure that commodity dealers, storage facilities, and processors have sufficient means to pay individual producers of dairy, grains, and vegetables from whom they purchase; and (3) grading and inspection services for grain, fruits and vegetables to be further marketed nationally or internationally. Appendix II contains a list of administrative rules related to trade practices. Appendix III summarizes the state's minimum markup law. The Business Trade Practices

Bureau is supported by GPR, various program revenues, the segregated (SEG) petroleum inspection fund (PIF), and the segregated agricultural producer security fund.

In 2013, the Department created the Bureau of Weights and Measures to carry out programs for: (1) inspection of petroleum products and the storage tanks and systems for those and flammable or combustible liquids; and (2) DATCP's existing weights and measures regulatory and inspection activities, which previously operated from the Regulation and Safety Section of the Consumer Protection Bureau. Prior to 2013 Act 20, DATCP's weights and measures program was responsible for inspecting retail motor vehicle fuel pumps as part of its general regulatory authority over devices for measuring mass or volume in the course of commercial transactions. The Department of Safety and Professional Services (DSPS) was responsible for inspecting petroleum product storage systems, as well as sampling and testing petroleum products, including motor vehicle fuel, to verify the purported content of the material. The 2013 merger was intended to consolidate similar inspection programs in one agency for greater administrative efficiency.

The Bureau of Weights and Measures in 2014-15 is authorized: (1) \$5,585,100 PIF SEG with 40.0 positions, funded primarily by a 2¢ per gallon fee on petroleum products received for sale in the state; (2) \$1,274,900 weights and measures PR with 13.05 positions, supported by license fees on various regulated devices or businesses, fees from municipalities for weights and measures inspection services provided by DATCP under contract, and tonnage surcharges related to weights and measures; (3) \$329,100 from federal (FED) funds provided by the U.S. Environmental Protection Agency for underground storage tank regulation, with 2.0 positions; and (4) \$40,000 GPR with 0.35 position. These amounts include administrative positions both in the Bureau and those at the Division level that are supported by appropriations made for

weights and measures or petroleum product inspection programs.

It should be noted in 2013-14, 2013 Act 312 and DATCP administrative rule changes eliminated certain program revenues generated primarily by annual licenses for automobile repair shops conducting mobile air conditioner installation, removal or repair work. These revenues had been anticipated to support authorized expenditures of \$470,400 PR with 6.05 positions in 2014-15.

A significant portion of DATCP weights and measures field inspections assist municipalities and private-sector servicers in weights and measures regulatory work required by Chapter 98 of the statutes. The statutes require municipalities with population of more than 5,000 to enforce state weights and measures laws in their jurisdiction, unless a municipality enters a contract with DATCP for weights and measures inspection services. As of July 1, 2014, 115 municipalities had contracts for DATCP services. These contracts obligate DATCP to provide a total of about 8,000 hours of inspection services to the contracting municipalities.

DATCP inspectors' weights and measures field work most often includes: (1) verifying the proper functioning of weights and measures used in commercial activity, including scales, liquid dispensers and timers; (2) conducting surveys of retail stores for scanner accuracy and price verification; and (3) verifying advertised product weights or volumes on prepackaged foods and consumer goods.

In 2012 and 2013, weights and measures inspectors performed surveys at approximately 5,400 locations each year. (A single location may have had multiple inspection types performed, such as price accuracy checks and scale verifications; the totals do not include reinspections, in which an inspector would return to a location to verify the correction of equipment previously determined to need recalibration or to be otherwise

noncompliant.) Further details of devices checked during surveys are shown in Table 3.

**Table 3: Summary of Weights and Measures Field Inspection Activities**

Inspection Category	2012	2013
Package Weight and Labels	109,211	124,431
Price Accuracy Checks	38,318	42,537
Fuel Pumps (Grades)	31,643	30,835
Non-Fuel Scales and Meters	<u>14,681</u>	<u>12,039</u>
Total (Non-Fuel)	193,853	209,842

Further, the Bureau of Weights and Measures maintains and staffs the state's metrology lab, which verifies the calibration of scales and other devices, used by inspectors and services to test weight and measures in commercial use throughout the state. In 2012 and 2013, the Department tested approximately 8,100 and 8,900 weights and measures, respectively.

Following the transfer of petroleum product and tank storage inspections, inspectors also are responsible for conducting sampling of petroleum products and other liquid fuels, as well as verifying compliance with standards for the safe storage and dispensing of petroleum products. Sampling and inspections for petroleum products and storage tanks occurs primarily at retail fuel stations and other fuel terminal or wholesale locations throughout the state. DATCP reports petroleum product storage tank operators registered 691 new storage tanks in 2013-14. DATCP reviewed 445 storage tank plans. Also, 737 storage tanks were reported closed.

From January 1, 2014, through June 30, 2014, the Department reports it conducted approximately 3,100 inspections of facilities at which petroleum product storage tanks are located. Approximately 2,300 of these facilities were retail sellers of gasoline and other petroleum products. (Statistics prior to January 1, 2014, are not readily available, due primarily to changes in program administration and tracking systems following

the transfer.)

DATCP reports the following enforcement actions were taken relating to petroleum product storage and dispensing requirements between January 1 and June 30, 2014, pursuant to approximately 5,600 infractions observed: (1) 260 violations corrected at the time of identification; (2) 4,221 issuances of administrative orders, issued at approximately 1,034 locations; (3) 906 final notices, issued at approximately 295 locations; and (4) 202 "red tags," which prohibit filling a noncompliant storage tank, issued at 72 different locations. Administrative orders describe the violation and direct its correction, while final notices are issued in the event administrative orders are not complied with. Red tags typically are issued only following noncompliance with final notices, or in the event a violation presents an immediate threat to public safety.

Petroleum product samples have been sent to one of nine laboratories in the state for analysis. In 2013-14, DATCP reports approximately 10,900 tests were performed on approximately 5,900 petroleum product samples received by the regional laboratories from field inspection and sampling.

In 2014, construction began on a central laboratory co-located with the metrology laboratory in Madison that will allow for the consolidation of the regional petroleum product testing laboratories. DATCP anticipates the central petroleum testing laboratory will be completed and operating by approximately August, 2015, at which point the regional laboratories would begin closing.

In addition, the Bureau of Weights and Measures enforces laws relating to the handling of potentially ozone-depleting refrigerants, including the proper servicing of mobile air conditioners and cold-storage trailers.

## Complaint Intake and Response Procedures

### *Initial Contact*

A primary function of the Bureau of Consumer Protection is to review and respond to consumer inquiries and complaints. The majority of contacts to the Bureau come electronically via the Bureau's website or by telephone. Table 4 summarizes the types of consumer contacts made by DATCP in 2012 and 2013. In addition, DATCP reports the Department's website in 2013 had 206,700 unique views of Web pages describing consumer protection programs, complaint intake and consumer information of note to the public.

Persons contacting the Bureau to report unfair or fraudulent business practices may receive several types of information. Based on a brief description of the person's circumstances, staff members generally discuss the consumer's legal rights and options for further actions. Consumers may attempt to resolve a dispute privately after gaining a fuller understanding of the responsibilities of involved parties, and DATCP in the past estimated that up to two thirds of consumer inquiries are resolved upon initial communication. Such resolution, in addition to being timely for consumers, minimizes more time-consuming written responses by consumer protection staff to consumers

**Table 4: Summary of Consumer Protection Contacts**

Contact Type	2012	2013
IVR Calls	37,238	N/A*
Non-IVR Phone Calls	27,898	28,870
Presentation Audiences**	5,300	5,000
E-mail	207	443
Walk-Ins	169	118
Media Contacts	268	368
Other***	<u>37</u>	<u>28</u>
Totals	71,117	36,057

\* Due to changes in data collection, a comparable total is not available for 2013.

\*\* Estimated total audience of DATCP presentations to groups, which totaled 77 in 2012 and 110 in 2013.

\*\*\* Includes contacts by legislators, state agencies and by other forms of communication such as fax or letter.

and affected businesses, which is the first step following receipt of a formal complaint.

Hotline personnel often send factsheets to callers describing applicable laws and consumers' rights under them. The Bureau sent 10,214 fact sheets in 2012 and 10,443 in 2013. Hotline responders also refer callers to factsheets and other information available on the DATCP website. The staff may also refer callers to other agencies that have jurisdiction over the area of concern or that can provide further assistance. The Bureau made 1,112 such referrals in 2012 and 2,832 in 2013.

### *Written Complaints*

In 2013, DATCP received 10,454 written complaints, and initiated another 598 complaints on its own, for a total of 11,052 formal complaints. Total complaints in 2012 were 10,614, including 10,061 received from consumers and 553 initiated by the Department. In 2013, approximately 23% of complaints were related to either telemarketer violations of the no-call list (2,014) or other telecommunications practices (573), which typically are among the top sources of written complaints. The Department in 2013 also received a number of complaints on landlord-tenant disputes (1,052), identity theft (398), and home improvement contracts and projects (325). All these subjects typically have been among the top 10 categories of complaints received annually in recent years.

In some instances, the Department may request that a consumer file an official complaint form. These instances may include practices that do not specifically violate current rules or specific statutes, but involve repeated and serious occurrences that DATCP wishes to review for potential further actions. Such complaints may also follow a series of similar complaints warranting further investigation after an initial review by an investigator.

After receiving a complaint, DATCP sends a

written response to both the consumer and the affected business. For many complaints, DATCP may find that no illegal action occurred. The Bureau in such cases generally attempts to mediate disputes by informing the consumer and the affected business of their rights or responsibilities and proposing possible solutions to both parties. Although DATCP's primary statutory mission is to identify and prevent unfair business practices and not to represent individual consumers, the Department reports many complaints are resolved to the satisfaction of consumers by providing the involved parties such information. DATCP estimates that approximately 90% of written complaints are mediated by the Department each year.

### **Investigations**

In some instances, the Department further investigates complaints to determine whether a violation 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. DATCP authority includes the ability to subpoena documents and testimony, conduct investigative hearings, collect and analyze samples, and inspect and copy business records. DATCP attorneys and legal staff assist consumer protection staff with investigative activities.

Although most complaints are handled through some form of mediation, an estimated 20% of all complaints require some level of investigation, including interviews, data collection, case evaluations and, at times, undercover investigation. It should be noted that many cases that end in mediation may involve some level of investigation prior to resolution. Additionally, DATCP may mediate certain individual cases prior to conducting investigations. These circumstances generally arise from violations that affect multiple complainants or that indicate other possible wrongdoing by an accused party. Telecommunications,

automotive repair, home improvement and tele-marketing cases for several years have represented the majority of investigations. DATCP also reports investigations since 2012 increasingly have focused on direct marketing, landlord-tenant issues, price notifications, time-share residences, travel clubs and unfair billing practices.

