

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.