



South Carolina
House of Representatives
Legislative Oversight Committee

DEPARTMENT OF CONSUMER AFFAIRS
STUDY REPORT



2024



South Carolina House of Representatives Legislative Oversight Committee

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Adam M. Morgan

Russell L. Ott

Marvin R. Pendarvis

Marvin "Mark" Smith

DIRECTOR

Lewis Carter

LEGAL COUNSEL

Roland Franklin

EXECUTIVE COORDINATOR

Cathy Greer

RESEARCH ANALYST

Riley E. McCullough

Post Office Box 11867

Columbia, South Carolina 29211

Telephone: (803) 212-6810 Fax: (803) 212-6811

Room 228 Blatt Building

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LEGISLATIVE OVERSIGHT COMMITTEE OVERVIEW

AUTHORITY

The Legislative Oversight Committee, created in December 2014, is a vehicle for oversight used by the House of Representatives. The Committee's specific task is to conduct legislative oversight studies and investigations of state agencies at least once every seven years. The Committee has the authority to conduct studies at any time of state agencies within the Committee's jurisdiction, even outside of the seven-year cycle.

VISION

For South Carolina agencies to become, and continuously remain, the most effective state agencies in the country through processes which eliminate waste and efficiently deploy resources thereby creating greater confidence in state government.

MISSION

Determine if agency laws and programs are being implemented and carried out in accordance with the intent of the General Assembly and whether they should be continued, curtailed, or eliminated. Inform the public about state agencies.

SUBCOMMITTEES



Economic Development, Transportation, and Natural Resources



Education and Cultural Affairs



Healthcare and Regulatory



Law Enforcement, Civil and Criminal Justice

METHODOLOGY

The Committee evaluates:

- ❖ the application, administration, execution, and effectiveness of the agency's laws and programs;
- ❖ the organization and operation of the agency; and
- ❖ any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation pertaining to the agency.

STUDY PROCESS

01

Full Committee schedules agency for study and gathers initial information from agency and the public

02

Subcommittee investigates through meetings and information requests

03

Subcommittee publishes report

04

Full Committee considers subcommittee report and may conduct further investigation

05

Full Committee publishes report

AGENCY OVERVIEW

DEPARTMENT OF CONSUMER AFFAIRS

The South Carolina Department of Consumer Affairs (“DCA”/” Department”) is the state’s consumer protection agency. Established in 1974, DCA has nearly fifty years of experience in protecting South Carolina consumers while recognizing those businesses that act honestly and fairly. The General Assembly has charged the DCA with administering, interpreting, and enforcing over one hundred twenty statutes, including the S.C. Consumer Protection Code. Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement, and education.

LEADERSHIP

The Commission on Consumer Affairs is the policy making and governing authority of the S.C. Department of Consumer Affairs, appoints the Administrator and is responsible for enforcement of the S.C. Consumer Protection Code.

AGENCY HEAD

- ❖ Carolyn Lybarker began her career with the agency in June 2004 as a law clerk, later becoming a Staff Attorney.
- ❖ She served as Acting Administrator from February 2011- October 2011, when she was appointed DCA’s fifth Administrator.

COMMISSION

- ❖ The Commission on Consumer Affairs is composed of nine members, one of whom is the Secretary of State.
- ❖ The General Assembly elects four other members from outside the legislature.
- ❖ The Governor appoints four members whose appointments are confirmed by the Senate.

STATUTES

120

Statutes to administer & enforce.

EMPLOYEES

45

Authorized FTEs

FUNDING

\$4,500,399

FY23 Operating Budget

DIVISIONS

Administration
Advocacy
Consumer Services
Identity Theft Unit
Legal
Public Information and Education

SUCSESSES & CHALLENGES

Identified by the agency.

SUCSESSES

- ❖ Making all content accessible to all education levels of consumer/business.
- ❖ Embracing and implementing technology to streamline processes.
- ❖ Being a catch-all agency. Consumers often go to the DCA when they don’t know where to go.
- ❖ Ability to make internal adjustments in response to challenges.

CHALLENGES

- ❖ Consumers are filing complaints at increased levels.
- ❖ Inability to adjust licensing fees on DCA’s own authority, a power given to other agencies.
- ❖ General citizen knowledge of DCA and the services offered.
- ❖ Lack of authority regarding complaints received under the Homeowner Association Act.
- ❖ Employee retention/recruitment.

COMMITTEE MEETINGS

06

8/9/2023
9/26/2023
10/19/2023
11/9/2023
3/5/2024
3/28/2024

FINDINGS

During the study of the Department of Consumer Affairs (agency or DCA), the Healthcare and Regulatory Subcommittee (Subcommittee) of the House Legislative Oversight Committee (Committee) adopts **15 findings** pertaining to organizational structure, Commission on Consumer Affairs (Commission) governance, operations, regulatory actions, consumer protection reports, and consumer issues.

Findings note information a member of the public or General Assembly may seek to know or on which they may desire to act.

FINDING 1 DCA is uniquely structured relative to consumer protection agencies across the country, as multiple entities may exist in other states to provide similar and like services for consumers.

Each state provides its residents consumer protection services by assigning related tasks to specific agencies. These agencies provide advocacy and provision of services designed to mitigate fraud, resolve disputes between consumers and businesses, enforce business licensing requirements, and educate the public. South Carolina's consumer protection agency is tasked with formulating and modifying consumer laws, policies, and

regulations; regulating the consumer credit marketplace; resolving complaints arising out of the production, promotion, or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promoting a healthy, competitive business climate with mutual confidence between buyers and sellers. The bundling of these responsibilities into one agency is relatively unique to South Carolina. According to agency staff testimony, Maine is the only state whose consumer protection agency provides a similar set of services to consumers.² Most states provide consumer protection services across multiple agencies. North Carolina, for example, has six agencies that perform some of the functions provided by DCA.

STATES WITH ONE CONSUMER PROTECTION AGENCY

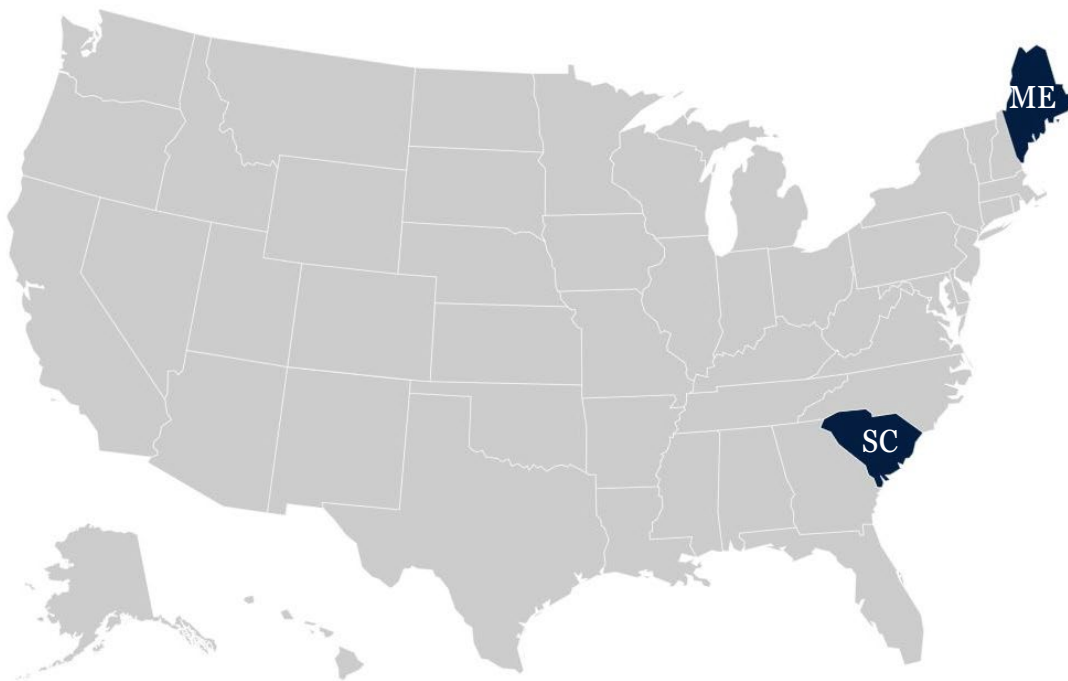


Figure 1. South Carolina and Maine are the only two states that bundle consumer protection responsibilities into one agency.

FINDING 2

The General Assembly passed Act No. 45 (2023), a bill related to motor vehicle sales contract closing fees to specify the way DCA is to provide enforcement measures. Complaints of government overreach, onerous DCA inspection practices, and hostility towards the motor vehicle industry, prompted legislative action. The bill was signed by the Governor May 16, 2023.

Automobile dealers across the state lobbied the General Assembly individually and through their trade association, the South Carolina Automobile Dealers Association, regarding perceived overreach of the Department of Consumer Affairs.¹ Per statute, the agency is responsible for ensuring motor vehicle sales contracts closing fees are presented to consumers according to state law.² A closing fee allows automobile dealers to recover costs associated with all administrative and financial work needed to transfer a vehicle to a consumer. Prior to the passage of Act No. 45, DCA had statutory authority to access a vehicle dealer's books, accounts, and records to determine if the dealer was in compliance with applicable state law.³ This broad authority and agency requests for records, deemed onerous and unnecessary by affected automobile dealers, created an acrimonious regulatory environment and relationship between DCA and automobile dealers.⁴ According to testimony provided by a representative of the South Carolina Automobile Dealers Association, the legislation resolved 98% of their concerns.

DCA has sought to inform automobile dealers of the changes associated with the legislation. These efforts include the following: the Department updated its closing fee filing forms as well as its online filing system, agency staff held a webinar for motor vehicle dealers to explain the changes in the statute, staff posted a video of the training to YouTube where it has been viewed 157 times, agency staff emailed all dealers to make them aware of its new dedicated webpage for motor vehicle dealers as well as the updated *Guide for Auto Dealers and Closing Fee FAQs*, and agency staff presented at DCA's annual webinar on renewals.⁵

Additional information regarding Act No. 45 can be found in Appendix A.

FINDING 3

DCA's industry specific statutes permit the agency to retain revenue generated by fees and fines (e.g., licensing fees, registration fees, violation fines, etc.). The retainment of these funds is meant to create a self-sustaining finance model for these programs. DCA is not permitted to adjust fees and fines unilaterally; the agency requires approval from the General Assembly.

DCA's budget is highly susceptible to disruption as 55% of revenues are generated through programs administered and enforced by the agency.⁶ Economic shocks to industries licensed by the agency can dramatically reduce agency revenues.

According to testimony provided by agency staff, 45% of agency revenues come from funds appropriated by the General Assembly.⁷ The other 55% of revenues are generated through fees and fines associated with regulating industries under the agency's purview.⁸ The state's shift from funding the agency with general funds created a new business model by which the agency operates. Per staff testimony, statute permits the agency to retain funds collected for the administration and enforcement of laws specific to licensed industries.⁹ Agency staff further stated the funding model presented in statute suggests that funds obtained through regulatory enforcement of licensed industries should cover the costs associated with these programs.¹⁰ Considering the agency's inability to set its own fees, as fees are set in statute, a true self-funding model cannot be implemented.¹¹ Major disruptions in regulated industries may result in significant reductions in Other Funds revenues. The 2008-2009 recession, as an example presented by agency representatives, resulted in broker licensing fees falling from \$1 million to \$200,000.¹² A self-funding model operates most efficiently when agency leaders have the flexibility to change fees and fines as economic conditions necessitate.

Additional information regarding fees and fines can be found in Appendix B.