Serious violations with a significant impact on affected consumers will tend to merit greater use of staff resources. 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.

Generally, 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 are assigned to staff based on priority and in an attempt to balance caseloads among investigative staff.

DATCP conducted 133 formal investigations related to consumer complaints in 2012 and 189 in 2013. DATCP reports it maintains regular contact throughout the course of an investigation with DOJ, or local district attorneys' offices, if a case is more appropriately pursued at the county level. According to DATCP, this typically includes preceding a formal investigation by discussing with prosecutors on the most appropriate course for the investigation, such as critical evidence needed and potential means of enforcement. DATCP and DOJ also report the agencies meet at least monthly to discuss progress on ongoing investigations, although in the course of case development, it is

common for agency staff to communicate daily on questions of law or determining the remaining responsibilities of each agency in closing the investigation and preparing the case for further action.

Investigations generally result in formal reports, known as summary investigative reports, of the case's facts and any violations DATCP believes to have occurred. These reports provide supporting evidence that may be used in court proceedings against the alleged violator. Cases referred to prosecuting agencies may result in civil claims, or criminal charges if appropriate. Alternatively, the agencies may agree the case is more appropriately pursued under an alternative enforcement action, several of which are discussed in the following paragraphs.

## **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. A summary of selected enforcement actions taken by DATCP in 2012 and 2013 is shown in Table 5.

### *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. 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.

### *Assurances of Compliance*

The Department requires a written assurance of compliance when the severity of the violation or

**Table 5: Summary of Consumer Protection Enforcement Actions and Case Referrals**

Action	2012	2013
Investigations	133	189
Warning Letters	1,511	1,216
Assurances of Compliance	217	116
Special Orders	0	0
Case Referrals		
Local District Attorney	23	24
Wis. Dept. of Justice	15	15
U.S. Attorneys/Agencies	9	11
Other*	<u>2</u>	<u>2</u>
Total Referrals	49	52
Actions Filed Pursuant to DATCP Referrals		
Local District Attorney	8	18
Wis. Dept. of Justice	1	1
U.S. Attorneys/Agencies	<u>0</u>	<u>0</u>
Total Cases Filed	9	19

\*Includes referrals to other jurisdictions or internally for further DATCP action.

the history of the violator indicates that a warning letter may not achieve compliance, but the Department considers formal prosecution unwarranted. Issuing an assurance of compliance typically involves an in-person meeting with the business suspected of improper practices. The violating business must sign a statement assuring compliance, which the Department can use to facilitate compliance by other means, if necessary, such as through court proceedings. Compliance assurances can include restitution agreements or other suitable outcomes for complainants while avoiding more time-consuming enforcement processes such as court cases.

### *Special Orders*

Special orders address unfair business practices that are not specifically addressed by current law or rules. Issuance of a special order generally takes six to eight months, and DATCP generally views a special order as a precursor to a new administrative rule. The Department first identifies a potentially unfair business practice that is not directly 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. DATCP did not issue any special orders in 2012 or 2013.

### *Formal Prosecutions*

As described earlier, the Department prepares cases for formal prosecution by district attorneys or DOJ attorneys. Violations of consumer protection statutes and rules are customarily prosecuted if they are considered to be serious, have a major adverse impact on consumers or are recurring by the business. Table 5 shows cases referred in 2012 and 2013, as well as actions filed by prosecuting attorneys for DATCP-referred cases. Appendix IV provides a summary of select court cases developed by DATCP that were completed in 2012 and 2013. The cases shown are not a comprehensive list. Rather, the list includes criminal cases and those civil cases for which the disposition included \$10,000 or more in combined restitution, fines or forfeitures, and court costs. In addition, certain cases investigated or referred by DATCP are not listed in Appendix IV but are listed in Appendix V as having been recently closed by DOJ. This discrepancy arises in part from DATCP monitoring a defendant for compliance with settlement or judgment terms for a period following the conclusion of court proceedings. DATCP classifies the case as closed once restitution or other monitoring requirements have been satisfied.

DATCP generally remains involved in the prosecution of referred cases. DATCP's role in this stage typically includes: (1) giving sworn testimony; (2) reviewing materials submitted by a defendant; (3) attending enforcement conferences with DOJ and the defendant; and (4) consulting on settlement terms.

Consumer protection-related court actions

may result in trials or settlements, both of which may include court orders or injunctions that prohibit future conduct by a defendant. In addition, defendants may be liable for civil forfeitures, penalties and restitution to Wisconsin consumers. General fines or forfeitures obtained in state courts are deposited in the common school fund. Additionally, fines and forfeitures for violations of consumer protection laws 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 \$147,800 from this appropriation, revenues totaled \$40,400 in 2012-13 and \$86,700 in 2013-14. The Department also transferred \$16,400 to the general fund in both 2012-13 and 2013-14 to meet agency lapse/transfer requirements in recent budget acts. Any revenues to the appropriation exceeding \$185,000 in a fiscal year are deposited to the state's general fund.

### **Information and Education**

In addition to the procedures used in resolving complaints and enforcing consumer protection laws, the Bureau also attempts to engage in several early-stage measures to promote voluntary compliance by businesses and to increase consumer awareness of potentially harmful situations. The Bureau's educational and informational activities include: (1) press releases and social media postings 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; and (4) regular appearances on television and radio shows.

DATCP also distributes factsheets. The most widely distributed factsheet describes landlord and tenant rights and is available in Spanish and English. DATCP publishes 403 total factsheets and booklets, including 72 in Spanish, 18 in Hmong,

and seven in large print for the visually impaired. In addition, the Department maintains a Web-based reference known as "Law at Your Fingertips," which appears on the Department's consumer protection website and is maintained by the DATCP legal staff. The Department also provides information to local law enforcement agencies to increase their knowledge of consumer protection laws and rules. Staff members also occasionally lecture at technical college law enforcement classes.

### **Surveys**

DATCP complements on-site inspections by staff of the Bureau of Weights and Measures with surveys to measure compliance with other consumer-protection laws. Consumer protection staff may perform the following types of surveys:

- Surveys of retail stores to check for hazardous household substances or products.
- Review of advertisements, employment offers, and residential leases on a random basis to identify possible law violations.
- Mail surveys to monitor price comparison advertising, initiated due to consumer complaints and Department oversight.

### **Product Safety Activity**

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 contends that public information is perhaps the most effective compliance tool. 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 may mediate between consumers and companies.

The Department works closely with the U.S. 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 several investigative functions for CPSC on a cooperative contract basis as described below.

*Investigations.* In addition to product-safety investigations for the CPSC, DATCP may perform its own product-safety investigations, either in response to consumer complaints or on the Department's own inquiry. DATCP has not initiated any of these investigations since 2007.

*Recalls and Compliance Checks.* The Department has performed recalls under its own statutory

authority for such products as stuffed/plush toys, matches, books, riding lawnmowers and electric scooters. The Department initiated recalls in 2006 and 2007 on children's clothing made with drawstrings, which led to issuance of federal recalls. DATCP has not issued any recalls since that time.

DATCP staff members also inspect retail stores on assignment from CPSC to gather information on the effectiveness of CPSC-issued recalls. The Department performed 20 recall effectiveness checks in 2012 and 29 in 2013. The subjects of the recent effectiveness checks included, among other products, various toys, recreational products, furniture and certain appliances.

Further, DATCP has investigated or inspected sellers of various products at the request of the CPSC to ensure compliance with federal regulations or other enforcement actions. In 2009 through 2011, DATCP conducted inspections at retail sellers of portable generators to verify that generators marketed for sale met federal labeling requirements. In 2012, the Department conducted undercover visits at several ATV dealers in Wisconsin to assess dealers' compliance with requirements regarding to whom ATVs may be marketed.

*Consumer Product Safety Surveys and Campaigns.* DATCP has occasionally performed consumer product safety surveys. Since 1999, examples of such activities have included: (1) analyzing records of state fire departments for reports of fires caused by consumer products; (2) surveying second-hand and resale stores for recalled or illegal products, and educating store operators about the illegality of such reselling; and (3) surveying cigarette lighters to verify the inclusion of child safety mechanisms. Surveys may be conducted on the Department's own initiative or in conjunction with CPSC efforts.

DATCP also participates in various state and federal product safety campaigns. For instance, DATCP in 2012 and 2013 participated in a CPSC campaign for safe use of products that can produce

carbon monoxide. Further, the Department is among approximately 30 states participating in an information-sharing system coordinated by CPSC, in which CPSC and state product-safety agencies exchange information on educational efforts, incident data and legislative changes. DATCP also publishes a monthly newsletter entitled "Keep Your Kids Safe" that summarizes and highlights all recalls related to children.

DATCP also conducts cooperative planning with 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 publicize information about product safety regulations.

*Organizational Memberships.* The Department was involved in the establishment of the International Consumer Product Health and Safety Organization. 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. DATCP also works with the standards organization ASTM International, 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 section in its Division of Legal Services. During the 2011-13 biennium, DOJ formally created the consumer protection and antitrust unit in its Division of Legal Services. In 2014-2015, this unit consists of 11.45 positions, including: (1) 5.75 attorneys; (2) 2.0 consumer investigators; (3) 2.0 legal secretaries; and (4) 1.7 paralegals. Of this staff, 1.0 attorney is dedicated to antitrust matters while the remaining attorneys and investigators are dedicated to consumer protection matters. In 2014-2015, DOJ estimates the consumer protection and antitrust unit budget for salaries and fringe benefits at \$992,400 GPR and 10.45 GPR positions, and \$96,700 PR and 1.0 PR position. 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 statutes (Chapter 100), DOJ may, after consulting with DATCP, determine violations and initiate prosecutorial proceedings involving certain prohibited practices aimed at protecting consumers. The Department has indicated that the consumer protection unit primarily handles cases relating to: (1) fraudulent representations prohibited under s. 100.18 of the statutes; and (2) telecommunication trade practices violations under s. 100.207 of the statutes. For each type of prohibited practice, DOJ may seek to restrain the activity by a temporary or permanent injunction. If DOJ brings an enforcement action under 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.

