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# consumer protection programs

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# Consumer Protection Programs

Prepared by

Rory Tikalsky and Sarah Wynn

Wisconsin Legislative Fiscal Bureau  
One East Main, Suite 301  
Madison, WI 53703  
<http://legis.wisconsin.gov/lfb>



## TABLE OF CONTENTS

Introduction.....	1
Consumer Protection Statutory Authority .....	1
Chapter 1: DATCP Consumer Protection Program .....	7
Bureau of Consumer Protection.....	7
Bureau of Weights and Measures .....	13
Bureau of Business Trade Practices .....	15
Surveys .....	15
Product Safety Activity .....	15
Chapter 2: Department of Justice Consumer Protection Program .....	18
Consumer Protection Enforcement Authority .....	18
Enforcement Actions .....	19
Restitution Payments, Investigation Costs, and Related Recoveries.....	19
Report on Restitution Payments .....	21
Settlement Authority of the Attorney General.....	21
Chapter 3: Other State Agency Programs Providing Consumer Protection .....	22
Department of Administration - Energy Issues .....	22
Board on Aging and Long Term Care .....	22
Department of Children and Families .....	22
Department of Financial Institutions .....	23
Department of Health Services .....	24
Office of the Commissioner of Insurance .....	24
Office of Lawyer Regulation .....	24
Public Service Commission .....	25
Department of Safety and Professional Services .....	26
Department of Transportation .....	27
Department of Workforce Development .....	27
Appendix I   Summary of DATCP Trade and Consumer Protection Administrative Rules .....	28
Appendix II   DATCP-Referred Consumer Protection Court Cases Closed from July 1, 2018, through June 30, 2020 .....	32
Appendix III   Unfair Sales Act/Minimum Markup Law .....	35
Appendix IV   Department of Justice Consumer Protection Cases Completed in 2018-20 .....	37



# Consumer Protection Programs

## Introduction

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 address individual consumer complaints and provide 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 that provide information and education to assist consumers in future transactions.

The paper is divided into five 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; (4) the consumer protection activities of other state agencies; and (5) appendices that briefly describe the trade and consumer protection administrative rules of DATCP (Appendix I), select court cases following DATCP investigations or referrals for prosecution (Appendix II), the Unfair Sales Act and minimum markup law (Appendix III), and select court cases prosecuted by DOJ (Appendix IV).

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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. As a result, DATCP is now primarily responsible for rule-making and enforcement 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; (13) telecommunications services; (14) the telemarketer no-call program; (15) prohibitions against using consumer loan information for solicitation; (16) allowing consumers via security freezes to restrict access to personal credit reports; (17) provisions concerning the privacy of certain consumer information; (18) requiring businesses with a statewide franchise for video services to provide sufficient consumer access; (19) soliciting contracts using checks or money orders; (20) regulation of foreclosure consultants; (21) a prohibition on using bisphenol A (BPA) in certain children's products; (22) various prohibitions on unfair billing for consumer goods or services; and (23) regulation of residential contractors. 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.

The Department of Justice has 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 may 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. The Department adopts new rules and modifies current rules in response to new practices. A summary of these rules is available in Appendix I.

A significant part of DATCP'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. In response to violations, however, DATCP 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 in a separate section in greater detail.

The sections following discuss the 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 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, originally adopted in 1913, to prohibit advertising and other representations that are "untrue, deceptive or misleading." Specific actions 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 monetary 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 \$50 to \$200 for each violation and require restitution. Businesses found to be misrepresenting themselves as local or regional may be ordered to forfeit \$100 to \$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 \$100 to \$10,000. Victims of an injunction violation also may sue for restitution of double their monetary 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 assurance 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 of 1914, on which it was based.

### *Administrative Rules*

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

In areas related to unfair business practices where no DATCP rule exists, DOJ may file a written complaint with DATCP relating to allegations of unfair methods of competition or trade practices in business. The statutes require DATCP to proceed, after proper notice, to the hearing and adjudication of the allegations.

### *Special Orders and Injunctions*

The unfair trade practices statute 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 \$25 to \$5,000 and imprisonment in a county jail for up to a year, or both; or (2) civil penalties of \$100 to \$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 and civil prosecutions are generally brought by DOJ for cases with 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 is defined by s. 196.01 of

the statutes to be services that convey voice communication. Telecommunications service does not include cable television or broadcast services.

The statutes 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, meaning a person may not bill anyone for any telecommunication service that was not affirmatively ordered. 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.

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.

A person who violates the consumer protection statutes related to electronic communications services shall be required to forfeit \$25 to \$5,000 for each offense. 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 related to such violations.

## *Telemarketing No-Call List*

The no-call program requires telemarketers to register with DATCP and prohibits them from calling or texting consumers who have their phone number listed on a no-call registry. Aside from certain exceptions, such as solicitations by non-profit organizations or solicitations to clients or persons who have specifically opted to receive phone solicitations, the no-call registry prohibits telephone solicitations to numbers on the list. Violations are punishable by forfeitures of up to \$100 per violation.

The Federal Trade Commission (FTC) administers a federal no-call list, which in 2014 subsumed the state no-call list and rendered it obsolete. As a result, DATCP no longer distributes to telemarketers a 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 no-call registration and on solicitations by subsidiaries and affiliates.

## **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, 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)
- BPA 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 harm 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. 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 placing security freezes. These laws generally allow persons incurring losses due to vi-

olations of the provisions to file court actions to recover losses and certain other amounts.

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

access 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. DATCP 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.

*DATCP CONSUMER PROTECTION PROGRAM*

DATCP's Division of Trade and Consumer Protection consists of three bureaus: the Bureau of Consumer Protection, the Bureau of Weights and Measures, and the Bureau of Business Trade Practices. All three broadly address allowable conduct in commercial transactions or the quantity, quality and purity of certain products marketed in the state. The following chapter describe the structure and operations of DATCP consumer protection programs.

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**Bureau of Consumer Protection (BCP)**

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**Funding**

Funding for BCP is provided primarily from general purpose revenues (GPR) and program revenues (PR). Total budgeted funding for DATCP consumer protection programs in 2020-21 is \$3.3 million, consisting of \$1,597,700 GPR and \$1,745,500 PR, which includes certain division-level staff and funding supported by BCP appropriations. BCP staffing includes 16.1 GPR and 17.9 PR positions. BCP 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. The Bureau received \$6,000 in each of 2018-19 and 2019-20 for these purposes. Activities under the federal contract are described later in detail.

BCP 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 BPA use in children's products.

**Bureau Organization**

The BCP's current organizational structure is described in the following paragraphs, with positions assigned to each area shown in Table 1.

*Administration*

The Bureau of Consumer Protection is administered by a director. Also included are an identity theft assistance liaison and identity theft outreach specialist who report to the director. The liaison and outreach specialist conduct activities related to identity theft as part of a team focused on identity theft issues, discussed later.

**Table 1: Consumer Protection Staff (2020-21)**

Work Unit/Area	Positions
Administration	3.00
Consumer Information and Education	7.00
Mediation and Enforcement Section	
Section Chief	1.00
Mediation Unit	12.00
Investigation Unit	<u>11.00</u>
Total	34.00

*Consumer Information and Education*

The consumer information and education unit is often the first point of contact between BCP and consumers. Staff's primary responsibility is operation of the consumer protection hotline, which receives phone calls and emails from individuals reporting potential violations of consumer

protection laws. 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.