EXPERT WITNESS EXPENSE AS % OF TOTAL OPERATION EXPENSES

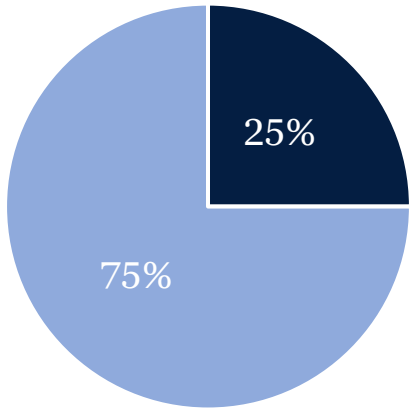


Figure 2.¹³ Percent of total operating expenses that are used for expert witnesses. An operating expense is an expenditure resulting from an organization’s day-to-day operations.

FINDING 4

In 2023, the agency’s operating expenses totaled \$1,039,276, of which \$263,543, or 25%, was spent on expert witnesses and consultants.¹⁴

DCA’s consumer advocacy work requires the utilization of expert witnesses and consultants. According to agency staff, expert witnesses and consultants were DCA’s largest fixed cost expense in 2023.¹⁶ The provision of consumer advocacy work in the utility rates space has required most of the expert witness and consulting support procured by the agency; these complex cases are adjudicated before the Public Service Commission.¹⁷ For example, Duke Energy’s electricity rate case required the assistance of three experts.¹⁸ Of the 30 topics presented in this case, DCA’s three expert witnesses were involved in three at a cost of \$135,000.¹⁹ DCA’s role in these cases is to represent the interest of consumers and residential customers.²⁰ The agency’s ability to effectively represent consumer interest is impacted by funds available for experts and consultants as the agency is only able to intervene in three to four

cases per year due to cost.²¹ According to agency staff testimony, \$175,000 was requested in the FY2024-25 budget to hire additional experts so DCA can cover more issues in a case, participate in more cases, or a combination of the two.²²

FINDING 5

From FY2019 to FY2023, DCA staff visited 33 of the state’s 46 counties. County visits are largely contingent upon agency resources, consumer requests for presentations, and DCA participation in local events.²³

DCA provides a variety of services to assist consumers and businesses as they operate in the marketplace.²⁴ Upon request, agency staff will travel to locations around the state to present consumer-related educational material to community groups and other like organizations.²⁵ Constituents can contact the agency directly or visit the agency’s website to request an in-person presentation.²⁶ According to agency staff, over 30 specific topic presentations were presented to groups across the state in the recent fiscal years.²⁷ Of the state’s 46 counties, 13 have not been visited by DCA staff.²⁸ The

SC COUNTIES VISITED BY DCA FROM FY19-FY23

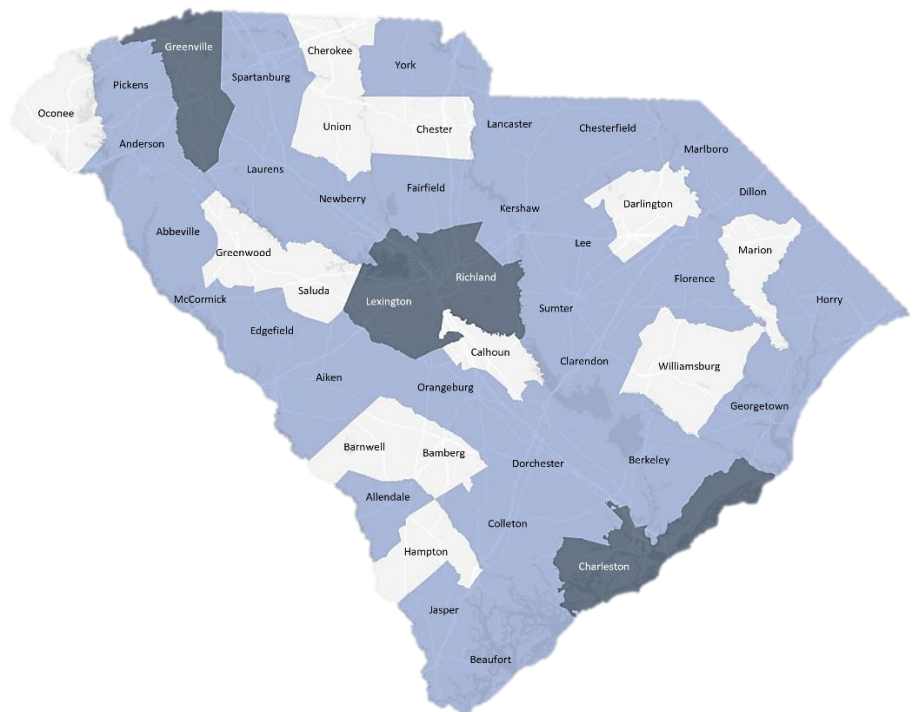


Figure 3.¹⁵ Counties visited by DCA from FY19-FY23 shaded in blue, with the most visited counties shaded in dark blue.

agency’s goal to visit each county was derailed by the pandemic and a staff vacancy.²⁹ The 13 counties not visited by DCA in the last five years are some of the state’s more rural counties (e.g., Oconee, Cherokee, Bamberg, etc.). The counties with denser populations and industrial bases utilize the services of DCA more frequently. According to agency staff, the agency receives presentation requests from Charleston, Lexington, Richland, and Greenville counties regularly.³⁰ The lack of demand in rural areas has skewed agency resources to these high demand counties.

FINDING 6

DCA’s partnership with the Department of Corrections has provided inmates scheduled for community reentry access to consumer education opportunities (e.g., credit reports, identity theft remediation, etc.).³¹

The development of interagency partnerships has assisted DCA with reaching South Carolina consumers. In the past year, DCA has participated in programming with the Department on Aging, South Carolina Attorney General’s Office, Department of Corrections, non-profits, and other organizations.³³ The agency’s yearslong effort to partner with the Department of Corrections has yielded a positive return for the agency.³⁴ DCA staff provide monthly webinars to inmates scheduled for reentry regarding credit reports, credit scores, identity theft remediation, and other consumer-related topics.³⁵ According to agency staff, inmates are susceptible to

identity theft due to time spent incarcerated and away from activities that would likely reveal the theft of their identity.³⁶ Since DCA is the agency tasked with assisting consumers with identity theft-related questions and support, connecting inmates to these services prior to reentry enhances their ability to successfully integrate back into their community.^{37 38}

FINDING 7

Most consumer complaints are captured in the following categories: vehicles, real estate, and contractors. In FY2023, the agency received 1,051 vehicle complaints, 772 real estate complaints, and 483 contractor complaints.³⁹

DCA processes and mediates written consumer complaints, seeking to find fair solutions for consumers and businesses.⁴⁰ In FY2023, consumers reported 1,051 vehicle-related complaints, 772 complaints associated with real estate, and 483 contractor-related complaints.⁴¹ Vehicle complaints fell into three subcategories: vehicle repairs, vehicle sales, and vehicle credit sales. Homeowner associations and timeshares garnered most real estate complaints, and solar, general repair, and security services were the most reported contractor-related complaints.⁴² DCA seeks to resolve issues between consumers and businesses through a voluntary mediation process. The process is voluntary as DCA does not have statutory authority to enforce state law or require a particular outcome.⁴³ DCA’s goal is to facilitate positive communication between consumers and

LEADING COMPLAINT CATEGORIES: FY2022-23

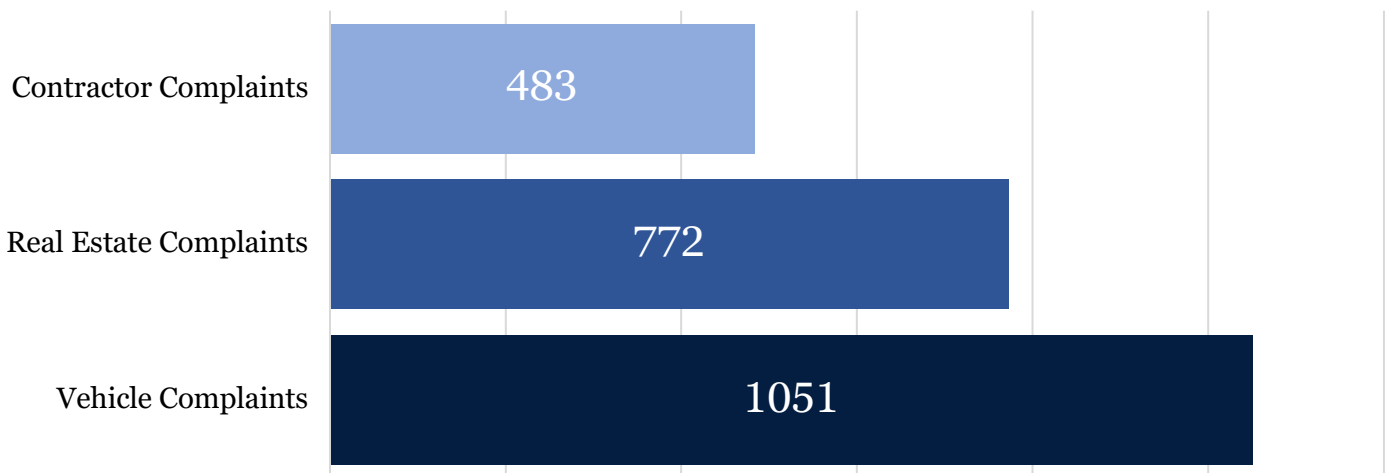


Figure 4.³² Most consumer complaints received by DCA are in the categories of contractors, real estate, and contractors.

businesses to seek resolution of disputes.³⁹ According to agency staff, approximately half of consumers are satisfied with the resolution of disputes mediated by DCA.⁴⁰ Some mediation cases result in a business providing a refund to the consumer, which may or may not be the full amount.⁴¹ In other instances, the consumer may decide to pursue further legal action through a private attorney or through magistrates court.⁴⁴

FINDING 8

DCA regulates 12 specific industries and has regulatory authority for Consumer Credit Sellers, Consumer Lenders, Consumer Lessors, and Rent-to-own.⁴⁵ Six of these industries are required to provide DCA’s name and contact information in contracts or other forms of notification to a consumer.⁴⁶

DCA is the administrator and enforcer of law governing consumer credit transactions and has responsibility for 12 industries.⁴⁸ According to agency staff, DCA’s name and contact information, in contracts or through other notice to a consumer, must be provided to consumers by law for the following industries: Mortgage Brokers, Cable Providers, Timeshare Resellers, Continuing Care Retirement Communities, Renewable Energy Retailers, and Professional Employer Organizations.⁴⁹ Requiring

notice be made to consumers regarding who to contact in the event of an issue with a regulated industry promotes accountability and consumer confidence. The absence of these requirements may create challenges for consumers to address complaints and receive satisfactory resolution to their grievances.

FINDING 9

Homeowner associations (HOA) are not required to register with DCA or any other state or local agency. Since there is no registration requirement, the number of HOAs operating in the state is unknown.