The Attorney General may also bring an action against any corporation or limited liability company (LLC) thought to have violated an order issued under s. 100.20 of the statutes (methods of competition and trade practices), for the purpose

of enjoining the corporation or LLC from doing business in Wisconsin or revoking its certificate of incorporation, authority, or organization.

As previously indicated, DOJ must consult with DATCP before commencing actions relating to consumer protection violations. 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.

In addition to its authority to bring cases independently, DOJ may represent the state in 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.

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 by filing a complaint 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.

### **Enforcement Actions**

During 2012-2014, a total of 175 consumer protection cases and investigations were either referred to or developed by DOJ's consumer protection unit. Of this total, 59 cases were referrals from other state agencies, as follows: (1) DATCP referred 46 cases; and (2) the Department of Fi-

nancial Institutions (DFI) referred 10 cases; and (3) other state agencies referred three cases. The remaining 116 cases were developed internally by DOJ. Of these latter cases, 32 were multi-state in nature and 84 were Wisconsin-specific.

During 2012-2014, DOJ's consumer protection unit closed 101 consumer protection cases and investigations, with the financial recovery in these cases totaling \$29,836,700. Appendix V identifies the consumer protection cases completed by DOJ's consumer protection unit during 2012-2014, in which the financial recovery in the case equaled or exceeded \$100,000. Appendix V also summarizes the consumer protection cases of a criminal nature concluded during 2012-2014. These cases included investigations, litigation, prosecution, 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. During 2012-2014, for the 24 cases summarized in Appendix V, the direct financial recovery totaled \$29,619,300.

### **Restitution Payments, Investigation Costs, and Related Recoveries**

Funds awarded in consumer protection cases are distributed under several different procedures. 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.

Further, a court judgment or settlement agreement may authorize the Attorney General to apply judgment or settlement funds to court costs, attorneys' 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 DOJ's 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. In 2012-2013, \$23,100 in expenditures for restitution and for other purposes authorized by the particular judgment or settlement was made from DOJ's restitution appropriation. In 2013-2014, \$143,300 in expenditures for restitution and for other purposes authorized by the particular judgment or settlement was made from DOJ's restitution appropriation.

The Department utilizes its Division of Management Services gifts, grants and proceeds continuing appropriation to receive and allocate settlement funds that are distributed at the sole discretion of the Attorney General. During 2012-14,

\$12,228,900 in settlement funds to be allocated at the sole discretion of the Attorney General was deposited to this appropriation.

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, civil consumer protection court judgments and settlements secured by DOJ often include amounts for: (1) attorney fees and case costs; (2) 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 state 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 attorneys' fees, to DOJ. When a person who violates the marketing and trade practices statutes is ordered to make these types of payments, these amounts are not deposited to the common school fund. Under s. 100.263 of the statutes, both agencies must credit these types of payments (and any such general payments to the state) to the state's general fund. However, DOJ is specifically authorized to credit 10 percent of the monies received for such costs, including attorney fees, to a program revenue, continuing investigation and prosecution appropriation. The funds

credited to this appropriation (under s. 100.263 and other statutory provisions) may be utilized by DOJ to provide funding for the expenses of investigations and prosecutions of alleged consumer protection violations, as well as other violations pursued by the agency. This appropriation began the 2012-13 fiscal year with a balance of \$1,295,300, received additional revenue of \$577,000 during the fiscal year, made no expenditures, and closed the 2012-13 fiscal year with a balance of \$1,872,300. During the 2013-14 state fiscal year the appropriation received additional revenue of \$3,300,600, expended \$4,500, and closed the 2013-14 state fiscal year with a balance of \$5,168,400.

### **Report on Restitution Payments**

Under s. 165.25(10) of the statutes, DOJ is required to submit a semiannual report to the Department of Administration (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. The Department's report is required to specify: (1) the amount of restitution received by DOJ during the reporting period; (2) the persons to whom DOJ paid restitution; (3) the amount paid by DOJ to each recipient during the reporting period; and (4) DOJ's methodology for selecting recipients and determining the amount paid to each recipient.



## APPENDIX I

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

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

**Department of Administration - Energy Issues.** The Department of Administration's Division of Energy Services provides general information on energy matters to consumers through the State Energy Office and the Home Energy Plus Program.

The State Energy Office 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 two years prior.

The Division of Energy Services also provides energy 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 2013-14, Home Energy Plus distributed approximately 146,000 copies of its program brochure in English, Spanish, and Hmong, to lo-

cal agencies and low-income energy assistance and weatherization service providers. Local providers may download and duplicate these brochures. Local providers must conduct their own outreach activities, 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 2013, regional ombudsmen opened 1,126 cases and closed 1,152, provided information and counseling to 28,528 individuals, and presented 911 educational programs. 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. In calendar year 2013, volunteer ombudsmen donated 6,849 hours and made 2,816 facility visits. Finally, the Board provides consumers with information and assistance regarding Medicare, Medicaid, and private insurance policies through printed materials, a website, and the toll-free Medigap helpline. In calendar year 2013, the helpline received 13,426 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 taking other disciplinary actions.

DCF also provides consumers with information on all licensed and certified child care providers, as well as programs provided or contracted for by a school board. Through the DCF website, an individual can initiate a child care provider search through the child care quality rating and improvement system, known as YoungStar. The search produces information regarding the location, quality rating, type of child care (licensed, certified, or school program), contact information, and the regulatory history of the child care provider. For child care providers not participating in YoungStar, the provider may still be accessed through the YoungStar website, and the same information will be provided, except for the quality rating. Child care providers not participating in YoungStar may not receive child care subsidy reimbursements under the Wisconsin Shares program. Child care providers can be searched by address, city, ZIP code, county, type of child care, provider name, and whether the provider is participating in YoungStar. The regulatory history shows compliance history, a list of any violations, and the corrective action plan for any violations.

**Educational Approval Board.** The Educational Approval Board (EAB) approves all for-profit postsecondary schools (other than schools regulated by other agencies, such as cosmetology, barbering, and real estate schools), 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 approval, 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 171 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 approximately 381,700 businesses on file with the Department. DFI also examines and files documents under the Uniform Commercial Code, filing 161,400 documents in 2013.

The Department regulates state-chartered banks (193), savings and loan associations (three), and savings banks (11). The Department also licenses approximately 17,200 solici-



tors/collectors, 8,000 charitable organizations, adjustment service companies, collection agencies, community currency exchanges, insurance premium finance companies, loan companies, sales finance companies, sellers of checks, mortgage banking professionals, payday lenders, auto title lenders, professional fundraisers and professional employer groups. 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 2013, the Division of Securities responded to 175 complaints, associated with both licensed and unlicensed entities. As a result of those investigations, seven warning letters and 85 administrative orders were issued, nine matters were referred for criminal prosecution, and nine respondents were convicted on previous referrals. Approximately \$621,300 was awarded as monetary relief to investors, and \$134,300 in fines and penalties was ordered.

DFI administers the Wisconsin Consumer Act, which governs consumer credit transactions. During 2013, the Bureau of Consumer Affairs received 1,179 consumer complaints. Subsequent investigations revealed 290 compliance problems under the Wisconsin Consumer Act, resulting in orders requiring merchants to correct their violations. A total of \$313,000 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 DHS website. 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 Office of Health Informatics collects and makes available health statistics, demographic and vital records information for public and private users. The Office produces a range of data files, such as information on physician visits, 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 by ensuring that insurance companies are financially solvent and enforcing consumer protection laws. In 2013, OCI's Bureau of Market Regulation received approximately 4,600 formal written consumer complaints and answered 32,000 tele-

phone, written, and "walk-in" inquiries or requests for information. Most official complaints involve the handling of claims, but other issues brought up in these complaints include 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 available through the OCI website.

**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, investigating and prosecuting grievances that include allegations of such things as neglect, lack of communication, dishonesty and conflicts of interest. The OLR has established a central intake unit, which receives inquiries and grievances concerning the conduct of an attorney in writing or by telephone. Intake staff take information about the alleged conduct, check for other grievances against the attorney, and inform the grievant that the matter will be assigned to an intake investigator who will contact the grievant within a few days to discuss the matter further.

After screening, a grievance may be closed if: (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, 2013, 1,086 matters were pending disposition in the OLR. The OLR received 2,521 new grievances in the 2013-14 fiscal year. In 2013-14, 40 attorneys were publicly disciplined and 24 private reprimands were issued. [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, 168 attorneys entered the alternatives to discipline program. Finally, 30 cases were dismissed with an advisory letter. On June 30, 2014, 1,085 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, 13.8 investigators, 7.7 administrative and support staff, 1.0 litigation counsel, and 2.0 assistant litigation counsels. Total expenditures for the OLR were \$3,114,900 PR in 2013-14 and are budgeted at \$2,846,000 PR in 2014-15. 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 works to ensure that, in the absence of competition, adequate and reasonably priced service is provided to utility customers. The Commission's consumer protection activities are the responsibility of the Division of Water, Compliance and Consumer Affairs. The Division's Consumer Affairs work unit reported 4,867 total contacts from consumers in calendar year 2013, and an estimated 6,100 contacts from consumers were received during calendar year 2014. Of the total contacts received, 2,188 became official complaints during calendar year 2013, and an estimated 2,500 contacts were handled as complaints during calendar year 2014. Most complaints concern disconnections, billing errors, applications for service, deposits, and deferred payment agreements.

In 2014, approximately 51% of all complaints involved combined electric and gas service, 19% involved electric service, 9% involved natural gas service, 16% involved either water, combined water and sewerage service, or combined water and electric service matters, 4% involved telecommunications service, and 1% involved miscellaneous issues. Actions taken by the Division to resolve complaints include investigation, mediation, and the issuance of informal determinations by Commission staff. Decisions by staff may be appealed to the Commission, which may issue cease and desist orders, refer a matter to the

Department of Justice for civil prosecution, or reopen the complaint for additional investigation. 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 Safety and Professional Services.** The Department of Safety and Professional Services (DSPPS) administers certain activities and programs previously handled by the former Department of Regulation and Licensing (DRL) and the former Department of Commerce. The Department's Division of Legal Services and Compliance provides investigative and prosecutorial services relating to the licensed professions (such as medical doctors, nurses, dentists, and pharmacists) under the jurisdiction of 28 regulatory boards or the Department's direct licensing authority. As of July, 2014, the Department and its boards regulated 374,064 active credential holders in 159 different professions, occupations and businesses. The Department received 3,263 complaints involving regulated persons or entities in 2013-14. 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. Additional information on the activities administered by DSPPS is available in the LFB informational paper, "Regulation of Professional Occupations by the Department of Safety and Professional Services."