### *Mediation and Enforcement Section*

BCP addresses formal complaints through the Mediation and Enforcement Section, which consists of a section chief, a mediation unit with 12.0 positions, and an investigation unit with of 11.0 positions, for a total of 24.0 positions.

*Investigation Unit.* The investigation unit is responsible for gathering information on complaints and assessing whether further enforcement action is necessary. Investigators work with DATCP's attorneys and DOJ in developing investigative methods and evidence for cases and determining the appropriateness of potential enforcement actions. The procedures for investigating and closing cases are discussed later in greater detail.

*Mediation Unit.* The mediation unit is responsible for receiving, processing and initiating responses to formal, written complaints. Whereas the consumer information and education unit receives and responds to consumers' initial inquiries, the mediation unit is responsible for resolving disputes for which consumers have submitted a formal complaint, which describe in detail an alleged improper business action. Complaints may result in further investigation, mediation or one or more types of enforcement, which are discussed later in greater detail. The mediation unit also responds to complaints made against businesses headquartered outside Wisconsin but whose operations within the state are alleged to have violated state laws.

The complaint mediation 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, 2020, BCP held securities of \$17.1 million for 406 businesses, including \$10.8 million for fitness centers, \$5 million in time-share sureties, \$600,000 for future service plans, \$375,000 for weight-loss centers, and \$275,000 for dating services.

### **Information and Education**

In addition to the procedures used in resolving complaints and enforcing consumer protection laws, BCP also attempts to engage in several early-stage measures to promote voluntary compliance by businesses and to increase consumer awareness of potentially harmful situations. BCP'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 creates and distributes fact sheets and other consumer protection publications. DATCP publishes 280 total fact sheets, including 93 in Spanish. The most widely distributed fact sheet describes landlord and tenant rights and is available in Spanish and English, and the most widely distributed publication is the senior guide, which addresses common consumer protection issues facing senior citizens. 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. DATCP estimates presentation audiences of 7,534 in 2018 and 4,027 in 2019.

### Identity Theft Assistance

DATCP dedicates 1.0 agency liaison, 1.0 outreach specialist, and 2.0 consumer protection investigators within the mediation and enforcement section to address identity theft, including providing education, processing complaints, and assisting victims. Positions are funded from Office of the Commissioner of Insurance PR and GPR. DATCP reports it received 1,143 and 858 contacts in 2018 and 2019, respectively, relating to identity theft concerns, including questions on prevention and possible instances of identity theft. DATCP addressed 250 and 228 formal complaints in 2018 and 2019, respectively, related to identity theft.

Identity theft staff also report data breaches on the DATCP website. Reports include information on potentially compromised information, mitigation methods, and assistance available to victims, such as credit monitoring. DATCP also conducts presentations to consumer groups, businesses and law enforcement to educate about best practices related to preventing and managing data breaches.

### Complaint Intake, Response, and Investigation Procedures

#### *Initial Contact*

A primary function of BCP 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 2 summarizes the types of consumer contacts received by DATCP in 2018 and 2019. Additionally in 2019, DATCP reports its website had approximately 176,000 unique web page views on its website related to consumer protection programs,

complaint intake, and consumer information of note to the public.

**Table 2: Summary of Consumer Protection Contacts**

Contact Type	2018	2019
Phone Calls	22,261	20,915
Email	2,611	3,000
Walk-Ins	98	90
Mail	90	45
Fax	<u>39</u>	<u>75</u>
Total	25,099	24,125

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

Hotline personnel often send callers fact sheets and other information from DATCP's website that describe applicable laws and consumers' rights under them. The Bureau sent 65,974 informational pieces in 2018, including 32,779 by mail, and 58,858 in 2019, including 29,475 by mail. Staff may also refer callers to other agencies that have jurisdiction over the area of concern or that can provide further assistance. BCP made 4,290 such referrals in 2018 and 3,548 in 2019.

#### *Written Complaints*

In 2019, DATCP received 10,994 unique complaints from consumers. In 2019, the top five com-

plaint categories were: (1) telemarketing with 4,244 complaints (39%), (2) landlord-tenant disputes with 1,128 (10%), (3) telecommunications practices with 686 (6%), (4) home improvement contracts and projects with 507 (5%), and (5) medical services with 299 (3%).

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 of the statutes, 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 in-

vestigative 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. Also, 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. Most investigations focus on the following issues: (1) telecommunications; (2) home improvement; (3) telemarketing; (4) direct marketing; (5) landlord-tenant issues; (6) prize notices; (7) deceptive marketing; and (8) 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.



DATCP conducted 115 formal investigations related to complaints in 2018 and 89 in 2019. 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 the most appropriate course for the investigation, including 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) cease-and-desist letters; (2) warning letters; (3) assurances of compliance; (4) special orders; and (5) formal prosecutions. A summary of selected enforcement actions taken by DATCP in 2018 and 2019 is shown in Table 3.

#### *Cease-and-Desist Letters*

Cease-and-desist letters are the initial stage of enforcement for telemarketer violations of the no-

**Table 3: Summary of Consumer Protection Enforcement Actions and Case Referrals**

Action	2018	2019
Investigations	115	89
Cease-and-Desist Letters	40	22
Warning Letters	500	521
Assurances of Compliance	11	15
Special Orders	1	1
<b>Case Referrals</b>		
Local District Attorney	38	25
Wis. Dept. of Justice	21	18
U.S. Attorneys/Agencies	1	1
Other*	<u>2</u>	<u>3</u>
Total Referrals	62	47
<b>Actions Filed Pursuant to DATCP Referrals</b>		
Local District Attorney	22	22
Wis. Dept. of Justice	9	2
U.S. Attorneys/Agencies	2	0
Other*	<u>0</u>	<u>1</u>
Total Cases Filed	33	25

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

call list. When a complaint is received regarding the no-call list, DATCP sends a cease-and-desist letter to the telemarketer. Based on the telemarketer's response, additional enforcement actions may follow, such as a warning letter.

#### *Warning Letters*

Warning letters are issued to businesses under the authority of s. 93.06 (10) of the statutes 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. Warning letters specify the violation that has occurred and state an expectation that such violations will cease. If further enforcement actions are not warranted, the warning letter is usually the final step in resolving a consumer complaint. 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 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.

### *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 3 shows cases referred in 2018 and 2019, as well as actions filed by prosecuting attorneys for DATCP-referred cases. Appendix II provides a summary of select court cases developed by DATCP that were completed between July 1, 2018, and June 30, 2020. The cases shown in Ap-

pendix II 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 II but are listed in Appendix IV 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 annual appropriation for consumer education. Revenues from this surcharge totaled \$117,600 in 2019-20. Under s. 100.261(3)(c) of the statutes, revenues to the appropriation that exceed \$185,000 in a fiscal year are to be deposited to the state's general fund. This transfer last occurred in 2017-18, with \$149,900 transferred to the general fund.