The state’s ability to effectively monitor and develop policies and regulations for HOAs may be limited as HOAs are not required to register with any state or local authority.⁵⁰ Further, enforcement of state statutes governing HOAs may pose a challenge without an effective registration process. The only way to identify these entities is if they choose to register as a limited liability company (LLC) or corporation, have “homeowners” or “association” in its name, or choose to register as a nonprofit corporation.⁵¹ These registration methods are not meant to classify the entity as an HOA for purposes of identification as agency staff do not have a system by which they can access, track, or identify these organizations.⁵² As the agency tasked with

SIX INDUSTRIES REQUIRED TO PROVIDE DCA’S NAME AND CONTACT INFORMATION

Industry	Statute or Regulation	Statute or Regulation Title
Mortgage Brokers	§ 37-23-70 (D)	Prohibited acts; complaints; penalties; statute of limitations; enforcement; costs.
Cable Providers	§ 58-12-360	Customer service requirements
Timeshare Resellers	§ 27-32-55 (A)(8)	Vacation time sharing resale services; written contract; and other requirements
Continuing Care Retirement Communities	S.C. Regs. 28-600 (M)(1) (e)	Licensing Standards for Continuing Care Retirement Communities
Renewable Energy Retailers	S.C. Regs. 28-78 (B)(1), (c) (2)	Sale or Lease of Renewable Energy Facilities
Professional Employer Organizations	§ 40-68-130	Form and content of licenses and notices; display

Figure 5.⁴⁷ DCA regulates 12 industries. Six of these industries are required to provide DCA’s name and contact information in contracts or other forms of notification to a customer.

interfacing with the public regarding issues with HOAs; collecting data specific to consumer complaints; and reporting this data to the Governor, General Assembly, and public; the ability to access information for all HOAs operating in the state may benefit the agency and its ability to serve consumers.⁵³

FINDING 10

DCA is governed by a nine-member Commission and currently has four vacancies and four members serving expired terms.⁵⁴ Members serving expired terms may continue to serve until they are reappointed or replaced.⁵⁵

DCA is one of over 250 state entities governed by a board or commission.⁵⁷ This governance structure places oversight of the agency, development of metrics for evaluation, and hiring of the agency executive in the hands of a volunteer commission.⁵⁸ DCA’s Commission is composed of nine members; one member shall be the Secretary of State as an ex officio member, four members shall be appointed by the Governor with advice and consent of the Senate, and the remaining four members shall be elected by the General Assembly.⁵⁹ According to agency staff testimony, there are four vacancies on the Commission and five members serving in holdover status. ⁶⁰The absence of a full cadre of Commissioners creates challenges as agency leadership looks to the

Commission for guidance, and the public entrusts the Commission to hold agency leadership accountable.⁶¹ Agency leadership has informed the Governor of the Commission’s condition and the need for new appointments.⁶² The General Assembly’s Joint Committee to Review Candidates for the South Carolina Consumer Affairs Commission, which is tasked with selection of four Commission members, is responsible for notifying the public of vacancies and opportunities to serve on the Commission.⁶³ According to information provided by agency staff, the committee issued a media release on December 14, 2018, to announce four vacancies on DCA’s Commission.⁶⁴ This committee has not published any subsequent media releases since that time.

FINDING 11

DCA’s Council of Advisors on Consumer Credit has five vacancies and 11 active members serving expired terms.⁶⁵ Members serving expired terms may continue to serve until they are reappointed or replaced.⁶⁶

The Council of Advisors on Consumer Credit consists of 16 members who are appointed by the Governor.⁶⁷ One of the advisors is designated by the Governor as chairman.⁶⁸ Agency staff referred to council advisors as “boots on the ground” assets as they are involved in the

DEPARTMENT OF CONSUMER AFFAIRS COMMISSION

Position	Position Title	Current Members	Appointed By	Appointed Date	Expiration Date
At Large	Member	Campbell, David R.	Gov. Henry McMaster	5/11/2017	8/30/2021
At Large	Member	Pennington, William F. Jr.	Gov. Henry McMaster	5/11/2017	9/20/2019
At Large	Member	Pressly, John	Gov. Henry McMaster	5/14/2019	9/30/2022
At Large	Member	Lewis, James E. Jr.	General Assembly	5/8/2019	6/30/2023
At Large	Member	VACANT			
At Large	Member	VACANT			
At Large	Member	VACANT			
At Large	Member	VACANT			
Ex Officio	Secretary of State				

Figure 6.⁵⁶ DCA is governed by a nine-member Commission and currently has four vacancies and four members serving expired terms.

marketplace and are aware of trends and issues facing consumers.⁶⁹ The Council meets quarterly and advises and consults on issues regarding the South Carolina Consumer Protection Code and may make recommendations to the administrator.⁷¹ Given the importance of securing council members skilled in areas within the scope of the Consumer Protection Code, service on the council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.⁷² Currently, there are five vacancies on the council, and the 11 active council members are serving in holdover status since their terms have expired.⁷³ The Governor's Office has been made aware of the vacancies and expired terms and the need to make new appointments.^{74 75}

FINDING 12

DCA employs a risk-based system to determine which licensed businesses to visit. This system is in place due to limited agency resources (e.g., staff, funding, etc.).^{76 77}

DCA's investigator team consists of five staff who are responsible for assisting consumers with complaints, educating businesses regarding licensing and regulations, and inspecting and enforcing regulations within the agency's jurisdiction.⁷⁸ Inspectors do not impose sanctions but do perform compliance reviews and conduct inspections and investigations to gather information which may lead to the issuance of sanctions.⁷⁹ According to agency leadership, the agency's goal is to visit 25% of licensees annually across all industries licensed by the agency.⁸⁰ This goal reflects the

DEPARTMENT OF CONSUMER AFFAIR'S COUNCIL OF ADVISORS ON CONSUMER CREDIT

Position	Position Title	Current Members	Appointed By	Appointed Date	Expiration Date
At Large	Member	Samuel, Alethea	Governor Nikki R. Haley	7/21/2014	8/15/2018
At Large	Member	Rhodes, Scott C.	Governor Nikki R. Haley	11/3/2015	8/15/2019
At Large	Member	McLeod, Victor C. "Chip" III	Governor Nikki R. Haley	8/17/2015	8/15/2019
At Large	Member	Bastian, Kristin M.	Governor Nikki R. Haley	11/3/2015	8/15/2017
At Large	Member	Godwin, James L.	Governor Nikki R. Haley	8/9/2016	8/15/2020
At Large	Member	Wilkes, Robert J.	Governor Nikki R. Haley	8/9/2016	5/15/2018
At Large	Member	Hardee, Ruth Ellen	Governor Nikki R. Haley	9/22/2015	8/15/2019
At Large	Chair	Bramlett, Sharon C.	Governor Nikki R. Haley	7/21/2014	8/15/2018
At Large	Member	Cole, Randall C.	Governor Nikki R. Haley	8/9/2016	8/1/2020
At Large	Member	Walters, James D.	Governor Nikki R. Haley	8/14/2014	8/15/2017
At-Large	Member	Palmer, Virginia K.	Governor Nikki R. Haley	8/17/2015	8/15/2019
At Large	Member	VACANT			
At Large	Member	VACANT			
At Large	Member	VACANT			
At Large	Member	VACANT			
At Large	Member	VACANT			

Figure 7. ⁷⁰ DCA's Council of Advisors on Consumer Credit has five vacancies and 11 active members serving expired terms.

agency’s available resources, not its desire to visit licensed businesses under its statutory purview.⁸¹ According to agency staff, they must allocate resources and focus on the industries which create the greatest opportunity for consumer harm⁸². The higher the risk in the industry, the more likely resources will be allocated for visits and review by the agency.⁸⁴ In a regulatory environment, the more frequently DCA staff can visit businesses and ensure compliance with the law, the safer and more equitable the marketplace becomes for the consumer. The only industry with a statutorily required inspection period is the funeral home industry, specifically funeral businesses that offer Preneed Funeral Contracts⁸⁵. These businesses must receive a visit from DCA every two years.⁸⁶

As illustrated in Figure 8, the highest percentage of DCA visits are to entities that provide these contracts.

FINDING 13

DCA does not include recommendations or opinions in an executive summary to contextualize data provided in the Mortgage Log Data Report, State of Credit Report, and Homeowners Association Complaint Report.

DCA aggregates various forms of consumer data to assist policymakers with the development of policies designed to help safeguard consumers as they participate in the marketplace. The *Mortgage Log Data Report, State of Credit Report, and Homeowners Association Complaint Report* provide insight into the consumer environment

TOTAL NUMBER OF BUSINESSES PER INDUSTRY LICENSED OR REGISTERED WITH DCA AND THE PERCENTAGE VISITED IN FY23 BY DCA

Industry	Total Number of Businesses as of Aug. 2022	Percentage Review FY23
Preneed Funeral	350	41.70%
Physical Fitness	596	34.70%
Pawnbrokers	119	33.60%
Mortgage Brokers	554	17.30%
Discount Medical Plan Organizations (DMPO)	33	15.20%
Continuing Care Retirement Communities (CCRC)	35	14.30%
Motor Vehicle Dealers	829	7.20%
Athlete Agents	167	0.00%
Credit Counseling	89	0.00%
Motor Club	25	0.00%
Prepaid Legal	10	0.00%
Professional Employer Organizations (PEO)	111	0.00%
Credit Grantor Notification	1643	0.00%
Maximum Rate Schedule	1622	0.00%
Credit Grantor Notification - Rent-to-Own	5	0.00%

Figure 8. ⁸³ Total number of businesses in South Carolina per industry licensed by DCA and the percentage of these businesses that were visited by DCA in FY23.

specific to mortgages, credit, and homeowner association issues. The data provided in these reports are useful but often lack context, which is needed to assist policymakers with policy decisions. According to agency staff, the *Mortgage Log Data Report*, for example, requires mortgage brokers and lenders to submit specific information regarding the mortgage application process (e.g., credit score, gender, race, etc.).⁸⁷ Understanding and contextualizing the data provided may pose a challenge, as policymakers, absent specific statements or observations from DCA, must make determinations regarding what the data purports about the state of these consumer environments. Evaluating large amounts of data is time-consuming and may lead to underutilization of the information provided in DCA's reports.

FINDING 14

DCA is statutorily required to collect HOA consumer complaint data and report this information to the public, Governor, and General Assembly on an annual basis.⁸⁹ DCA does not regulate HOAs, administer the South

Carolina Homeowners Association Act (HOA Act), nor enforce the HOA Act, but does provide voluntary mediation to assist with dispute resolution.⁹⁰

An HOA is an organization that makes and enforces rules that govern a planned community. Consumers who purchase homes in these communities agree to the terms, rules, and conditions provided in the HOA agreement and are subject to the HOA's enforcement of the agreement. These organizations do not operate unfettered but are governed by the HOA Act and other tangentially associated laws (e.g., SC Nonprofit Corporations Act, etc.). While South Carolina does not have a comprehensive law detailing how an HOA must operate, associations must follow the HOA Act⁹¹. Consumers who contact DCA are at times confused regarding the agency's usefulness as the agency does not regulate HOAs, administer the HOA Act, nor enforce the HOA Act⁹². While the agency does not perform these tasks, DCA does have a complaint submission process to collect HOA complaint data; the agency assists with mediation, shares HOA complaint data with the Governor

COMPLAINT FILING SYSTEM FOR DEPARTMENT OF CONSUMER AFFAIRS

The screenshot shows the 'COMPLAINT FILING SYSTEM' interface. At the top, there are navigation tabs: HOME, COMPLAINT FILING (selected), BUSINESS RESPONSE, and PUBLIC INFORMATION. Below the tabs, the breadcrumb trail reads 'Home > Consumer Login'. The main heading is 'Consumer Complaint Filing' with the sub-heading 'LOGIN TO ACCESS YOUR ACCOUNT'. A message states: '» Login below or [register for an account](#) to file a complaint.' There are two input fields: 'Username' and 'Password'. Below the password field is a blue 'Login' button. Two links are provided: '[Forgot your password?](#)' and '[Forgot your username?](#)'. At the bottom, there is a 'Contact Information' section with the following details: Email: scdca@scconsumer.gov, Phone: 803-734-4200 or toll-free in South Carolina: 1-800-922-1594, Website: [Consumer Affairs Home](#). A logo for 'DGAA' (Digital Government Advancement Award) is visible in the bottom right corner.