**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 1,250 complaints

annually related to sales and lease practices, warranties, product quality, and the motor vehicle lemon law. Most investigations 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.

The Department also provides consumer protection services to customers of the state's vehicle inspection program. This contractor-managed program conducts emissions testing of about 650,000 vehicles annually in southeastern Wisconsin. Departmental auditors regularly review the 200 private inspection facilities that provide these services to ensure compliance with applicable laws and contractual obligations. The auditors investigate consumer issues related to emissions testing, wait time, and fraud complaints. In addition, auditors review electronic records and videos to identify and investigate possible fraudulent practices.

**Department of Workforce Development.** The Department enforces both civil rights and

labor standards laws through the Civil Rights Bureau and the Labor Standards Bureau, which are located in the Division of Equal Rights. The Bureau of Civil Rights enforces anti-discrimination laws affecting housing, employment, and public accommodations. DWD received approximately 3,100 discrimination complaints in 2013; approximately 96% of the discrimination cases were employment-related. Cases are investigated and may be conciliated or brought before an administrative law judge for a formal hearing. The Civil Rights Bureau also enforces the family and medical leave law and certain anti-retaliation laws.

The Labor Standards Bureau enforces labor standards laws, including laws governing minimum wage, overtime, and child labor. In 2013, the Bureau investigated approximately 2,600 cases, about 2,400 of which involved unpaid wage claims from employees. In addition, the Bureau annually determines the prevailing wage rates and hours of labor for local and state building construction projects and investigates 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 provides information related to both civil rights and labor standards programs and laws. The Equal Rights Division maintains offices in Madison and Milwaukee.

## APPENDIX II

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

#### Consumer Protection Administrative Rules

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

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

*Car Rentals; Customer Notices (ATCP 118)*. Specifies the form and content of a notice 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 certain toys and children's clothing.

*Coupon Sales Promotions (ATCP 131)*. Pro-

hibits misrepresentation in the offering of coupons, requires written agreements between coupon 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. ATCP 127 also implements the state do-not-call program.

*Environmental Labeling of Products (ATCP 137)*. Establishes standards for advertising and labeling that makes environmental claims for consumer products, such as products that advertised as recycled, recyclable or degradable. Further establishes labeling requirements for plastic containers 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. Also regulates the guarantee of basement waterproofing services, and prohibits contractors from using the pressure pumping method to waterproof basements without a seller's and engineer's analysis; basement-waterproofing provisions were previously contained in ATCP 111.

*Manufactured Home Communities - Fair Trade Practices (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 Repair (ATCP 132).* Establishes the regulation of motor vehicle repair transactions and practices for the repair of autos, motorcycles and small trucks. Prohibits unauthorized repairs, and generally requires shops to give customers a written repair order and written estimate

of cost prior to commencing repairs and requires the return of used parts to customers upon request.

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

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

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

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

*Electronic Communications 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 re-

quirements 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 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.

### **Weights and Measures Administrative Rules**

*Flammable, Combustible and Hazardous Liquids (ATCP 93)*. Specifies standards and requirements for proper storage, handling and dispensing of flammable liquids.

*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.

*Petroleum and Other Liquid Fuel Products (ATCP 94)*. Establishes standards and specifications for quality of gasoline, petroleum-based and other liquid fuels, and provides procedures for inspection of such products.

*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.

*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.

### **Trade Practice Administrative Rules**

*Milk Contractors (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.

*Grain Dealers and Grain Warehouse Keepers (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.

*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.

*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.

*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.

*Sales Below Cost (ATCP 105)*. Generally pro-

hibits sales below the seller's costs. Further, prohibits selling tobacco products, alcoholic beverages or motor vehicle fuel without required markups between wholesalers and retailers. See Appendix III for further details.

*Vegetable Contractors (ATCP 101)*. Regulates vegetable procurement contracts to ensure producers receive compensation for goods sold.



## 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. It was thought the remaining large firms would use near-monopoly power to charge exorbitant prices after smaller firms were mostly forced from the market.

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. Table 6 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

**Table 6: Current Minimum Markup Law Calculations**

Average Terminal Price	Transportation Cost	Taxes and Fees	Subtotal	Minimum Markup (9.18%)	Minimum Pump Price
\$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
5.00	0.02	0.513	5.53	0.51	6.04

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. 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. Claims pertaining to motor vehicle fuel must also be made within 180 days of a violation.

In January, 2009, the Dane County Circuit Court ruled, in response to a challenge of the minimum markup law's validity under the Wisconsin Constitution, that the law was not unconstitutional beyond a reasonable doubt, and the law would continue to be in effect. However, in February, 2009, the United States District Court for the Eastern District of Wisconsin ruled that

the minimum markup law as it applies to motor vehicle fuel restrains trade in violation of the federal Sherman Act and does not meet criteria for state immunity. DATCP stopped enforcing the law for motor vehicle fuel after this decision. Provisions regarding tobacco, alcohol and other below-cost sales were not affected by the ruling, and DATCP continued enforcing these non-fuel provisions.

In September, 2010, the U.S. 7th Circuit Court of Appeals overturned the District Court, ruling the minimum markup as applied to motor vehicle fuel did not lead to retailer collusion or price-fixing. DATCP thereafter resumed enforcement of the minimum markup as it applies to motor vehicle fuel. In May, 2012, Wisconsin's Fourth District Court of Appeals also affirmed the 2009 Dane County decision upholding the law.

In addition to protections against below-cost sales, s. 100.305 of the statutes 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 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-Referred Consumer Protection  
Court Cases Closed in 2012 and 2013**  
(Total Judgments of \$10,000 or More and Criminal Cases)

<b>Case Name</b>	<b>Case Type</b>	<b>Where Referred</b>	<b>Case Description</b>	<b>Resolution</b>	<b>Forfeiture, Restitution and Other Payments</b>	<b>Other Conditions</b>
<b>Civil Cases</b>						
CVS Caremark Corp.	Weights and Measures	Brown County District Attorney	CVS was alleged to be noncompliant with standards for price scanners.	Settlement/Consent Order	The settlement requires total payments of \$57,306, including forfeitures of \$36,900 and assessments and other costs of \$20,406.	
Gas Distribution Systems; d/b/a Gasco	Weights and Measures	Brown County DA	The defendant was alleged to have misrepresented prices or quantities delivered.	Settlement/Consent Order	The settlement requires total payments of \$13,902, including forfeitures of \$8,750, and assessments and other costs of \$5,152.	
Infusion Media, Inc., d/b/a Google Money Tree	Fraudulent Representations; Unfair Billing	Federal Trade Commission	DATCP assisted in an investigation in which the defendant was alleged to have fraudulently used the trade name of the Internet site to sell business-startup kits and institute recurring negative-option charges against customers.	Settlement/Stipulated Order	Total eligible refunds were estimated at \$2.3 million nationally.	The defendant is prohibited from instituting negative-option billing and from making misleading or unsupported claims.
Kraft Foods Group, Inc.	Weights and Measures	Walworth County DA	Kraft was alleged to offer for sale underweight products.	Settlement	The settlement requires total payments of \$36,909, including forfeitures of \$24,000 and \$12,909 in other costs and assessments.	

<b>Case Name</b>	<b>Case Type</b>	<b>Where Referred</b>	<b>Case Description</b>	<b>Resolution</b>	<b>Forfeiture, Restitution and Other Payments</b>	<b>Other Conditions</b>
Kraft Foods Group, Inc.	Weights and Measures	Wood County DA	Kraft was alleged to offer for sale underweight products.	Settlement/Consent Order	The settlement requires total payments of \$13,912, including forfeitures of \$9,000 and \$4,912 in other costs and assessments.	
North Country Business Products, Inc.	Weights and Measures	Pierce County DA	The defendant was alleged to have operated incorrect or unsealed scales and to have failed to comply with required reporting of testing.	Settlement	The settlement requires total payments of \$15,006, including forfeitures of \$9,664 and \$5,342 in other costs and assessments.	
Publishers Marketing Service, Inc.	Do-Not-Call Registry; Fraudulent Representations	Wisconsin Dept. of Justice (Dane County Circuit Court)	The defendant was accused of not registering as a telemarketer, telemarketing to persons listed on the state do-no-call registry, misrepresenting prices of magazine subscriptions offered for sale, and engaging in unfair billing practices.	Default Judgment	The judgment requires total payments of \$52,568, including civil forfeiture of \$34,500 and \$18,068 in other court costs.	The defendant is enjoined from further violation of state marketing laws.
Rassbach, John P.; d/b/a Rassbach Oil Co.	Weights and Measures	Wisconsin Dept. of Justice (St. Croix County Circuit Court)	Rassbach Oil was alleged to have engaged in multiple techniques that resulted in consumers being charged for fuel not delivered.	Summary Judgment	Restitution of \$109,397 was ordered.	
Roundy's Supermarkets	Weights and Measures	Waukesha County DA	Roundy's was found to have inconsistencies between store signage and price scanners that resulted in potential overcharging. Some stores also did not post signs stating consumers are entitled to a product's lowest displayed price.	Settlement/Consent Order	Roundy's was to pay \$42,023, including \$27,700 in forfeitures and \$15,323 in other court costs and fees.	
Topco Associates, Inc.	Weights and Measures	Manitowoc County DA	The defendant was alleged to have misrepresented quantities offered for sale in certain prepackaged foods.	Settlement/Consent Judgment	Topco was to make total payments of \$13,808, including a forfeiture of \$9,000 and \$4,808 in other court costs and fees.	