### **Telemarketer Regulation and No-Call List**

The Bureau of Consumer Protection adminis-

ters the no-call program under s. 100.52 of the statutes and Chapter ATCP 127 of the administrative code, which establishes terms for the licensing of telemarketers, specifies provisions for maintaining and distributing the no-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 2020-21, DATCP is provided \$693,200 and 6.2 positions from the appropriation. In addition, the Department is budgeted \$316,500 telephone solicitation PR with 4.2 positions in 2020-21 in an annual appropriation for general consumer protection and consumer education, which supports positions divided among BCP's consumer information and education, mediation, and investigation units.

DATCP discontinued Wisconsin's no-call list in 2014, transferring all numbers to the FTC, which maintains a federal no-call list. Telemarketers now receive lists of registered phone lines from the FTC instead of DATCP, which occurs at least every 31 days under federal law. FTC administrative rules charge telemarketers an annual no-call list access fee of \$65 per area code accessed during federal fiscal year 2020, although there is no charge for accessing up to five area codes. To access all six active area codes in Wisconsin, telemarketers would have to pay \$65 annually to the FTC, in addition to charges assessed by DATCP.

For consumers, registration for the no-call list is now managed by the FTC. Federal law allows states to administer and enforce telemarketing laws that are more stringent than federal provi-

sions. Wisconsin's law is more stringent. 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 administrative rules permit only one contact by a seller to determine whether the lapsing of a contract was inadvertent. The FTC reports approximately 4.87 million active and registered Wisconsin phone lines on the federal no-call list as of November, 2020.

ATCP 127.81(5) 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 intermittently waived fees due to large balances in the account, but has collected all quarterly payments since 2007.

DATCP has transferred a total of \$9.86 million from the appropriation balance to the general fund since 2003-04 under various annual lapse requirements. These amounts are shown in Table 4. On July 1, 2020, the telephone solicitation appropriation had a balance of \$2,231,900. No-call revenues were \$1.53 million in 2018-19 and \$1.38 million in 2019-20, including amounts transferred to the general consumer protection appropriation.

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### **Bureau of Weights and Measures (BWM)**

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In 2020-21, BWM is authorized: (1) \$5,621,300 from the segregated petroleum inspection fund with 42.15 positions, funded primarily by a 2¢ per gallon fee on petroleum products received for sale in the state; (2) \$1,971,800 weights and measures PR with 17.05 positions, supported by license fees on various regulated devices or businesses, fees from municipalities for weights

**Table 4: 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	777,700
2014-15	763,600
2015-16	250,000
2016-17	250,000
2017-18	0
2018-19	0
2019-20	<u>0</u>
Total	\$9,857,400

and measures inspection services provided by DATCP under contract, and tonnage surcharges related to weights and measures assessed on fertilizer and animal feed; and (3) \$38,500 GPR with 0.35 position. DATCP also receives federal (FED) funds from the U.S. Environmental Protection Agency for underground storage tank regulation. During the 2017-19 biennium, FED received for underground storage tank regulation totaled \$1,001,100 and supported 3.0 positions. These amounts include administrative positions both in BWM and those for division administration that are supported by appropriations made for weights and measures or petroleum product inspection programs.

A significant portion of BWM field inspections assist municipalities 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 or another municipality for weights and measures inspection services. As of July 1, 2020, 120 municipalities had contracts for DATCP services. These contracts obligate DATCP to provide a total of about 7,730 hours of annual 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 2018 and 2019, weights and measures inspectors performed surveys at 6,580 and 6,849 locations, respectively. (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 5.

**Table 5: Summary of Weights and Measures Field Inspection Activities**

Inspection Category	2018	2019
Package Weight Checks	141,939	188,698
Price Accuracy Checks	57,027	61,589
Fuel Pumps (Grades)	45,192	40,175
Non-Fuel Scales and Meters	<u>14,562</u>	<u>16,297</u>
Total	258,720	306,759

Further, BWM maintains and staffs the state's metrology lab, which verifies the calibration of scales and other devices used by inspectors and servicers to test weight and measures in commercial use throughout the state. In 2018 and 2019, respectively, the Department tested 15,714 and 17,684 weights and measures.

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, as well as other fuel terminal or wholesale locations throughout the state. In 2019-20, 6,186 inspections occurred at facilities with petroleum systems or petroleum product storage tanks, the majority of which were retail sellers of gasoline and other petroleum products. DATCP notes that inspection activity was limited during the second quarter of 2020 due to the COVID-19 pandemic. In 2019-20: (a) 655 new tanks were registered; (b) 297 tank permits were issued; (c) 869 tanks were reported closed; and (d) 554 storage tank plans were reviewed.

DATCP reports that in 2019, 4,840 petroleum product samples were sent to a lab where they underwent 15,688 lab tests, resulting in 66 failed tests. In 2019, DATCP took the following enforcement actions with regards to storage tanks: (a) 2,614 administrative orders (first notice); (b) 1,666 administrative orders (final notice); and (c) 444 red tags. First-notice administrative orders describe a violation and direct its correction, while final notices are issued in the event administrative orders are not complied with. Red tags prohibit filling a noncompliant storage tank and are issued only following noncompliance with final notices or in the event a violation presents an immediate threat to public safety.

BWM is also responsible for enforcing laws related to the handling of potentially ozone-depleting refrigerants, including the proper servicing of mobile air conditioners and cold-storage trailers.

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### **Bureau of Business Trade Practices**

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The Bureau of Business Trade Practices handles regulatory duties related to unfair trade practices and is primarily concerned with potential instances of unfair industry competition. Examples of Bureau of Business Trade Practices programs include: (1) regulation of product pricing under

the Unfair Sales Act, which is commonly known as the "minimum markup" law; (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 I contains a list of administrative rules related to trade practices, and Appendix III summarizes the Unfair Sales Act. The Business Trade Practices Bureau is supported by GPR, various program revenues, the segregated petroleum inspection fund, and the segregated agricultural producer security fund.

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### **Surveys**

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BCP complements on-site inspections by BWM staff with surveys to measure compliance with other consumer-protection laws. Consumer protection staff may perform the following: (1) surveys of retail stores to check for hazardous household substances or products; (2) review of advertisements, employment offers, and residential leases on a random basis to identify possible law violations; and (3) mail surveys to monitor price comparison advertising, initiated due to consumer complaints and Department oversight.

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### **Product Safety Activity**

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As the principal product safety agency in the state, the Department is to protect consumers from unreasonable risk of illness or injury from consumer products by: (a) identifying product hazards; (b) eliminating unsafe products or reducing risks of exposure to them; (c) providing the public with information needed to identify product hazards; and

(d) providing the public with information needed to compare and use products safely.

DATCP 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. Chapter ATCP 139 of the administrative code 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. It 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**

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. The Department also has investigated or inspected sellers of various products at the request of the CPSC to ensure compliance with federal regulations or other enforcement actions, although no such inspections have been requested since 2012.

### **Recalls and Compliance Checks**

The Department has performed recalls under its own statutory authority for such products as stuffed/plush toys, matches, books, riding lawn mowers 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 28 recall effectiveness checks in 2018 and 25 in 2019 for, among other products, various toys, recreational products, tools, electronics, furnishings, and children's products.