Figure 9.⁸⁸ Screenshot of DCA's Complaint filing system taken on 4/17/2024 from the Department's website. <https://applications.sc.gov/DCAComplaintSystem/Login/ConsumerLogin.aspx>.

and General Assembly annually, and provides general HOA education to homeowners and HOAs.^{93 94}

FINDING 15

In 1982, the General Assembly passed the Consumer Protection Code Revision Act, which requires creditors charging an Annual Percentage Rate greater than 18% to file a Maximum Rate Schedule with DCA.⁹⁵ In some cases, this reporting requirement has not prevented creditors from setting interest rates as high as 850%, a rate considered predatory by DCA.⁹⁶

The General Assembly passed the Consumer Protection Code Revision Act of 1982 in response to the near collapse of the consumer credit market⁹⁷. The law deregulated interest rates, eliminated the state's tiered rate structure, and permitted creditors to determine the rates charged and assessed to consumers in the credit market.⁹⁸ These changes were made to ensure the state's consumers would continue to have access to the consumer credit market.⁹⁹ Deregulation of the industry did not remove the checks and balances on the market. The legislation required creditors establishing rates above 18% to submit a Maximum Rate Schedule to DCA and to post the schedule in a conspicuous place at the creditor's place of business.¹⁰⁰ These requirements provided DCA with pertinent information regarding the consumer credit market, but it did not dissuade creditors from charging and assessing exorbitant rates. According to agency staff, DCA has seen rates as high as 850% issued on a Maximum Rate Schedule.¹⁰¹ Additionally, testimony received from agency staff intimated that the General Assembly likely did not imagine that creditors would set rates this high; the General Assembly possibly considered rates topping out at between 20-30%.¹⁰²

RECOMMENDATIONS

During the study of the Department of Consumer Affairs, the Healthcare and Regulatory Subcommittee (Subcommittee) of the House Legislative Oversight Committee (Committee) adopts **14 recommendations**.

With any study, the Committee recognizes **these recommendations (e.g., continue, curtail, improve areas potentially, and/or eliminate agency programs, etc.) will not satisfy everyone nor address every issue or potential area of improvement at the agency.** Recommendations are based on the agency’s self-analysis requested by the Committee, discussions with agency personnel during multiple meetings, and analysis of the information obtained by the Committee. This information, including, but not limited to, the Initial Request for Information, Accountability Report, Restructuring Report, and videos of meetings with agency personnel, is available on the Committee’s website.

RECOMMENDATION 1

DCA should include an executive summary in the following reports: Mortgage Log Data Report, State of Credit Report, and Homeowners Association Complaint Report. The executive summary should state the report’s purpose, summarize and highlight the central points, give context to the data elements provided in the report, and include policy recommendations for the General Assembly to consider when consumer protection issues are identified.

As noted in Finding #13, DCA does not include statements or opinions in an executive summary to provide context to data provided in the *Mortgage Log Data Report*, *State of Credit Report*, nor *Homeowners Association Complaint Report*. The Governor, General Assembly, and public rely on DCA staff, as the state’s consumer protection experts, to provide not only data but also context regarding what the data show and to present recommendations to resolve issues when

identified. According to staff, data provided in these reports are meant to inform requisite stakeholders¹⁰³. To assist stakeholders who have an interest in the data provided in DCA reports, agency staff should include in each report’s executive summary significant findings found in their analysis of the data. These findings should explain how consumers have been affected and provide policy recommendations for how these issues may be addressed or resolved.

RECOMMENDATION 2

The agency should develop metrics and targets to evaluate performance at the division level (e.g., Legal, Public Information & Education, etc.). These metrics should support the agency’s broader goals and objectives (e.g., inspections by licensed industry type, online and in-person trainings, etc.).

The establishment of metrics and targets is essential to the objective evaluation of an agency’s internal

DIVISIONS OF THE DEPARTMENT OF CONSUMER AFFAIRS

Administration	Legal
Advocacy	Public Information and Education
Consumer Services	Identity Theft Unit

Figure 10. The six divisions of the Department of Consumer Affairs.

processes, work product, and customer service outcomes. DCA is divided into 6 divisions: Administration, Advocacy, Consumer Services, Legal, Public Information and Education, and Identity Theft Unit. While the agency has broad agencywide accountability goals, as mentioned by agency staff during testimony, distinct metrics at the division level may allow for more focused accountability.¹⁰⁴ DCA staff, when asked about how the agency's web traffic compared to similar consumer protection agencies in other states, agency staff testified that they did not have this information and only used internal agency activity to evaluate themselves.¹⁰⁵ Agency leadership should evaluate each division and determine the efficacy of metrics, if present, and ensure future implementation of division-specific metrics.

RECOMMENDATION 3

DCA should develop a comprehensive marketing strategy designed to increase agency visibility and consumer awareness; promote agency programs and services within the state (e.g., licensing, identity theft reporting, etc.); enhance awareness of consumer protection issues (e.g., scams, fraud, etc.); and promote services provided to regulated industries, businesses, and consumers. The department should use any and all mediums, including social media, to promote awareness of the complaint process. The department should refrain from messaging which unfairly targets specific businesses. Agency leadership should seek technical expertise from the South Carolina Department of Parks, Recreation, and Tourism (PRT) as internal resources may not be sufficient for plan development. PRT leadership has agreed to assist DCA with the development of its strategy.

DCA staff identified public awareness of the agency as a challenge that has been an issue for quite some time.¹⁰⁶ As the consumer protection advocate for the state's 5.3 million residents, awareness of the agency and its services is key to the agency achieving its mission. According to agency staff, there has been an effort to make sure consumers know the state has a consumer protection agency, but awareness generally results following a negative experience encountered by a consumer.¹⁰⁷ Agency staff would prefer greater general knowledge and awareness of the agency driven through means other than an individual consumer crisis.¹⁰⁸

According to agency staff, limited resources for marketing is the key factor associated with the agency's inability to effectively reach the state's consumers¹⁰⁹. Staff also stated the agency does not have a set budget for social media nor advertising.¹¹⁰ Other than the approximately \$50,000 spent on hard copy publications, agency staff stated the agency does not spend much money on marketing.¹¹¹ Since DCA staff have been challenged to develop a plan that effectively raises the profile of the agency, staff should seek technical expertise through a partnership with PRT. PRT has a cadre of marketing staff with proven outcomes, having successfully implemented a marketing strategy at the state and national level. PRT leadership has offered to provide DCA technical assistance as DCA develops a marketing strategy designed to raise its profile.

RECOMMENDATION 4

DCA should update the SCDCA Divisions page on its website to include names, position titles, and pictures of current agency leadership.

An agency's website is generally one of the first mediums of contact a customer has with an agency. The look, feel, and ease of this public-facing medium is important to the customer experience and an agency's efforts to provide excellent customer service. The SCDCA Divisions webpage identifies the agency's six divisions and provides a description of each divisions' responsibilities.¹¹² Currently, three of the six divisions presented do not provide a picture of the division senior executive nor their official title. The agency should update its website to properly list and present agency staff and their associated position titles.

RECOMMENDATION 5

DCA should study the efficacy of state law requiring mortgage brokers to annually submit a mortgage log to the agency. The agency's study should include an analysis of the mortgage environment during the time the law was enacted; the purpose, intent, and effect of S.C. Code Section 40-58-65 since enactment; and evaluation of the industry's perceived value of submitting mortgage log data. Agency staff shall submit this report to the Committee within one year of approval of the study report.

DCA's submission of the annual mortgage log report is a requirement of the South Carolina Mortgage Lending Act

(Act No. 287 of 2010), which became effective on January 1, 2010.¹¹³ The Act added Chapter 22, “Mortgage Lending,” to the Consumer Protection Code, located in Title 37, and amended Chapter 58, “Licensing of Mortgage Brokers,” of Title 40, “Professions and Occupations.”¹¹⁴ This legislation was, in part, a response to the mortgage crisis experienced between 2007-2009.¹¹⁵ The affected parties (i.e., lenders, servicers, and brokers) are required to maintain and report mortgage data for the previous calendar year annually.¹¹⁶ According to agency testimony, data provided in the *Mortgage Log Report* is meant to inform the General Assembly of activity in the mortgage lending environment.¹¹⁷ In the approximately 14 years since the legislation passed, no review or analysis of the efficacy of the law has been performed. The absence of such analysis leaves lenders, servicers, brokers, and DCA to collect data that may not provide the return the General Assembly anticipated in 2010. The legislation was not without challenge, as Governor Sanford vetoed Act No. 287, only to have his veto overridden by the General Assembly.¹¹⁸

RECOMMENDATION 6

DCA should post conspicuously on its website a statement to inform entities licensed and registered by the agency of the right to contest an administrative order pursuant to applicable state law.

According to DCA staff, education is a core component of the agency’s mission¹¹⁹. This element of the agency’s mission includes making a licensed or registered business aware of its rights and responsibilities under various state laws.¹²⁰ DCA provides a variety of trainings to assist in the facilitation of information meant to educate both consumers and businesses.¹²¹ As the administrator statutorily tasked with licensing or registering 12 industries, violations of law may require businesses within these industry sectors to pay fines. The ability to contest fines when deemed appropriate by the effected business is essential to creating a fair marketplace for businesses and consumers. DCA should ensure a licensed or registered business is aware of its rights provided in state law regarding disputes specific to fines imposed by the agency. Posting this information conspicuously on the agency’s website may assist in providing this education.

RECOMMENDATION 7

DCA should post minutes from Commission meetings on its website and archive agendas and minutes for public access.

According to agency staff, DCA’s Commission meets monthly to receive updates on agency activities.¹²² The meeting schedule and list of Commissioners can be found on the agency’s website, but minutes and agendas from prior meeting are not available nor archived. Agency staff should make available on its website minutes from previous meetings and associated agendas for public access. Additionally, DCA’s Commission should develop a policy requiring the posting of minutes and agendas. This policy should include when the documents should be posted and the length of time documents should be made available on the agency’s website.

RECOMMENDATION 8

DCA should host annual meetings with trade associations, businesses, and regulated industries licensed or registered by the agency. Agency staff may use these meetings to provide updates regarding consumer protection issues specific to each industry, to seek feedback regarding agency communication and services, and to give updates regarding statutory or regulatory changes. When feasible, these meetings should be held in person with the option to participate via web conferencing technologies (e.g., Zoom, Webex, conference calls, etc.).

According to DCA leadership, the agency is open to engagement with all trade associations with respect to trainings and educational information specific to the industries they represent.¹²³ As education is a core component of DCA’s mission, engagement and communication with stakeholders is foundational to the adherence to statutes governing the agency’s mandate.¹²⁴ Agency leadership identified over 120 statutes that are within the scope of DCA’s authority or jurisdiction.¹²⁵ Given the agency’s limited resources, which, for example, only permit DCA’s investigators to visit 25% of licensees annually, bringing industry representatives and stakeholders to the agency through hosted meetings may assist with the dissemination of pertinent industry-specific information and provide opportunities for DCA to discuss developments occurring in the consumer protection ecosystem.¹²⁶ The agency’s

Public Information and Education division, which agency staff identified as the main education portal for DCA, serves consumers, businesses, and the media.¹²⁷ This division is responsible for informing consumers and businesses of their rights and responsibilities in the marketplace; this is achieved through traditional and alternative media distribution, media coverage, and publications.¹²⁸ In addition to the work agency staff are currently doing through the Public Information and Education division, annual meetings with industry representatives may develop better relationships between DCA, consumers, and businesses.

— MODERNIZATION OF LAWS —

RECOMMENDATION 9

The Committee recommends the General Assembly consider requiring regulated industries licensed or registered by DCA to provide a disclosure notice (i.e., agency’s contact information) to consumers who are engaged in official business with the licensed or registered entity.

Of the 12 regulated industries licensed or registered by DCA, only six are required per statute to provide a disclosure to consumers with DCA’s contact information.¹²⁹ Providing consumers notice of who to contact if a consumer protection issue arises beyond their ability to navigate is foundational to creating a

consumer-friendly marketplace. Currently, only mortgage brokers, cable providers, timeshare resellers, continuing care retirement communities, renewable energy retailers, and professional employer organizations are required to provide disclosures to consumers with DCA’s contact information¹³⁰. Implementing a mandatory disclosure requirement may provide consumers better access to resources to assist in the resolution of complaints. Additionally, agency leadership identified awareness of the agency as a significant issue as many consumers are unaware of the resources provided by DCA.¹³¹ Mandatory disclosure may also assist with general awareness of the agency.

