

LITTLE HOOVER COMMISSION



CONSUMER PROTECTION: A QUALITY OF LIFE INVESTMENT

June 1998

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This report was adopted by the Commission on May 28, 1998 by a unanimous vote of those members present. Commissioner Hunt voted to adopt the report, except for Recommendation 2.



State of California

LITTLE HOOVER COMMISSION

June 17, 1998

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Executive Director

The Honorable Pete Wilson
Governor of California

The Honorable John Burton
President Pro Tempore of the Senate
and members of the Senate

The Honorable Antonio Villaraigosa
Speaker of the Assembly
and members of the Assembly

The Honorable Ross Johnson
Senate Republican Leader

The Honorable Bill Leonard
Assembly Republican Leader

Dear Governor and Members of the Legislature:

Each year, the State invests hundreds of millions of dollars in the name of consumer protection. Each year, consumers suffer losses because of unqualified professionals and fraud, unfair and anti-competitive business practices. Sometimes the losses are measured in dollars and sometimes in tears.

In this report, the Little Hoover Commission makes recommendations that it believes will help the State improve the return that Californians receive on the money invested in consumer protection.

California has more than a century of experience in the consumer protection business. For nearly 40 years the State has had a department dedicated solely to being guardian, advocate and educator of citizens as consumers. If there is a lesson from this experience it is that consumer protection done right is government at its best.

Done right, consumer education helps buyers throughout the marketplace make smart decisions -- avoiding bad actors and bad products, minimizing losses and lawsuits.

Done right, consumer advocacy results in market conditions that encourage robust competition -- providing consumers with more choices at lower prices and rewarding investors who support innovation and excellence.

Done right, consumer regulations build public confidence by ensuring that minimum standards will be met without discouraging competition, by investigating complaints and fairly but assertively enforcing the law.

Done right, consumer protection is seamless -- with licensing officials, investigators and law enforcement authorities working cooperatively regardless of their agency affiliation.

In each of these areas -- education and advocacy, regulatory structure and interagency collaboration -- the Little Hoover Commission found civil servants working hard to make California a better place to live and do business. And in each of these areas, the Commission saw opportunities to improve consumer protection.

The Little Hoover Commission became interested in the State's consumer protection apparatus because in so many of the issue areas explored by the Commission in recent years public advocates complained that the State's commitment to consumer protection was waning. Whether the service was long-term care for the growing number of aging Californians or an embryonic telecommunications technology, the public expects the State to protect privacy, to counter fraud, to ensure minimum standards and to enforce the laws.

During its review the Commission found that the State has an adequate, even ambitious legal framework for giving consumers a voice in the political process that often shapes their choices in the marketplace. The Consumer Affairs Act of 1970 eloquently articulates how important consumer education is to an efficient free market. And the law envisions the need and creates mechanisms to coordinate the consumer-related activities of the disparate government agencies that have some responsibility over some niche in the marketplace.

Yet consumer advocates, business representatives and even present and past leaders of the State's consumer protection units nearly unanimously agree that as a whole the network of consumer protections is not living up to its potential. Momentum has been lost. The day-to-day exigencies of operating public agencies have somehow overwhelmed the ability of the organizations to work together and be as dynamic as the markets they monitor.

Some advocated that the State lower its sights. The Little Hoover Commission heartily disagrees. As the century closes, a very dynamic marketplace is creating new opportunities for generating wealth and improving the standard of living -- and generating new threats to the health, safety and economic well-being of Californians. The State cannot sit on the sidelines waiting for potential threats to the public safety to materialize before taking action.

Too often, consumer protection is seen as adversarial to business, and that is not inherently the case. Establishing rational minimal standards and fairly enforcing those standards rewards the most efficient and effective suppliers, just as it protects consumers from harm.

To be sure, government cannot pretend or aspire to protect all consumers in every transaction. That reality is among the reasons why consumer education is the best protection. But that reality cannot be used as an excuse for failing to aggressively investigate complaints and enforce laws, particularly when adequate special funds are

dedicated to that purpose. In some instances, the Commission believes a targeted investment of General Fund revenue will improve the public welfare, enhance commerce and prevent the need for more intensive government intervention.

In short, consumer protection is a quality of life investment. In some cases, regulations, licensing, enforcement and education programs can result in higher consumer prices. But those investments can also yield reliable and healthy goods and services, and priceless peace of mind.

The Little Hoover Commission stands ready to work with the Legislature and the Governor to make these reforms a reality.

Sincerely,

A handwritten signature in black ink, reading "Richard R. Terzian". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Richard R. Terzian
Chairman

Consumer Protection:

A Quality of Life Investment

June 1998



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Executive Summary

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Executive Summary

As California's economy has matured, consumer protection has evolved into a government imperative. Done correctly, consumer protection efforts facilitate market efficiency, improve public decision-making and empower all consumers to make smart choices while shielding the most vulnerable from the worst abuses.

The State fulfills its consumer protection role in a variety of ways, with dozens of agencies charged with some consumer-related function. But ensuring this protection is the core expertise and the fundamental responsibility of the Department of Consumer Affairs. And as envisioned by the Consumer Affairs Act of 1970, it is the job of the department to see that other agencies are working in concert with the public's interest.

In enacting the 1970 law, the Legislature and the Governor commissioned the department with a noble charge and steeled it with significant authority. Over time, that mission has held up as an important public policy goal that is worth pursuing with the vigor originally intended.

Over time, the potential for the policy to advance the public interest has been demonstrated by solid investigations, innovative education efforts and effective advocacy. But with time, the department's edge has been dulled -- by a lack of resources, a dysfunctional organizational structure and a diminished sense of purpose.

Historically, consumer protection has been an ephemeral public issue -- one that waxes and wanes like the business cycle. Concerns rise meteorically when scandalous abuses are exposed or when harsh business decisions turn a skeptical public cynical. But history also teaches policy makers that in good times and bad -- and whether politically hot or not -- consumer protection is good for buyers and sellers. Market economies are helped by informed consumers, by assertive enforcement of unfair business practices and by a low tolerance for unscrupulous behavior.

The findings and recommendations contained in this report are intended to affirm the intent of the Consumer Affairs Act of 1970 and the Department of Consumer Affairs' essential role in this regard -- while refining some of the ways those goals are pursued to reflect the lessons learned in the last three decades and the needs of the next decade.

In the areas of education and interagency collaboration, the recommendations seek to make the most of existing government activities by coordinating the efforts of state and local consumer-related agencies. In the area of advocacy, the recommendations seek to creatively fortify existing but underdeveloped advocacy efforts.

While the forces against organizational change are great, the recommendations on the department's structure seek to better align the regulatory boards and the department -- to increase accountability, flexibility and effectiveness.

Toward those ends, the Little Hoover Commission makes the following recommendations:

Consumer Education

Finding 1: While consumer education is often the most cost-effective and least intrusive form of consumer protection, the State lacks a well-planned and well-funded effort to equip consumers with the information they need to protect themselves.

When consumers select the best goods and services at the best available prices, the forces of the market encourage innovation and efficiency. Equally important, consumer education can prevent the need for more intrusive and costly intervention by government, such as licensing and enforcement. Even staunch consumer advocates believe that well-conducted education programs provide consumers with the best of all protections: The ability to make wise choices and the knowledge to resolve inevitable disputes.

Recommendation 1: The Department of Consumer Affairs should develop a comprehensive consumer education program and the Governor and the Legislature should provide General Fund money to operate that program.

- The highest priority for consumer education funding should be instances in which the public health and safety are jeopardized.
- The education program should be based on a strategic assessment of those areas of the marketplace where consumers are vulnerable to the greatest abuses and where there is the least government infrastructure to prevent or respond to those abuses.
- The education program should provide for coordination between federal, state and local agencies involved in regulating that aspect of the market.
- The education program should include ongoing coordination with media, consumer advocates and trade organizations to amplify and distribute the message throughout the marketplace, including the use of public service announcements.
- The education program needs to be adaptive and flexible as new areas of concern are identified.
- The Department of Consumer Affairs should develop standardized criteria for releasing information on individual licensees. The criteria should make as much information available to consumers as is possible, while shielding businesses from unsubstantiated claims. Telephone hot lines, on-line resources and other means of communicating information about individual licensees should clearly explain the potentially relevant information that is not provided and how often the information is updated.

Consumer Advocacy

Finding 2: Californian consumers are not adequately represented in the variety of policy making venues in which their interests are at stake.

There are a number of public forums in which policies are forged that directly affect the quality, supply and price of consumer goods and services: the Legislature, regulatory venues, the judiciary, and at times just the court of public opinion. In most of these forums, business

interests -- both individually and aggregated into associations -- are well-represented by professionals skilled in the procedures and cultures of those public venues. In nearly all cases, consumers lack the same level of representation. While the stake of individual consumers in each of these proceedings are small, their collective stake is large. This small individual stake discourages participation and there is no natural mechanism for sufficiently encouraging consumers to effectively consolidate their interests. As the State has neglected this role, the task has fallen to a few and diminishing number of nonprofit activists with limited resources.

Recommendation 2: The Governor and the Legislature should create and fund a Consumer Advocacy Council to serve as a repository for consumer advocacy funds and as a vehicle for distributing those funds through a competitive process to nonprofit groups that agree to represent consumers on a particular issue for a specific time.

- The council should be comprised of a range of consumer interests -- such as retired citizens, renters and those with lower incomes. The director of the Department of Consumer Affairs should be a member of the board. Other members could include previous directors of the department and legislative committee chairs.
- While at times policy makers may want to appropriate General Fund or special fund revenue for specific advocacy programs, the council should first explore the use of court judgments, foundation and federal grants.
- The council should annually conduct a public process to identify the most immediate concerns to the broadest range of consumers and in which consumers are most grossly under-represented. The council should solicit proposals from nonprofit groups and award intervenor grants to fund consumer advocacy on those issues. Each grant should be evaluated to determine the effectiveness of the effort, providing information to guide future council decisions.

Organizational Structure

Finding 3: The organizational structure of the Department of Consumer Affairs has evolved in ways that do not provide the best possible protection for California consumers.

The Department of Consumer Affairs' organizational chart documents a tortured history of often conflicting goals. For decades professional licensing organizations that were created in the name of consumer protection were captured by the industries they regulated -- and in some instances that problem persists, in reputation if not reality. The Legislature's Sunset Review efforts have clearly prodded boards to be more consumer oriented, but the remedy for ineffective entities is to eliminate the board and transfer the program's regulatory responsibilities to the department. While this process reduces the ability of the regulated industry to thwart consumer protections, it also reduces the public accountability afforded by open meeting laws and reduces the subject matter expertise provided by board members.

Recommendation 3: The boards should be transformed from nearly autonomous units into policy-making bodies that set regulations and review enforcement actions – allowing licensing, enforcement and administrative activities to be coordinated and eventually consolidated within the department.

- This change should begin with the formal involvement of the department director in the activities of every board by having a seat on each board, even if that seat were routinely staffed by a proxy.
- The Governor and the Legislature should enact legislation providing the director of the department with the authority to approve the selection of new board executive officers. The legislation also should formalize the director's role in orienting and training new board members to their task as guardians of the consumers' interests.
- Fees collected from regulated professions should be aggregated into one special professional regulation fund that is then distributed among the boards and the department. This would untie the fiscal relationship between the regulated and the regulator, it would prevent regulated professions from starving enforcement efforts, and it would erode the popular concept that boards exist for the purpose and the benefit of the professions.
- The department's assessment on boards for administrative services should be disaggregated by the services provided, allowing the boards to select which services they want to pay for while encouraging them to "purchase" those services as soon as the department can perform them more cost-effectively than the boards.

Interagency Collaboration

Finding 4: State and local government efforts on behalf of consumers are numerous and varied -- but they also are uncoordinated, and as a result are not as effective as possible.

In recent years more than a dozen state agencies have fully developed consumer protection functions. In addition, the Attorney General, many county district attorneys and some local governments devote resources toward making sure that the marketplace is functioning for the benefit of consumers and in policing individual cases of fraud and anti-competitive behavior. These efforts are occasionally coordinated. But more often the State's limited consumer protection efforts are further limited by institutional isolation. Clearly consumers would be served better if protection efforts were guided by two fundamental principles: first, that government should work in the most seamless way possible, and second that all of the various tools and talents represented by the various agencies are acting in an orchestrated and effective manner.

Recommendation 4: The Department of Consumer Affairs should develop a Consumer Protection Alliance to coordinate the activities between state and local agencies responsible for consumer protection.

- The top officials from the agencies represented in the alliance should meet at least annually to establish goals for the coming year and to assess the progress made toward already established goals. The alliance also should establish technical committees of managers and supervisors to identify specific problems and recommend solutions that would provide seamless and effective consumer protection.
- The alliance should help the department to fashion a process and establish standards that the department should use to fulfill its statutory obligation to assess and report on the consumer protection activities of other state departments.
- The department's Consumer Information Center should be formally designated and widely advertised as the central contact point between California consumers and the State. While the center is paid for with special funds, it clearly operates as a primary contact for consumers with complaints that fall within the jurisdiction of other agencies or within the jurisdiction of no particular government agency. While some General Fund revenue is warranted for this effort, the department should also implement available technologies to track and assess other agencies for the calls fielded by the Consumer Information Center that fall within the responsibility of those other agencies.

Introduction

Vertical line

Introduction

The modern consumer protection movement is most often associated with the 1960s, when concerns about product safety, misleading advertising and fraud angered an increasingly skeptical public. Those concerns first made headlines. Then they were forged into public policy, which resulted in new government programs.

But long before the rebellious '60s, government acted in ways that benefited consumers.

From the earliest days of the Republic, political leaders recognized the fundamental role of government in free market economies: Civil and criminal laws define personal property, unfair business practices, market abuses and fraud. The government facilitates economic growth by investing in public infrastructure and by allocating public resources. The courts provide a venue for resolving disputes.

On the other hand, as the modern market began to emerge, so did the mantra of *caveat emptor*, or buyer beware. The Latin phrase implied that while producers and consumers benefit from a government-defined market, the specifics of individual transactions were a private, not public concern.

Consumerism, as it is known, today began to emerge at the close of the 19th century -- and with it a new role for government. Mechanization pushed people off of self-sufficient farms and pulled people toward the factories and markets of a new urban America.

The first of three waves of modern consumerism rose as the national distribution of brand-named goods and newspaper advertising transformed the relationship between producer, merchant and buyer.¹

Upton Sinclair's 1906 book *The Jungle* exposed the horrors of a Chicago meat plant and generated a public outcry about food safety. The federal government responded by creating the Federal Trade Commission and the Food and Drug Administration.

Inspired by these events and the Progressive political movement, states, including California, also saw a growing role for themselves. The California Legislature had passed the Medical Practices Act in 1876 to counter the injurious potential of being treated by an incompetent or unscrupulous physician. By the close of the century, the State had expanded its regulatory net to other professions whose occupations were closely linked to public safety -- dentists and nurses, accountants and lawyers, architects and engineers.

At the same time, political concerns rose about the economic hegemony of monopolies and trusts. While the federal government created anti-trust laws, states expanded rate-setting and route regulation over franchised monopolies -- railroads, ferries, trucking, and as they matured, public utilities including water, power and telephone.

The second wave of modern consumerism came in the late 1920s and 1930s -- as mass-produced goods, and in particular electric appliances, flooded a market that was reshaped by radio advertisements. Stuart Chase and Frederick J. Schlink's 1927 book *Your Money's Worth* distilled public concerns about new product safety and reliability. Consumers Union was founded and Congress passed numerous laws that resulted in minimum standards for products and advertising.

The third and most recent wave of consumerism began in the early 1960s as global markets, an explosion of new products, the expansion of credit and the maturation of television created new concerns about product safety, lending practices and advertising claims.

In 1962, in a speech to Congress, President John F. Kennedy outlined four basic consumer rights: a right to safety, a right to be informed, a right to choose among a variety of products and services at competitive prices, and a right to a fair hearing by government during the formation of public policy, or in other words, a right to be heard.