### **Product Safety Surveys**

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; (3) surveying cigarette lighters to verify the inclusion of child safety mechanisms; and (4) surveying manufacturers and importers of infant and toddler products subject to federal regulations for durability. Surveys are conducted at the request of CPSC, and DATCP reports it did not conduct any safety surveys in 2018 or 2019.

### **Product Safety Campaigns**

DATCP participates in various state and federal

product safety campaigns. For instance, from 2012 to 2019, DATCP has participated in a CPSC carbon monoxide safety program 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 Keep Your Kids Safe newsletter 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.

The Department was involved in the establishment of the International Consumer Product Health and Safety Organization. ICPHSO provides 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, product liability experts, and government officials. DATCP also works with the standards organization ASTM International, a voluntary organization for standards development in a variety of products.

*DEPARTMENT OF JUSTICE CONSUMER PROTECTION PROGRAM*

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 anti-trust unit in its Division of Legal Services. In 2018-19, this unit consists of 11.8 positions, including: (1) 7.0 attorneys; (2) 1.0 consumer protection investigator; (3) 1.0 legal secretary; and (4) 2.8 paralegals. Of this staff, 1.0 attorney is dedicated to anti-trust matters while the remaining attorneys and investigators are dedicated to consumer protection matters. The Department of Justice does not separately budget for individual units within its Division of Legal Services. However, for 2020-21, DOJ estimates the budget for salaries and fringe benefits associated with the consumer protection and anti-trust unit to be \$1,355,600 GPR and 11.8 GPR positions.

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**Consumer Protection Enforcement Authority**

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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.

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### **Enforcement Actions**

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During 2018-20 (July 1, 2018, through June 30, 2020), a total of 106 consumer protection actions and investigations were opened by DOJ's consumer protection unit. Of this total, 54 actions and investigations were referrals from other state agencies, as follows: (1) DATCP referred 50 actions; and (2) the Department of Financial Institutions referred four actions. The remaining 52 actions and investigations represent multistate cases, actions referred to DOJ from non-governmental entities, actions internally generated by DOJ, or actions for which DOJ's records does not identify its origin. Of these 106 actions, 26 were multi-state in nature and 80 were Wisconsin-specific.

During 2018-20, DOJ's consumer protection unit closed 71 consumer protection actions and investigations, with the financial recovery in these actions totaling \$23,280,500. Appendix IV identifies the consumer protection actions completed by DOJ's consumer protection unit during 2018-2020, in which the financial recovery in the action equaled or exceeded \$100,000. Appendix IV also summarizes the consumer protection actions of a criminal nature concluded during 2018-2020. These actions included investigations, litigation, prosecution, and negotiated settlements. For each listed action, the following information is provided: (1) name; (2) type; (3) source; (4) description; (5) resolution; and (6) restitution or other monetary recovery, if any. During 2018-20, for the 18 actions summarized in Appendix IV based on data provided by DOJ, the direct financial recovery totaled \$39,533,900.

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

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Funds awarded in consumer protection actions 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 actions, it is possible to identify specific consumers to whom refunds or restitution can be made. In such actions, 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 actions, 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 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 actions 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 2018-19, \$7,809,700 in expenditures for restitution and for other purposes authorized by the particular judgment or settlement was made from DOJ's restitution appropriation. In 2019-20, \$789,500 in expenditures for restitution and for other purposes authorized by the particular judgment or settlement was made from DOJ's restitution appropriation. [Note that restitution expenditures were uncommonly high in 2018-19 as a result of a pre-litigation settlement in June, 2019, against Equifax for false representations (discussed in greater detail in Appendix IV).]

Prior to Act 369, DOJ utilized its Division of Management Services gifts, grants and proceeds continuing program revenue appropriation to receive and allocate settlement funds that are distributed at the sole discretion of the Attorney General. Under Act 369, the appropriation was converted from a continuing appropriation to an annual appropriation. As an annual appropriation, expenditures are limited to the amounts authorized by the Legislature. In 2019-21 expenditure authority for the appropriation was established at \$0 annually. No revenue was deposited to the gifts and grants appropriation in 2019-20 or 2020-21 (through November, 2020).

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 actions involving the allocation of restitution awards directly from defendants or through third-party administrators, the restitution funds do not pass through DOJ's restitution appropriation.

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% 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. The appropriation began the 2018-19 fiscal year with a balance of \$1,894,100 and received additional revenue of \$2,031,400 during the fiscal year. In 2018-19, \$2,392,500 was expended from the appropriation, and as a result, the appropriation closed 2018-19 with a balance of \$1,530,200. During the 2019-20 state fiscal year the appropriation received

additional revenue of \$155,800, expended \$1,284,500, and closed the 2019-20 state fiscal year with a balance of \$401,500.

Under 2017 Act 369, DOJ is required to deposit all settlement funds into the general fund. As a result, in order for monies to be appropriated as directed by the court or settlement agreement, legislation will need to be enacted.

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### **Report on Restitution Payments**

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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.

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### **Settlement Authority of the Attorney General**

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Under 2017 Act 369, the Legislature has the right to intervene in certain actions. An intervenor appointed by the Assembly, Senate, or Joint Committee on Legislative Organization (JCLO), or if there is no intervenor, the Joint Committee on Finance (JFC) must approve any compromise or discontinuance of a civil action prosecuted by the state. Further, Act 369 provided that the Attorney

General may not submit a proposed settlement plan to JFC if the plan concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates or is preempted by federal law without JCLO's approval.

Under Act 369, in defending an action, if an action is for injunctive relief or there is a proposed consent decree, the Attorney General must receive the approval of an intervenor, or if there is no intervenor, submit the settlement or compromise plan to the JFC for passive review. If JFC does not schedule a meeting to review the plan within 14 days, the Attorney General may proceed, but, if JFC does schedule a meeting, the Attorney General may proceed only with the approval of JFC. Further, the Act provides that the Attorney General may not submit a proposed settlement plan to JFC if the plan concedes the unconstitutionality or other invalidity of a statute or concedes that a statute violates or is preempted by federal law without JCLO's approval.

In February, 2019, the Service Employees International Union filed suit against the leaders of both houses of the Legislature, the Governor, and Attorney General over provisions of Act 369. A number of the Act 369 provisions were challenged on the separation of powers grounds and these provisions included the Legislature's involvement in settlements. On July 9, 2020, the Wisconsin Supreme Court found that the provision requiring JFC overview was not unconstitutional in every potential application. However, the majority opinion noted, "We stress that this decision is limited. We express no opinion on whether individual applications or categories of applications may violate the separation of powers, or whether the legislature may have other valid institutional interests supporting application of these laws." Litigation regarding more limited applications of the law is ongoing.

*OTHER STATE AGENCY PROGRAMS PROVIDING CONSUMER PROTECTION*

Other state agencies perform functions related to ensuring 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 programs, a variety of state agencies respond to consumer complaints and provide information to consumers. This chapter lists these agencies and provides a brief description of each agency's consumer protection activities.