RECOMMENDATION 10

The Committee recommends the General Assembly consider deleting statutes requiring the Department of Consumer Affairs to enforce laws specific to dispensing of an ophthalmic contact lens or lenses.

Chapter 25 of Title 37 directs DCA to enforce laws governing limitations on dispensing of an ophthalmic contact lens or lenses.¹³² In South Carolina, contact lenses must be prescribed by a licensed optometrist or ophthalmologist. These products are prohibited from being dispensed without a prescription and fitting. According to agency staff testimony, the statute governing dispensing of contact lenses should not fall under DCA’s purview as agency staff do not regularly visit places that sell and dispense contact lenses.¹³³ Costume contact lenses, though not used for vision correction, are typically sold at locations such as gas stations, beauty shops, and vape stores¹³⁴. Per S.C. Code Section 37-25-20, contact lenses require a prescription to be dispensed.¹³⁵ DCA provides information on its website to educate consumers about these products as they are dangerous and may cause severe damage to the eyes.¹³⁶

The Department of Labor, Licensing, and Regulation (LLR) is the licensing authority for prescribers of contact lenses (i.e., optometrists, ophthalmologists). Per the LLR 2023 Annual Accountability Report, the mission of the agency includes promoting the health, safety, and economic well-being of the public through regulation, licensing, enforcement, training, and education¹³⁷. As the licenser of professionals authorized to prescribe contact lenses, the enforcement of laws governing distribution of

**INDUSTRIES REQUIRED TO DISCLOSE
DCA’S CONTACT INFORMATION**

Mortgage Brokers
Cable Providers
Timeshare Resellers
Continuing Care Retirement Communities
Renewable Energy Retailers
Professional Employer Organizations

Figure 11. The six industries required to disclose DCA’s contact information to consumers.

contact lenses may be best managed at LLR. Agency leadership at LLR concurs with this assessment.

RECOMMENDATION 11

The Committee recommends the General Assembly consider amending code sections specific to vacation timesharing plans by changing the right to cancel from five days to 10 days.

A timeshare is a contractual agreement that provides a consumer access to properties at certain times each year. The contract is a lifetime commitment with limited right of rescission.¹³⁸ Given the lifelong permanency of the contract, agency staff recommend amending statute to allow consumers 10 days to cancel the contract after the initial contract signing date. Under state law, consumers have five days to cancel the contract. According to agency staff, allowing consumers more time to evaluate the efficacy of such a permanent decision may provide greater protections given the limited right of rescission and the difficulty and costs associated with attempting to cancel or exit the contract.¹³⁹

RECOMMENDATION 12

The Committee recommends the General Assembly consider amending state law to require HOAs have internal dispute resolution processes, comply with certain voting provisions of the Nonprofit Corporations Act, submit certain documents when responding to a complaint filed with DCA, and permit magistrates to hear all HOA disputes, regardless of the amount in controversy.

South Carolina has three acts associated with HOA governance: SC Homeowners Association Act, SC Nonprofit Corporations Act, and the SC Horizontal Property Act.¹⁴⁰ These acts provide direction regarding items such as HOA governing documents, HOA declarations, and bylaws.¹⁴¹ Per S.C. Code Section 27-30-340, DCA is required to collect certain data from consumers filing complaints against HOAs.¹⁴² In 2018, the agency received 92 complaints, and in 2022, the agency recorded 331 complaints.¹⁴³ The three top complaints reported involved failure to adhere to or enforce covenants, issues regarding maintenance and repairs, and failure to notify residents of HOA actions¹⁴⁴. Upon evaluation of claims received from consumers, agency

staff provided suggested legislative changes which may provide additional tools to reduce or resolve issues before they become formal complaints.¹⁴⁵ The legislative changes presented by agency staff include recommendations for HOA internal dispute processes, permitting magistrates to hear HOA disputes, changes to voting procedures, and preventing HOAs from charging consumers who file complaints to DCA or seek resolution to complaints through the dispute resolution process.¹⁴⁶

RECOMMENDATION 13

The Committee recommends the General Assembly consider amending code sections to require the inclusion of DCA's contact information and certain data elements in notifications of a security breach and to remove safe harbor and sync business and agency requirements for breach notifications.

According to agency staff, notifying consumers of data or security breaches, which may have exposed their personal identifying information, is time sensitive.¹⁴⁷ The legislative recommendations presented by DCA staff were originally suggested in 2013, but instead of these recommendations becoming statute, the General Assembly put the language in proviso and only applied it to state agencies.¹⁴⁸ DCA's Identity Theft Unit is tasked with informing residents about steps they can take to protect their personal identifying information, advising residents about how to spot ID theft, and offering help with remediating the impact of identity theft¹⁴⁹. For DCA to assist and best support consumers, businesses and state agencies, each must report breaches to DCA. Agency staff seek to strengthen the agency's ability to assist consumers in the event of a data breach by seeking placement of a mandatory reporting requirement in statute.¹⁵⁰ Agency staff also seek to establish a baseline reporting standard for agencies and businesses impacted by breaches. The safe harbor provision permits a business to operate under its own policy even if the policy is not as stringent as the state's breach reporting guidelines¹⁵¹. Agency staff recommend the General Assembly remove the safe harbor and implement one reporting standard for businesses and state agencies.¹⁵²

RECOMMENDATION 14

The Committee recommends the General Assembly consider changes to the Consumer Protection Code to address issues specific to

predatory lending in the consumer lending market.

DCA, as the administrator tasked with enforcing laws governing consumer credit transactions, is required to protect consumers from credit lending practices that run afoul of the law.¹⁵³ These predatory lending practices seek to exploit borrowers' lack of financial acumen to the advantage of the lender. The Consumer Protection Code Revision Act of 1982, which requires lenders issuing rates greater than 18% to submit a Maximum Rate Schedule to DCA, provided agency staff data to evaluate the credit market but did not necessarily prevent lenders from establishing exorbitant annual percentage rates (APR)¹⁵⁴. As noted in Finding #15, lenders operating in the state have submitted Maximum Rate Schedules that include rates as high as 850%. According to DCA staff, rates of 800% are not just filed but are being charged and assessed.¹⁵⁵ Agency staff do engage with lenders that charge these rates to inform them of the agency's belief that a court action initiated by DCA would likely find its rates to be unconscionable.¹⁵⁶ DCA does have the authority to decide or label an exorbitant rate "unconscionable" but must make the argument in court.¹⁵⁷

DCA staff believe prohibitions against wage garnishments and wage assignment have been a considerable help in limiting predatory lending, but agency leadership believes more needs to be done to mitigate predatory lending practices.¹⁵⁸

APPENDIX A

South Carolina General Assembly
125th Session, 2023-2024

A45, R54, H3952

STATUS INFORMATION

General Bill

Sponsors: Reps. G.M. Smith, Bannister, Bradley, Crawford, Herbkersman, W. Newton, Felder, Alexander, Wetmore, Hyde, Sessions, Guffey, Connell, Hager, Atkinson, Moss, Stavrinakis, Yow, Mitchell, Ligon, B. Newton, Williams, T. Moore, Robbins, Brewer, Murphy, Wooten, Cromer, Magnuson, Pope, Hixon, Forrest, M.M. Smith, Davis, Ballentine, Erickson, Guest, Ott, Willis, Sandifer, White, Lawson, Hardee and Long

Companion/Similar bill(s): 483

Document Path: LC-0150DG23.docx

Introduced in the House on February 14, 2023

Introduced in the Senate on March 30, 2023

Last Amended on May 3, 2023

Currently residing in the House

Summary: Consumer affairs

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/14/2023	House	Introduced and read first time (House Journal-page 10)
2/14/2023	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 10)
2/15/2023	House	Member(s) request name added as sponsor: Connell, Hager, Atkinson, Moss, Stavrinakis, Yow, Mitchell, Ligon
2/16/2023	House	Member(s) request name added as sponsor: B. Newton, Williams, T. Moore, Lawson
2/21/2023	House	Member(s) request name added as sponsor: Robbins, Brewer, Murphy, Wooten, Cromer, Magnuson, Pope, Hixon, Forrest, M.M. Smith, Davis, Ballentine, Erickson, Guest
2/22/2023	House	Member(s) request name added as sponsor: Ott, Willis
3/7/2023	House	Member(s) request name added as sponsor: Sandifer, White
3/28/2023	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 12)
3/29/2023	House	Member(s) request name added as sponsor: Hardee, Long
3/29/2023	House	Amended (House Journal-page 10)
3/29/2023	House	Read second time (House Journal-page 10)
3/29/2023	House	Roll call Yeas-102 Nays-0 (House Journal-page 16)
3/29/2023		Scrivener's error corrected
3/30/2023	House	Read third time and sent to Senate (House Journal-page 31)
3/30/2023	Senate	Introduced and read first time (Senate Journal-page 8)
3/30/2023	Senate	Referred to Committee on Banking and Insurance (Senate Journal-page 8)

3/31/2023 Scrivener's error corrected
4/25/2023 Senate Recalled from Committee on **Banking and Insurance** (Senate Journal-page 4)
5/2/2023 Senate Debate adjourned (Senate Journal-page 35)
5/2/2023 Senate Roll call Ayes-xxx Nays-xxx (Senate Journal-page 35)
5/3/2023 Senate Amended (Senate Journal-page 216)
5/3/2023 Senate Read second time (Senate Journal-page 216)
5/3/2023 Senate Roll call Ayes-43 Nays-0 (Senate Journal-page 216)
5/4/2023 Senate Read third time and returned to House with amendments (Senate Journal-page 25)
5/5/2023 Scrivener's error corrected
5/10/2023 House Concurred in Senate amendment and enrolled (House Journal-page 35)
5/10/2023 House Roll call Yeas-109 Nays-0 (House Journal-page 35)
5/11/2023 Ratified R 54
5/16/2023 Signed By Governor
5/26/2023 Effective date 05/16/23
5/26/2023 Act No. 45

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[02/14/2023](#)

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[03/29/2023-A](#)

[03/31/2023](#)

[04/25/2023](#)

[05/03/2023](#)

[05/05/2023](#)

3/31/2023 Scrivener's error corrected
4/25/2023 Senate Recalled from Committee on **Banking and Insurance** (Senate Journal-page 4)
5/2/2023 Senate Debate adjourned (Senate Journal-page 35)
5/2/2023 Senate Roll call Ayes-xxx Nays-xxx (Senate Journal-page 35)
5/3/2023 Senate Amended (Senate Journal-page 216)
5/3/2023 Senate Read second time (Senate Journal-page 216)
5/3/2023 Senate Roll call Ayes-43 Nays-0 (Senate Journal-page 216)
5/4/2023 Senate Read third time and returned to House with amendments (Senate Journal-page 25)
5/5/2023 Scrivener's error corrected
5/10/2023 House Concurred in Senate amendment and enrolled (House Journal-page 35)
5/10/2023 House Roll call Yeas-109 Nays-0 (House Journal-page 35)
5/11/2023 Ratified R 54 (Senate Journal-page 142)
5/16/2023 Signed By Governor
5/26/2023 Effective date 05/16/23
5/26/2023 Act No. 45

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[05/03/2023](#)

[05/05/2023](#)

(A45, R54, H3952)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 37-2-307, RELATING TO MOTOR VEHICLE SALES CONTRACT CLOSING FEES, SO AS TO REQUIRE THE CLOSING FEE TO BE PROMINENTLY DISPLAYED WITH THE ADVERTISED PRICE, TO REQUIRE THE FEE BE REASONABLE, AND TO SPECIFY THE MANNER IN WHICH THE DEPARTMENT OF CONSUMER AFFAIRS IS TO PROVIDE ENFORCEMENT MEASURES.