Ralph Nader's 1965 book *Unsafe at Any Speed* helped to define a public agenda that resulted in the creation of the National Highway Traffic Safety Administration and the Consumer Product Safety Commission.

And so it was in California, where consumer concerns rapidly evolved from protest placards to line-items in public budgets. The policy was outlined in the Consumer Affairs Act of 1970, which created the Department of Consumer Affairs out of its predecessor, the Department

of Professional and Vocational Standards. The department was given a mission far broader than the regulation of specific licensed businesses. Civil servants and political appointees were given the job of educating consumers on all relevant issues, advocating on behalf of consumers in all relevant public forums, and increasing regulatory and enforcement efforts against bad actors in all corners of the marketplace.

More recently, the federal and state governments have deregulated markets in which economic analyses have showed that vigorous competition could be expected to put a constant downward pressure on prices and encourage increasing consumer choice and quality of goods and services. Those policies reflect assessments that demonstrated how over-regulation can increase prices, limit choice and discourage innovation -- indicating that the government's role requires a sophisticated balancing.²

The Legislature finds that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free enterprise market economy.

Business and Professions Code § 301

These concepts have been articulated by economists and policy analysts. They were placed in statute by overwhelming bipartisan support. And they remain an essential benchmark for assessing government's efforts in the area of consumer protection. As stated in California's Consumer Affairs Act of 1970:

It is the intent of the Legislature and the purpose of this chapter to promote and protect the interests of the people as consumers. The Legislature finds that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free enterprise market economy. The Legislature declares that government advances the interests of consumers by facilitating the proper functioning of the free enterprise market economy through [a] educating and informing the consumer to insure rational consumer choice in the marketplace; [b] protecting the consumer from the sale of goods and services through the use of deceptive methods, acts, or practices which are inimical to the general welfare of consumers; [c] fostering competition; and [d] promoting effective representation of consumers' interests in all branches and levels of government.³

The Legislature went on to define the consumer's interest in a way that despite its construction seems to be without limits:

"Interests of consumers" is limited to the cost, quality, purity, safety, durability, performance, effectiveness, dependability, availability and adequacy of choice of goods and services offered or furnished to consumers and adequacy and accuracy of information relating to consumer goods, services, money, or

credit (including labeling, packaging and advertising of contents, qualities and terms of sale).⁴

This intent language is notable both for its breadth and its restraint. While the Legislature saw consumer protection as broadly defined and paramount, it also saw the State's role first and foremost as a "facilitator" of market efficiency rather than an intervenor in the marketplace.

Achieving ambitious public policy goals, however, is a greater challenge than setting those goals. Policy makers and program managers have worked persistently to develop effective organizational structures, guiding statutes and regulations, management and leadership techniques that would provide the mandated protections to a growing and diverse population of consumers in a rapidly evolving marketplace.

Consumer-related policy questions cannot be asked and answered with any finality. A healthy economy by definition involves a constant evolution of goods and services, producers and consumers. An equally healthy government provides for constant assessment of how and how well it is providing consumer protection.

Conducting that assessment is complicated by the reality that no one agency or even level of government is responsible for all consumer protection activities. In recent years a number of public agencies have recognized that consumer protection is among their reasons for existing. Some have even established units dedicated to consumer protection.

Still, in California the nexus for all of these issues is the Department of Consumer Affairs, which statutorily holds the broad mandate for ensuring protection of all California consumers. By law it is required to stand on behalf of consumers -- in the marketplace and on the soapbox, in public forums such as the Legislature and the courts, and in private meetings among public and private sector leaders.

In this report, the Little Hoover Commission examined four mainstays of the State's consumer protection function:

1. ***Consumer Education.*** Common sense and academic research have long shown that educated consumers make smarter choices, discerning quality and price, rewarding efficient and innovative suppliers with their business, and resolving disputes on their own behalf. The State's premier statute places education high, and consumer advocates and business interests often agree that is the best course of action.
2. ***Consumer Advocacy.*** The need for government-sponsored consumer advocacy has been defined by economists in theory and demonstrated in public venues. In general, consumers often do not organize themselves collectively when the individual costs of participating in public forums are high and the individual

benefits are low. Few people take a day off work to testify at a regulatory hearing over a utility rate increase that will mean small change to them. Advocacy is often lacking even when the aggregated costs to consumers are high.

3. ***Organizational Structure.*** The organizational structure of the Department of Consumer Affairs is an issue that predates the department itself, and has never been adequately resolved. The department is the product of an evolution of policies shaped by political and economic interests -- a debate historically controlled by the regulated industries. Changes as a result have been incremental rather than holistic. This structure is important because it shapes how, and how well consumer protection is accomplished -- particularly in the area of professional regulation, where ineffective consumer protection can result in limited choices and higher prices.
4. ***Interagency Cooperation.*** The interdepartmental structure also is important because many governmental agencies are involved and consumer protection can never be placed into one entity. In fact many agencies have expanded their consumer protection functions since the Department of Consumer Affairs was created.

Previous Commission Studies

The Little Hoover Commission has twice before reviewed the state agency charged entirely with consumer protection:

- ***An Examination of the Department of Professional and Vocational Standards.*** In 1967, the Commission issued a report on the Department of Professional and Vocational Standards (later renamed the Department of Consumer Affairs). The report recommended converting the licensing boards to advisory groups, centralizing investigative and legal resources and using license fees to reimburse the General Fund rather than directly finance individual regulatory boards.
- ***Comments and Recommendations Regarding Professional and Business Licensing.*** In January of 1979, the Commission, at the request of the Secretary of the State and Consumer Services Agency, evaluated the conclusions of a regulatory task force the Department of Consumer Affairs had established to scrutinize the performance of the professional and vocational boards. The Little Hoover Commission concluded that some of the task force's most stinging criticisms were unsubstantiated. However, considerable evidence remained to show the boards were not putting consumer interests first.

In addition to those reviews, a number of more contemporary reports by the Little Hoover Commission have involved state programs with an important consumer protection element. Among the most recent:

- ***When Consumers Have Choices: The State's Role in Competitive Utility Markets.*** Consumer protection in changing utility markets is the fundamental issue addressed in the Commission's 1996 report. In addition to the overriding concerns about providing effective regulation to produce the lowest consumer prices, the Commission dealt specifically with the role of consumer advocacy in the public venues in which utility regulation issues were debated and defined. The Commission recommended that an office of consumer advocacy be established in the Attorney General's office to deal with utility issues.
- ***Long-Term Care: Providing Compassion Without Confusion.*** In more select and less visible "markets," such as the delivery of long-term care for the elderly and infirmed, the public wants -- and federal, state and local agencies are called on to encourage and ensure -- low-cost, high-caliber care. A central element in the Commission's 1996 report concerned better enforcement of regulations governing long-term care providers.

And finally, the department's board-based structure puts it in the spotlight in larger reviews of government structure, and in particular assessments of the State's reliance on boards and commissions to perform a wide range of functions. The Little Hoover Commission has contributed to that debate, as well:

- ***Boards and Commissions: California's Hidden Government.*** In 1989, the Little Hoover Commission released a report on boards and commissions. In this report, the Commission recommended developing "sunrise" criteria for evaluating the best way of addressing new public concerns that may warrant public action, but not necessarily a new organization. It recommended a sunseting process by which agencies would have to prove their worth.

Methodology

During this review, the Commission organized a series of meetings with those who play a role in public consumer protection efforts -- local prosecutors, legislators and their staff, business interests and consumer advocates. A list of round table participants is contained in **Appendix A**. The directors and managers of other state agencies with consumer-related functions also were interviewed, along with some of the executive officers of professional boards within the department. A list of those interviewed is contained in **Appendix B**.

The Commission empaneled an advisory committee that met twice to further flesh out the issues and the challenges facing the department and the State's efforts to fulfill the interests of the department. A list of Advisory Committee members is contained in **Appendix C**.

And the Commission conducted a public hearing in November 1997 to explore how the State fulfills its consumer protection mandates. A list of witnesses is contained in **Appendix D**.

With the assistance of consumer advocates and the cooperation of numerous public officials, the Commission has completed this report. It begins with a transmittal letter, an Executive Summary and this Introduction. A Background is followed by four chapters, on Consumer Education, Consumer Advocacy, Organizational Structure and Interagency Cooperation, which are followed by a Conclusion, Appendices and Endnotes.

Background

- ❖ *Government consumer protection activities protect the public health, safety and welfare and make free markets more efficient by allowing buyers to make more informed choices.*
- ❖ *A wide range of local, state and federal agencies perform some consumer-related functions -- educating buyers about their choices, licensing providers, enforcing minimum standards for professional competence, ethical behavior and product safety and reliability.*
- ❖ *A long-standing issue concerning the State's consumer protection efforts has been the independence of the professional boards and their relationship to the director of the Department of Consumer Affairs.*

Background

The State's response to the Consumer Movement has been to vest a wide variety of public agencies with some consumer protection function. These protections are justified by economic analyses that show certain government interventions increase efficiency in the market. Perhaps more importantly, practical politics often require a government response when the unqualified or the unscrupulous take advantage of consumers.

In California, specific functions are performed by several departments. In some cases consumer protection is a new addition -- as it is with the Department of Motor Vehicles' role in enforcing the automobile lemon law. In other cases, programs were created for the sake of the consumer, but have evolved with the careful guidance of the regulated industry.

In California, as in most states, the regulation of professions and some businesses is accomplished by semi-autonomous boards grouped within a department. The California Department of Consumer Affairs -- in addition to providing administrative support to the boards -- has broad authority to advance consumer protections wherever needed.

Over the years, the department has made significant contributions to making Californians better consumers, helping to identify bad actors, and defining a marketplace that induces the spirited competition that leads to better service at lower prices. But the department also is haunted by the conflicting relationship between itself and the semi-autonomous boards and commissions, and the department's overall effectiveness has been limited by significant funding reductions.

The Public Sector and the Public Interest

A perennial public policy issue is the role of the government in the marketplace. One economic justification for government intervention is "market failure," when the dynamics of the market fail to provide a desired commodity in a competitive way. For instance, when it has been demonstrated that a certain good or service is most efficiently provided by a single provider, the government has regulated monopolies. Environmental pollution is another market failure -- because the market does not consider the economic costs of the degradation -- and government has intervened to correct for that failure.

Two other common market failures are the provision of public goods and "inadequate information."⁵ Both of these failures are used to justify the government consumer protection activities:

- ***Consumer Protection as a Public Good.*** Public goods are ones that for a variety of reasons are not adequately provided by private suppliers. Economists often use military defense as the classic public good: If government did not provide for the public defense, the market would not either. Among the reasons is the "free rider" problem. If public defense were not supported by public taxes, some people would support it, some people would not -- but all would benefit. So it is, economists say, with consumer advocacy: Few people want to do it or pay for it, but everyone stands to benefit from it.
- ***Consumer Protection as Information.*** Many consumer protection activities -- including regulatory mechanisms -- are premised on the consequences to consumers, the economy and society at large due to inadequate information. For instance, a patient who does not know that a doctor is a fraud can suffer extreme injury. To counter this lack of information, the State sets minimum standards and enforces those standards to ensure competence -- improving the commerce of medical practice.

State policy makers have been relatively quick to create regulations where inadequate information can cause harm to the public health, safety and welfare -- if not because regulations can make the market more efficient, certainly because it is responsive to public concerns.

In practice, regulators have asserted that strict licensing provisions reduce the need for extensive enforcement mechanisms -- and that is the rationale for license exams and other minimum requirements for lawyers, doctors, accountants and engineers that can be difficult to pass. However, a practical consequence of this trade-off is that new providers may be artificially kept out of the market, reducing competition and increasing prices. And if enforcement is inadequate, consumers may be assuming too much about a provider -- and as a result still suffer the consequences of "inadequate information" anyway.

In other fields, low licensing requirements are expected to be counterbalanced with more rigorous enforcement efforts. That is the case in security guards, where turnover is high and the industry wants to minimize recruitment times. It is also the case in vehicle repair -- where workers are not licensed but registered, resting virtually all of the consumer protection on the efficacy of enforcement programs.

In more recent years, however, many industry-specific regulatory bodies have come under criticism for rules that do more to limit competition than protect consumers. As the Little Hoover Commission noted more than 30 years ago, too many businesses are being regulated at the behest of those businesses.

Industry-specific regulatory mechanisms are legally complemented by broad antitrust and anti-competition statutes, fraud, unfair business practices and other legal provisions intended to reduce consumer abuses in the marketplace.

From an economic standpoint, consumer activists argue that well-executed consumer protections are good business, as described in testimony from the California Public Interest Research Group:

Strong consumer protections and effective enforcement powers cut down on unacceptable business practices and provide consumers additional powers of redress, thereby making the marketplace more efficient and properly self-regulating. When bad corporate practices are allowed to continue and proliferate, honest businesses are left to suffer along with consumers who get ripped off.⁶

From a more practical and political standpoint, consumer protection efforts are government's response to citizen complaints, as described in testimony by Consumers Union:

Consumers often feel powerless when fighting businesses, particularly large corporations. That imbalance of power, combined with the impact on one's quality of life that consumer problems often have, are important reasons why the State needs to take a strong role in assisting consumers.⁷

And in numerous ways, the State has taken a strong role. Regulators are fond of saying their rules govern from cradle to grave because the State regulates the doctors that bring Californians into the world and the funeral, cemetery and embalming industry that usher them out. For practical reasons, these consumer protection efforts are diffused throughout government -- a reality that creates opportunities and challenges for those charged with consumer protection.

Broad-Based Consumer Protection

If closely examined nearly all state agencies have a consumer-related function. In some instances, consumer protection was the inspiration for its creation -- but that fact may have been lost along the way as regulators became more sympathetic to those they regulate than the public they serve.

Thanks, however, to nonprofit consumer advocates and to government "re-engineering" efforts, consumers do not have to look quite so hard to find the programs operating on their behalf. In the nearly ritualized exercise among bureaucracies of the 1990s, efforts to identify "customers" have refocused industry-aligned agencies away from fee-payers and back toward taxpayers.

Many state agencies have recognized and formalized their role in consumer protection by establishing dedicated units to respond to calls from the buying public, investigate complaints and more vigorously enforce regulations that had long been central to their statutory mission. Some of those departments -- besides the Department of Consumer Affairs -- that have named consumer assistance or protection units are identified in the table below.

<i>State Entities with Consumer-Related Divisions</i>	
<i>Department</i>	<i>Consumer-Related Function</i>
Department of Developmental Services	Assists consumers of developmental services
Department of Fair Employment and Housing	Investigates discrimination complaints
Department of Insurance	Provides information and investigates consumer complaints against insurers
Department of Justice	Investigates complaints and enforces antitrust and consumer protection laws
Department of Motor Vehicles	Investigates consumer complaints and enforces the vehicle lemon law
Department of Corporations	Regulates securities, financial services and health maintenance organizations
Department of Rehabilitation	Assists consumers of rehabilitation services
Public Utilities Commission	Sets rates and regulates public utilities
State Bar of California	Investigates complaints against attorneys
State Department of Financial Institutions	Regulates banks, savings and loans, and credit unions

Other agencies have not designated special consumer divisions, but still have expanded the function. The Department of Real Estate, for instance, proactively has expanded the information it makes available to buyers about the agents that the State regulates. And others, such as the Department of Social Services, have seen their consumer-related role increase as the number of people using a regulated service increase.

The Attorney General also plays a broad and large role. Many state agencies rely upon the Attorney General to act on their behalf during enforcement and other legal proceedings. The Attorney General also enforces anti-competition, fraud, false advertising and other provisions. In many of these instances, the Attorney General has coordinated with county district attorneys, more than one regulatory agency and even other states. It focuses on cases with statewide significance or those with victims in more than one county.⁸

This diffused approach reflects a rational distribution of responsibility, leaving to subject-matter experts the responsibility for protecting that group of consumers. But it also creates the potential for confusion, duplication or unintended gaps in the State's protection efforts.