Case Name	Case Type	Where Referred	Case Description	Resolution	Forfeiture, Restitution and Other Payments	Other Conditions
Walgreen Co.	Weights and Measures	Douglas County DA	Walgreens was alleged to have inconsistencies between store product displays and price scanners that would result in overcharging of consumers. Walgreens also lacked signage stating consumers are entitled to a product's lowest displayed price.	Settlement/Consent Order	Walgreen Co. was to make total payments of \$29,242, including a forfeiture of \$19,000 and \$10,242 in other court costs and fees.	
Willms, Jesse et al.	Fraudulent Representations; Unfair Billing	Federal Trade Commission	DATCP assisted on a federal investigation into negative-option billing by Willms' firms, typically beginning with offers of free products.	Settlement/Stipulated Order	Total U.S. judgment of \$359.3 million was ordered, to be suspended on relinquishment of certain personal and business assets of Willms and co-defendants.	Enjoined from numerous practices, including negative option billing, using customer information, making certain health-related claims or representing certain testimonials or endorsements.
Wisconsin Auto Center, a/k/a Metro Ford of Madison	Prize Notices	Dane County DA	The defendant was accused of making insufficient or improper notifications in a direct-mail prize offering.	Settlement/Consent Order	A total of \$76,893 was to be paid, including \$50,000 in fines and forfeitures and \$26,893 in other court costs and fees.	
Yellow Pages Online	Unfair Trade Practices	Federal Trade Commission	DATCP assisted on an investigation into foreign solicitors portraying themselves as updating local "yellow pages" business directories throughout the U.S., then billing small businesses or nonprofit groups for unwanted listing services.	Default Judgment	A judgment of approximately \$10.2 million was entered against the defendants in U.S. District Court.	
Zapencki, Edward M.	Fraudulent Representations	Wisconsin DOJ (Kenosha County Circuit Court)	Zapencki was alleged to have sold advertising space on custom-produced maps which were never delivered, nor were purchasers refunded. The case alleged Zapencki violated a 2007 DATCP special order pertaining to the same conduct.	Settlement/Consent Judgment	The settlement requires total payments of \$250,000, including \$200,000 restitution and \$29,496 in forfeitures, and other assessments and costs of \$20,504.	Enjoined from engaging in any advance-payment sales through a business in which the defendant has ownership.

Case Name	Case Type	Where Referred	Case Description	Resolution	Forfeiture, Restitution and Other Payments	Other Conditions
<b>Criminal Cases</b>						
Cechini, Robert; d/b/a Amazing Exteriors	Home Improvement Practices; Theft by Contractor	Dane County DA	The defendant was accused of theft by contractor, as well as multiple violations of DATCP administrative rules regarding home improvement contractors.	Pleaded guilty to two felony counts, two misdemeanors and a civil forfeiture.	Total payments of \$26,686 were ordered.	Six days' jail imposed.
Farmer, Travis; d/b/a Farmer Construction	Home Improvement Practices	Dunn County DA	The defendant was alleged to have accepted payment but failed to complete work, and also to have violated DATCP rules regarding contractual notifications required to be provided to customers.	Pleaded no contest to two misdemeanor counts of violating DATCP regulations.	Total payments of \$12,445 were ordered, including restitution of \$11,239 and other costs and assessments of \$1,206.	Two years' probation imposed.
Forbes, Derek; d/b/a Forbes Construction & Masonry	Theft by Contractor; Unfair Trade Practices; Theft in a Business Setting	Dane County DA	Forbes was charged with not completing work for which payment had been accepted.	Pleaded no contest to one felony count of theft by contractor and five misdemeanor counts of theft or violating general trade orders.	Restitution of \$15,110, plus other assessments and costs.	Three years' probation ordered on lesser counts. Judgment withheld on felony, pending completion of probation and payment of restitution. The defendant may not operate as a contractor in a position to handle customer payments.
Gardetto, James D.; d/b/a Elmbrook Electronics	Fraudulent Representations	Wisconsin DOJ (Waukesha County Circuit Court)	Gardetto was alleged to have taken possession of televisions for purported repairs, then attempted to enforce prohibited contractual terms and failed to return property. The actions had previously been the subject of a DATCP order.	Pleaded no contest to one felony count of bail jumping and seven misdemeanor counts, including violating DATCP regulations/orders and obstructing an officer.	Restitution of approximately \$2,400, plus fees and costs.	Two years' state prison with three years' extended supervision. An additional three years' probation was ordered, beginning after the extended supervision period. The defendant may not facilitate service contracts, arrange for payment, or enter customer residences.

<b>Case Name</b>	<b>Case Type</b>	<b>Where Referred</b>	<b>Case Description</b>	<b>Resolution</b>	<b>Forfeiture, Restitution and Other Payments</b>	<b>Other Conditions</b>
Haluska, Kent d/b/a Nature's Pest and Wildlife	Fraudulent Representations; Identity Theft; Theft by Contractor	Wisconsin DOJ (Brown County Circuit Court)	The defendant was accused of overbilling customers, violating contractual agreements and making unauthorized charges to credit cards.	The defendant pleaded no contest to four felony counts, including forgery, theft of movable property, and identity theft.	Restitution of \$5,187 was ordered, in addition to other court costs and fees.	A prison sentence of 14 months' initial confinement and 36 months' extended supervision was imposed, as well as five years' probation to be served following the prison sentence. An additional prison sentence of three years' initial confinement and three years' extended supervision was imposed and stayed, pending completion of probation.
Hamilton, Geoffrey L.; d/b/a Hamilton Concrete LLC	Theft by Contractor; Home Improvement Practices	Dane County DA	The defendant was alleged to have taken payment without performing work promised.	Pleaded no contest to five misdemeanor counts, including theft by contractor and violations of other contract requirements.	Restitution of \$12,673 plus other assessments and costs.	Three years' probation ordered. Court reserved power to impose jail time in case of restitution nonpayment. Also, the defendant may not be in a position of handling or accepting customer payments.
Hausner, Shane N.	Unfair Trade Practices; Theft	Adams and Dane County DAs	The defendant was accused of theft by misrepresentation and of failing to provide timely notice of a work delay.	Pleaded no contest to one misdemeanor count in each county. (The Adams County case closed in early 2014.)	Total payments of approximately \$1,822, including restitution of \$269 and other fees and costs of \$1,553.	Four months' jail time imposed in Dane County case, and two years' probation ordered in Adams County case.

<b>Case Name</b>	<b>Case Type</b>	<b>Where Referred</b>	<b>Case Description</b>	<b>Resolution</b>	<b>Forfeiture, Restitution and Other Payments</b>	<b>Other Conditions</b>
Hopper, Lisa and Paul, Deborah; d/b/a Carol's Tours	Fraudulent Representations; Theft in a Business Setting	Wisconsin DOJ (Dodge County Circuit Court)	The defendants, as operators of the travel agency, were alleged to have failed to deliver travel services after having accepted payment for travel and travel insurance premiums. Funds were alleged to have been misappropriated for defendants' personal use. The business ultimately failed.	Each defendant pleaded no contest to two felony counts.	Total combined restitution ordered of approximately \$263,500, not including lesser additional amounts paid at sentencing, in addition to other fees and costs.	Hopper was sentenced to 18 months' initial confinement in prison, to be followed by three years' extended supervision and seven years' probation. Paul was sentenced to 27 months' prison, to be followed by three years' extended supervision and seven years' probation. Each is restricted in conducting future business activities similar to those held with the defunct firm.
Jurgens, Michael J.; d/b/a Pro Touch Contracting	Home Improvement Practices; Theft in a Business Setting	Racine County DA	The defendant was accused of accepting payment for home repairs never completed, including under a City of Racine program funded with federal grants.	Pleaded no contest to one felony count of theft in a business setting.	Restitution of \$63,237 ordered for City of Racine, and \$21,000 ordered for private parties, in addition to other court costs of approximately \$8,700.	One year of initial prison confinement and one year of extended supervision imposed but stayed pending completing of three years' probation.
Mueller, Timothy; d/b/a Advanced Home Tech, Custom Creations or Windesign	Fraudulent Representations; Identity Theft; Home Improvement Practices; Unfair Trade Practices; Direct Marketing	U.S Attorney's Office, Western District of Wisconsin	Persons responding to offers for door or window replacements had their credit information used to open credit cards without their knowledge.	Guilty Plea	Restitution of \$391,299.	Sentenced to 30 months in federal prison.
Reeves, Adam; d/b/a Reeves Construction	Home Improvement Practices; Fraudulent Representations; Theft by Contractor	Winnebago County DA	The defendant was accused of misappropriating payments received under contract to repair hail damage and failing to perform work, as well as failing to provide lien waivers.	Pleaded no contest to one felony count of theft of movable property.	Total payments of \$8,658, including \$7,000 restitution.	Two years' probation imposed, with 45 days' conditional jail time.



<b>Case Name</b>	<b>Case Type</b>	<b>Where Referred</b>	<b>Case Description</b>	<b>Resolution</b>	<b>Forfeiture, Restitution and Other Payments</b>	<b>Other Conditions</b>
Ruelle, Joseph A.	Home Improvement Practices; Theft by Contractor; Theft in a Business Setting	Waupaca County DA	The defendant was accused of failing to complete work and unauthorized billing, among other practices.	Among other charges, pleaded no contest to four misdemeanor counts, including theft in a business setting, theft by false representation, and theft of movable property.	Restitution of \$12,210 on theft charges, plus other court costs and assessments.	Three years' probation initially imposed. The defendant was subsequently sentenced to one year of jail.
Scheer, Brian; d/b/a Scheer Photography	Fraudulent Representations	Waukesha County DA	The defendant was accused of misdemeanor theft in a business setting for misrepresenting photography services.	Pleaded no contest to theft as a municipal ordinance violation.	A fine of \$264 was ordered.	The court reserved the ability to impose a five-day jail sentence for nonpayment.
Wolf, Michael; d/b/a Next Level Remodeling Systems	Fraudulent Representations; Theft by Contractor	Racine County DA	The defendant was accused of theft by contractor.	The defendant pleaded guilty to two misdemeanor counts of violating DATCP rules for home improvement contractors.	Total costs of \$64,924, including restitution of \$64,723 and fines of \$201.	One year of probation was ordered.