Be it enacted by the General Assembly of the State of South Carolina:

Motor vehicle closing fees

SECTION 1. Section 37-2-307 of the S.C. Code is amended to read:

Section 37-2-307. (A) As used in this section:

(1) A closing fee is defined as a fee for recovery of a motor vehicle dealer's actual costs for all administrative and financial work needed to transfer and deliver the motor vehicle to the consumer including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs.

(2) "Department" means the South Carolina Department of Consumer Affairs.

(3) "Dealer" means a "motor vehicle dealer" as defined in Section 56-15-10.

(B)(1) Every dealer charging closing fees in a motor vehicle sale or lease transaction shall pay a filing fee of ten dollars to the department each time the dealer provides notice of a new closing fee amount to the department. The department shall set the filing fee annually in an amount

not to exceed twenty-five dollars.

(2) The closing fee must be disclosed on the motor vehicle sale or lease contract, displayed in a conspicuous location in the motor vehicle dealership, and clearly and conspicuously disclosed in any advertisement of a specific motor vehicle for sale or lease.

(C)(1) Prior to charging a closing fee, a dealer shall provide written notice to the department of the maximum amount of the closing fee the dealer intends to charge.

(2) If the maximum amount of the proposed closing fee the dealer intends to charge is not more than two hundred twenty-five dollars for each vehicle, the closing fee is considered to be approved by the department, and the dealer does meet and fulfill all reasonable requirements and criteria in compliance with this section. If the proposed closing fee exceeds two hundred twenty-five dollars, the department may review the amount of the closing fee for reasonableness using the criteria in item (5).

(3) If the department intends to conduct a formal review of a proposed closing fee, the department shall provide written notice to the dealer of the department's intention to review the proposed closing fee within fifteen days of receiving the complete proposed closing fee notice. If the department determines that a proposed closing fee is not reasonable, the department shall issue a written order detailing the department's findings within thirty days of receiving the complete proposed closing fee notice. If the department does not provide the dealer with written notice of the department's approval of the proposed closing fee within thirty days of receiving the proposed closing fee notice, the dealer is authorized to charge the proposed closing fee.

(4) The dealer is at all times authorized to submit a new closing fee that is equal to or less than two hundred twenty-five dollars per vehicle

which is not subject to review. If the department finds that a proposed closing fee is not reasonable, the dealer may request a hearing in accordance with the Administrative Procedures Act. During the pendency of the department's review period, or the pendency of any action before the Administrative Law Court, the dealer is authorized to charge a closing fee at an amount not to exceed the amount most recently on file and permitted to be charged by the department.

(5)(a) In determining the reasonableness of a closing fee, the department shall accept and allow all of the dealer's actual costs and expenses including, but not limited to, employee compensation, information processing, facilities costs, supplies, and materials associated with the following closing and delivery activities:

(i) closing the motor vehicle sale or lease transaction, including any associated loan or lease and transferring title of the motor vehicle to the consumer;

(ii) delivering the motor vehicle to the consumer;

(iii) complying with all state, federal, and lender requirements;

(iv) preparing, storing, and retrieving transaction documents; and

(v) protecting the private personal information of the consumer.

(b) Dealer costs must be calculated using generally accepted cost accounting principles for the preceding twelve-month period.

(c) In determining the reasonableness of a closing fee, the department may compare a particular dealer's costs only with other similarly situated dealers.

(D) Whether the vehicle transaction is a credit sale, consumer lease, or cash transaction:

(1) notwithstanding any other provision of law, a dealer who complies with this section and any regulation promulgated under it and who charges a closing fee is not engaging in any action which is

arbitrary, in bad faith, unconscionable, an unfair or deceptive practice, or an unfair method of competition for purposes of Sections 56-15-30, 56-15-40, and 39-5-20 with regard to the charging of a closing fee and may lawfully charge a closing fee;

(2) a dealer may assert any defenses provided to a creditor pursuant to the provisions of this title; and

(3) a purchaser injured or damaged by an action of a dealer in violation of this section or any regulation promulgated thereunder, may assert the remedies available pursuant to the provisions of this title.

(E)(1) The department shall administer and enforce the subject of motor vehicle dealer closing fees as limited by this section. The department may make and promulgate such rules and regulations relating to motor vehicle dealer closing fees to administer and enforce this section. The department shall have access to a dealer's records, but only to the extent necessary to determine the dealer's compliance with the disclosure provisions of subsection (B)(2) and the accuracy of the dealer's cost and expense information in subsection (C)(5), and this information must be kept confidential and privileged from disclosure, except as otherwise provided by law.

(2) In administering and enforcing this section, or for any other review or investigation of dealers, the department shall:

(a) promote education for consumers and best practices for dealers; and

(b) mediate complaints between a consumer and a dealer, whenever possible.

(3) The department may review or investigate a dealer upon receipt of a complaint or other credible evidence that the dealer has violated a provision of this section or a provision of this title related to closing fees.

In administering and enforcing this section:

(a) The department must provide a written notice by certified mail to the dealer regarding the complaint or other credible evidence. If the department's records show an email address for the dealer, the department must also send an email to the dealer. This written notice must contain sufficient information for the dealer to identify documents related to the alleged violation, request only such information as is reasonably related to the alleged violation, and state that the dealer may provide a written response to the allegation.

(b) The dealer must respond to the department's notice within forty-five days from the date the written notice described in item (3)(a) was received via certified mail. If a dealer fails to provide the requested information within sixty days from the date of receipt of the written notice via certified mail, the department may commence a proceeding pursuant to the Administrative Procedures Act.

(c) The department must issue a decision within fifteen days of receipt of the requested information from the dealer. If the department determines the dealer failed to comply with the requirements of this section or of this title regarding closing fees, the department's decision must determine if the violation was either (1) not intentional and resulted from a bona fide error, or (2) an intentional violation.

(i) In the event of a violation that was not intentional and resulted from a bona fide error, the dealer must refund any excess charge paid by the consumer. The department must close the investigation upon notice that the consumer received the refund.

(ii) In the event of an intentional violation, the department may request only those records reasonably related to the alleged violation for the ten transactions immediately preceding and the ten transactions immediately after the transaction identified in the complaint or other credible evidence received by the department. If the department

discovers a potential violation of any kind related to closing fees in any of these transactions, the department may request only those records reasonably related to the alleged violation for transactions occurring on the date of the transaction identified in the complaint or other credible evidence, and transactions thirty days immediately preceding and thirty days immediately after the transaction identified in the complaint or other credible evidence received by the department.

(4) A dealer may not be held liable in any action for a violation of this section or a violation of this title regarding closing fees if the dealer (a) shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error; and (b) the dealer refunded any excess charge paid by the consumer.

(5) A dealer who is found to have intentionally violated this section, or any other provision in this title regarding closing fees, must refund any excess charge paid by the customer within thirty days from the date of written notice from the department regarding its determination of a violation. Notwithstanding any other provision of law, the following remedies also apply for an intentional violation:

(a) for the first violation in a twelve-month period, the department must send a written warning to the dealer;

(b) for a second violation in a twelve-month period, the department may charge a five hundred dollar administrative penalty;

(c) for a third violation in a twelve-month period, the department may charge not more than a one thousand dollar administrative penalty; and

(d) for a fourth or subsequent violation in a twelve-month period, the department may charge not more than a five thousand dollar administrative penalty, provided that cumulative administrative

penalties shall not exceed one hundred thousand dollars in the twelve-month period.

(F)(1) It is the intent of the General Assembly to authorize a motor vehicle dealer to charge a closing fee in compliance with this section and to protect a motor vehicle dealer from civil liability for charging a closing fee if the fee is charged in compliance with this title and any Department of Consumer Affairs regulation or administrative interpretation. It is further the intent to protect consumers by the disclosure and notice provisions established in this section and with the remedies provided by this title.

(2) Nothing in this section is intended to prohibit the department from administering and enforcing other laws under the department's jurisdiction.

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2023.

Approved the 16th day of May, 2023.

APPENDIX B

SC Department of Consumer Affairs Current Fees and History

Program/Activity	Authority (Code Section, Regulation)	Current Fee Amount	Year Fee Last Amended	Fee Prior to Amendment
Credit Card Filing Fees	S.C.Code Ann. § 37-3-305	New & Renewal: \$40	2008	Changed fee from the amount of \$20 (1987) to \$40.
Mortgage Broker Fees	S.C.Code Ann. § 40-58-30(B); 40-58-50(E); 40-58-110	Organization: New \$750; Renewal \$550 Branch: \$150 (new and annual renewal) Mortgage Loan Originator: New \$50-\$100; Renewal \$50	1998- Organization Fees Only	Organization fees were increased \$50 in 1998. Branch fees have been in effect since 1996, Mortgage Loan Originator since 2005 and Qualified Mortgage Loan Originator since 2010 and remained unchanged.
Continuing Care Retirement Communities	S.C. Regs. 28-600(B)	New & Renewal: \$2000	Never- Statute effective 1992	Timing of when the fee was paid during the application process has changed, but total has stayed \$2,000.
Preneed Burial Contract	S.C.Code Ann. § 32-7-50(B),(C),(D)	New \$250; Renewal \$200 (odd numbered years); Contract fee: up to \$30	2012 - Renewal Fee Added	2012 Amendment created the renewal fee. \$100 goes to DCA, \$100 to Preneed Loss Reimbursement Fund. Contract fee and initial license fee in place prior to DCA getting jurisdiction. SC Board of Financial Institutions had ability to set fees. Best we can tell, these amounts established in 1989. Contract fee codified in \$30, new license fee in 2006.
Credit Counseling Organizations	S.C.Code Ann. § 37-7-104(B),(C)(2); 37-7-115(E); 37-7-122	New: Location \$100, \$50 investigation fee; Renewal \$100 New & Renewal: Counselor \$40	Never - Statute effective 2005	N/A
Prepaid Legal Services Fees	S.C.Code Ann. § 37-16-30; 37-16-40	New & Renewal: Organization \$800 Individual selling plan \$40	2009- Renewal Fee Only	Changed individual fee from the original staute amount of \$20 (2000) to \$40.
Professional Employer Organizations	S.C.Code Ann. § 40-68-170	\$2,000/Single; \$4,000/Group for biennium \$1,000/Single; \$3,500/Group second year of biennium Renewal \$1,500/single; \$3,000 Group	Never- Statute effective 1993	N/A
Motor Vehicle Disclosure Fees	S.C.Code Ann. § 37-2-307	New & Amendment: 25	2012/ 2023	Changed fee from the original staute amount of \$10 (2000) to \$25 in 2012. Removed renewal requirement in 2023. Only requires fee when a change made to amount on file.
Athlete Agents	S.C.Code Ann. § 59-102-30(D)	New \$1,500; Renewal \$700	2021	Changed fees from the amount of New \$500; Renewal \$300 (2004) to New \$1,500; Renewal \$700.
Maximum Rate Fees	S.C.Code Ann. § 37-2-305; 37-3-305	New & Renewal: \$40	2008	Changed fee from the amount of \$20 (1987) to \$40.
Credit Grantor Notification Fees	S.C.Code Ann. § 37-6-203	New & Renewal: \$120	2008	Changed fee from the amount of \$90 (1991) to \$120.
Discount Medical Plan Organization Fees	S.C.Code Ann. § 37-17-40(B)	New & Renewal range based on size: \$500-\$1,000	Never- Statute effective 2007	N/A
Pawnbroker Fees	S.C.Code Ann. § 40-39-120	New & Renewal: \$275	Never-Statute effective 1988	N/A