For example, medical services are increasingly dominated by managed care providers. So who does a consumer turn to? Physicians are licensed by the Medical Board, which is in the Department of Consumer Affairs. Health maintenance organizations are regulated by the Department of Corporations. Hospitals are licensed by the Department of Health Services. And to complicate matters, the Department of Health Services has some authority over those health maintenance organizations that provide Medi-Cal services.⁹

Similarly, lemon law violations can be reported to the Department of Motor Vehicles or the new Motor Vehicle Board, but Consumer Affairs arbitrates many of the cases.

In addition, no matter how these functions are grouped organizationally, public managers face a persistent challenge of divided loyalties and conflicting expectations. Consumer advocates, some policy makers and even some sections of the statutes expect those agencies to stand up on behalf of the consumer. Conversely, the businesses, other policy makers and other sections of the statutes expect and direct those agencies to work on behalf of the industries by developing new markets, promoting California-made products and limiting competition.

The Department of Consumer Affairs is often described as an umbrella agency for the semi-autonomous professional boards that were created over time. But by law, the Department of Consumer Affairs is supposed to be much more: It is charged with monitoring the consumer protection efforts of other state agencies, advocating within the upper echelon of the executive branch on behalf of consumers, and representing consumers wherever their interests are at stake.

The History and Nature of the Licensing Boards

The longest standing dispute over the State's consumer protection infrastructure involves the oldest part of that infrastructure.

In 1876, the Legislature passed the Medical Practices Act, which established minimal standards for physicians, developed licensing exams and levied fines for violations. Before the turn of the century separate boards had been created to regulate dentists, pharmacists and veterinarians. By the late 1920s, 10 boards existed -- certifying accountants, architects, barbers, cosmetologists, dentists, embalmers, optometrists, pharmacists, physicians and veterinarians.

While inspired by consumer protection, once established the boards functioned more like professional guilds than regulatory watchdogs. Examinations did as much to limit competition and hold up prices as they did to screen out incompetence. Investigation and enforcement efforts were lax.

In 1929, the Department of Professional and Vocational Standards was created to consolidate administrative functions of the boards. But that reform did little to dilute the independence of the boards or to diminish the control of the boards by the professions they regulated.

By the time the Little Hoover Commission reviewed the department in 1967, the abuses were well-known: "There appears to be no question but that the licensed groups benefit; the benefit to the public, on the other hand is not always as clear."

In 1970, Gov. Reagan proposed reorganizing the department. The purpose of the plan was three-fold:

- To provide consumers an effective consumer advocate within state government.
- To provide an alternative means of resolving disputes between consumers and businesses short of court actions.
- To provide consumer education as the best consumer protection.

Clear and Definite Danger

In its 1967 report, the Little Hoover Commission recommended that high standards be set for when the government should intervene in the name of protecting consumers -- mostly because such protections so often provide more benefit to producers than consumers:

Licensing by the State of the members of a profession or vocation should be undertaken only when:

- 1. Failure to do so would present a clear and definite danger to the general public health, safety or welfare -- as distinguished from the interests of a particular group or segment.*
- 2. Specific pre-qualification standards can be established and there is reasonable assurance that persons meeting such standards will be able to function effectively in the vocation and those who fail to meet the standard could not.*

The plan went into effect, and the concepts were affirmed by the Legislature that same year in the Consumer Affairs Act.

The act changed the name from the Department of Professional and Vocational Licensing to the Department of Consumer Affairs. It authorized the department to take legal action to protect consumer interests, to receive and act on consumer complaints, to report on the consumer protection efforts of other departments and to advocate on behalf of consumers. Much of the authority is vested specifically with the director of the department. The director's responsibilities as defined in statute appear in the adjacent box.

Currently, the department issues more than 2.1 million licenses in more than 200 occupations. The department does this by setting minimum qualifications, issuing licenses, registering or certifying practitioners, investigating complaints, disciplining violators and educating consumers and licensees.¹⁰

The Department of Consumer Affairs acts as an umbrella agency for what the director calls "37 small departments" that regulate and license such disparate professions and businesses as contractors, embalmers, car stereo installers, futon manufacturers and auto mechanics.

Nine programs or bureaus currently are administered directly by the department: Arbitration Review, Barbering and Cosmetology, Automotive Repair/Smog Check, Cemetery, Electronic and Appliance Repair, Funeral Directors and Embalmers, Home Furnishings and Thermal Insulation, Private Post-Secondary and Vocational Education, Security and Investigative Services. The balance of the businesses are regulated by 28 semi-autonomous boards, commissions and committees. Appendix E provides a complete listing of the boards.

The Director's Duties

According to Business and Professions Code § 310, it is the duty of the director of the Department of Consumer Affairs to:

Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers. Represent the consumer's interests before federal and state legislative hearings and executive commissions. Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers. Study, investigate, research, and analyze matters affecting the interests of consumers. Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information. Propose and assist in the creation and development of consumer education programs. Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services. Advise the Governor and Legislature on all matters affecting the interests of consumers. Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature. Maintain contact and liaison with consumer groups in California and nationally.

Combined, the department has a total of 2,526 civil servants. Roughly half of those work for the boards and commissions and the balance work for one of the bureaus or in a variety of support services, such as department's enforcement or investigations divisions. Combined, the department has a budget of \$306 million a year. Nearly half of that, \$145 million, is spent by the boards and commissions.

Each of the boards is self-governing: the department's role in relation to them is largely ancillary, providing computer and mail services, for instance. The department has no input on such areas as staffing, which in some boards may be a crucial determinant in the direction board members move. The department's leverage with the boards extends to the director's authority to disapprove rules, regulations or fee changes. The board can override the director's veto, though, with a unanimous vote. By contrast, the department has total authority over its own bureaus and programs.

Many of the most horrific cases of regulatory abuse are now historical. Former directors tell of examination procedures in effect as recent as the 1970s that resulted in higher passing rates for California-trained and Caucasian professionals.¹¹ The problems now are much more subtle -- in part because a number of laws have been enacted that counter these abuses -- including civil rights laws, open meeting and public records laws, and financial disclosures. But many of these laws rely on the spotlight of public scrutiny to prevent abuses or uncover them when they happen. The boards do not receive the same kind of public participation that, say, city councils and school boards receive.

And not all abuses are ancient history. As recently as 1995, the Legislature took specific action regarding the Structural Pest Control Board to counter "apparent unwillingness of the SPCB to address widespread abuses in the structural pest control industry."¹²

Also in that case, the Joint Legislative Review Committee observed that the intent language of the statute creating the board was backward. The law said that "ensuring consumer protection" was a means to attain "a fair and competitive marketplace." Rather, the committee noted, the purpose of encouraging fair and competitive markets is to provide consumer protection. In other words, consumer protection is the end, not the means.

Efforts to realign the authorities between the department and the boards are detailed in Finding 3 of this report. In general those efforts have been both persistent and largely rebuffed by the boards and the professions associated with them.

In terms of the department's larger role -- as omnibus consumer advocate and educator -- the department also has a troubled history. For a variety of reasons explored in greater detail in Findings 1, 2, and 4, the department is not living up to the expectations of consumer advocates and department officials themselves.

The department's director conceded to the Commission that "consumer affairs" may be a misnomer for the agency because its focus remains what it was 30 years ago: licensing and regulating a variety of professions that ultimately comprise only a small portion of the marketplace.

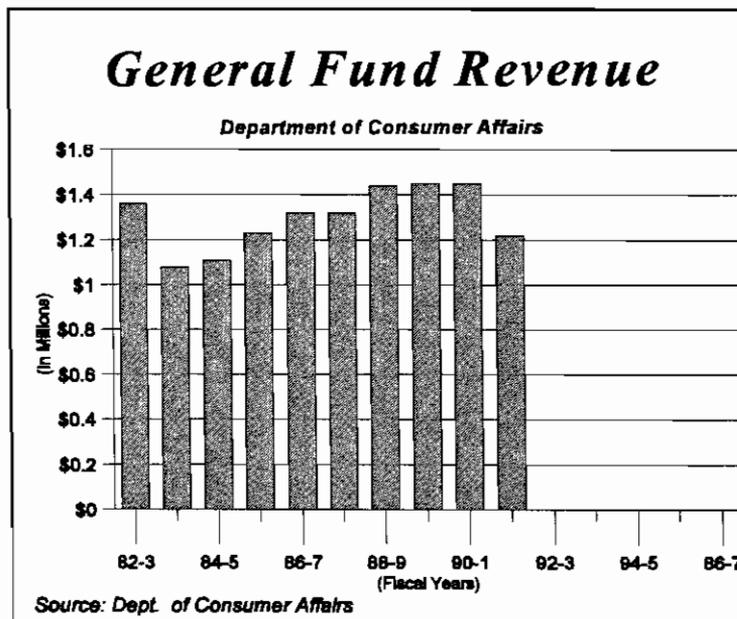
Administratively, the Department of Consumer Affairs also has some unusual characteristics. The department is one of four departments involved in a pilot project on performance-based budgeting. The Little Hoover Commission's 1995 report, *Budget Reform: Putting Performance First*, was a detailed study of this process.

The effort, which the Legislature approved in 1993, gives the department great flexibility in such areas as budgeting and contracting, but demands the participating departments submit annual performance reviews and demonstrate results: a cost-effective program, performance innovations and identifiable savings. The director argues the department has met these goals, but the staff at the Legislative Analyst's Office believes Consumer Affairs has not been able to quantify its successes convincingly.

General Responsibilities, No General Funding

Because of the fees it receives from licensees, the department is entirely self-supporting. It has received no general fund money since 1992, when California was mired in recession. The lack of general fund money is the primary reason the department cites for not having a more prominent role in consumer advocacy.

To take on that responsibility would require an infusion of several million dollars, which the Legislature has been unwilling to approve. The department cannot take the money out of the coffers of boards and commissions, either, because of court rulings requiring that fee money go only toward programs that have direct jurisdiction over licensees. (The Athletic Commission receives some General Fund money, a partial rebate of ticket sales revenue that goes to the State.)



The chart to the right shows the level of General Fund support prior to its elimination in fiscal year 1992-93.

The Sunset Review Committee

Years of debate failed to yield a structural solution to the dysfunctional relationship between the boards and the department. Eventually policy analysts and reforms began to define the solution in terms of a process that might bring about the desired change. The Legislative Analyst, the Little Hoover Commission and others characterized the process as a sunset review -- submitting existing government agencies to the same rigorous test that should be used to determine when a new agency is considered for creation.

The boards and some of the professions argued that oversight occurred annually during the budget process. But in 30 years the Legislature has created numerous regulatory schemes while only eliminating two boards: those governing dry cleaners and auctioneers.

In 1993 and 1994 the Senate Business and Professions Committee and the Assembly Consumer Protection Committee began to review the regulatory boards and identified six fundamental problems that the Legislature at large agreed needed correcting:

1. *There were licensing laws and regulations which clearly benefited the profession but not the consumer or the professional candidate who wanted to enter into the profession. In effect, the licensed group, through the board and its licensing program, had set up artificial barriers of entry into the profession that enabled it to control the availability and cost of services and restrict competition.*
2. *Little or no disciplinary actions were being taken against licensees. Board would argue, "that they were doing such a good job of weeding out the incompetent, that there was little need for enforcement." But when the number of complaints were reviewed -- it was not clear why so few were actually disciplined.*
3. *Committees of the boards, made up of volunteer professionals, would make decisions usually accorded to staff or the executive officers concerning investigations or disciplinary actions to be taken against licensees.*
4. *Boards were not carrying out their statutory responsibility for particular programs, or taking an extremely long time to implement.*
5. *Boards were not operating their licensing, examination and enforcement programs in an effective and efficient manner. (They) were not responding to consumer complaints, or resolving complaints in a timely fashion. Program spending was not prioritized and some programs were too costly or completely unnecessary.*

6. *Boards lacked definitions of professional standards, or what amounted to incompetent, negligent or unprofessional conduct.*¹³

As a result of these findings, the Legislature in 1994 established the Joint Legislative Sunset Review Committee (SB 2036; Chapter 908, 1994) and a process for routinely and intensely scrutinizing the performance of the boards. The statute requires the boards to first analyze themselves, their goals and objectives, priorities and enforcement efforts. In short, the boards were asked to justify their existence.

After their self-examination, the boards are reviewed by the Joint Sunset Committee. The basic issue for the Joint Committee to consider during its deliberations is whether the State should continue to regulate this area, and if so, what changes should be made to these boards to improve their overall effectiveness and efficiency to ensure that the interests of California's consumers are protected adequately.¹⁴

Importantly, the 1994 law only provides for the regulatory boards to be eliminated, not the regulations. In the event a board is eliminated, those responsibilities pass to the department.

It is difficult to measure the committee's effectiveness if the measure is the de-boarding of a profession. For starters, all of the reviewed boards may have met the test established by the Legislature as being necessary to protect the public safety.

The Legislative Analyst's Threshold

The Legislative Analyst's Office in 1996 published a three-prong test that it believes should be applied to regulatory programs to determine if they are of value to consumers:

- Will regulation protect the public from a potential health or safety risk that could result in death or serious injury?
- Will regulation protect the consumer from severe financial harm?
- Are there federal mandates that require the State to regulate certain activities?

But the politics of regulation are such that even in some cases where the committee concluded the boards were unnecessary, the professions were capable of recreating the regulatory framework.

As a result of sunset review, the Board of Landscape Architects has become a subset of the Board of Architectural Examiners and the Board of Barbering and Cosmetology has become a program within the department. On July 1, 1997, the Board of Guide Dogs for the Blind was sunsetted. But as a result of subsequent legislation, it was "sunrised" on Jan. 1, 1998.

At the same time, however, the committee has significantly improved the legislative oversight of all of the boards. By requiring the boards to scrutinize themselves under the cloud of possible elimination, some boards have made reforms on their own. For instance, more disciplinary

actions are being taken by the boards and backlogs in complaints have been reduced.¹⁵

The boards also have cut costs, and they have recovered more of their investigation costs through enforcement actions. Some boards have lowered the barriers to new market entrants by converting to national standardized tests, while other boards have validated unique aspects of their examinations to ensure they were testing what should be tested. Some boards also have developed more reasonable reciprocity with licensing agencies in other states.

Summary

Over the last century, a very clear role for the government -- and in particular state government -- has been defined in terms of consumer protection. Those protections most often are regulatory mechanisms that are spread throughout the government based on the subject expertise of the public entity -- motor vehicles, public utilities, health care. Some of the earliest regulatory efforts were of professions, conducted by quasi-independent boards. Those boards were first placed under the umbrella of a department for administrative purposes, but that department was later expanded to provide over-arching consumer protection. As embodied in the Department of Consumer Affairs, the State's consumer protection efforts face two ongoing challenges -- how to ensure that the boards are really protecting the public and not the regulated profession, and how to make sure that the department is doing all it can to protect consumers in its broader mission.

Consumer Education

- ❖ *Consumer education can provide citizens with the best of all protections -- the ability to chose wisely, to assert their rights, to resolve disputes on their own and to know what to do when they come across illegal activity.*
- ❖ *Since the early 1990s the State has not funded general consumer education efforts, making it difficult for the department to respond to new threats to public health and safety and economic well-being.*
- ❖ *Often times consumer education can be enhanced by giving consumers easy and uniform access to public information.*

Consumer Education

Finding 1: While consumer education is often the most cost-effective and least intrusive form of consumer protection, the State lacks a well-planned and well-funded effort to equip consumers with the information they need to protect themselves.

Consumer education efforts are an important common ground in a policy arena that is adversarial by nature. Whether a person is “pro-business” or “pro-consumer” they should be able to support efforts to fairly and accurately inform buyers how to make good decisions and what to do when they make bad ones.

Good consumer education is the least intrusive way the State can encourage a healthy economy and in some cases the most cost-effective way it can prevent the abuses that become citizen complaints. Economists and advocates both describe consumer education as the first order of business.

But in California, consumer education is often the last step that is taken rather than the first. Part of the problem is financial. With no General Fund money appropriated to the Department of Consumer Affairs, the only consumer education the department can legally pursue involves regulated professions.