## APPENDIX V

### Department of Justice Consumer Protection Cases Completed in 2012-14 (Total Judgments of \$100,000 or More and Criminal Cases)

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
<b>Civil Cases</b>								
Janssen Pharmaceuticals, Inc. (Risperdal)	Deceptive drug marketing	Multistate	The defendant was alleged to have improperly marketed the following atypical antipsychotic drugs for off-label uses: Risperdal, Risperdal Consta, and Risperdal M-Tab. These drugs are approved by the Food and Drug Administration (FDA) for the treatment of schizophrenia and bipolar mania. It was alleged that Janssen Pharmaceuticals marketed these drugs for off-label uses to both geriatric and pediatric patients, targeting patients with Alzheimer's disease, dementia, depression, and anxiety.	In August, 2012, 36 states (including Wisconsin) and the District of Columbia reached a \$200 million dollar settlement agreement with Janssen Pharmaceuticals, Inc. Wisconsin's share of the monetary settlement is \$4,267,900. Of the \$4,267,900, \$2,500 is awarded for litigation reimbursement costs while the remaining \$4,265,400 may be expended for any purpose permitted by state law, at the sole discretion of the Attorney General. Under the settlement agreement, Janssen Pharmaceuticals is prohibited from promoting its atypical antipsychotics for off-label uses. The settlement agreement also requires that Janssen Pharmaceuticals make specific reforms to its marketing practices.	\$4,265,400	\$2,500		\$4,267,900
Vivint, Inc.	Deceptive sales practices	DATCP & DFI	Vivint, Inc., a security alarm sales business, was alleged to have engaged in misleading and deceptive sales tactics. It was alleged that Vivint induced customers to sign up for its services based on misrepresentations made during sale presentations. Additionally, it was alleged that Vivint violated consumer protection laws by: (a) misleading customers about the costs of goods and services; (b) misleading customers about their ability to cancel their contracts; (c) failing to register its business in Wisconsin; (d) failing to pro-	A consent judgment with Vivint, Inc. was reached in September, 2012. The consent judgment requires Vivint to provide affected consumers with restitution totaling up to \$228,800, and to pay Wisconsin \$65,000 in forfeitures, investigation costs, and attorneys' fees. Additionally, Vivint must cancel all debts amassed by affected consumers. The judgment also provides injunctive relief requiring that: Vivint sales representatives refrain from making false or misleading statements; Vivint receive verbal confirmation from customers that they understand the terms of their agreement; Vivint comply with Wiscon-		\$65,000	\$228,800	\$293,800

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
			vide consumers with an oral statement as a supplement to the written service agreement; (e) making telephone solicitations while not registered with DATCP; and (f) making telephone solicitations to individuals on Wisconsin's No-Call List.	sin state law regarding telephone solicitations; Vivint sales representatives refrain from entering the home of an individual without permission; Vivint sales representatives refrain from making oral modifications to a written contract; and Vivint refrain from installing an alarm system prior to receiving a signed contract.				
U.S. Fidelis, Inc., f/k/a National Auto Warranty Services, Inc., d/b/a Dealer Services	Deceptive sales practices	Multistate	U.S. Fidelis is a vehicle service contract marketer, based in Missouri, which filed for bankruptcy in March, 2010. U.S. Fidelis was alleged to have engaged in illegal actions stemming from its deceptive junk mail, illegal telemarketing, robo-calls, and misleading television ads. Among other allegations, it was alleged that U.S. Fidelis' solicitations misled consumers by: (a) deceptively claiming that consumers' current auto warranties had or would soon expire; (b) deceptively claiming that consumers were being contacted by a manufacturer or other entity affiliated with their original vehicle warranty; and (c) leading consumers to believe that they were purchasing a warranty with "bumper to bumper" coverage, even though the warranty contained several exclusions and did not cover many necessary repairs.	In November, 2010, 12 states (including Wisconsin) agreed to settle all claims against U.S. Fidelis under the condition that the defendant would turn over its assets to the bankruptcy estate. As part of the initial November, 2010, agreement, \$2,579,000 in forfeitures, assessments, and reimbursement costs were to be awarded to Wisconsin. In July, 2012, Wisconsin obtained a consent judgment with U.S. Fidelis. The July, 2012, consent judgment: (a) established a \$14.1 million consumer restitution fund to provide compensation to eligible consumers who submit valid proof of claim with the bankruptcy court; and (b) imposed injunctive relief prohibiting future illegal conduct by U.S. Fidelis. The restitution fund was overseen by a third party who reported that \$143,000 was awarded to Wisconsin consumers.		\$2,579,000	\$143,000	\$2,722,000
Pinnacle Security, LLC	Deceptive sales practices	DATCP & DFI	The defendant, a home security company, was alleged to have engaged in deceptive and misleading sales tactics. Customers complained that Pinnacle's door-to-door salespeople disingenuously claimed that Pinnacle was either affiliated with or had purchased the customer's existing home-	A September, 2012, consent agreement requires Pinnacle to pay refunds to consumers who were misled about their ability to cancel their alarm service contracts. The consent agreement also requires Pinnacle to cancel any debt amassed by affected consumers. The Department of Justice has indicated that both the refunds and consumer debt		\$40,000	\$1,820,700 (includes debt relief)	\$1,860,700

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
			security company. It was also alleged that Pinnacle: (a) misled customers about their ability to cancel their alarm service contracts; (b) misrepresented the level of emergency response provided by police and emergency personnel to Pinnacle's alarms; and (c) misrepresented the costs of its services.	relief equal restitution totaling \$1,820,700. Further, Pinnacle must pay Wisconsin \$25,000 in forfeitures, penalties and surcharges, as well as \$15,000 in attorneys' fees and litigation costs. The judgment also provides injunctive relief requiring that Pinnacle sales representatives refrain from making false or misleading statements regarding Pinnacle's services and charges.				
GlaxoSmithKline LLC (Avandia)	Deceptive drug marketing	Multistate	GlaxoSmithKline, a pharmaceutical company, was accused of engaging in untrue, deceptive, and misleading practices with regards to its drug Avandia. The defendant allegedly misrepresented Avandia's cardiovascular risks and cholesterol profile. Avandia is approved by the Food and Drug Administration (FDA) to manage type 2 diabetes mellitus. According to the FDA, Avandia improves glycemic control while reducing circulating insulin levels.	In November, 2012, 37 states (including Wisconsin) and the District of Columbia obtained a \$90 million consent judgment with GlaxoSmithKline (GSK). Under the consent judgment, Wisconsin receives \$2,024,800, of which \$2,800 is awarded for litigation reimbursement costs and the remaining \$2,022,000 may be expended for any purpose permitted by state law, at the sole discretion of the Attorney General. Additionally, the defendant must not make any false, misleading, or deceptive claims about any of its diabetes products, and, for a period of eight years, GSK must: (a) report its research in an accurate, objective, and balanced manner as required by federal law; (b) comply with the International Committee of Medical Journal Editors (ICMJE) Uniform Requirements for Manuscripts submitted to Biomedical Journals; (c) register and post any observational study or meta-analysis it conducts of a GSK diabetes product that informs the product's effective, safe, and appropriate use; and (d) post summaries of GSK-sponsored clinical trials of diabetes products within eight months of the study's primary completion date.	\$2,022,000	\$2,800		\$2,024,800
Pfizer, Inc.	Deceptive drug marketing	Multistate	The defendant allegedly misrepresented the use and effectiveness of its drugs Zyvox and Lyrica.	In December, 2012, 32 states (including Wisconsin) and the District of Columbia obtained a \$42.9 million consent judg-	\$1,159,200	\$19,200		\$1,178,400

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
			<p>Zyvox is an antibacterial agent approved by the FDA for, among other indications, treating nosocomial pneumonia caused by methicillin-resistant Staphylococcus aureus (MRSA) and complicated skin and skin structure infections caused by MRSA. It was alleged that Pfizer made unsubstantiated claims regarding the superiority of Zyvox to the drug Vancomycin. According to the FDA, Lyrica is indicated for: (a) neuropathic pain associated with diabetic peripheral neuropathy (DPN); (b) post-herpetic neuralgia (PHN); (c) adjunctive therapy for adult patients with partial onset seizures; and (d) fibromyalgia. It was alleged that Pfizer promoted Lyrica for off-label uses such as the treatment of chronic pain, neuropathic pain (other than DPN and PHN), perioperative pain, and migraines.</p>	<p>ment with Pfizer, Inc. Under the consent judgment, Wisconsin will receive \$1,178,400, of which \$19,200 is awarded for attorneys' fees and other litigation reimbursement costs, and the remaining \$1,159,200 may be expended for any purpose permitted by state law, at the sole discretion of the Attorney General. Additionally, as part of the consent judgment, Pfizer must: (a) refrain from making any false, misleading, or deceptive claims when comparing the efficacy or safety of Zyvox to Vancomycin; (b) refrain from promoting any Pfizer product for off-label uses; (c) design financial incentives that ensure its marketing personnel are not motivated to engage in improper marketing of Zyvox or Lyrica; and (d) promptly notify its sales force of any warning letter received from the FDA that would affect the promotion of Pfizer products.</p>				

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
Lender Processing Services, Inc., LPS Default Solutions, Inc., and DOCX, LLC	Deceptive sales practices; "robo-signing" mortgage loans	Multistate	The defendants, businesses which primarily provide technological support to banks and mortgage loan servicers, were accused of improper conduct related to mortgage loan default servicing. Specifically, the defendants were accused of "surrogate" or "robo" signing, the practice of unauthorized personnel signing documents in the name of another and notarizing those documents as if they had been signed by the proper person. The defendants were also accused of other improprieties relating to the document execution and filing process.	In January, 2013, 43 states (including Wisconsin) and the District of Columbia reached a \$120 million settlement agreement with the defendants. Under the settlement agreement, Wisconsin will receive \$1,505,300, of which \$2,800 will be awarded as reimbursement to the state to cover the costs of investigation and litigation, and the remaining \$1,502,500 may be expended for any purpose permitted by state law, at the sole discretion of the Attorney General. In addition to the monetary relief, the consent judgment requires that the defendants, among other actions: (a) practice the proper execution of documents and prohibit signature by unauthorized individuals and those without first-hand knowledge of facts attested to in the documents; (b) increase oversight of the default services it provides; and (c) review all third-party fees to ensure that the fees have been earned and are reasonable and accurate.	\$1,502,500	\$2,800		\$1,505,300
Toyota Motor Corporation	Deceptive sales practices	Multistate	Toyota Motor Corporation was accused of misleading the public through untrue and deceptive advertisements, statements, and representations relating to the safety and reliability of Toyota motor vehicles and motor vehicle equipment. Specifically, Toyota was accused of misleading the public with regards to safety issues related to unintended acceleration in some of its motor vehicles.	In February, 2013, Wisconsin joined 28 other states and American Samoa in a settlement agreement. Under the agreement, Toyota must pay the states and American Samoa \$29 million and provide additional restitution to vehicle owners who incurred out-of-pocket expenses due to Toyota's actions. The agreement awards Wisconsin \$674,000, as follows: (a) \$14,800 in attorneys' fees and other reimbursement costs; and (b) \$659,200 in discretionary funds which may be expended for any purpose permitted by state law, at the sole discretion of the Attorney General. The agreement further provides that for four years, Toyota must not, among other actions: (a) advertise the safety of vehicles without sound scientific or engineering data to substantiate such safety claims; (b) re-	\$659,200	\$14,800	Restitution provided to consumers directly by Toyota	\$674,000