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**Department of Administration - Energy Issues**

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The Department of Administration's Division of Energy, Housing and Community Resources operates the Home Energy Plus Program. The program provides general information to consumers and energy assistance and weatherization benefits to low-income residents. The division operates a website and toll-free number to provide program information.

In 2019-20, Home Energy Plus distributed 236,600 copies of its brochure in English, Spanish, and Hmong to local agencies and energy assistance and weatherization service providers. Local providers must conduct their own outreach activities, which may include radio, television and newspaper advertisements and distributing information to local community-based agencies.

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**Board on Aging and Long-Term Care**

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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 individuals who need long-term care, and provides information to the public.

In federal fiscal year 2019, regional ombudsmen opened 1,422 cases, addressing 4,179 complaints, and provided 18,268 consultations, informational contacts, and referrals. The Board's ombudsman staff and trained volunteers also made 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 2019, 91 volunteer ombudsmen donated 4,946 hours and made 2,064 facility visits. Finally, the Board provides consumers with information and assistance regarding Medicare, Medicaid, and private insurance policies through printed materials, a website, and Medigap Helpline and the Medigap Part D and Prescription Drug Helpline. In calendar year 2019, the two helplines received 12,097 calls, with another 8,184 contacts through outreach events, such as presentations and informational booth events.

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**Department of Children and Families**

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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 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 by or contracted for 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.

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## **Department of Financial Institutions**

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The Department of 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 Department's Office of Financial Literacy provides information to the public on matters of personal finance. The Office of Credit Unions is attached to DFI for administrative purposes and is responsible for regulating the 118 credit unions chartered by the state.

The Department 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 489,271 currently active entities on file with DFI. The Department also examines and files documents under the Uniform Commercial Code, filing 182,043 documents in 2019.

The Department also regulates state-chartered banks and trusts (141), savings banks (12) and savings and loan associations (two), and licenses approximately 17,800 solicitors/collectors, 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, and auto title lenders. In addition, 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. Further, DFI registers 10,656 charitable organizations, professional fundraisers, and professional employer organizations and groups, performs compliance reviews, and responds to complaints related to such entities.

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 bro-

ker-dealers, securities agents, and investment advisers. In 2019, the Division of Securities responded to 59 complaints, associated with both licensed and unlicensed entities. As a result of those investigations, 12 warning letters and 28 administrative orders were issued against 49 respondents, and four matters were referred for criminal prosecution against five defendants. Approximately \$437,817 was awarded as monetary relief to investors, and \$821,500 in fines and penalties was ordered. Total amounts assessed as monetary relief to investors in administrative, civil and criminal actions combined was \$7,012,770.

The Bureau of Consumer Affairs administers the Wisconsin Consumer Act, which governs consumer credit transactions. During 2019, the Bureau received 565 consumer complaints. Subsequent investigations revealed 55 compliance problems under the Wisconsin Consumer Act, resulting in orders requiring merchants to correct their violations. A total of \$39,843 was returned to consumers as refunds, credits, or adjustments.

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### **Department of Health Services**

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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. 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 taking other disciplinary actions.

The DHS website provides a significant amount of information useful to consumers. For example,

the website provides detailed descriptions of state- and county-administered health and human services programs, for which individuals may be eligible, including contact information. The website enables consumers to locate and compare long-term care facilities, home health agencies and other health care providers. In addition, the website contains several consumer guides on a range of topics, such as how to file complaints against providers, options for paying for health care services, immunizations and preventive care, end-of-life planning, and information for parents and parents-to-be.

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### **Office of the Commissioner of Insurance**

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The Office of the Commissioner of Insurance (OCI) regulates insurance companies and agents by ensuring that insurance companies are financially solvent and adhering to consumer protection laws. OCI's Division of Market Regulation and Enforcement investigates written consumer complaints and inquiries as well as responds to telephone inquiries or requests for information. Most official complaints involve the handling of claims, but may also include service to policyholders, marketing and sales practices, and underwriting. Following its investigation of a complaint, OCI may order license discipline, 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.

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### **Office of Lawyer Regulation**

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The Office of Lawyer Regulation (OLR) inves-

tigates and responds to alleged violations of the rules of professional conduct for attorneys licensed to practice law in Wisconsin. It 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 members of the public, 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 members of the public, 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 or diligence, 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 does not present sufficient information to support a potential ethical violation; or (3) the grievance can be reconciled between the grievant and attorney (if it is a minor

dispute). Grievances that cannot be resolved are referred for investigation to be 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, 2019, 465 matters were pending disposition in the OLR. The OLR received 1,518 new grievances in the 2019-20 fiscal year. In 2019-20, 30 attorneys were publicly disciplined and 18 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, 31 attorneys entered the alternatives-to-discipline program. Finally, 113 cases were dismissed with an advisory letter. On June 30, 2020, 420 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, 12.95 investigators, 7.0 administrative and support staff, 1.0 litigation counsel, and 3.55 assistant litigation counsel. Total expenditures for the OLR were \$3,138,300 PR in 2019-20; in 2020-21, the OLR is budgeted at \$3,287,700 PR. 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.

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## Public Service Commission

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The Public Service Commission works to en-

sure that, in the absence of competition, adequate and reasonably priced service is provided to utility customers. Commission staff report 4,327 contacts from consumers in calendar year 2019. As of October 28, 2020, contacts totaled 3,252 in 2020. Of these contacts, 1,247 in 2019 and 757 in 2020 year-to-date became official complaints. Commission staff report the decline in consumer contacts in 2020 is attributable to the moratorium on disconnection of service imposed in response to the COVID-19 pandemic, as service disconnections represent a notable portion of all complaints.

Most complaints concern disconnections, billing errors, applications for service, deposits, and deferred payment agreements. Of 2020 complaints reported through October 28, approximately 32% of all complaints involved combined electric and gas service; 17% involved electric service; 4% involved natural gas service; 37% involved either water, combined water and sewerage service, or combined water and electric service; 7% involved telecommunications service; and 3% involved miscellaneous issues. Actions taken 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 DOJ for civil prosecution, or reopen the complaint for additional investigation. Commission staff monitor 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.

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## **Department of Safety and Professional Services**

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The Department of Safety and Professional Services (DSPS) administers certain activities and programs regarding licensing of professional oc-

cupations and trade professions. The 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 27 regulatory boards or the Department's direct licensing authority. As of July, 2020, the Department and its boards regulated approximately 415,694 active credential holders in 267 different professions, occupations and businesses. The Department received 3,051 complaints involving regulated persons or entities in 2019. 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 and has staff in four district offices who work with the trades professions.

Further, 2017 Act 59 transferred the program responsibilities of the Educational Approval Board (EAB) and 6.50 PR positions to DSPS. The EAB had previously been an independent unit of state government budgeted under the Wisconsin Technical College System. DSPS now administers the Educational Approval Program (EAP), which approves and supervises for-profit colleges, out-of-state nonprofit colleges and universities, and some in-state, nonprofit institutions, as well as solicitors that recruit students on behalf of an institution. Schools and solicitors representing schools reapply annually for approval from the EAP. Additionally, EAP investigates student complaints, maintains student records following the closure of a school, and maintains a student protection fund consisting of fees collected from schools.