But even where resources are available, consumer education is not the top priority. Rather, education is seemingly left to the end of the day. It is as if only after the brush fires are out, does the fire prevention efforts begin.

Education First, Regulation Second

A fundamental assumption of market economies is that consumers will be fully informed. Markets are most efficient and innovation is best rewarded when consumers select the best goods and services at the best available prices. Of equal importance, consumer education can prevent the need for more intrusive and costly government intervention, such as licensing and enforcement.

Even staunch consumer advocates believe that well-conducted education programs can provide consumers with the best of all protections: The ability to tell when a deal is too good to be true, to select wisely among providers, to assert their rights, to resolve disputes on their own, and what to do when they come across illegal activity.

The Consumer Affairs Act of 1970 recognized the importance of consumer education and named it as a primary function of the Department of Consumer Affairs. And today the department's "vision" statement ranks the importance of education first and regulation second:

The Legislature declares that government advances the interests of consumers by facilitating the prepared functioning of the free enterprise market economy through (a) educating and informing the consumer to insure rational consumer choice in the marketplace...

Business and Professions Code § 301

First, consumers are best protected through a fair and competitive market with high standards of competence and ethical behavior and consumer information.

Second, a regulatory structure should be pursued only when voluntary compliance fails. When regulation is used, it should be the least intrusive possible for ensuring public health, safety and welfare.¹⁶

In its testimony, the department elaborated on this first goal by saying that the "primary responsibility rests with both industry and consumers who are equipped to make sound decisions about products and services."

Similarly, the county district attorneys, who often become involved in cases when it is too late for education to prevent harm, testified that informing consumers should be a top priority:

The dissemination of information is one of the most important ways to combat consumer fraud. The consumer's first line of defense is knowledge. An informed consumer is less likely to be victimized. This includes knowledge about the specific product or service, the industry, the consumer's legal rights and how other consumers have been victimized in the past.¹⁷

In some instances, the core message in consumer education efforts is the same, whether someone is buying a car or a car phone. In other cases, consumers need information specific to a commodity that may or may not be regulated by the State.

The education can take many forms: a printed brochure, a bill insert, a page on a web site, a public service announcement on television or radio, a news account of a legislative debate or a press conference. And education can be done one-on-one -- by providing consumers the opportunity to ask basic questions and get honest answers about their rights and responsibilities.

Just as consumer education takes many forms, it is sometimes intertwined with other functions the Department of Consumer Affairs is directed by law to perform. Proposed legislation and initiated litigation both generate public debate. Press releases that are part of an aggressive consumer advocacy effort will receive more attention than press releases providing routine cautions to consider when buying noncontroversial commodities.

How much education is enough and how well the State is doing with the resources it has available are not issues that can be easily quantified. But just as nearly everyone who participated in the Commission's process believed education is a first step toward good consumer protection, no one thought the State was doing enough consumer education.

No Money for Step One

U ntil the early 1990s state General Fund revenue was used to support the Department of Consumer Affairs' general consumer protection efforts, and much of that money was dedicated to consumer outreach and education.

The department's specially funded regulatory programs have provided some consumer education. And the administration overhead fee charged to all department's boards and bureaus funds the department's Communications and Education Division, which distributes press releases, works on public service announcements and does other outreach on behalf of the regulatory programs.

But legally the Department of Consumer Affairs does not have any revenue at its disposal for education efforts in those areas of the marketplace where the State does not regulate suppliers.

Often these areas involve goods and services that are too new to fall under existing regulatory schemes, and may involve issues where effective education efforts could prevent the kind of consumer abuses that historically have prompted the creation of new regulatory agencies.

For instance, one of the most common sources of consumer disputes involve landlord-tenant issues: When can a landlord deny an application? When can a landlord evict a tenant? Does a landlord have to fix a leaky roof? When can a landlord inspect the property? When does a tenant forfeit the security deposit?

California has more than 4.5 million rental units, but the rental housing industry is not regulated by a single agency. The Department of Consumer Affairs has a landlord-tenant brochure that answers some of the basic questions.

But for nearly five years the brochures were unavailable because the department did not have any money to print them. Eventually the department received a \$15,000 grant from the California Consumer Protection Foundation, which it used to print 50,000 copies. The department now charges \$2 a copy to pay for future printings. The department's creativity is laudable, but how many landlord-tenant conflicts escalated for lack of information in the meantime?

Similarly, the department has spent considerable resources trying to make the small claims court an accessible and efficient process for consumers to resolve their disputes. It has worked with judges and attorneys to publish and distribute -- for a fee -- a consumer law source book for use by judicial officers. And it has published an easy to read guide -- in English and Spanish -- on how to use small claims court for disputes that cannot be settled some other way. But the brochures are gone, there is no money for more. Last year alone, 450,000 small claim cases were filed in California.

Another program related to consumer education that the department is obligated to operate, but receives no money for, is the Dispute Resolution Office. The department administers the 1986 Dispute Resolution Programs Act by encouraging counties to voluntarily operate local mediation programs. Thirty-one of California's 58 counties participate in the program, which is intended to save court costs and accelerate settlements. Counties can divert a portion of their filing fees to pay for programs.

But while the Legislature believed that it was cost-effective and good government to teach people how to resolve disputes, the program does not receive General Fund support. The department dedicates an estimated four personnel hours a week to the program. No evaluations have been completed to assess which programs are working best and why. Data submitted by the counties is not aggregated and analyzed.¹⁸

The department's Consumer Information Center is another example of how the department has tried to stretch special funds to fill a General Fund obligation. The center is described in greater detail in Finding 4, which deals with interagency cooperation. But in the interest of educating consumers, the center demonstrates the good that comes from providing individual answers to specific concerns.

Currently the call center is funded by the special fees collected through the regulatory boards and programs. However, the call center received nearly 300,000 calls last year that were unrelated to a specific department function, and many of those were not related to a state regulatory function.

More than 27,000 of the calls involved landlord-tenant disputes. Nearly 18,000 of the calls were "private" civil matters that could be settled through local dispute resolution programs or small claims courts.

The department's General Fund revenues were cut when the recession of the early 1990s starved public coffers. Similarly, the State tapped the special fund reserves of the regulatory boards. When the recession ended, the reserve funds were restored but the department's General Fund appropriation was not. The Center for Public Interest Law described the result:

The bottom line for consumers? With some exceptions, DCA has been reduced to the activity level of its predecessor agency, the Department of Professional and Vocational Standards -- an umbrella which provides staff services to its constituent occupational licensing agency. DCA lacks the resources to do much more, and may in fact be legally prohibited from using pro rata charge back funds for general consumer protection activities; and California government lacks a Consumer Advocate office or agency to carry out the terms of the Business and Professions Code § 301 in good faith.¹⁹

The department received \$1.2 million from the General Fund in 1991-92, the last year it received a general appropriation. The department estimates that to restore the level of activity would cost \$2.9 million in current dollars.

Educating Where the Money Is

The Department of Consumer Affairs, including the boards, does receive \$306 million in revenue. And some of the boards publish brochures. The Board of Pharmacy provides information on how to use medicines safely and effectively. The Structural Pest Control Board has a fact sheet on termites. And the Contractors State License Board has a "Consumer's Guide to Asbestos."

But the regulatory boards have been reluctant to quickly, easily and completely provide to consumers public information about specific licensees. The Contractors' State License Board is an example. Its on-line records can provide a list of past formal legal actions against a licensee. (The board will not tell the public about someone it has cited for unlicensed activity, because it does not believe that information to be a public record.) The on-line data base does not cross reference consumers to other registered businesses operated by the same licensee

-- which allows bad actors to close one business and open another and avoid detection under the old name. So it is possible to request information under a business name and be told the State has no problem with that contractor, when in fact the person has been cited under a different business name.

Some consumer advocates believe incomplete information can create a false sense of security. On the other hand, the Contractors' Board is doing more than many of the regulating boards, which do not make specific licensee information easily available to the public, on-line or other wise.

Setting Priorities

Some educational efforts have been funded by the special fees collected from regulated businesses and professions -- although clearly more could be done. Recent news accounts have retold some horror stories in which greater public education, along with vigorous enforcement, appear warranted:

- ***Bad builder.*** Several Southern California homeowners were scammed by the same contractor -- who took tens of thousands of dollars, did part of the agreed-upon remodeling work and then never returned. The homeowners' second complaint was they had relied upon the hotline at the Contractors' State Licensing Board, which failed to tell them the builder had a history of trouble.
- ***Illegal clinics.*** Several illegal medical clinics have been operated in Southern California, catering to immigrant populations. After brief examinations, the fraudulent doctors were diagnosing kidney problems and selling drugs without prescriptions -- even to an undercover reporter with no health problems.

But abuses also occur in areas of the market where there are no specific regulatory programs or dedicated sources of funds. Telemarketing fraud, identity theft and fraudulent Internet commerce are all issues in which consumer education could prevent significant losses.

It is impossible to predetermine an appropriate level of public expenditure on consumer education. But the decision on how and how much to spend should be based on a set of agreed-upon priorities.

The department could take a number of steps to increase education within the framework of the boards:

- ***Make public records public.*** At a very minimum, the State could do all that it can reasonably do to make public records more accessible to the public. That means information about problem providers should be available on the Internet and over a toll-free

telephone line. The Department of Real Estate managed to win the support and financial backing of the industry it regulates in order to increase public outreach, as explained in more detail in the box.

The department and the boards also could work more closely with nonprofit consumer advocates to make information available. Consumer groups maintain the department has been too restrictive with the most important information that consumers need when making very specific choices.²⁰

The Department of Real Estate

The Department of Real Estate (DRE) demonstrates how consumer education is in the interest of both buyers and sellers, and how the regulated industry can be persuaded to support education efforts.

The department is the regulatory body governing persons engaging in the real estate business. The department administers examinations, issues licenses, and handles disciplinary actions for real estate sales people and brokers. In addition, the department is charged with overseeing the sales of subdivided lands and regulating the lending activities of mortgage brokers. This specially funded department regulates nearly 300,000 licensees.

The department's major objective is the protection of the public interest in real estate transactions. It accomplishes this by establishing a standard of knowledge, measured by written examination, and by setting minimum disclosure requirements for subdivided land offerings. The department also maintains a consumer recovery account which can provide financial restitution to members of the public who are injured due to certain types of licensee misconduct.

The department also conducts consumer education by distributing department-prepared brochures on topics ranging from mobile home park purchases to the use of trust deeds as investments. It also operates an Internet web site (<http://www.dre.ca.gov>). Through the department's web site, a consumer can check the current status of a licensee, learn of recent licensee disciplinary actions, file an on-line complaint against a licensee or subdivider, order consumer publications and become apprised of recent developments in the real estate industry.

The department relies on revenues from fees charged for real estate licenses, subdivisions, public reports and various permits. As a result of the decline of the real estate market in the early 1990s, the department saw its revenue shrink significantly. For example, in 1989-90, DRE's revenues totaled \$30 million, while in 1994-95, its revenues were less than \$23 million. While the department had established a healthy reserve, in 1992 more than \$14 million dollars were transferred from its reserve to the General Fund to balance the budget.

The department instituted numerous cost-saving measures, but by 1995 it faced a budget shortfall that jeopardized its ability to perform its consumer protection role and to satisfy its core regulatory functions. In response, the California Association of Realtors (CAR) sponsored legislation that increased the examination and license fees charged by the department as a way to help the department bridge its budgetary gap. Interestingly, that legislation -- AB 2536 (Miller) -- was supported by CAR and other industry associations that were subjected to the higher fees. AB 2536 was signed by the Governor in August of 1996.

Department officials assert that the next generation computer being designed to process and track licensees -- known as the Integrated Consumer Protection System -- will allow the department to more effectively regulate individuals and make more complete records available to the public electronically. From a consumer education standpoint, that external access to public information is as important as the ability of the department to regulate the individual. But not every board is being required to use the system and so there is no assurance the information will be uniformly available.

- ***Publish annual "State of Consumer Affairs" reports.*** Part of the education process is to inform policy makers, commentators and business leaders. A former director of the department and several consumer advocates believe the department should publish and proudly distribute an annual assessment of the biggest consumer issues of the year, what has been done to resolve the issues and what else needs to be done. This report could build on the requirement already in the Business and Professions Code that the department track complaints and develop responses to new consumer issues.²¹

Summary

Consumer education is the first step that should be taken in the pursuit of effective consumer protection, but is often not taken at all. Part of the problem is resources, as the Department of Consumer Affairs does not receive General Fund revenue and does not have the authority to tell regulatory boards how to spend their special funds. But education happens in many ways and more education could be achieved by better coordinating resources.

Recommendation 1: The Department of Consumer Affairs should develop a comprehensive consumer education program and the Governor and the Legislature should provide General Fund money to operate that program.

- The highest priority for consumer education funding should be instances in which the public health and safety are jeopardized.
- The education program should be based on a strategic assessment of those areas of the marketplace where consumers are vulnerable to the greatest abuses and where there is the least government infrastructure to prevent or respond to those abuses.
- The education program should provide for coordination between federal, state and local agencies involved in regulating that aspect of the market.

- The education program should include ongoing coordination with media, consumer advocates and trade organizations to amplify and distribute the message throughout the marketplace, including the use of public service announcements.
- The education program needs to be adaptive and flexible as new areas of concern are identified.
- The Department of Consumer Affairs should develop standardized criteria for releasing information on individual licensees. The criteria should make as much information available to consumers as is possible, while shielding businesses from unsubstantiated claims. Telephone hot lines, on-line resources and other means of communicating information about individual licensees should clearly explain the potentially relevant information that is not provided and how often the information is updated.

Consumer Advocacy

- ❖ *For all of their collective power in the marketplace, consumers are ineffective and under-represented in the policy-making process.*
- ❖ *Institutionalizing consumer advocacy in public venues was a primary reason for creating the Department of Consumer Affairs, but the department's efforts on behalf of consumers within the Legislature and other public forums have dwindled.*
- ❖ *Some have called for creating an independent consumer advocate as other states have done. Another option would be to create a mechanism to encourage more nonprofit advocacy.*

Consumer Advocacy

Finding 2: Californian consumers are not adequately represented in the variety of policy making venues in which their interests are at stake.

Just as informed consumers make smarter choices, so do informed policy makers. If policy makers hear debate from a variety of articulate perspectives, they are more informed than if they hear from just one side.

Too often in public venues -- legislative hearing rooms, regulatory proceedings, in the corner office or on the street corner -- the voice of the consumer is not heard. The public interest is certainly at stake -- because in the subsections of statutes, the fine print of regulations and in the parenthetical clauses of court rulings, that is where the ground rules for the marketplace are established. Those rules shape the choices that consumers have and the prices they pay.

It is completely understandable that consumers as individuals do not choose to participate in these proceedings. They lack the detailed knowledge and most consumers lack the time. That does not mean that they -- and the economy at large -- do not stand to benefit from effective representation in the public process.

Advocacy was a primary function of the Department of Consumer Affairs when it was created. But few people, not even the most recent director, believe the department as of late has been a loud and persistent voice for the consumer.

It is the Duty of the Director ...

For all their collective power in the marketplace, consumers have shown to be ineffective -- either individually or collectively -- in the policy making process. Economists have created sophisticated models to rationalize this behavior. But simply put, the costs of participating in the process for individual consumers far outweigh the individual benefits.

There are several public forums in which policies are forged that directly affect the quality, supply and price of consumer goods and services: the Legislature, regulatory proceedings, the courts, and even the court of public opinion.

In most of these forums, business interests -- both individually and aggregated into associations -- are well represented by professionals skilled in the procedures and cultures of those venues. In nearly all cases, consumers lack the same level of representation.

While the stake of individual consumers in each of these proceedings are small, their collective stake is large. The high cost of participating and the diffused benefits to be gained from participating discourages consumers from taking part and often discourages them from effectively consolidating their interests. As a result, the task has fallen to a few diminishing number of nonprofit activists with limited resources.