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
				sell a vehicle it reacquires from a consumer who states that the vehicle is not in conformity with the vehicle's warranty, until the vehicle is inspected and any identifiable defect is repaired; or (c) misrepresent the purpose for which it directs consumers to take their vehicles to a dealer for inspection or repair.				
The Mandatory Poster Agency (d/b/a Corporate Records Service, Inc.) and Steven J. Fata	Deceptive sales practices	DFI	The Mandatory Poster Agency (MPA) and Steven J. Fata, a principal of MPA, were alleged to have engaged in deceptive solicitation practices. Specifically, the defendants were accused of sending solicitations to 72,860 Wisconsin corporations by direct mail in an envelope bearing the words "IMPORTANT ANNUAL MINUTES REQUIREMENT STATEMENT". Inside the envelopes recipients found a "2013 Annual Minutes Form", the contents of which misled business owners into believing that Wisconsin law required them to complete the form and submit a \$125 payment to the defendants. The state also alleged that the solicitation gave the misleading impression that the "2013 Annual Minutes Form" was either a government document or sponsored by the government.	In September, 2013, Wisconsin obtained a consent judgment against the defendants in the amount of \$340,000, and received \$348,300. Payments were as follows: (a) \$156,500 in civil forfeitures and statutory surcharges; (b) \$25,600 in reimbursement costs to the state for attorneys' fees, investigation costs, and costs associated with imposing injunctive relief; and (c) \$166,200 for restitution. After DOJ provided restitution payments to the identified affected consumers, there was \$50,500 remaining from the \$166,200 that was obtained from the consent judgment for restitution. Pursuant to the consent judgment, the Department deposited the remaining \$50,500 with other discretionary settlement funds where they may be utilized for consumer protection and law enforcement purposes, at the discretion of the Attorney General. The consent judgment provided injunctive relief as well. The injunctive relief requires MPA to: (a) reform its solicitation practices to conform to state laws; and (b) register to do business as a foreign corporation with the Wisconsin Department of Financial Institutions.	\$50,500 <sup>5</sup>	\$182,100	\$115,700	\$348,300

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
Affinion Group, Inc., Trilegiant Corporation, and Webloyalty.com, Inc.	Deceptive sales practices	Multistate & DATCP	Affinion Group, Inc. and its subsidiaries, Trilegiant Corp. and Webloyalty.com, Inc., manage discount clubs and membership programs that offer a variety of services, such as credit monitoring, roadside assistance, and discounted travel. The defendants were accused of charging consumers for services without the consumers' authorization or knowledge and, when the consumers learned of the charges, causing consumer difficulty in cancelling the charges or obtaining a refund. It was further alleged that the defendants: (a) solicited potential customers with misleading language regarding incentives and trial offers; (b) sent direct mail solicitations that did not accurately disclose all materials and conditions affecting the sale of goods and services; and (c) used deceptive billing practices to sign consumers up for membership programs without their knowledge.	In October, 2013, 47 states (including Wisconsin) and the District of Columbia entered into a \$30 million consent judgment with the defendants. Of the \$30 million, Wisconsin will receive: (a) \$26,800 to reimburse the state for attorneys' fees and investigation costs; and (b) \$223,200 in settlement funds which may be spent at the discretion of the Attorney General for purposes permitted by state law. The defendants also established a restitution fund of approximately \$19 million to provide refunds to eligible consumers. Additionally, the consent judgment prohibits the defendants from engaging in the use of "live checks" and online "data pass." Live checks are checks sent to consumers as part of a solicitation which, when cashed, automatically enroll the consumer in an ongoing membership program. This results in many consumers being enrolled in membership programs without their knowledge. Data pass is the practice of an online retailer providing a customer's credit card information directly to Affinion without the customer having to re-enter the information. This results in customers being charged for fees without their knowledge.	\$223,200	\$26,800	Restitution payments overseen by third party	\$250,000
Google, Inc.	Deceptive sales practices	Multistate	Google, Inc. was alleged to have misled consumers about the privacy of Web browsing while using Apple, Inc.'s Safari Web browser from June 1, 2011, to February 15, 2012. During this time, Google offered consumers the ability to opt out of having third-party advertising cookies set on their browsers through the installation of an advertising cookie opt-out plugin. Cookies are small files sent to a consumer's Web browser from a website	In November, 2013, 37 states (including Wisconsin) and the District of Columbia reached a \$17 million settlement agreement with Google. Wisconsin's share of the settlement is \$336,000, of which \$3,600 is awarded to reimburse the state for attorneys' fees and investigation costs, and the remaining \$332,400 may be expended for any purpose permitted by state law, at the sole discretion of the Attorney General. Additionally, Google agreed: (a) not to deploy the type of code at issue in this matter to override a browser's cookie blocking settings	\$332,400	\$3,600		\$336,000



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			<p>the consumer visits. Google uses those cookies to gather information about consumers, such as the consumers' Web surfing habits. Through its Web page, Google represented to consumers that Apple's Safari Web browser is set, by default, to block all third-party cookies. Therefore, the opt-out plugin offered by Google would be unnecessary for users of Apple's Safari Web browser. However, from June 1, 2011, to February 15, 2012, Google altered its coding so that the default privacy settings on Apple's Safari would be circumvented, and as a result consumers would unknowably be vulnerable to third-party advertising cookies.</p>	<p>without the consumer's prior consent, unless it is necessary to do so in order to detect, prevent or otherwise address fraud, security or technical issues; (b) not to misrepresent or omit material information to consumers about how they can use any particular Google product, service, or tool to directly manage how Google serves advertisements to their browsers; (c) to improve the information it provides to consumers regarding cookies and how cookies can be managed by consumers using Google's products or services; and (d) to maintain systems designed to ensure the expiration of third-party cookies sent to Safari Web browsers while Safari's default privacy settings had been circumvented.</p>				
Great Expectations Milwaukee, LLC., JRM Enterprises, LLC, and John R. Meriggi (as the owner of Great Expectations Milwaukee, LLC. and JRM Enterprises, LLC)	Deceptive sales practices	DATCP & DFI	<p>The defendants were accused of misleading consumers into entering into dating service contracts. It was alleged that Great Expectations (GE) utilized websites that did not indicate any connection with GE to obtain the contact information of individuals completing online surveys on those websites. Great Expectations' telemarketers used the contact information to make telephone calls to potential customers. Further, it was alleged that in the course of selling its dating services, Great Expectations misrepresented: (a) the number of members participating in GE's dating services; (b) GE's practices of conducting criminal background checks on its prospective members and screening those with criminal histories; (c) the purpose for which GE obtained prospec-</p>	<p>In November, 2013, Wisconsin reached a settlement agreement with the defendants. Under the agreement, the defendants are to pay the state \$500,000, \$50,000 of which will be assessed as forfeitures, penalties and surcharges, and the remaining \$450,000 will be awarded to DOJ as discretionary settlement funds. The Department has indicated that the discretionary settlement funds will be utilized to provide restitution to affected consumers and to reimburse DATCP for any incurred investigation costs. The Department will utilize any remaining discretionary funds to cover the costs it incurred relating to litigation. The agreement also provides injunctive relief requiring the defendants to: (a) comply with Wisconsin's consumer protection laws; (b) comply with Wisconsin's dating service contract laws; and (c) remove any negative credit report a consumer received as a result of contracting with Great Expectations.</p>	\$450,000	\$50,000		\$500,000

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			<p>tive members' credit information; and (d) that a professional photographer would take photographs and videos of members for their dating profile. It was also alleged that the defendants: (a) failed to comply with the state's dating service contract laws by entering into dating service contracts lasting more than two years; and (b) offered financing for consumers without fully complying with the Wisconsin Consumer Act, which regulates credit transactions.</p>					
Wisconsin Auto Title Loans, Inc.	Deceptive sales practices	DFI	<p>It was alleged that Wisconsin Auto Title Loans, Inc. engaged in false, misleading, and deceptive conduct in the course of selling "motor club" service contracts in connection with the sale of auto title loans. Auto title loans are a type of secured loan with high interest rates where the borrower uses their vehicle title as collateral. The defendant was accused of misleading consumers into paying membership fees for its optional Continental Car Club (CCC). The defendant allegedly sold consumers CCC membership without their knowledge and told other consumers that CCC membership was a mandatory purchase along with their title loan. In most instances, the additional cost of the CCC was rolled into the total amount of the loan and became subject to the high interest rate attached to the loan.</p>	<p>In September, 2013, DOJ, DFI, the Legal Aid Society of Milwaukee, Inc., and four individually named plaintiffs reached a preliminary settlement with the defendant. The settlement agreement requires the defendant to pay up to \$2.75 million. The \$2,750,000 will be allocated as follows: (a) \$2,000,000 will be utilized to establish a restitution fund; (b) \$180,000 will be provided to the Department of Financial Institutions to fund financial education for consumers or examiner training related to the non-depository financial services industry; (c) a total of \$73,000 will be paid as settlement to four individually named plaintiffs; and (d) up to \$497,000 will be awarded to the state as reimbursement for attorneys' fees and other litigation costs. The Department of Justice has indicated that \$100,000 was awarded to the state as reimbursement for attorneys' fees and other litigation costs. In addition, Wisconsin Auto Title Loans agreed to extinguish all finance charges and fees that accrued on all open accounts for title loans issued in Wisconsin from January 1, 1999, through December 31, 2010. Finally, the agreement provided injunctive relief, requiring that: (a) Wis-</p>		\$280,000	Restitution overseen by third party	\$280,000

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				consin Auto Title Loans release all existing liens it has on borrowers' vehicles for all title loans issued in Wisconsin from January 1, 1999 through December 31, 2010; and (b) Wisconsin Auto Title Loans refrain from selling Continental Car Club membership for a period of two years after the effective date of the judgment.				
Ocwen Financial Corporation and Ocwen Loan Servicing, LLC	Deceptive practices (mortgage servicing)	Multistate	Ocwen Financial Corp. and its subsidiary Ocwen Loan Servicing, LLC were accused of engaging in premature and unauthorized foreclosures, violating homeowners' rights and protections, using false and deceptive documents and affidavits, and "robo-signing." Robo-signing is the practice of unauthorized personnel signing documents in the name of another and notarizing those documents as if the documents were signed by the proper person.	In December, 2013, 49 states (including Wisconsin), the District of Columbia and the federal Consumer Financial Protection Bureau agreed to a joint state-federal settlement agreement with the defendant worth \$2.1 billion. Ocwen will provide restitution in the form of first-lien principal reductions and cash payments to borrowers on foreclosed loans. Wisconsin consumers are projected to receive \$12 million in first-lien principal reductions. Further, 2,484 Wisconsin residents are eligible to receive cash payments of approximately \$1,000 (the cash payment is contingent on the number of consumers that submit a valid claim). The settlement also provides that: (a) homeowners will receive comprehensive new protections from increased mortgage loan servicing and foreclosure standards; (b) an independent monitor will oversee implementation of the settlement to ensure compliance; (c) the government may pursue civil and criminal claims outside of the settlement and borrowers and investors may pursue individual cases; and (d) Ocwen will pay \$2.3 million for settlement administration costs.			Restitution overseen by third party	