Additional information is available in the Legislative Fiscal Bureau's informational paper entitled, "Regulation of Occupations by the Department of Safety and Professional Services."



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## **Department of Transportation**

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The Division of Motor Vehicles is responsible for licensing new and used motor vehicle dealers, recreational vehicle dealers, motor vehicle manufacturers and distributors, and salvage dealers. In 2019, the Department investigated approximately 1,840 complaints 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 between 650,000 and 700,000 vehicles annually in southeastern Wisconsin, pursuant to Clean Air Act requirements for areas with air quality issues. Departmental auditors regularly review the approximately 190 private inspection facilities that pro-

vide 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.

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## **Department of Workforce Development**

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The Department of Workforce Development (DWD) enforces both civil rights and labor standards laws through the Division of Equal Rights. The division maintains offices in Madison and Milwaukee.

The Equal Rights Division enforces anti-discrimination laws affecting housing, employment, and public accommodations. DWD received approximately 2,900 discrimination complaints in 2019; approximately 94% of the discrimination cases were employment-related. Cases are investigated and may be mediated or brought before an administrative law judge for a formal hearing. The division also enforces the Wisconsin Family and Medical Leave Act and certain anti-retaliation laws.

The Equal Rights Division also enforces labor standards laws, including laws on minimum wage, overtime, and child labor. In 2019, the Division investigated 1,800 cases, 1,600 of which involved unpaid wage claims from employees.

## APPENDIX I

### 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).* Prohibits 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. Implements the state no-call program.

*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 requirements for provision of video services for providers such as cable operators receiving a statewide franchise.

*Environmental Labeling of Products (ATCP 137).* Establishes standards for advertising and labeling that makes environmental claims for consumer products, such as products advertised as recycled, recyclable or degradable. Further establishes labeling requirements for plastic containers to facilitate recycling or reuse of the containers.

*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.

*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.

*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**

*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.

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

*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.

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

*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 measure truthfully the type, weight, grade and quality of grain when determining purchase price.

*Milk Contractors (ATCP 100).* Provides reasonable assurance that producers will be paid for their milk and prohibits price discrimination between individual producers.

*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 prohibits sales below the seller's costs. Further,

prohibits selling tobacco products, alcoholic beverages or motor vehicle fuel without required markups between wholesalers and retailers.

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

## APPENDIX II

### DATCP-Referred Consumer Protection Court Cases Closed July 1, 2018, through June 30, 2020 (Total Judgments of \$10,000 or More and Criminal Cases)

Case Name	Case Type	Where Referred	Resolution	Forfeiture, Restitution, and Other Payments	Other Conditions
<b>Civil Cases</b>					
ALDI Inc.	Weights and Measures	Racine County DA	Settlement/Stipulation	Forfeiture of \$38,720.	
AMP Security	Direct Marketing	Wisconsin DOJ	Judgment	Forfeiture of \$36,608. Restitution of \$3,595.	
Arushupinder Singh Chahal	Storage Tank	Wisconsin DOJ	Judgment	Forfeiture of \$12,000.	
CAP Operations Inc.	Fuel Quality	St. Croix County DA	Settlement/Stipulation	Forfeiture of \$13,520.	
Casey's General Stores Inc.	Storage Tank	Monroe County DA	Settlement/Stipulation	Forfeiture of \$11,597.	
Coborn's Inc.	Weights and Measures	Polk County DA	Settlement/Stipulation	Forfeiture of \$23,774.	
Direct Checks Unlimited Inc.	Unfair Billing	Wisconsin DOJ	Judgment	Forfeiture of \$550,000, Restitution of \$185,177.	
Dollar General Corporation	Weights and Measures	Racine County DA	Settlement/Stipulation	Forfeiture of \$10,587.	
Electronic Media Group	Fraudulent Representations	Wisconsin DOJ	Judgment	Forfeiture of \$119,600. Restitution of \$5,525	
Euro-American Realty Investors Inc.	Storage Tank	Wisconsin DOJ	Judgment	Forfeiture of \$68,479.	
Flat Rate Plumbing	Home Improvement	Wisconsin DOJ	Judgment	Restitution of \$73,627. Forfeiture of \$18,355.	
Hansen's IGA Inc.	Weights and Measures	La Crosse County DA	Settlement/Stipulation	Forfeiture of \$16,200.	
Khushi Corporation	Storage Tank	Wisconsin DOJ	Judgment	Forfeiture of \$10,000.	
Legal Helpers Debt Resolution LLC a.k.a Macy, Aleman, Hyslip & Seams	Fraudulent Representations, Direct Marketing	Wisconsin DOJ	Stipulated Settlement	Restitution of \$1,751,173.	
Millennium Travel & Promotions	Advertising	Florida Attorney General	Judgment	Restitution of \$61,499. Fees of \$25,000.	
Minit Mart LLC	Weights and Measures	Polk County DA	Settlement/Stipulation	Forfeiture of \$35,857.	

Case Name	Case Type	Where Referred	Resolution	Forfeiture, Restitution, and Other Payments	Other Conditions
NorthStar Alarm Service LLC	General Merchandise	Wisconsin DOJ	Judgment	Forfeiture of \$80,000. Fees of \$29,872.	
Royale Construction LLC	Telemarketing	Jefferson County DA	Settlement/Stipulation	Forfeiture of \$4,100. Fees of \$3,400.	
Russell Stoller	Storage Tank	Wisconsin DOJ	Judgment	Forfeiture of \$35,192.	
Skogen's Foodliner Inc.	Weights and Measures	Eau Claire County DA	Settlement/Stipulation	Forfeiture of \$32,013.	
Thomas Carroll and Edward Carroll, Taking Care of Paving	Home Improvement	Wisconsin DOJ	Judgment	Forfeiture of \$154,020. Restitution of \$27,860. Fees of \$2,236.	
<b>Criminal Cases</b>					
Aaron Miller	Home Improvement	Dane County DA	Judgment	Fees of \$1,594. Restitution of \$750.	6 months in jail.
Charles Reitz III, Elite Fence and Landscaping LLC	Home Improvement	Milwaukee County DA, Waukesha County DA	Judgment	Restitution of \$2,900. Forfeiture of \$705.	
Corey Griego, Artisano Remodeling	Home Improvement	Dane County DA	Settlement/Stipulation	Restitution of \$800.	10 days in jail and 2 years of probation.
Dale Baldwin, Baldwin Building Improvements	Home Improvement	Outagamie County DA	Judgment	Fees of \$528.	2 years of probation.
Daniel Solie, D & D Construction	Home Improvement	Chippewa County DA, Rusk County DA	Settlement/Stipulation	Restitution of \$6,475.	
Donald Boeshaar	Home Improvement	Milwaukee County DA	Settlement/Stipulation	Restitution of \$2,800.	
Gregory Cash, Buendel LLC	Home Improvement	Milwaukee County DA, Waukesha County DA	Judgment	Restitution of \$207,644.	3 years in prison, 5 years of extended supervision, and 6 years of probation.
Jacob Hall and Mark Wells	Home Improvement	Dodge County DA, Douglas County DA	Settlement/Stipulation	Forfeiture of \$831.	
Jeffrey Briscoe	Home Improvement	Waukesha County DA	Judgment	Restitution of \$1,400. Fees of \$443.	2 years of probation.
John French, Clear Cut Painting & Remodeling LLC	Home Improvement	Milwaukee County DA	Judgment	Restitution of \$5,250.	15 months in jail and 1 year of probation.
London Pearce, Blackrock Asphalt LLC	Home Improvement	Dane County DA	Settlement/Stipulation	Forfeiture of \$957.	
Marc Clark, ATFAB Repair and Service	Home Improvement	Waupaca County DA	Settlement/Stipulation	Restitution of \$6,000.	