The Center for Public Interest Law summarized the problem this way:

Consumers, inherently unorganized and represented only sporadically by sufficiently-financed public interest organizations, have little chance -- either in the Legislature or in the agencies -- of overcoming the campaign-contribution assisted influence of the utilities or the insurance, real estate, managed care, banking and cable television industries. Further, consumers may have little incentive to pursue a remedy for abuses. For example, few consumers will take or have the time to question or investigate a possibly unlawful \$5 late fee or overcharge by a cable television company. However the \$5 times 500,000 customers equals a huge windfall for the company which is unlikely to be disgorged effectively through any judicial or regulatory system. In short, it pays to abuse consumers, and there is rarely anyone with the time, the resources or the incentive to do anything about it.²²

The Legislature declares that government advances the interests of consumers by facilitating the proper functioning of the free enterprise market economy through ... [d] promoting effective representation of consumers' interests in all branches and levels of government.

Business and Professions Code § 301

Beyond the fact that consumers are not effective participants in the policy-making process, it is important to recognize that business interests are adept at influencing public decision-making and those efforts are well-financed.

Monitoring the regulatory process has been the principal goal of the Center for Public Interest Law and the subject of the Center's *California Regulatory Law Reporter*. Publication of the journal has been suspended because of a lack of financial support, which the Center testified is a persistent problem of nonprofit consumer advocacy organizations:

Consumers are inherently unorganized. With some rare exceptions they do not band together, make contributions, hire lawyers and lobbyists and make campaign contributions.... That is what industry does.

Center for Public Interest Law

Consumers are inherently unorganized. With some rare exceptions they do not band together, make contributions, hire lawyers and lobbyists and make campaign contributions that influence government decision makers.... That is what trade organizations do. That is what industry does. That is what corporations do.... Consumer interests are sporadically represented by public interest organizations. Most of them are nonprofit. Most of them under-funded. Their resources are stretched thin and they are simply unable to be everywhere policy is made and laws are decided.²³

Publicly sponsored consumer advocacy made sense to then-Gov. Reagan, whose reorganization plan for the Department of Professional and Vocational Standards listed as a top goal to provide consumers with an effective advocate within state government.

That same year the Legislature cited the need for better consumer advocacy as the primary reason for creating the new Department of Consumer Affairs. The Legislature placed advocacy in the detailed duties assigned in statute to the director of the new department. The director is charged with representing consumer's interests before federal and state legislative hearings and executive commissions. The director is expected to investigate consumer issues -- hold hearings, take testimony and compel documents. The director is suppose to advise the Governor and Legislature on "all matters affecting the interests of consumers."

But the assignment has never been fully carried out. In recent years, the department's leadership has been able to point to the lack of General Funds for its limited advocacy agenda. But more than money is needed for effective advocacy, and what nonprofit advocacy does exists operates on a fraction of the \$1.2 million the department spends on legislative affairs.

More Than Money

Like consumer education, it is difficult to gauge how much consumer advocacy would be enough. But gauged solely by the department's participation in legislative proceedings, the department's role has been small and diminishing.

Nonprofit consumer advocates trace a gradual decline in the department's legislative advocacy back to the early 1980s. In its first few years the department sponsored a dozen or more bills each session to increase enforcement authority, require more notice to consumers, increase public representation on regulatory boards and dealing with other issues. By the mid-1980s the department legislative efforts had declined to responding to proposals made by others.²⁴

The California Public Interest Research Group (CALPIRG) testified that the department's legislative advocacy declined long before General Funds were eliminated:

*CALPIRG has had a presence in Sacramento for more than 15 years, and as time has marched on, the role of the department in consumer protection legislation has dwindled from little to virtually none.... Our experience with the department on consumer protection legislation has mostly been that they are either noticeably absent from most debates or that we must work with them to go from opposed to neutral on good consumer bills.*²⁵

Consumer interests were united in 1997 in support of three major pieces of consumer-related legislation: SB 289 (Calderon), which would have expanded the California Lemon Law; SB 930 (Rosenthal), which would have strengthened consumer protections against identity theft; and AB 46 (Sweeney), which would have prohibited new ATM surcharge fees.

All three bills were heavily opposed by the affected industries. And without judging the merits of any of the bills, it is noteworthy that legislators did not receive the benefit of the department's analysis or testimony on any these measures. While clearly the consumer groups sought the support of the department, what is most telling is the department never took a public position, despite its statutory obligation to represent consumers in the process.²⁶

The director of the department told the Commission that the legislative unit is overwhelmed with the task of analyzing the hundreds of consumer-related bills each year. The department also is subject to the administration's protocol of having to obtain gubernatorial approval for every position it takes legislatively.

The department's legislative unit has 10 analysts, five staff managers and an annual budget of \$1.2 million. In the spring of 1998, the

department was sponsoring 1 bill (the department's omnibus bill enacting minor statutory changes for the bureaus and boards). It was opposing 2 bills and supporting 16.²⁷

The department also is required by statute to disseminate information to the public about legislation of interest to consumers.²⁸ The department does this by publishing an annual digest. By the time the digest is published, most of the bills are either dead or adopted -- and in either case it is too late for consumers to participate in the process. The digest also fails to tell consumers which bills the department opposed, supported or sponsored on their behalf.

In pointing to other venues, the department did produce a briefing paper identifying consumer-related issues in the restructuring and the advent of competition in local telephone markets -- an issue largely decided by the Public Utilities Commission. The department did not publicly participate in the regulatory or legislative proceedings in which the rules defining competition in the electrical markets were established.

Beyond the numbers and examples, the history dating back more than one administration shows that assigning to the director broad responsibilities to advocate on behalf of consumers does not ensure much advocacy will get done. Among the problems:

- **Time.** Perhaps more than money, department officials said they were limited by a long list of managerial problems that they considered the first order of business. This problem is aggravated by the department's organizational structure, which makes the director responsible for about half of the regulatory programs and requires the director to work with hundreds of volunteer board members in order to influence the management of the other programs. In recent years, the department's top managers also have been overwhelmed with new tasks -- smog check and vocational school regulation -- which pushed freelance consumer advocacy farther down the list of things to do.
- **Protocol.** Historically, for a variety of reasons, including the political beliefs of a given executive and the political climate of the times, individual department directors have been given more or less latitude in their role as consumer advocate. While in some ways this is a product of representative government, the act creating the department did not envision that the director as consumer advocate would be prevented from taking a public position counter to another state agency.
- **Resources.** Consumers do not just need a loud voice, they need a wise and respected voice. The statute envisions advocacy based on investigation and research first. While the department has resources, it legally must spend money on issues within the jurisdiction of the boards and bureaus. While the department could do more with what it has, if it wandered much farther afield

of the regulated businesses, it would likely and rightly be challenged legally.

There also are inherent conflicts in consumer advocacy that will have to be addressed if the State wants to find the best way to accomplish this goal: What is good for one class of consumer is not always good for another class of consumer or the consumer advocate. And there are at times competing ideas about how to best provide for the same group of consumers.

On Behalf of Consumers

Even within these limitations, given the recent history, it is easy to think of ways the department could increase its advocacy. Its web site could track the most important consumer bills of the session, and provide links to sites of opponents and supporters of the bill. The department could publish the same report on paper form and distribute it weekly to the hundreds of small news outlets that are looking for "news you can use."

During the Reagan Administration the department started an advertisement substantiation unit. In 1978 it received 454 requests from consumers that resulted in 145 advertisements being modified. The unit was disbanded in 1979, but could be resurrected with the cooperation of the Attorney General.²⁹

But the larger problem is systemic, and efforts to establish more consistent and forceful consumer advocacy should recognize the systemic problems.

Other states, such as New York, have set up independent consumer advocates, who are given the freedom to decide what debates to participate in and what positions to take. The advocate is unfettered by ties to the executive and unburdened by the demands of managing a multi-body agency like the Department of Consumer Affairs. Such independence, however, raises questions of accountability that are fundamental to the long-term expenditure of public money.

Every president since Lyndon Johnson has appointed a special assistant for consumer affairs to advocate on behalf of consumers within the government and on the public stage. (Johnson, however, fired his adviser, Esther Peterson, for being too outspoken. President Carter gave Peterson the job back when he was elected.) Congress in the 1970s considered establishing an independent consumer advocate, but the measure failed under heavy lobbying by business interests.

A former director of the department recommends establishing an advocacy office within the department to give it some autonomy, more focus and a dedicated revenue stream. Similarly, the Center for Public

Interest Law believes the State should create an Office of Consumer Advocate within the department.

Others have suggested expanding to other agencies the intervenor funding that is now available to nonprofit groups that advocate on behalf of consumers before the Public Utilities Commission and the Department of Insurance. That system has fans, who assert the intervenors add a valuable and knowledgeable voice to complicated public processes. It also has critics, who assert intervenors become dependent on the public funding and permanently linked to a specific government agency.

Another potential model for increasing advocacy is the California Consumer Protection Foundation. The foundation was created in 1991 as an independent 501(c)(4) corporation to distribute \$4 million from the legal settlement of the consumer class action lawsuit *State of California v. Levi Strauss & Co.*

The foundation is governed by a five-member board of directors, representing consumer interests from across the state, who were named by parties to the litigation and approved by the court. The foundation is required to distribute the money over a six-year period in the form of grants to public, private and non-profit organizations for litigation, lobbying and consumer education.

The department could establish a similar mechanism, by creating a council that identified the most pressing consumer issues, collecting and distributing available funds from court settlements, fines and even seed money from the General Fund, and then distributing that money in the form of grants to nonprofit groups that submit proposals to work on the most important consumer issues.

The council could be created in a way that does not expand the bureaucracy and does not create umbilical-like relationships between

Filling the Void

The Center for Public Interest Law advocates that the State establish an Office of Consumer Advocate within the Department of Consumer Affairs to take on many of the responsibilities that have been neglected in recent years. The center believes the office should be supported by the General Fund and should be assigned the following duties:

- ***Gather complaints.*** Consumers would file complaints with the office and the office would make sure those complaints made their way to the correct state agency.
- ***Assess complaints.*** The office would track complaints to detect patterns of consumer abuse, and in particular monitor complaints lodged with the department's regulatory programs and boards.
- ***Advocate and litigate.*** The office would fulfill the department's obligation to represent consumer interests in regulatory forums and to initiate lawsuits on behalf of consumers when necessary.
- ***Sponsor legislation.*** The office would sponsor legislation, support and oppose bills that effect consumers.
- ***Educate consumers.*** The office would take on the department's general consumer education functions.

specific advocacy groups and specific government agencies. The goal of the council would be to provide what is missing in many of these forums -- credible and research-based advocacy on rapidly changing issues. The funds would go to groups that are willing to support the legislative intent of the Department of Consumer Affairs -- to make free markets work better.

The Consumer Affairs Act of 1970 did establish a Consumer Advisory Council. The seven-member council -- when empaneled -- is comprised of representatives of business, labor and the public. The members are appointed by the governor and the legislative leadership. The purpose of the council is to make recommendations to the director and the Legislature that would protect or promote the interests of consumers.³⁰

Department officials said it has been a number of years since the advisory council was operative and in its last iteration was unproductive. In this context, the statute -- modified to reflect the State's previous experience with the council -- could be the basis for a forum charged with discerning consumer issues most in need of more effective consumer advocacy.

While there is more than one way to provide advocacy, the goal is important -- to engender the power of public discussion.

Summary

The consumer advocacy envisioned in the Consumer Affairs Act of 1970 is not being fulfilled. A variety of hurdles have thwarted advocacy efforts -- including the director's other responsibilities, political protocol and restrictions on resources. One option the State has would be to create an independent or quasi-independent consumer advocate to perform the duties outlined in the 1970 law. Another alternative would be to supplement the department's advocacy role by distributing available funds on a project-by-project basis to nonprofit groups willing to represent consumers on the most important issues and in the most relevant venues of the day.

Recommendation 2: The Governor and the Legislature should create and fund a Consumer Advocacy Council to serve as a repository for consumer advocacy funds and as a vehicle for distributing those funds through a competitive process to nonprofit groups that agree to represent consumers on a particular issue for a specific time.

- The Council should be comprised of a range of consumer interests -- such as retired citizens, renters and those with lower incomes. The director of the Department of Consumer Affairs should be a member of the board. Other members could include

previous directors of the department and legislative committee chairs.

- While at times policy makers may want to appropriate General Fund or special fund revenue for specific advocacy programs, the council should first explore the use of court judgments, foundation and federal grants.
- The council should annually conduct a public process to identify the most immediate concerns to the broadest range of consumers and in which consumers are most grossly under-represented. The council should solicit proposals from nonprofit groups and award intervenor grants to fund that consumer advocacy on those issues. Each grant should be evaluated to determine the effectiveness of the effort, providing information to guide future council decisions.

Organizational Structure

- ❖ *One purpose for putting the licensing boards in a department 70 years ago was to increase administrative efficiency and reduce independence. But the organizational structure today is more confused than ever.*
- ❖ *The relationship between the department and the boards is shaped by the boards compositions, the director's authority, funding mechanisms and the functions of the boards.*
- ❖ *The scrutiny of the sunset review process has provided great value, but the fundamental organizational problems remain.*

Organizational Structure

Finding 3: The organizational structure of the Department of Consumer Affairs has evolved in ways that do not provide the best possible protection for California consumers.

The Department of Consumer Affairs' organizational chart reveals a tortured history. For decades professional licensing organizations that were created in the name of consumer protection were considered to be captured by the professions they regulated -- subtly protecting business by restricting market entrants and limiting enforcement efforts.

One purpose for putting the boards within a department 70 years ago was to increase administrative efficiency and reduce the independence of the boards.

But today the organizational structure is more confused than ever. The boards remain largely independent. The department has leaned increasingly harder on the licensing programs to pay for its overhead and consumer programs unrelated to the fee-based regulators. The relationship between the department and the boards is often strained and occasionally adversarial.

The Legislature's Sunset Review efforts have clearly prodded boards to be more consumer oriented. But public scrutiny has not been medicine enough to cure the organizational ills engendered by more than a century of evolving organizational missions and loyalties.

Balkanized Governance

A former director of the Department of Consumer Affairs describes the organization as Balkanized -- plagued by turf battles and unclear lines of authority. On a different occasion, the same former director described the department as the Winchester Mystery House, assembled over time -- a board here, a program there and never comprehensively remodeled.

As described in more detail in the Background section of this report, the department's origins lie in the independent and profession-specific regulatory boards that were established one at a time over the years. In 1929, the Department of Professional and Vocational Standards was created to centralize administrative functions, but that centralization never really materialized. In more recent years, new regulatory programs were placed directly under the department.

In 1970, the department was remade into the Department of Consumer Affairs. The law reorganized the department to provide a one-stop complaint process for consumers and expand public membership on the professional boards. The director was given discretion to consolidate the board's investigative and auditing personnel into the Division of Investigation and to create the Division of Consumer Services to take on the duties of a consumer counsel.

Today, the department houses 28 semi-autonomous boards and nine bureaus or programs that report to the director. In terms of budgets and staffing, about half of those resources rest with the boards and the other half with the bureaus and programs under the department's control.

In 1993-94, the department reorganized and centralized many of the functions of the regulatory programs under the department's control. Five new divisions were created -- licensing, consumer information, complaint mediation, enforcement, communications and education. The reorganization, according to the director, improved efficiency by "centralizing the performance of similar functions historically performed separately by the bureaus and the programs under its authority."³¹ The director characterized the reorganization as another part of the department's continuing evolution from an "umbrella" agency to an executive branch department that provides direction and performs "administrative and regulatory functions for an increasing number of occupations and professions."

The boards, however, were immune from the reorganizational changes, except for one reform. The department established a deputy director to coordinate efforts between the director and the boards. The deputy works directly with the appointed board members to make sure they understand their loyalty is to the consumer, not the profession. The deputy director also organizes training on conflict of interest regulations, contracting and other provisions in the Government Code, as well as

regulatory procedures. The deputy director also attends meetings of the boards.