APPENDIX C

SC Department of Consumer Affairs Current Fines and History

Program/Activity	Authority (Code Section, Regulation)	Current Fine Amount	Year Fine Last Amended	Fine Prior to Amendment
Agency Security Breach	S.C.Code Ann. §1-11-490(H)	Up to \$1,000 for each affected resident	Never- Statute effective 2009	N/A
Mortgage Broker	S.C.Code Ann. § 40-58-80(B),(C)	Violation of Prior Order: \$1,000-\$2,500 per violation; Initial violation: \$500 per, not to exceed \$5,000 for same set of transactions or occurrences	Never- Prior Order language effective 1988; Initial violation effective 1993.	N/A
Continuing Care Retirement Communities	S.C.Code Ann. § 37-11-100(C)(3)	\$1,000-\$10,000 per violation	2008	N/A
Preneed Burial Contract	S.C.Code Ann. § 32-7-110(B)	Up to \$10,000 per violation	2009	Prior to 2009, subsection did not contain administrative fines.
Credit Counseling Organizations	S.C.Code Ann. § 37-7-119(C)	\$500 pr violation not to exceed \$5,000 for same set of transactions or occurrence ; \$50 per day annual report late fee.	Never - Statute effective 2005	N/A
Prepaid Legal Services	S.C.Code Ann. § 37-16-70(A)(2)	up to \$5,000	Never- Statute effective 2000	N/A
Professional Employer Organizations	S.C.Code Ann. § 40-68-160(C)	\$1,000- \$50,000 per violation	Never- Statute effective 1993	N/A
Motor Vehicle Disclosure	S.C.Code Ann. § 37-2-307(E)(5)	Stepped process: warning up to \$5,000 not exceed \$100,000 for violation occurring in a 12-month period	2023	Prior to 2023, section did not contain fines.
Athlete Agents	S.C.Code Ann. § 59-102-170	Up to \$100,000 per violation	2004	N/A- No administrative fine existed in prior version of the statute.
Maximum Rate	S.C.Code Ann. § 37-2-201(7); 37-3-201(6)	Up to \$5,000	1989	N/A- No administrative fine existed in prior version of the statute.
Credit Grantor Notification	S.C.Code Ann. § 37-6-113(C)	\$1,000	Never-1976	
Discount Medical Plan Organization	S.C.Code Ann. § 37-17-80(B)	\$100-\$10,000	Never- Statute effective 2007	N/A
Pawnbroker	S.C.Code Ann. § 40-39-150 (B)	\$750, maximum of \$15,000 for same set of transactions or occurrences	Never- Statute effective 1988	N/A
Motor Club	S.C.Code Ann. § 39-61-100(B)	\$100-\$1,000, not to exceed \$5,000 in a calendar year	Never- Statute effective 1987	N/A
Physical Fitness	S.C.Code Ann. § 44-79-80(B)(9)	\$500 per violation, not to exceed \$5,000 in a calendar year	1991	N/A- No administrative fine existed in prior version of the statute.
Violations of the South Carolina Consumer Protection Code (SCCPC) and Other Regulatory Statutes	S.C.Code Ann. § 37-6-108(E); 37-6-113	Fine \$2,500-10,000 for each set of trasnactions or occurrences; Up to \$5,000 if violated a prior order; Up to \$5,000 for civil actions	1991	Sections existed prior to 1991, however fines were not included until 1991.
Business Security Breach	S.C.Code Ann. §39-1-90(H)	Up to \$1,000 for each affected resident	Never- Statute effective 2009	N/A
Auto Brokers	S.C.Code Ann. § 56-28-110	Up to \$500 per vehicle	Never- Statute effective 1989	N/A
Telephone Privacy Protection	S.C.Code Ann. § 37-21-90(A)	Up to \$5,000 per violation	Never- Statute effective 2018	N/A
Cosmetic Contact Lenses	S.C.Code Ann. § 37-25-70(A)	Up to \$5,000 per violation	Never- Statute effective 2005	N/A
Auto Advertising	S.C.Code Ann. § 37-6-108(F)	Stepped process: warning up to \$10,000 every 6 months	Never - Statute effective 2011	N/A

APPENDIX D

Appendix A

Industries licensed by DCA – Industry Service

Industry	Industry Service
Athlete Agents	Contracts with a student-athlete or recruits or solicits a student-athlete to enter into an agency contract.
Credit Counseling	Provides lodging along with nursing, medical, or other health-related services to people 65 years of age or older. Includes independent living, assisted living, and skilled nursing care.
Continuing Care Retirement Communities (CCRC)	Offers to improve credit rating, reduce debt, or eliminate debt. Includes credit repair, debt consolidation, debt management, debt negotiation, debt settlement, foreclosure assistance, and loan modification.
Discount Medical Plan Organizations (DMPO)	Offers discount programs for health care services with participating providers (doctors, pharmacies, etc.). Does not include insurance.
Mortgage Brokers	Brings a borrower and mortgage lender together. Includes loan correspondents and third-party loan processors and underwriters.
Motor Club	Offers memberships for motor club services or reimbursement for motor club services including towing, emergency roadside, emergency travel expense, travel, guaranteed hotel/motel rates, new car pricing, etc.
Motor Vehicle Dealers	All DCA filings related to motor vehicle dealers.
Pawnbrokers	Lends money for goods or personal property that may be redeemed or repurchased at a later date.
Physical Fitness	Includes personal trainers, gyms, health or exercise centers, clubs, studios, or classes; health spas; weight control centers, tanning centers; and athletic or sport clubs.
Preneed Funeral	Sells contracts for purpose of: (1) performing funeral services for, or (2) providing merchandise or services in connection with the final disposition of, a person who is alive at the time of the contract.
Prepaid Legal	Offers contracts for legal services or reimbursement for legal services for a predetermined, specific, periodic (i.e.: monthly) fee.
Professional Employer Organizations (PEO)	Shares employment responsibilities with a client company that outsources certain tasks to the PEO (i.e.: payroll, benefits, recruiting, training and insurance services).
Credit Grantor Notification	Makes consumer credit sales, leases, loans, or rental-purchase agreements (rent-to-own); or takes assignment of rights against debtors arising from these transactions.
Maximum Rate Schedule	Charges an Annual Percentage Rate (APR) in excess of 18% on consumer credit sales or consumer loans.
Credit Grantor Notification - Rent-to-Own	Makes consumer credit sales, leases, loans, or rental-purchase agreements (rent-to-own); or takes assignment of rights against debtors arising from these transactions.

<https://consumer.sc.gov/business-resources/laws/licensing>

ENDNOTES

¹ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (February 23, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of," and under "Meetings and Agency Presentations," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/meetings/Full%20Committee%202.23.23.pdf>. A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=12790>. Hereinafter, "02/23/2023 Full Committee Meeting Minutes and Video." See video at 01:43:36-01:43:54.

² S.C. Code Section 37-2-307

³ SC Code Section 37-2-307 (2016) 2016 Act No. 231

SECTION 1. Section 37-2-307 of the 1976 Code is amended to read:

"Section 37-2-307. (A)(1) Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year before January 31st to the Department of Consumer Affairs. The department shall set the fee annually in an amount not to exceed twenty-five dollars.

(2) The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(B) A closing fee is defined as a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer, person, or entity including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs.

(C)(1) Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis. The department may review the amount of the closing fee for reasonableness using the criteria in subsection (C)(3) if the maximum amount of the closing fee intended to be charged by a dealer in a vehicle transaction exceeds two hundred twenty-five dollars per vehicle. The department shall not conduct a review of the amount of the closing fee for reasonableness when the maximum amount the dealer intends to charge in a vehicle transaction is not more than two hundred twenty-five dollars per vehicle. If the department intends to conduct a formal review of a proposed closing fee, the department shall provide written notice to the motor vehicle dealer of the department's intention to review the proposed closing fee within thirty days of receiving the proposed closing fee notice. If the department does not provide a motor vehicle dealer with written notice of the department's intention to review the proposed closing fee within thirty days, the motor vehicle dealer is authorized to charge the proposed closing fee. If the department determines that a proposed closing fee is not reasonable, the department shall issue a written order detailing the department's findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. The dealer is at all times authorized to submit a new closing fee that is equal to or less than two hundred twenty-five dollars per vehicle which is not subject to review. During the pendency of the review period, a motor vehicle dealer is authorized to charge a closing fee at an amount not to exceed the amount most recently on file and permitted to be charged by the department. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(2) If the maximum amount of the closing fee that the dealer intends to charge is not more than two hundred twenty-five dollars per vehicle, the closing fee is deemed approved by the department and the dealer does meet and fulfill all reasonableness requirements and criteria in compliance with the law and this section.

(3) In determining the reasonableness of a closing fee, the department shall allow the following items to be included in a reasonable closing fee:

(a) all administrative expenses, costs, staff, supplies, materials, and financial work needed to transfer the motor vehicle to the consumer and to procure the closing of the motor vehicle transaction;

(b) all costs for administrative expenses, costs, staff, supplies, and materials necessary by dealer to comply with all state, federal, and lender requirements;

(c) all costs for administrative costs, staff, and materials needed for the preparation and retrieval of documents;

(d) all costs for administrative costs, staff, supplies, and materials necessary for the protection of the private personal information of the consumer; and

(e) all costs for administrative costs, staff, supplies, and materials necessary for records retention and storage costs of such records.

(D) Whether the vehicle transaction is a credit sale, consumer lease, or cash transaction:

(1) notwithstanding another provision of law, a motor vehicle dealer who complies with this section and any regulation promulgated under it and who charges a closing fee is not engaging in any action which is arbitrary, in bad faith, unconscionable, an unfair or deceptive practice, or an unfair method of competition for purposes of Section 56-15-30 and 56-15-40 with regard to the charging of a closing fee and may lawfully charge a closing fee;

(2) a motor vehicle dealer may assert any defenses provided to a creditor pursuant to the provisions of this title; and

(3) a purchaser injured or damaged by an action of a motor vehicle dealer in violation of this section or any regulation promulgated thereunder, may assert the remedies available pursuant to the provisions of this title.

(E)(1) The Department of Consumer Affairs shall administer and enforce the subject of motor vehicle dealer closing fees including, but not limited to, this section. The department shall make and promulgate such rules and regulations relating to motor vehicle dealer closing fees to administer and enforce this section. The department shall have access to a motor vehicle dealer's books, accounts, and records to determine if the dealer is complying with the provisions of this section, and this financial information must be kept confidential and privileged from disclosure, except as provided by law.

(2) If the department determines that a closing fee is not reasonable, the department shall issue a written order detailing the department's findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(F) It is the intent of the General Assembly to authorize a motor vehicle dealer to charge a closing fee in compliance with this section and to protect a motor vehicle dealer from civil liability for charging a closing fee if the fee is charged in compliance with this title and any Department of Consumer Affairs regulation or administrative interpretation. It is further the intent to protect consumers by the disclosure and notice provisions established in this section and with the remedies provided by this title."

SECTION 2. This act takes effect upon approval by the Governor; provided, however, a motor vehicle dealer must be allowed an additional period of thirty days from the effective date to comply with Section 37-2-307(C).

⁴ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (August 9, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of," and under "Meetings and Agency Presentations," (accessed [date of most recent visit to link]). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=13466>. See video at 00:04:30-00:04:52. Hereinafter, "August 9, 2023, Minutes and Video."

⁵ S.C. House of Representatives, House Legislative Oversight Committee, "Agency Response to Committee (January 29, 2024)," under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of" and under "Correspondence," <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Correspondence/HLOC%20Responses%20012924.pdf> (accessed April 8, 2024). See question 6. Hereinafter "Agency Response to Committee (January 29, 2024)."

⁶ August 9, 2023, Minutes and Video. See video at 04:03:54-04:04:02.

⁷ Ibid.

⁸ Ibid.

⁹ August 9, 2023, Minutes and Video. See video at 04:07:04-04:07:50.