<b>Case Name</b>	<b>Case Type</b>	<b>Where Referred</b>	<b>Resolution</b>	<b>Forfeiture, Restitution, and Other Payments</b>	<b>Other Conditions</b>
Matthew Berg, M & J General Contracting LLC	Home Improvement	Calumet County DA, Green Lake County DA	Settlement/Stipulation	Restitution of \$650.	90 days in jail.
Michael Gerken, Moms and Dads for Kids	Fraudulent Representations	St. Croix County DA	Judgment	Forfeiture of \$5,000.	7 to 13 months in jail, and 3 years of probation.
Nathaniel Dicosimo, Global Roofing Solutions	Home Improvement	Outagamie County DA	Judgment	Restitution of \$2,090. Forfeiture of \$1,069.	
Neil Davey and Jason Klidies, WinCorp Platinum Inc.	Advertising	Wisconsin DOJ	Judgment	Restitution of \$246,189. Forfeiture of \$32,785. Fees of \$17,215.	90 days in jail, 26 months of probation



## APPENDIX III

### Unfair Sales Act/Minimum Markup Law

The Unfair Sales Act, which first took effect in the 1930s, generally prohibits the sale of merchandise below its invoice or replacement cost. The law is intended to ensure fair competition by preventing predatory "loss leader" pricing by larger businesses, which could incur short-term losses to drive competing smaller firms out of business. It 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 9.18% above cost, while all other products may not be sold below cost.

Below-cost sales are allowed under certain circumstances, including: (a) bona fide clearance sales; (b) sales of perishable merchandise; (c) sales of damaged or discontinued merchandise; (d) liquidation sales; (e) sales for charitable purposes; (f) contract sales to government bodies; (g) prices set to meet a competitor's documented price; and (h) 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, in conjunction with district attorneys, has responsibility for enforcing the act, and may seek forfeitures of \$50 to \$500 for the first below-cost sale and \$200 to \$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 \$200 to \$5,000. DATCP is authorized 2.35 positions for its administrative and enforcement functions related to the Unfair Sales Act. Additionally, any person injured or threatened with injury due to sales at a price below what is authorized under law may bring court

action against the seller for injunctive relief and for damages including attorney's fees.

#### Markup Requirement

Motor vehicle fuel, alcoholic beverages, and tobacco products must be sold at a markup of 9.18% at the final point of sale, equal to a markup of 3% by wholesalers and 6% by retailers. Applicable state and federal taxes and fees, as well as transportation and other costs not otherwise included in the listed cost, are also figured in the base price subject to markup.

Table 6 shows an example of the minimum markup for regular unleaded gasoline based on recent prices. In the case of motor vehicle fuel, the "base price" subject to markup is defined as the greater of: (a) the invoice or replacement cost of fuel; or (b) the average posted price at the fuel distribution terminal nearest the retail location. Data in the table represents the average wholesale ("terminal") price for regular unleaded gasoline in Wisconsin for the most recent year of data available as of December, 2020. Included in the table are taxes and fees of 51.3¢ per gallon, reflecting 30.9¢ in state tax, 18.4¢ in federal tax, and 2¢ in state petroleum inspection fees. The calculation assumes transportation costs of 2.5¢ per gallon, the convention adopted by DATCP, although transportation costs may vary based on location. (Although not shown in the table, the federal tax rate on diesel fuel is 24.4¢ per gallon.)

While Table 6 estimates typical statutorily required minimum fuel prices, these should not be considered directly representative of retail fuel prices, as retailers are expected to price motor vehicle fuel in relation to local market and competitive factors. As such, the minimum markup can be considered a price floor that retailers generally

**Table 6: Minimum Markup Law Calculation**

Month/Year	Terminal Price	Transportation Cost	Taxes and Fees	Subtotal	Minimum Markup (9.18%)	Minimum Pump Price*
October, 2019	\$1.65	\$0.025	\$0.513	\$2.19	\$0.20	\$2.39
November	1.61	0.025	0.513	2.15	0.20	2.35
December	1.61	0.025	0.513	2.15	0.20	2.35
January, 2020	1.59	0.025	0.513	2.13	0.20	2.33
February	1.53	0.025	0.513	2.07	0.19	2.26
March	0.91	0.025	0.513	1.45	0.13	1.58
April	0.38	0.025	0.513	0.92	0.08	1.00
May	0.96	0.025	0.513	1.50	0.14	1.64
June	1.21	0.025	0.513	1.75	0.16	1.91
July	1.26	0.025	0.513	1.80	0.17	1.97
August	1.25	0.025	0.513	1.79	0.16	1.95
September	1.20	0.025	0.513	1.74	0.16	1.90

\*Represents the statutory minimum under the current formula. Some exceptions may apply.  
Source: U.S. Energy Information Administration.

may not go below, but may choose to exceed based on any number of pricing factors, which could include: (a) the capacity and accessibility of nearby competitor stations; (b) operating costs of the retail location, such as salary, lease, and equipment costs; (c) payment processing fees associated with card-based transactions; and (d) desired return on investment for owners of a station. Such regional variability in prices means that at any given time, the minimum markup may be the determining factor for price-setting in some areas of the state, and not in others.

Other factors are generally reflected in the wholesale price of motor vehicle fuel purchased by retailers for resale, and would not be considered factors in the price-setting decisions of local retailers, including: (a) crude oil prices; (b) seasonal variability in U.S. consumer demand; (c) short-term national or regional fuel supply changes caused by such events as public health emergencies, natural disasters, or refinery maintenance; (d) seasonal gasoline reformulation required under the federal Clean Air Act; (e) federal policy changes and political events; and (f) national and global market conditions.

### Period of Abnormal Disruption

In addition to protections against below-cost sales, s. 100.305 of the statutes protects consumers against "unreasonably excessive prices" during "abnormal economic disruptions." Periods of disruption may be declared by the Governor and include public health emergencies, natural disasters, hostile actions, energy supply disruptions, or labor or civil unrest. ATCP 106 specifies unreasonably excessive prices, which is generally not allowed to exceed 15% above the highest posted price of the product in the preceding 60 days. DATCP, or DOJ after consulting with DATCP, may issue warnings to violating sellers or prosecute excessive pricing. Violators are subject to forfeitures up to \$10,000.

In response to the COVID-19 pandemic, the Governor declared a period of abnormal economic disruption beginning on March 12, 2020, and ending on July 3, 2020. DATCP reports that a majority of complaints it received during that period were associated with groceries and household supplies.