Reorganized, But Not Resolved

By definition, for the department to reorganize those regulatory efforts under its control means the department could only complete half of the job. Many of the underlying problems that existed when the department was first created in 1929 and recreated in 1970 remain, as was described to the Commission in testimony by the Center for Public Interest Law:

It is unclear why the Legislature would direct DCA to "facilitate the proper functioning of the free enterprise market economy" but then place it over 40 semi-autonomous occupational licensing agencies -- many of which are deliberately designed to limit "the proper functioning of the free enterprise market economy" without consumer benefit. And we fail to understand why the Legislature would charge DCA with "fostering competition" without also giving the DCA director sufficient authority to interfere with the cartel-like function of its boards which serve to suppress competition, limit consumer choice in the marketplace and artificially inflate the price of the services performed."

There are four central and interrelated issues that define the relationship between the department and the boards, and as a result define the problems and potential solutions to the department's organizational architecture: board composition, the authority of the director, funding, and the scope of the boards.

1. Board Composition

As early as 1961, the Legislature began to add non-professional members to the regulatory boards in order to dilute professional bias. This trend accelerated in more recent years to the point that all trade-type boards have public majorities and the medical-type boards have greater public representation than in the past. The issue of board composition has most recently been examined by the Legislature's sunset review process. In most cases, the Joint Legislative Sunset Review Committee has concluded that non-professional representation is adequate, although the committee has recommended some adjustments.³²

While adding public members appears to have given the boards greater consumer orientation, few analysts believe the reform by itself has converted the boards into vigorous enforcers of the public interest. One recent director took the next step of scrutinizing nominees, and orienting new appointees to their role as consumer guardian. He then maintained those relationships to have influence over board decisions.

In addition to the consumer benefits of having public members on the boards, changing board composition might also be a way to strengthen the relationship between the boards and the department. In recent years, a deputy director has served as a liaison to the boards. The next step in the evolution would be to give the director an *ex officio* position on each of the boards, allowing for more direct and public influence over such important board decisions as selecting an executive officer, setting standards and establishing enforcement strategies.³³

2. *Director's Authority*

While the statute makes the director the chief consumer protector in the State, the director has little legal authority over the regulatory boards that form the front line for much of that consumer protection. All directors have had the power of persuasion over the boards, and some directors have exercised that power with considerable ambition. One recent director, for instance, targeted board executive officers that he did not think were making the grade, and lobbied the boards to replace those executives.

The director also has administrative control over board budgets, which can increase the director's persuasiveness even on non-budgetary issues. And by statute, boards must submit new rules and regulations to the director for approval. Under the law, the director has 30 days to disapprove the regulations on the grounds that they are injurious to the public health, safety or welfare. Should the director veto proposed regulations, the board can override the director with a unanimous vote.³⁴

The problem with this provision is its limitations. It explicitly exempts from a director's veto rules and regulations related to examinations and qualifications of licensure -- two areas that the boards have used to limit market entrants. In addition, many of the actions that the boards take are not rules and regulations, but rather case-by-case decisions concerning complaints and investigations. Finally, the law does not include management decisions by the board, including the selection or retention of an executive officer. As a result, the director has no say in board decisions that are most likely to determine the intensity of the board's consumer protection efforts.

The state Constitution provides that each board has the right to hire an executive officer -- which is why directors have had to lobby board members if they wanted to influence the hiring or firing of an executive. In a few cases, the Legislature has found a way to give the director some role in the selection process without impinging on the board's constitutional prerogative. In those cases, the director may approve or disapprove the board's selection of an executive officer.

3. *Funding*

Virtually all of the money that the department spends -- \$306 million in the 1997-98 budget year -- comes from special fees charged to professions and businesses regulated by the department or one of the boards. The department historically received a relatively small contribution from the General Fund -- \$1.2 million in fiscal year 1991-92, the last year it received an appropriation -- to pay for general consumer-related programs.

The department now funds all of its administrative functions by tapping the revenue collected by its regulatory bureaus and by assessing an overhead charge to the regulatory boards. As early as 1937 the department had the authority to assess the boards for services it provided.³⁵ The current fee is based on the department's assessment of how much it costs to provide centralized services for the boards, pro-rated for the board's authorized number of personnel years. In some cases, the pro-rata charge amounts to 13 percent of a board's budget and in 1996-97 came to \$8 million.³⁶

The Legislative Analyst believes the funding system reduces accountability and the ability of the boards to control their own budgets.³⁷ And the policy implications of the financial arrangement go even further.

- ***Shadow Budgeting.*** The administrative assessment functions as a sort of budgeting sleight-of-hand. Department officials are candid about the fact that since the department gets no General Fund revenue that it must rely on the pro-rata administrative fees to finance general consumer protection functions unrelated to specific programs.
- ***Monopoly Service Provider.*** The boards pay for centralized administrative services whether or not they use them. Some boards, for instance, do their own personnel work -- even though they are paying the department to do it. At the very least this engenders duplicative bureaucracies. But it also prevents the boards (now captive customers) from choosing how to best meet basic business needs.
- ***Melded Costs.*** Even if boards and bureaus are using all of the services provided by the department, there is no clear connection between the actual charge and the actual service. Personnel costs, for instance, are higher for units with greater turnover than for those with stable workforces. Since the assessments are not based on the actual services as they are rendered, boards do not experience -- and as a result, do not consider -- the costs or savings that come from good management.

The considerable distance between the assessment or "chargeback" and the actual cost of providing service was described to the Commission in testimony by the Center for Public Interest Law:

The precise basis of the calculation of this chargeback is a mystery to most DCA executive officers, and varies depending upon the service provided. But an unscientific survey of several boards indicates that the chargeback consumes approximately 5 to 13 percent of their annual budgets. DCA also has access to revenue generated by its bureaus, which operate under the direct jurisdiction of the DCA Director. To fund activities related to its more general consumer protection mandate, DCA is forced to cross-subsidize from its chargeback revenues.³⁸

Representatives from the Center argue that because the special fund is charged to all practitioners, all practitioners can pass those costs onto consumers. That means that consumers and not the businesses or professionals are actually paying for the regulatory programs. But even if that argument were supported by a consensus of economists, the center concedes that the department's budget is built on a questionable legal foundation:

To the extent that California law expressly earmarks the licensing and other fees collected by an occupational licensing agency for specific and direct use by that agency to fund its licensing and standards setting and enforcement activities, is DCA acting improperly if it charges more than the actual cost of service provided and uses excess chargeback monies for general consumer protection activities unrelated to that particular board?³⁹

This financial arrangement has allowed the department to pursue some general consumer protection activities. It has coerced some of the boards to rely more on the department -- reducing the autonomy that consumer advocates have railed against. And in some instances it may have reduced the cost of individual services through economies of scale.

But it also has produced considerable resentment. It has allowed policy makers to avoid the issue of funding general consumer protection activities. And it has not rationally resolved the issue of which functions are best performed by the boards and which by the department.

A separate funding issue concerns the actual fee. Most of the fees are set in statute. For some regulatory programs, a fee range is specified in statute -- giving the board or the department the ability to raise fees if, for instance, they are needed to increase enforcement efforts. Some professions have blocked legislative efforts to increase fees. And while containing the cost of government is an important goal, department officials and consumer advocates believe that a primary motivation on the part of the professions has been to prevent the regulators from expanding enforcement efforts.⁴⁰

The fees should be high enough to cover the fee-related activities. The courts, however, have found it to be illegal for special fees, when aggregated, to exceed the cost of funding the related activities, or for those fees to be diverted to other uses.

The State maintains separate funds for each of the fees. As the Commission has observed in previous studies, this arrangement complicates the State's budgeting process -- and tends to limit the activities of the individual consumer protection units. The use of special funds, the Commission has observed, "tends to fix artificial limits on the scope of regulatory and enforcement programs and influence decisions in specific disciplinary cases. Rather than developing a program based on actual needs, the tendency is to build the program around the amount of fees collected."⁴¹

Since boards and programs must spend whatever it costs to examine and license applicants, the discretionary portion of the budget is the enforcement end of the spectrum. A number of large states have averted these problems by setting fees based on the historical cost of providing the service and then appropriating the funds needed to do the appropriate level of consumer protection.

4. Board Functions

The boards' primary functions are to license members of a profession, investigate complaints and take enforcement actions against violators. For years, analysts have attempted to change the scope of board functions to either encourage greater efficiency or to bolster their consumer protection record.

LAO Assessment: Nix the Boards

The Legislative Analyst's Office believes the Department of Consumer Affairs organizational structure is fundamentally flawed. A 1995 analysis concluded:

- ***Fractionalized organization hinders an effective and responsive process.*** We believe that the current organizational framework of independent regulatory programs does not give the State the ability to either provide effective consumer protection or sustain public confidence in the regulatory programs.
- ***Structure does not facilitate the needs of business nor promote consumer protection.*** Each program is administered independently by separate staff and management. This can hinder coordination of regulatory efforts among programs, result in uneven enforcement activities and records and limit the effectiveness and efficiency of the overall regulatory program in terms of ability to protect consumers.
- ***Lack of oversight and control of independent boards.*** Because of the independent status of the boards, there is not an effective departmental oversight or control of board activities. Furthermore, many appointed board members are representative and practitioners of the occupations and professions they license and regulate. These factors can leave the appearance -- if not the reality -- of a lack of state control and conflicts of interest, which in turn diminishes public confidence in the State's regulatory process.

The LAO said the regulatory programs should be eliminated and the functions consolidated within the department. The director could use advisory bodies if needed. The LAO asserted the consolidation would reduce costs.

As can be seen in the department's recent renovation, organizational architects believe that centralizing common functions yields efficiency.

The effectiveness argument is based on the belief that licensing requirements created by the boards have been too strict and the enforcement efforts too weak. Centralizing either set of functions would reduce the chances that the professions will control the regulatory process.

Depending on how the functions are arranged, the scope of the boards could span the continuum from completely self-contained as they were historically, to a very limited or even advisory role in which they review standards used for licensing and review enforcement actions taken against individual professionals or businesses.

The argument for narrowly defining the boards' enforcement functions is that boards with professional members should not determine which complaints are investigated or which cases should proceed to revocation or suspension hearings. Those are issues of law. Rather, the boards should review decisions made by administrative law judges to ensure that subject-specific regulations were correctly interpreted and applied to individual cases.

Even when it was the Department of Vocational and Professional Standards, the individual boards looked to the department to do some functions, including some investigations.

But over the years, efforts to consolidate more board functions and dilute board autonomy have been largely unsuccessful. In 1967, the Little Hoover Commission urged better consolidation of administrative services. And in 1979, the Commission recommended that enforcement functions be consolidated.

Defining Goals for Structural Reform

Some policy analysts -- and previous Little Hoover Commission reviews -- have asserted that centralizing functions would bring the economies of scale to the department while reducing the bias of boards toward the professions they regulate. Similar economies might be expected by collapsing similar boards -- such as consolidating the health-related boards into a single healing arts board.

The research and analysis on this issue, however, is not unanimous. A 1991 report by the Auditor General, for instance, concluded that few additional financial benefits would come from further consolidating functions of the regulatory boards it reviewed. The conclusions were based in large part on the fact that many of the smaller boards already rely on the Department of Consumer Affairs or the Department of General Services to perform administrative functions such as budgeting or personnel.⁴²

Researchers at the University of Southern California reviewed medical and nursing boards throughout the nation and concluded that centralizing administrative functions actually reduces disciplinary actions. The analysis, however, showed that increasing public membership on regulatory boards increases disciplinary actions.

Perhaps more importantly, the study showed that centralized investigative units yielded more disciplinary actions, as did more investigative staff regardless of how the personnel was organized. The researchers found the results counter-intuitive, but from a broader perspective they are not that surprising. Centralizing personnel or budgeting may or may not make the boards more efficient, but centralizing those functions should not be expected to make them more aggressive consumer guardians.⁴³

Distilled, the previous analyses and reform efforts suggest two important goals that should be used to guide future efforts to craft a better consumer protection organization:

- ***Case-by-case efficiency.*** Historically organizational architects relied on economies of scale through centralization to yield efficiency. Those potential gains must now be weighed against the flexibility, accountability and innovation obtained through decentralization. As a result, the most efficient degree of centralization changes from organization to organization and sometimes manager to manager. The best business solution may depend how well technology is employed to gather, store, manage and disseminate information.
- ***Outcome-based effectiveness.*** One way to increase effectiveness is through accountability. Traditionally the boards have been accountable to the professions paying the fees. The issue is how to change the structure to make the agencies accountable to the consumers, or at least the consumer representatives in the executive and legislative branch. One means to that end would be to benchmark boards according to desired outcomes, while reducing their direct dependence on the professional fees that allow them to perform their duties.

How these principles are transferred onto an organizational chart depends on one's perspective. All of the board executive officers consulted by the Commission believe their agencies are now responsible consumer protection entities and that the reform most needed is to reduce or eliminate the assessment for services they do not use.

Many former directors believe the answer is to give the director more control over the boards. Most consumer advocates would increase scrutiny of the boards and decrease their autonomy.

One recent director recommends consolidating administrative and investigative functions at the department, leaving the boards with the

tasks that benefit from having a plural body and subject expertise -- setting standards and reviewing enforcement actions that have been heard by administrative law judges. The Little Hoover Commission made a similar recommendation in 1967.

The Center for Public Interest Law believes the director should have "sufficient statutory authority to expose and eliminate unnecessary and/or ineffective licensing barriers, and to encourage the establishment of relevant licensing and continuing competence requirements for the protection of the public." The Center would give the director the authority to issue an "order to show cause" that a board's activities are the minimum necessary to preserve public health and safety. And the authority would cut the umbilical link between the fees paid by the professions and the boards' budgets.

In some ways that oversight is now being conducted by the Joint Legislative Sunset Review Committee. The Committee's scrutiny has revealed that some boards are doing a good job protecting the public's interest, which can be interpreted to mean that the performance of many boards could be improved without structural reforms. The director of the department testified:

There is reason to believe that many of the boards are looking at their operations and especially their enforcement priorities more closely than they did in past years. The certainty of a critical sunset review and the risk of being terminated has given them added reason for self-examination -- a reason to revisit the reason for existence, and how well they are performing.⁴⁴

The Committee, however, also revealed that some boards had serious performance problems that were the direct result of leaving consumer protection to industry-oriented, nearly autonomous and nearly invisible boards.

The range of reform options is wide, and the examination of those options has appropriately begun with the Legislature's board-by-board review to determine which boards should continue at all. But at a

Benefits, Perils of Board-Based Government

In a 1965 report, the Little Hoover Commission identified the characteristics of citizen boards to inform the debate then raging about how to best organize State operations. The conclusions remain valid today:

The benefits of citizen boards include broader public participation in government, the open manner in which affairs are conducted, achieving a consensus of views, providing a buffer against undue pressures, and offering a needed protection against arbitrary action...

The negatives have been identified as diffusion of responsibility, slowness to act, division of authority, undue special interest representation, expense and isolation from normal processes of government...

The historic concern with licensing boards has been the presence of the special interests and the isolation from normal processes of government.

Overall the best uses of plural bodies have been policy formation and rule-making, allocation of funds or grants and acting as a review tribunal for actions.

minimum, any reforms should seek to resolve the following structural problems:

- **Clarify the authorities between the board members and the director.** By creating a deputy director for board relations, the department has tried to enhance policy coordination and streamline administrative procedures. The department also has initiated efforts to ensure board members know their customer is the consumer.⁴⁵ But the director's relationship is still defined most by bureaucratic veto power, and the California's consumer advocate still does not have explicit control over -- or even a vote on -- the regulatory boards.
- **Allow for the right level of centralizing functions.** It is intuitive that centralizing similar functions performed by a number of agencies can create efficiencies by reducing duplication and from economies of scale. But there also are problems with large bureaucracies. They become hard to manage, bloated and do not have a record for being customer-service oriented. And finally, technology can change the economies of scale -- raising and lowering them for different functions. In other words, the right level of centralization depends on a variety of factors -- including the competency of the individual units or the centralized unit. Given the variables, it is difficult envisioning the right decision being made in legislation or even in an annual budget process. Increasingly, these decisions are managerial in nature, and can be left to managers and appointees -- provided performance is publicly measured.
- **Untangle the funding strings.** The purpose of special funds is to create a revenue stream for a government function that serves specific individuals or a portion of the population. The only real limitation is that the fee does not exceed the cost of performing the identified function -- there is no requirement that dollar for dollar the money has to be kept separate. Currently the boards use the special funds to reinforce their independence and the regulated professions use those special funds to exert indirect fiscal control over the boards.