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
Mark F. Stitt and ES Technology LLC	Deceptive sales practices	DATCP	Mark Stitt, through his business ES Technology LLC, was accused of using fraudulent representations to sell an attic insulation product called ProGuard AB to Wisconsin homeowners. Stitt misrepresented to consumers that installing ProGuard AB in their attic could cut their utility bills by up to one-third. Stitt further misrepresented that ProGuard AB was used by NASA in its space shuttles.	At least 41 Wisconsin homeowners purchased ProGuard AB and 12 filed complaints with the state. In March, 2014, DOJ received a judgment ordering Mark Stitt and ES Technology to pay a total of \$215,600. The judgment required payments of: (a) \$100,000 for consumer restitution; (b) \$108,700 in forfeitures, fees, and surcharges; and (c) \$6,900 for reimbursement to the state for the costs of investigation and prosecution.		\$115,600	\$100,000	\$215,600
Morgan Drexen, Inc.	Violations of debt adjustment services law	DFI	Morgan Drexen, Inc. was accused of operating an adjustment service company without a license and charging fees to debtors in excess of what is permitted under Wisconsin law. According to the Department of Financial Institutions, an adjustment service company helps consumers with budgeting and debt resolution options.	In May, 2013, an administrative law judge ruled that Morgan Drexen was to pay approximately \$4.25 million in restitution and \$1.89 million in forfeitures and penalties for committing at least 1,890 violations of Wisconsin's adjustment service company laws. According to DOJ, a circuit court has since upheld the administrative law judge's ruling.		\$1,890,000	\$4,253,100	\$6,143,100
Going Places Travel Corp., Travel Services, Inc., and Perry Ruiz and Lisa Ruiz (as owners of Going Places Travel Corp.)	Deceptive sales practices	DATCP	The defendants were accused of deceptively marketing the benefits associated with memberships in two travel clubs: the Castaways Vacations Club and the Phoenix Vacation Club. Both travel clubs were created by Travel Services, Inc., however both Travel Services, Inc. and Going Places Travel Corp. marketed the two travel clubs. The defendants allegedly provided consumers with documents containing untrue, deceptive, or misleading representations regarding the: discounts on travel available to club members; geographic locations of the travel clubs; and exclusive nature of the benefits available to club members. The defendants were also	In January, 2014, a jury found that the defendants engaged in illegal practices. Subsequently, in June, 2014, a judge ordered the defendants to jointly pay \$4,860,200, which includes: (a) \$3,803,600 in restitution to consumers; (b) \$841,600 in forfeitures and assessments; and (c) \$215,000 to reimburse the state for the costs of the investigation and prosecution. The judgment also imposes a permanent injunction limiting the scope of the defendants' future business activities.		\$1,056,600	\$3,803,600	\$4,860,200

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
			accused of violating Wisconsin's prize notice law by failing to include certain required disclosures in marketing postcards that were sent to consumers.					
GlaxoSmithKline LLC (Paxil, Wellbutrin, Advair)	Deceptive drug marketing	Multistate	<p>GlaxoSmithKline (GSK) was accused of making misleading representations in its promotion of the drugs Advair, Paxil, and Wellbutrin. Advair is a Federal Drug Administration (FDA) approved asthma medication while Paxil and Wellbutrin are FDA approved antidepressant drugs. It was alleged that from 2000 to 2010, GSK used false or misleading representations to promote Advair as a first-line treatment for all asthma patients, including mild patients who were not taking inhaled corticosteroids (ICS) and only used short-acting beta agonists (SABA) intermittently, even though the FDA had not approved Advair for such a purpose. It was further alleged that GSK promoted Paxil as safe and effective for children and adolescents from 1999 to 2003, even though Paxil was FDA approved to only treat adults during this time period. Additionally, it was alleged that from 1999 to 2003, GSK promoted Wellbutrin for several unapproved indications, including the treatment of: obesity, sexual dysfunction, attention deficit hyperactivity disorder (ADHD), addiction, anxiety, and bipolar disorder. Finally, it was alleged that GSK encouraged its sales representatives to promote Advair and Wellbutrin for its aforementioned off-label uses.</p>	In June, 2014, 44 states (including Wisconsin) and the District of Columbia reached a \$105 million settlement agreement with GlaxoSmithKline. Under the agreement, Wisconsin will receive: (a) \$1,949,800 in settlement funds which may be expended for any use permitted by state law, at the discretion of the Attorney General; and (b) \$9,100 in reimbursement for the costs of investigation and attorneys' fees. In addition to reimbursing the states, GSK must, among other requirements: (a) reform its marketing and promotional practices; (b) continue its Patient First Program (or an equivalent program), which reduces financial incentives for sales representatives engaging in improper marketing, through March 1, 2019; and (c) require that scientifically trained personnel be ultimately responsible for developing and approving clinical responses to questions from health care providers regarding a GSK product, and for the data in these responses to be presented in an unbiased and non-promotional manner.	\$1,949,800	\$9,100		\$1,958,900

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
<b>Criminal Cases</b>								
Kent E. Haluska	Criminal	DATCP & DOJ	It was alleged that Kent Haluska, while operating the business Nature's Pest and Wildlife, committed theft, forgery, and identify theft.	Convictions (no contest plea) of one count of felony theft of over \$5,000, one count of fraudulent writings, and two counts of identity theft. For the fraudulent writings count, Mr. Haluska was sentenced to 14 months of confinement followed by 36 months of extended supervision. On the remaining three counts, the court imposed and stayed consecutive terms of six years, with three years of initial confinement and three years of extended supervision. The court also placed the defendant on probation for five years, to be served consecutive to the prison term imposed on the fraudulent writings count. Additionally, as a condition of extended supervision and probation, the court ordered the defendant to pay \$5,200 in restitution.			\$5,200	\$5,200
Vernon D. Hershberger	Criminal	DATCP	It was alleged that the defendant, a dairy farmer and food store owner, violated a DATCP holding order placed on raw milk and other products in his store. It was further alleged that the defendant operated without a retail food establishment license, a milk producer license, and a dairy plant license.	In May, 2013, Vernon Hershberger was found not guilty (court trial) of operating without a retail food establishment license, milk producer license, and a dairy plant license. However, Mr. Hershberger was found guilty of violating a holding order placed on his products by DATCP. The defendant was ordered to pay a \$1,000 fine and \$500 in court fees. In July, 2014, the defendant appealed his case to the District IV Court of Appeals and the decision was upheld. In August, 2014, the defendant filed a petition to have his case heard by the Wisconsin Supreme Court. As of October, 2014, the Supreme Court has yet to decide if it will hear the case.		\$1,500		\$1,500

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
James D. Gardetto	Criminal	DATCP & Waukesha County DA	It was alleged that on multiple occasions, James Gardetto, in direct violation of an order set forth by DATCP in 2003, refused to return a consumer's property and attempted to enforce unconscionable contract clauses through the auspices of his business Elmbrook Electronics. The defendant was further accused of: (a) failing to disclose his business location; (b) lying to customers in order to obtain their money and property; and (c) providing a false business address to a police detective who was investigating his practices.	The defendant was convicted of six counts of engaging in unfair trade practices, one count of felony bail jumping, and one count of obstructing a police officer. In October, 2012, the defendant was sentenced to two years in prison, three years of extended supervision, three years of probation, and ordered to pay \$2,400 in restitution.			\$2,400	\$2,400
James D. Gardetto	Criminal	DATCP & Waukesha County DA	In a separate case, it was alleged that James Gardetto made a false statement under oath when he testified in trial that he did not know the location of a television he had taken from a consumer under the auspices of his business Elmbrook Electronics.	In March, 2014, the defendant was convicted of false swearing and sentenced to nine months in jail without any release privileges.				
Deborah Paul	Criminal	Beaver Dam Police Department	It was alleged that Deborah Paul, through her business Carol's Tours, committed theft when she accepted payments from over 200 customers and did not provide those customers the requisite services.	A conviction (no contest plea) of two counts of felony theft was obtained. The defendant was sentenced to 27 months of initial confinement, 36 months of extended supervision, seven years of probation, and order to pay \$191,200 in restitution.			\$191,200	\$191,200
Jay S. Fischer	Criminal	Marathon and Waupaca County	Two complaints were brought against Jay S. Fischer. In one complaint, it was alleged that while operating Valley Title, a business in Marathon County, Fischer committed mortgage fraud. Homeowners used Valley Title as a title agent when refinancing a mortgage or purchasing a house. Fischer received more than \$1,000,000 from ten real	In a resolution of both complaints, the defendant was convicted (no contest plea) of racketeering, theft, fraudulent writings, securities fraud, bail jumping, failure to file an individual tax return, and failure to file a corporate tax return. In July, 2014, a Marathon County judge sentenced the defendant to 11 years of prison followed by 18 years of extended supervision.				

Case Name	Case Type	Source of Referral	Case Description	Resolution	Discretionary Settlement Funds <sup>1</sup>	State Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
			<p>estate transactions in 2009 and 2010, but failed to pay off the old mortgages on the homeowners' homes.</p> <p>In the second complaint, it was alleged that Fischer committed securities fraud when he obtained funds from four investors during the purchase of the campground he operated as Crazy J's Campground. Fischer was also accused of making a false statement under oath regarding funds used toward the down payment on the campground.</p>					
<b>Totals</b>					\$12,614,200	\$6,341,400	\$10,663,700	\$29,619,300

<sup>1</sup> Discretionary settlement funds are amounts that may be expended for purposes permitted by state law, at the sole discretion of the Attorney General.

<sup>2</sup> Amounts received as state awards include civil forfeitures, attorneys' fees, costs and penalties.

<sup>3</sup> Due to third party administration of some settlement recoveries, DOJ cannot always determine the full amount of restitutions received by Wisconsin consumers.

<sup>4</sup> 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.

<sup>5</sup> Per the consent judgment, this amount may only be utilized for consumer protection and law enforcement purposes, at the discretion of the Attorney General.