**APPENDIX IV**

**Department of Justice Consumer Protection Cases Completed in 2018-20**  
 (Total Judgments of \$100,000 or More and Criminal Cases)

<b>Action Name</b>	<b>Action Type</b>	<b>Source of Referral</b>	<b>Resolution</b>	<b>Discretionary Resolution Funds<sup>1</sup></b>	<b>State's Award<sup>2</sup></b>	<b>Restitution<sup>3</sup></b>	<b>Total<sup>4</sup></b>
<b>Civil Actions (total judgement of \$100,000 or more)</b>							
Midland Funding	Violations of debt collection laws	Multistate	Pre-litigation resolution. Wisconsin joined 41 other states and the District of Columbia in reaching a \$6 million agreement to resolve the claims. Wisconsin entered into an Assurance of Voluntary Compliance/Assurance of Discontinuance providing for a \$127,200 payment to the state and a \$25,000 restitution fund for affected state consumers.	\$106,800	\$20,300	\$25,000	\$152,100
Electronic Media Marketing Group	False, deceptive business practices	DATCP	Litigated judgments against Electronic Media Marketing Group, Inc., and Vladimir Adolphe. The Judgments enjoin defendants from running a business directory scam in Wisconsin and sending bills to Wisconsin consumers, \$148,600 in forfeitures, surcharges, costs, and fees, and \$5,500 in consumer restitution.		\$148,600	\$5,500	\$154,100
Atomic Glass	Investigation into alleged unlawful sales; violations of drug labeling laws	DATCP	Litigated judgments against both David Kelly and Atomic Glass, Inc., owed jointly and severally by both defendants. Judgments provide for \$4,560,600 in forfeitures, surcharges, costs, and fees.		\$4,560,600		\$4,560,600
WinCorp Platinum, Inc.	Unfair and deceptive trade	DATCP	Litigated consent judgment permanently enjoining defendants from engaging in the sale or transfer of time		\$50,000	\$246,200	\$296,200

Action Name	Action Type	Source of Referral	Resolution	Discretionary Resolution Funds <sup>1</sup>	State's Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
	practices in direct mail solicitations		share instruments, \$50,000 in forfeitures, surcharges, and costs, and \$246,200 in consumer restitution.				
American Dream Home Improvement	Unfair Billing; fraudulent representations; home improvement violations	DATCP	Litigated consent judgment for injunctive relief, \$397,600 in forfeiture, surcharges, restitution, costs and fees, and \$582,000 in consumer restitution.		\$397,600	\$582,000	\$979,600
UBER	Fraudulent representations	Multistate	Pre-litigation resolution. Wisconsin joined the other 49 states and the District of Columbia in reaching a \$148 million agreement to resolve the allegations.	\$877,400	\$1,191,900		\$2,069,300
Northstar Alarm Services	Fraudulent representations; unfair billing; misrepresentation of costs related to consumer goods or services	DATCP	Litigated consent judgment with injunctive provisions, \$100,000 in forfeitures, surcharges, costs, and fees, and \$9,900 in consumer restitution.		\$100,000	\$9,900	\$109,900
Johnson & Johnson - Ethicon Mesh	Unlawful, misleading, unfair and/or deceptive acts relating to the marketing of Surgical Mesh	Multistate	Pre-litigation resolution. Wisconsin joined 40 other states and the District of Columbia in reaching a \$116.9 million agreement to resolve the allegations.	\$2,034,800	\$38,800		\$2,073,600
Hampton Avenue Group	Fraudulent misrepresentations	DATCP	Litigated consent judgment with injunctive relief, and \$350,000 in forfeitures, surcharges, costs and fees.		\$350,000		\$350,000
Fiat Chrysler	Deceptive sales practices	Multistate	Pre-litigation resolution. Wisconsin joined 49 other jurisdictions in reaching a \$72.5 million agreement to resolve the allegations.	\$1,177,600	\$224,300		\$1,401,900

Action Name	Action Type	Source of Referral	Resolution	Discretionary Resolution Funds <sup>1</sup>	State's Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
Bosch	Emissions testing related fraud	Multistate	Pre-litigation resolution. Wisconsin joined 49 other jurisdictions in reaching a \$98.7 million agreement to resolve the allegations.	\$2,138,700	\$407,400		\$2,546,100
Johnson & Johnson - DePuy	Fraudulent representations	Multistate	Pre-litigation resolution. Wisconsin joined 45 other Attorneys General in reaching a \$120 million agreement to resolve the allegations.	\$1,841,900	\$350,800		\$2,192,700
Wells Fargo	Unlawful conduct including unauthorized insurance, accounts and mortgage-related issues	Multistate	Pre-litigation resolution. Wisconsin joined 49 other states in reaching a \$575 million agreement to resolve the allegations.	\$7,195,300	\$1,370,500		\$8,565,800
Carroll, Thomas and Carroll, Edward d/b/a Taking Care of Paving	Violations of ATCP ch. 110 (home improvement services)	DATCP	Litigated judgment for injunctive relief and \$160,900 in forfeitures, surcharges, costs and fees, and \$27,900 in consumer restitution.		\$160,900	\$27,900	\$188,800
Direct Checks	Fraudulent representations and unfair billing	DATCP	Pre-litigation resolution. Consent Judgment that includes injunctive relief, \$567,000 in forfeitures, surcharges, costs and fees, and \$185,200 in consumer restitution.		\$567,000	\$185,200	\$752,200
Equifax	False representations	Multistate	Pre-litigation resolution. Wisconsin joined 47 other states, the District of Columbia, and the Commonwealth of Puerto Rico in reaching a \$600 million agreement to resolve the allegations. The agreement included a \$175,000,000 payment to the states, and a \$425,000,000 national restitution fund.	\$1,710,900	\$325,900	*See Resolution Description	\$2,036,800

Action Name	Action Type	Source of Referral	Resolution	Discretionary Resolution Funds <sup>1</sup>	State's Award <sup>2</sup>	Restitution <sup>3</sup>	Total <sup>4</sup>
Student CU CUSO	False representations	Multistate	Pre-litigation resolution. Wisconsin joined 42 other states in reaching an Assurance of Voluntary Compliance providing injunctive type relief and \$5,806,600 in student loan debt relief for Wisconsin students.			\$5,806,600	\$5,806,600
Career Education Corporation	False representations	Multistate	Pre-litigation resolution. Wisconsin joined 47 other states and the District of Columbia in reaching an Assurance of Voluntary Compliance providing injunctive type relief, a payment of \$5 million to the states, and \$5,247,600 in student loan debt relief for Wisconsin students.	\$42,000	\$8,000	\$5,247,600	\$5,297,600
Civil Action Total				\$17,125,400	\$10,272,600	\$12,135,900	\$39,533,900
<b>Criminal Cases</b>							
State v. William Edward Tanko	Criminal	DATCP	The defendant pled guilty. Restitution paid to victims prior to trial. The defendant must: (a) maintain/obtain full-time employment/ school/ combination or be productive with time; (b) write a letter of apology to each victim; (c) not work in construction or home improvement business; and (d) not work for cash or self-employment without prior approval of agent.				

<sup>1</sup> Discretionary resolution funds are amounts that may be expended as permitted by state law.

<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 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.