Summary

The organizational issues facing the State's consumer protection infrastructure are paramount, and the positions of the various interest groups are entrenched. The problems are old and few solutions are new. Still, as the financing of the regulatory programs devolves, as the Legislature plays a more active oversight role, as directors do what they can to build relationships within the existing walls, and as the department's bureau-based reorganization is tested, new opportunities are emerging to strengthen the department's structural weaknesses.

Recommendation 3: The boards should be transformed from nearly autonomous units into policy-making bodies that set regulations and review enforcement actions – allowing licensing, enforcement and administrative activities to be coordinated and eventually consolidated within the department.

- This change should begin with the formal involvement of the department director in the activities of every board by having a seat on each board, even if that seat were routinely staffed by a proxy.
- The Governor and the Legislature should enact legislation providing the director of the department with the authority to approve the selection of new board executive officers. The legislation also should formalize the director's role in orienting and training new board members to their task as guardians of the consumers' interests.
- Fees collected from regulated professions should be aggregated into one special professional regulation fund that is then distributed among the boards and the department. This would untie the fiscal relationship between the regulated and the regulator, it would prevent regulated professions from starving enforcement efforts, and it would erode the popular concept that boards exist for the purpose and the benefit of the professions.
- The department's assessment on boards for administrative services should be disaggregated by the services provided, allowing the boards to select which services they want to pay for while encouraging them to "purchase" those services as soon as the department can perform them more cost-effectively than the boards.

Interagency Collaboration

- ❖ *The Department of Consumer Affairs is encouraged by statute to create an interdepartmental committee to coordinate consumer protection activities, but recently the department has relied on informal cooperation.*
- ❖ *The department is obligated by law to assess the performance of consumer programs in other state agencies.*
- ❖ *The Department could capitalize on the success of its Consumer Information Center to coordinate and monitor the efforts by other state agencies and provide buyers with a reliable place to turn for information and assistance.*

Interagency Collaboration

Finding 4: State and local government efforts on behalf of consumers are numerous and varied -- but they also are uncoordinated and as a result are not as effective as possible.

In recent years more than a dozen state agencies have fully developed consumer protection functions. In addition, the Attorney General, many county district attorneys and some local governments devote resources toward ensuring that the marketplace is functioning for the benefit of consumers and policing individual cases of fraud and anti-competitive behavior.

All of these efforts are in addition to the Department of Consumer Affairs' specific regulatory programs and its over-arching consumer protection functions.

These various efforts are occasionally and only casually coordinated. In some prominent cases, a coordinated review of complaints tipped off investigators to grand schemes that abused consumers. In some cases, county investigations have turned into multi-county investigations. But at all levels, regulators and enforcers said these connections were made informally -- giving credence to complaints from critics that the State's limited consumer protection efforts are further limited by institutional boundaries.

Coordination is not easy, but it is often the best way of ensuring the most important consumer issues of the day are being addressed in the most effective way. That coordination begins with strategically monitoring consumer complaints and acting on the information.

Cooperation by Statute

Policy makers have long recognized that consumer protection requires interagency cooperation. Those on the front lines have often developed the professional relationships and multi-disciplinary approaches that it takes to prevent and respond to marketplace abuses. Some of these concepts and practices were formalized by the Consumer Affairs Act of 1970, which establishes a Consumer Advisory Council and directs the department to create an interdepartmental committee and to assess the consumer-related performance of other state agencies.

The Consumer Advisory Council is supposed to be comprised of business, labor and public representatives. As described in more detail in Finding 2, the statute envisions that the Council involves stakeholders outside of government to help assess consumer needs and the government's response. The department does not have a functioning advisory council. In its last iteration, department officials said the council had devolved into a forum for divisive politics rather than consumer-oriented cooperation.

Similarly, the act encourages the director of the Department of Consumer Affairs to establish a permanent venue for coordinating interdepartmental consumer-related activities:

The director may create an interdepartmental committee to assist and advise him in the implementation of his duties. The members of such committee shall consist of the heads of state departments, or their designees. Members of such committee shall serve without compensation but shall be reimbursed of the expenses actually and necessarily incurred by them in the performance of their duties.⁴⁶

Recent department directors said they have frequent contact with officials in other consumer-related agencies. However, the press of day-to-day business has prevented them from establishing a committee.

And whether or not the director develops a committee of peers, the department is required by the law to assess the consumer-related efforts of other state agencies:

The director shall submit to the Governor and the Legislature during the month of December prior to each regular session of the Legislature a full and accurate report of the activities of the department relating to consumer affairs, and an evaluation of the consumer programs of each state agency. Such report shall include recommendations, when appropriate, for legislation which will protect and promote the interests of consumers.

... The required evaluation of the consumer programs of each state agency shall include, but is not limited to, comment with

respect to the scope, effectiveness, and efficiency of such programs within each agency, as well as deficiencies noted in the coordination, administration, or enforcement of such programs.

The director shall include within the report information regarding his or her experience in obtaining and disseminating information with respect to information available from other departments by the state.⁴⁷

The department does prepare an annual report that describes the department's activities and provides some performance statistics. The report does not describe or evaluate the consumer-related performance of other agencies and it does not recommend legislation to improve consumer protections.

Cooperation and collaboration are essential elements in consumer protection because so many different agencies and all three levels of government are involved.

The Attorney General has the primary responsibility to enforce California's consumer protection statutes. Most of the cases are brought under the Business and Professions Code sections that prohibit false advertising.⁴⁸

But the Attorney General also has a licensing and health quality enforcement section, which represents the bureaus and boards under the DCA umbrella and other state regulatory agencies.

More than 30 local districts attorneys have investigators and prosecutors dedicated specifically to consumer-related issues, and many of the cases that result in statewide or even interstate legal actions are initiated by local prosecutors.

The district attorneys do have a standing committee comprised of representatives from counties that have active consumer protection units. The committee meets regularly to identify trends in complaints, to stay up on changes in the law and developments in major court actions.

Committee members said from their perspective the weakest link in the chain is between local and state agencies. In particular they said the state consumer-related investigators often do not provide the right information in a timely way, reducing the ability of the prosecutors to bring successful legal action. Those are the kinds of weaknesses that could be strengthened by more routine and institutional collaboration.

... The required evaluation of the consumer programs of each state agency shall include, but is not limited to, comment with respect to the scope, effectiveness, and efficiency of such programs within each agency, as well as deficiencies noted in the coordination, administration, or enforcement of such programs.

Business and Professions Code § 312

Informal Cooperation Only

While the department has not capitalized on the traditional mechanisms for creating inter-departmental cooperation, it has developed one program that has the potential to engender a more seamless approach to consumer protection.

In 1994, the department created a Consumer Information Center to consolidate the incoming calls for the boards and bureaus and it is funded out of regulatory fees. But from its inception, the department also saw the information center as a first (and whenever possible, last) stop for consumers turning to the State for help.

The center -- which can be reached at 800-952-5210 -- has the ability to talk with consumers in 140 different languages. It fielded 1.1 million telephone calls in fiscal year 1996-97. In each of the years that the center has existed it has answered more calls, with shorter wait times and with fewer hang ups than the year before.

The department does not discourage calls that do not relate to a regulatory program within the Department of Consumer Affairs. Rather, operators are trained to assess the consumer's problem and which of the hundreds of federal, state, local or non-governmental agencies is best equipped to help that consumer.

The department estimates that 20 to 30 percent of the calls are concerning issue areas that are outside of areas in which DCA has a specific consumer protection program.

In 1996-97, the department referred nearly 15,000 calls to the Attorney General and nearly 50,000 calls to the Department of Motor Vehicles. But call center operators also directed consumers to local Better Business Bureaus more than 12,000 times, and to specific local government agencies nearly 50,000 times.

Receiving Complaints

The Business and Professions Code requires the Department of Consumer Affairs to receive and analyze complaints. Specifically, Section 325 requires:

It shall be the duty of the director to receive complaints from consumers concerning (a) unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in the conduct of any trade or commerce; (b) the production, distribution, sale and lease of any goods and services undertaken by any person which may endanger the public health, safety or welfare; (c) violations of provisions of this code relating to businesses and professions licensed by any agency of the department, and regulations promulgated pursuant thereto; and (d) other matters consistent with the purposes of this chapter, whenever appropriate.

The code also requires the department to forward the information to appropriate authorities and to analyze complaints to detect trends. Specifically:

It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to the probable violations or pattern of complaints.

A frequent compliment from callers is that they were pleasantly surprised to quickly be able to speak with a live and knowledgeable person -- who may not have had all of the answers, but could listen to their problem and simply tell them whether there was someplace in government they could turn for help. By itself that is a valuable service for the less sophisticated taxpayers in an increasingly complex and automated world.

Not surprisingly, the major issue with the call center is a lack of money. Like all other department activities, the general consumer protection workload associated with the call center is funded by blending licensed-based special fees into programs that service those licensing programs.

In 1996-97 the department spent \$2.8 million operating the call center and sought a General Fund appropriation of \$880,000 to cover the costs of fielding calls unrelated to special-fund programs. The Legislature denied the request. The department repeated that request in the 1997-98 budget process. The Legislature is reluctant to allocate General Fund money to a function that from a legal standpoint exists to serve specially funded programs -- and either way seems to be doing just fine without General Fund money.

However, the department is required by law to act as a clearinghouse for all consumer complaints -- whether or not they concern the department's programs. The director is required to receive and forward complaints to appropriate authorities. The director is required to analyze the complaints to detect trends.⁴⁹

The Consumer Information Center is performing that function -- but only to a limited degree. Between 20 and 30 percent of the calls do not have anything to do with the department's specially funded programs. Many of those calls do not fall within the "jurisdiction" of another agency. But that does not mean the issue is not real or unimportant to the taxpayer, who may be making their only call to a government agency in months.

If broadened, the Consumer Information Center could be more than one-stop shop for consumers. It could be a diagnostic tool that all departments with consumer-related responsibilities could use to detect problems in the marketplace. The department also could follow up on complaints received through the call center to determine the effectiveness of its programs and those of other agencies, as envisioned by the annual reporting requirement in the statutes. Developing a follow-up mechanism could be particularly valuable in determining if enforcement efforts -- whether by regulatory boards or traditional law enforcement agencies -- are vigorous enough.

Consumer Affairs officials said other departments have cooperated with the call center in terms of providing information that operators can distribute. But the other departments are not collaborating to any significant degree to make the information center more useful to either consumers or public agencies charged with protecting consumers.

Beyond Information

There will never be enough money to fund all of the consumer protection activities that might be warranted. Nor is it likely to ever make sense to consolidate all consumer-related functions into a single agency, or even at a particular level of government.

But clearly consumers would be served better if protection efforts were guided by two fundamental principles: first, that government should work in the most seamless way possible, and second that all of the various tools and talents represented by the various agencies are acting in an orchestrated and effective manner.

In the course of this review, consumer protection staffs often suggested nuts and bolts ways that investigators from other agencies could act more effectively, how information about bad actors could be better disseminated to the public, and how scarce resources could be better targeted toward egregious offenders. These kinds of assessments and ideas should be the basis for continuous improvement of the State's efforts. But this will only be the case if there is an ongoing interest in collaboration and an institutionalized mechanism for assessing and refining the consumer protection network.

Consumer advocates believe that until the State and local agencies strategically gather and assess complaint information, enforcement will be sporadic and ineffective.⁵⁰

A number of reviews over the years by the Bureau of State Audits show that many regulatory agencies are slow to investigate and even slower to act, even to the point of missing legal deadlines.⁵¹ Those audits show the importance of the department's role in following up on complaints that are forwarded to other agencies.

And a former director of the department recommends that the department formalize the process for sharing information between the Department of Consumer Affairs, the Attorney General, local district attorneys and others to strengthen enforcement efforts.⁵²

Summary

The Department of Consumer Affairs has an obligation to make sure that consumers are getting their money's worth out of the State's consumer-related programs. The department also has an opportunity to inspire collaboration among the various regulators and law enforcement agencies charged with preventing and responding to market abuses. The department can begin to meet its obligation and to capitalize on present opportunities by expanding its ability to receive, analyze and follow up on consumer complaints.

Recommendation 4: The Department of Consumer Affairs should develop a Consumer Protection Alliance to coordinate the activities between state and local agencies responsible for consumer protection.

- The top officials from the agencies represented in the alliance should meet at least annually to establish goals for the coming year and to assess the progress made toward already established goals. The alliance also should establish technical committees of managers and supervisors to identify specific problems and recommend solutions that would provide seamless and effective consumer protection.
- The alliance should help the department to fashion a process and establish standards that the department should use to fulfill its statutory obligation to assess and report on the consumer protection activities of other state departments.
- The department's Consumer Information Center should be formally designated and widely advertised as the central contact point between California consumers and the State. While the center is paid for with special funds, it clearly operates as a primary contact for consumers with complaints that fall within the jurisdiction of other agencies or within the jurisdiction of no particular government agency. While some General Fund revenue is warranted for this effort, the department should also implement available technologies to track and assess other agencies for the calls fielded by the Consumer Information Center that fall within the responsibility of those other agencies.

Conclusion



Conclusion

The rationale, the intensity and the focus of consumer protection issues change with the times.

As babyboomers reach retirement age, policy pundits expect consumers to clamor for more oversight of skilled nursing homes and the funeral industry, just as graying and balding consumers are now focused on food and pharmaceutical safety.

Thirty years ago, consumer advocates rallied public support for more government action by railing against the abuses of uncaring businesses. Today, advocates argue first and foremost that effective consumer protection increases the efficiency of the free market -- and as a result is good for consumers, producers and the government.

Naturally, government needs to change with the times, as well. Fraud investigators now need to tail door-to-door shysters and cyberspace scammers. Consumer education efforts need to be Internet-based and market-targeted. A generation ago the hot consumer topic was credit abuse; now it is identity theft.

In assessing the ability of the Department of Consumer Affairs to meet these challenges, the Little Hoover Commission was too often told: "We are doing the best we can with what we have got." Even if that is true, that is not the benchmark the State should be striving for.

Because consumer education saves money and prevents the need for costly government intervention in markets, the State needs to restore

General Fund support for at least the most important consumer education needs.

Because the public expects the government to act in the public interest -- and expects policy makers to at least be told how their decisions will affect the public interest -- the State needs to restore its consumer advocacy efforts.

Because the Department of Consumer Affairs is still burdened by an organizational structure that discourages efficiency and frustrates consumer protection, at least incremental improvements need to be made to clarify the director's authority in relation to the boards.

And because government's consumer protection functions are as diverse as the market, the State needs to restore the relationships that yield cooperation. It can begin that process by gathering, analyzing and acting on the information that will ensure government is responding to the most important consumer issues of the day.

The Little Hoover Commission's recommendations would require some additional expenditure of public funds. But if implemented correctly, the recommendations also could be expected to make the consumer protection apparatus more efficient. And by increasing the effectiveness of those protection efforts, the recommendations would save the money of taxpayers in their role as consumers.

Appendices



APPENDIX A

Roundtable Participants

In the course of the consumer affairs study, a number of roundtable discussions were conducted to understand the historical context of consumer protection issues. The following persons were invited to participate in those discussions.

Legislative Roundtable State Capitol, Sacramento October 6, 1997

Jay J. DeFuria
Principal Consultant
Senate Business and Professions Com.

Andy Meyers
Chief Consultant
Assembly Consumer Protection Com.

Michael V. Abbott
Consultant
Senate Business and Professions Com.

Sailaja Cherukuri
Senior Consultant
Assembly Consumer Protection Com.

Julie Simon
Minority Consultant
Senate Business and Professions Com.

Peter Renevitz
Minority Consultant
Assembly Consumer Protection Com.

District Attorney Roundtable Alameda County District Attorney's Office October 10, 1997

John Wilson
San Mateo County
District Attorney's Office
Chair, CDAA Consumer Protection
Subcommittee

Mike Botwin
Deputy Attorney General
Attorney General's Office

Thomas Papageorge
Head Deputy District Attorney
Los Angeles District Attorney's Office

Bill Newsome
Deputy City Attorney
San Diego City Attorney's Office

Rich Michaels
Chief Assistant District Attorney
Alameda County District Attorney's
Office

**Business Roundtable
State Capitol, Sacramento
October 28, 1997**

Barry Goggin
President
Better Business Bureaus of California

Sharon Hilke
Executive Director
California Assn. of Licensed Investigators

Kit Costello
President
California Nurses Association

Tom Holsman
Executive Vice President
Associated General Contractors Assn..

Fred Main
General Counsel
California Chamber of Commerce

Dennis DeCota
Executive Director
California Service State and Automotive
Repair Assn..

**Advocates Roundtable
State Capitol, Sacramento
October 6, 1997**

Jon Golinger
Consumer Advocate
California Public Interest Research Group

Pat McGinnis
President
California Advocates for Nursing Home
Reform

Earl Lui
Advocate
Consumers Union

Cher McIntyre
Director of Advocacy
Consumer Action

David Ball
President
California Consumer Affairs Association

Nettie Hoge
Executive Director
The Utility Reform Network

Julianne D'Angelo Fellmeth
Administrative director
Center for Public Interest Law

Jim Conran
Former Director
Department of Consumer Affairs

Michael Ross
President
California Alliance for Consumer
Protection

Mark Savage
Public Advocates

APPENDIX B

Interviews

The following persons are among those who were interviewed in the course of the Consumer Affairs study to help the Little Hoover Commission understand the issues and explore possible solutions.

Joanne C. Kozberg
Secretary
State and Consumer Services Agency

Wayne Smith, Chief of Staff
Bob Mukai, Chief Assistant, Civil Law
Attorney General's Office

Michael P. Kenny
Executive Officer
Air Resources Board

Keith Paul Bishop
Commissioner
Department of Corporations

Sally Reed
Director
Department of Motor Vehicles

Jim Antt Jr.
Commissioner
Department of Real Estate

Sherry Mehl
Executive Officer
Board of Behavioral Science Examiners

Patricia Harris
Executive Officer
Board of Pharmacy

Stephen P. Sands
Executive Officer
Board of Architectural Examiners

Jim Conran
Former Director
Department of Consumer Affairs

Carla Framiglio
Assistant Deputy Director
Licencing and Certification
Department of Health Services

Richard Spohn
Former Director
Department of Consumer Affairs

Marjorie Berte
Director
Department of Consumer Affairs

Larry Brown
Executive Director
California District Attorneys Association

Barry Goggin
President
Better Business Bureaus of California

Calvin Smith
Department of Finance

APPENDIX C

Little Hoover Commission Consumer Affairs Advisory Committee

The following people served on the advisory committee for the Consumer Affairs study. Under the Little Hoover Commission's process, advisory committee members provide expertise and information, but do not vote on the final product.

Michael V. Abbott, Consultant Senate Business & Professions Com.	William P. Conway, Jr., Exec. Vice Pres. California Mortuary Alliance
Assemblymember Elaine Alquist Assembly Consumer Protection Com.	Kit Costello, President California Nurses Association
Jim Antt, Jr., Commissioner Department of Real Estate	Senator William Craven, Member Senate Business & Professions Com.
Jerry Beavers Legislative Analyst's Office	Assemblywoman Susan Davis, Chair Assembly Consumer Protection Com.
Kimberly Belshe, Director Department of Health Services	Dennis DeCota, Executive Director Calif. Service Station/Auto. Repair Assoc.
Marjorie Berte, Director Department of Consumer Affairs	Jay J. DeFuria, Principal Consultant Senate Business & Professions Com.
Assemblyman Bill Campbell, Vice Chair Assembly Consumer Protection Com.	Julianne D'Angelo-Fellmeth, Adm. Dir. Center for Public Interest Law, USD
Sailaja Cherukuri, Senior Consultant Assembly Consumer Protection Com.	Assemblymember Liz Figueroa, Member Assembly Consumer Protection Com.
Jim Conran, President Consumers First	Assemblyman Brooks Firestone, Member Assembly Consumer Protection Com.
Assemblyman Peter Frusetta, Member Assembly Consumer Protection Com.	Senator David Kelley, Member Senate Business & Professions Com.
Bill Gage, Chief Consultant Jt. Legislative Sunset Review Committee	Clark Kelso, Director Institute for Legislative Practice
Barry Goggin, President Better Business Bureaus of California	Joanne C. Kozberg, Secretary State & Consumer Services Agency
Jon Golinger, Advocate Calif. Public Interest Research Group	Wes Larson, Minority Consultant Assembly Republican Caucus
Nancy Gutierrez, Director Dept. of Fair Employment & Housing	Senator Barbara Lee, Member Senate Business & Professions Com.

Sharon Hilke, Executive Director
Calif. Assoc. of Licensed Investigators

Nettie Hoge, Executive Director
The Utility Reform Network

Tom Holsman, Exec. Vice President
Associated Gen. Contractors of Calif.

C. Kirk Hutson, Chief of Staff
Assemblyman Tom McClintock

Senator Maurice Johannessen, Vice Chair
Senate Business & Professions Com.

Cher McIntyre, Director of Advocacy
Consumer Action

Andy Meyers, Chief Consultant
Assembly Consumer Protection Com.

Michael Miller, Consultant
Office of Legis. Dev. & Assistance

Assemblyman Jim Morrissey, Member
Assembly Consumer Protection Com.

Assemblymember Grace Napolitano
Assembly Consumer Protection Com.

Assemblymember Deborah Ortiz, Member
Assembly Consumer Protection Com.

Senator Jack O'Connell, Member
Senate Business & Professions Com.

Mike Peterson, Minority Consultant
Assembly Republican Caucus

Senator Richard Polanco, Chair
Senate Business & Professions Com.

Earl Lui, Advocate
Consumers Union

Assemblyman Mike Machado, Member
Assembly Consumer Protection Com.

Fred Main, General Counsel
California Chamber of Commerce

Patricia McGinnis, President
Calif. Adv. for Nursing Home Reform

Sally Reed, Director
Department of Motor Vehicles

Peter Renevitz, Minority Consultant
Assembly Republican Caucus

Senator Herschel Rosenthal, Member
Senate Business & Professions Com.

Michael Ross, President
Calif. Alliance for Consumer Protection

Mark Savage, Advocate
Public Advocates Inc.

Julie Simon, Minority Consultant
Senate Business & Professions Com.

Kurt Sjoberg, California State Auditor
Bureau of State Audits

Richard Steffen, Chief Consultant
Jt. Legis. Task Force on Gov. Oversight

Assemblymember Virginia Strom-Martin
Assembly Consumer Protection Com.

Assemblyman Nao Takasugi, Member
Assembly Consumer Protection Com.

Brian A. Thompson, Acting Commissioner
Department of Corporations

Betty Jo Toccoli, President
Calif. Small Business Assoc.

Assemblyman Scott Wildman
Assembly Consumer Protection Com.

APPENDIX D

**Witnesses Appearing at
Little Hoover Commission
Consumer Affairs Public Hearing
November 20, 1997
Sacramento**

Marjorie Berte
Director
Department of Consumer Affairs

Hershel Elkins
Senior Assistant Attorney General
Consumer Law Unit

Ron Russo
Senior Assistant Attorney General
Licensing Unit

John Wilson
Deputy District Attorney
San Mateo County District Attorney
Consumer & Environmental
Protection Unit

Kurt Sjoberg
Auditor
Bureau of State Audits

Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law

Jim Conran
President
Consumers First

Jon Golinger
Advocate
California Public Interest Research Group

APPENDIX E

The following table breaks out detailed information on the semi-autonomous boards and commissions under the Department of Consumer Affairs "umbrella."

<i>Department of Consumer Affairs: Boards and Commissions</i>				
Board/Commission	Civil Service Positions (June 1996)	Licenses/ Registrations (June 1996)	Certificates/ Permits (June 1996)	1997-98 Budget (Thousands)
Accountancy	59.0	54,030	N/A	\$9,774
Architectural Examiners	21.5	20,407	N/A	2,857
Athletic Commission	9.8	1,820	580	1,081
Behavioral Science Examiners	31.5	50,392	N/A	4,369
Contractors State License	471.7	210,148	3,842	41,124
Dental Examiners	46.8	34,643	35,176	5,628
Dental Auxiliary	7.5	37,945	32,058	1,248
Geologists/Geophysicists	4.0	4,470	1,926	798
Medical Board	278.8	103,162	8,014	32,750
Registered Dispensing Opticians	1.0	5,878	N/A	261
Outpatient Surgery Clinics	1.0	N/A	N/A	27
Licensed Midwifery	0.5	3	N/A	18
Acupuncture	6.0	3,482	55	1,187
Hearing Aid Dispensers	2.7	1,865	N/A	586
Physical Therapy	5.5	18,022	N/A	1,973
Physician Assistant	3.7	11,067	215	765
Podiatric Medicine	4.0	2,077	414	966
Psychology	10.0	13,340	N/A	2,787
Respiratory Care	12.4	13,220	726	2,117
Speech Pathology and Audiology	2.0	8,407	N/A	308

Board/Commission cont'd	Civil Service Positions (June 1996)	Licenses/ Registrations (June 1996)	Certificates/ Permits (June 1996)	1997-98 Budget (Thousands)
Nursing Home Admin.	6.0	2,743	726	449
Optometry	6.0	5,763	2,033	1,003
Pharmacy	46.0	52,149	3,569	\$5,788
Professional Engineers	36.0	90,012	187,349	6,620
Registered Nursing	94.0	234,168	52,437	12,008
Court Reporters	3.5	7,834	N/A	846
Structural Pest Control	25.5	16,842	4,170	3,150
Veterinary Medical Board	4.6	7,737	2,350	1,204
Registered Veterinary Technician	1.0	N/A	2,873	104
Vocational Nurse	30.1	65,895	N/A	3,245
Psychiatric Technician	4.8	11,232	N/A	900
Total	1,236.9	1,020,821	338,513	\$145,941

Endnotes

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ENDNOTES

1. The history of the consumer movement was drawn from a number of general literature sources, but predominantly from: Robert L. Mayer, *The Consumer Movement, Guardians of the Marketplace*, Twayne Publishing, 1989.
2. A detailed description of this trend and the governmental responses is contained in the Little Hoover Commission's 1996 report, *When Consumers Have Choices: The State's Role in Competitive Utility Markets*.
3. Business and Professions Code § 301.
4. Business and Professions Code § 302(g).
5. David L. Weimer and Aidan R. Vining, *Policy Analysis: Concepts and Practice*, Englewood Cliffs: Prentice Hall, 1989, and Mayer, op cit.
6. Julieanne D'Angelo Fellmeth, administrative director, Center for Public Interest Law, in testimony to the Little Hoover Commission, Nov. 20, 1997.
7. Earl Lui, advocate, Consumers Union, in testimony to the Little Hoover Commission, Nov. 20, 1997.
8. Herschel Elkins, Sr., Assistant Attorney General, Consumer Law Unit, in testimony to the Little Hoover Commission, Nov. 20, 1997.
9. On April 30, 1998, the Administration proposed a Governor's Reorganization Plan that would create a Department of Managed Health Care to assume the health-related regulatory duties of the Department of Corporations. The Legislature had not considered that proposal at the time this report was adopted by the Commission.
10. Marjorie Berte, director, Department of Consumer Affairs, in written testimony to the Little Hoover Commission, submitted Oct. 28, 1997.
11. Personal interview with Richard Spohn, former DCA director, with Commission staff.
12. Joint Legislative Sunset Review Committee, April 1997, SPCB-2; and AB 910 (Speier,) (Chapter 381, Statutes of 1995).
13. Joint Legislative Sunset Review Committee, *Findings and Recommendations*, April 1997.
14. Ibid.
15. Ibid.
16. Department of Consumer Affairs, Business Strategic Plan.
17. John Wilson, Deputy District Attorney, Consumer Law and Environmental Protection Unit, San Mateo County District Attorney's Office, in testimony to the Little Hoover Commission on Nov. 20, 1997, on behalf of the California District Attorneys Association, Consumer Affairs Subcommittee.

18. Interview with Dispute Resolution Office coordinator Albert Balingit, April 28, 1998.
19. Fellmeth testimony, op cit.
20. Consumers Union and CALPIRG at Consumer Advocates Round Table.
21. Jim Conran, former director of the Department of Consumer Affairs, in testimony to the Little Hoover Commission, Nov. 20, 1997.
22. Fellmeth, op cit.
23. Fellmeth, op cit.
24. California Public Interest Research Group, *The Decline of Consumer Representation in the Deukmejian Administration*, April 24, 1984.
25. Jon Golinger, Consumer Program Director, California Public Interest Research Group, in testimony to the Little Hoover Commission, Nov. 20, 1997.
26. Jon Golinger, Consumer Program Director, California Public Interest Research Group, in written correspondence to the Commission, April 25, 1998.
27. Ray Saatjian, deputy director for legislation, in personal communication with Commission staff.
28. Business and Professions Code § 335(g).
29. CALPIRG, 1984, op cit.
30. Business and Professions Code § 315 et seq.
31. Berte testimony, page 8.
32. Joint Sunset Review Committee, April 1997, page 6.
33. The Little Hoover Commission made a similar recommendation in 1967, but department officials said the issue has not been raised recently. In 1967, the Commission opined: "Another method of broadening the interest base of the board membership -- other than the addition of more public members -- would be the *ex officio* membership of the director of the department or his designee. This would have the added advantage of permitting improvement in department-wide coordination and introduce a kind of management expertise that is now lacking on many boards, which are frequently called upon to decide matters having significant administrative ramifications."
34. Business and Professions Code § 313.
35. Business and Professions Code § 201.
36. Joint Sunset Review Committee, April 1997, Crosscutting p. 4.
37. As quoted by Sunset Review Committee, April 1997.

38. Fellmeth, op cit.
39. Ibid.
40. Marjorie Berte, director of the Department of Consumer Affairs, and former director Jim Conran in discussions with the Commission's Advisory Committee.
41. Commission on California State Government Organization and Economy, *An Examination of the Department of Professional and Vocational Standards*, State of California, 1967.
42. Auditor General of California, *The Potential Benefits of Further Centralizing the Functions of State Entities that Regulate Professions Appear Limited*, P-22, May 1991.
43. Elizabeth Graddy and Michael B. Nichol, "Structural Reforms and Licensing Board Performance," *American Politics Quarterly*, Vol 18., No. 3, July 1990, Sage Publications.
44. Berte testimony, op cit., page 38.
45. Berte testimony, op cit. Interview with Jim Conran, former director of the Department of Consumer Affairs, with Commission staff.
46. Business and Professions Code § 311.
47. Business and Professions Code § 312.
48. Elkins testimony, op cit., and Business and Professions Code § 17500.
49. Business and Professions Code § 326.
50. Lui testimony, op cit, and in discussions with the Advisory Committee.
51. Kurt Sjoberg, State Auditor, in testimony to the Little Hoover Commission.
52. Conran testimony, op cit.

LITTLE HOOVER COMMISSION FACT SHEET

The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency that was created in 1962. The Commission's mission is to investigate state government operations and -- through reports, and recommendations and legislative proposals -- promote efficiency, economy and improved service.

By statute, the Commission is a balanced bipartisan board composed of five citizen members appointed by the Governor, four citizen members appointed by the Legislature, two Senators and two Assembly members.

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