¹⁰ Ibid.

¹¹ Ibid.

¹² S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (September 26, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of.," and under "Meetings and Agency Presentations," (accessed [date of most recent visit to link]). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=13469>. See video at 00:35:33-00:35:42. Hereinafter, "September 26, 2023, Minutes and Video."

¹³ September 26, 2023, Meeting Packet. See Meeting Packet Page 35.

¹⁴ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (September 26, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of.," and under "Meetings and Agency Presentations," (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/meetings/Meeting%20Packet%209.26.23.pdf>. See Meeting Packet Page 35. Hereinafter, "September 26, 2023, Meeting Packet".

¹⁵ September 26, 2023, Meeting Packet. See Meeting Packet page 74.

¹⁶ September 26, 2023, Minutes and Video. See video at 00:41:34-00:41:54.

¹⁷ September 26, 2023, Minutes and Video. See video at 03:40:26-03:40:47.

¹⁸ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (October 19, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of.," and under "Meetings and Agency Presentations," (accessed [date of most recent visit to link]). A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=135900>. See video at 00:43:20-00:43:32. Hereinafter, "October 19, 2023, Minutes and Video".

¹⁹ October 19, 2023, Minutes and Video. See video at 04:28:10-04:28:23.

²⁰ September 26, 2023, Minutes and Video. See video at 00:43:41-00:44:03.

²¹ Ibid.

²² October 19, 2023, Minutes and Video. See video at 04:29:24-04:29:46.

²³ September 26, 2023, Meeting Packet. See Meeting Packet Page 74.

²⁴ August 9, 2023, Minutes and Video. See video at 02:51:01-02:51:08.

²⁵ September 26, 2023, Minutes and Video. See video at 01:35:11-01:35:51.

²⁶ Ibid.

²⁷ September 26, 2023, Minutes and Video. See video at 01:36:12-01:36:24.

²⁸ September 26, 2023, Minutes and Video. See video at 01:38:53-01:39:00.

²⁹ September 26, 2023, Minutes and Video. See video at 01:38:53-01:39:21.

³⁰ September 26, 2023, Minutes and Video. See video at 02:02:28-02:02:45.

³¹ September 26, 2023, Minutes and Video. See video at 02:01:18-02:01:35.

³² October 19, 2023, Meeting Packet. See Meeting Packet LOC Page 29.

³³ September 26, 2023, Minutes and Video. See video at 01:33:45-01:34:04.

³⁴ September 26, 2023, Minutes and Video. See video at 02:01:18- 02:02:03.

³⁵ Ibid.

³⁶ Ibid.

³⁷ September 26, 2023, Minutes and Video. See video at 02:27:59-02:28:10.

³⁸ September 26, 2023, Minutes and Video. See video at 02:28:10-02:28:22.

³⁹ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (October 19, 2023), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Consumer Affairs, Department of,” and under “Meetings and Agency Presentations,” (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/meetings/Meeting%20Packet%2010.19.23.pdf>. See Meeting Packet LOC Page 29. Hereinafter, “October 19, 2023, Meeting Packet”.

⁴⁰ <https://consumer.sc.gov/consumer-resources/consumer-complaints>

⁴¹ October 19, 2023, Meeting Packet. See Meeting Packet LOC Page 29.

⁴² October 19, 2023, Minutes and Video. See video at 00:31:38-00:31:46.

⁴³ October 19, 2023, Minutes and Video. See video at 00:42:11-00:42:36.

⁴⁴ October 19, 2023, Minutes and Video. See video at 00:43:00-00:43:10.

⁴⁵ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (January 29, 2024), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Consumer Affairs, Department of,” and under “Correspondence” (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Correspondence/HLOC%20Responses%20012924.pdf>. See Agency response to Committee (January 29, 2024) Question 20. Hereinafter, “Agency response to Committee (January 29, 2024)”.

⁴⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (January 29, 2024), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Consumer Affairs, Department of,” and under “Correspondence” (accessed [date of most recent visit to link]). [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Correspondence/DCA%20Presentations%20Follow-Up%20\(002\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Correspondence/DCA%20Presentations%20Follow-Up%20(002).pdf). See Agency response to member questions (12.6.2023). Hereinafter, “Agency response to member questions (12.6.2023)”.

⁴⁷ Agency response to member questions (12.6.2023).

⁴⁸ Agency Response to Committee (January 29, 2024). See answer to question 16.

⁴⁹ Agency response to member questions (12.6.2023)

⁵⁰ October 19, 2023, Minutes and Video. See video at 01:40:28-01:40:49.

⁵¹ October 19, 2023, Minutes and Video. See video at 01:30:49-01:31:10.

⁵² Ibid.

⁵³ October 19, 2023, Minutes and Video. See video at 01:44:02-01:44:33.

⁵⁴ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (September 26, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of.," and under "Meetings and Agency Presentations," (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/meetings/Meeting%20Packet%208.9.23.pdf>. See Meeting Packet SC House Legislative Oversight Committee Page 57. Hereinafter, "August 9, 2023, Meeting Packet".

⁵⁵ S.C. Code Section 37-6-502.

⁵⁶ S.C. House of Representatives, House Legislative Oversight Committee, "Meeting Minutes" (September 26, 2023), under "Committee Postings and Reports," under "House Legislative Oversight Committee," under "Consumer Affairs, Department of.," and under "Additional Agency Details," (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Consumer%20Credit.pdf>. Hereinafter, "Commission on Consumer Affairs (Graphic)".

⁵⁷ <https://governor.sc.gov/executive-branch/boards-and-commissions>

⁵⁸ Ibid.

⁵⁹ S.C. Code Section 37-6-502. Members of Commission on Consumer Affairs; terms; vacancies.

⁶⁰ August 9, 2023, Minutes and Video. See video at 02:58:23-02:59:04.

⁶¹ Section 37-6-506. Powers and duties of Commission.

⁶² August 9, 2023, Minutes and Video. See video at 03:00:14-03:00:51

⁶³ Ibid.

⁶⁴

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Media%20release-12-14-18%20-%20Committee%20to%20Review%20Candidates%20for%20the%20Consumer%20Affairs%20Commission.pdf>

⁶⁵ August 9, 2023, Meeting Packet SC House Legislative Oversight Committee Page 59.

⁶⁶ Section 37-6-301. Council of Advisors on Consumer Credit.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ August 9, 2023, Minutes and Video. See video at 03:04:29-03:04:47.

⁷⁰ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (September 26, 2023), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Consumer Affairs, Department of,” and under “Additional Agency Details,” (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/Consumer%20Credit.pdf>. Hereinafter, “Council of Advisors on Consumer Credit (Graphic)”.

⁷¹ <https://consumer.sc.gov/about-us/council-advisors-consumer-credit>.

⁷² August 9, 2023, Minutes and Video. See video at 03:00:55-03:01:11.

⁷³ August 9, 2023, Minutes and Video. See video at 03:06:27-03:06:35.

⁷⁴ August 9, 2023, Minutes and Video. See video at 03:09:12-03:09:34.

⁷⁵ Ibid.

⁷⁶ S.C. House of Representatives, House Legislative Oversight Committee, “Meeting Minutes” (February 23, 2023), under “Committee Postings and Reports,” under “House Legislative Oversight Committee,” under “Consumer Affairs, Department of,” and under “Meetings and Agency Presentations,” <https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ConsumerAffairs/meetings/Full%20Committee%202.23.23.pdf>. A video of the meeting is available at <https://www.scstatehouse.gov/video/archives.php?key=13528>. Hereinafter, “November 9, 2023, Meeting Minutes and Video.” See video at 00:15:55-00:16:01.

⁷⁷ November 9, 2023, Meeting Minutes and Video. See video at 02:02:41-02:02:55.

⁷⁸ October 19, 2023, Meeting Packet. See Meeting Packet LOC Page 179-180.

⁷⁹ August 9, 2023, Minutes and Video. See video at 00:56:51-00:57:01.

⁸⁰ November 9, 2023, Meeting Minutes and Video. See video at 02:17:18- 02:17:29.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Agency Response to Committee (January 29, 2024). See question 16.

⁸⁴ November 9, 2023, Meeting Minutes and Video. See video at 02:01:59-02:02:06.

⁸⁵ November 9, 2023, Meeting Minutes and Video. See video at 02:01:40-02:01:51.

⁸⁶ Ibid.

⁸⁷ November 9, 2023, Meeting Minutes and Video. See video at 01:17:32- 01:17:56.

⁸⁸ <https://applications.sc.gov/DCAComplaintSystem/Login/ConsumerLogin.aspx>.

⁸⁹ October 19, 2023, Minutes and Video. See video at 01:24:09-01:24:49.

⁹⁰ October 19, 2023, Minutes and Video. See video at 01:33:48-01:34:20.

⁹¹ <https://consumer.sc.gov/hoa-ed>

⁹² October 19, 2023, Minutes and Video. See video at 01:34:20-01:34:45.

⁹³ October 19, 2023, Minutes and Video. See video at 01:24:48-01:25:06.

⁹⁴ October 19, 2023, Minutes and Video. See video at 00:14:50-00:15:01.

⁹⁵ August 9, 2023, Minutes and Video. See video at 01:17:07-01:17:31.

⁹⁶ November 9, 2023, Meeting Minutes and Video. See video at 00:45:27-00:45:50.

⁹⁷ August 9, 2023, Minutes and Video. See video at 01:14:21-01:14:34.

⁹⁸ Ibid.

⁹⁹ August 9, 2023, Minutes and Video. See video at 01:14:00-01:14:21.

¹⁰⁰ August 9, 2023, Minutes and Video. See video at 01:17:17-01:17:30.

¹⁰¹ November 9, 2023, Meeting Minutes and Video. See video at 00:48:55-00:49:20.

¹⁰² Ibid.

¹⁰³ November 9, 2023, Meeting Minutes and Video. See video at 01:21:40- 01:21:56.

¹⁰⁴ <https://consumer.sc.gov/about-us/commission>

¹⁰⁵ September 26, 2023, Minutes and Video. See video at 01:26:43- 01:27:21.

¹⁰⁶ August 9, 2023, Minutes and Video. See video at 04:22:18-04:22:25.

¹⁰⁷ September 26, 2023, Minutes and Video. See video at 04:22:25-04:22:53.

¹⁰⁸ Ibid.

¹⁰⁹ September 26, 2023, Minutes and Video. See video at 02:00:26-02:00:39.

¹¹⁰ September 26, 2023, Minutes and Video. See video at 01:01:58- 01:02:41.

¹¹¹ Ibid.

¹¹² <https://consumer.sc.gov/business-resources/laws/licensing>

¹¹³ https://consumer.sc.gov/sites/consumer/files/Documents/Reports/2022%20Mtge%20Log%20Analysis%20Report%20_FINAL.pdf.

See page 2.

¹¹⁴ Ibid.

¹¹⁵ November 9, 2023, Meeting Minutes and Video. See video at 01:21:03-01:21:40.

¹¹⁶ https://consumer.sc.gov/sites/consumer/files/Documents/Reports/2022%20Mtge%20Log%20Analysis%20Report%20_FINAL.pdf.

See page 2.

¹¹⁷ November 9, 2023, Meeting Minutes and Video. See video at 01:21:40-01:21:56.

¹¹⁸ <https://www.scstatehouse.gov/billsearch.php?billnumbers=3790&session=118&summary=B>

¹¹⁹ August 9, 2023, Minutes and Video. See video at 02:53:37-02:53:49.

¹²⁰ August 9, 2023, Minutes and Video. See video at 02:53:49-02:53:55.

¹²¹ August 9, 2023, Minutes and Video. See video at 02:54:11-02:54:26.

¹²² August 9, 2023, Minutes and Video. See video at 03:04:01-03:04:03.

¹²³ August 9, 2023, Minutes and Video. See video at 01:05:03-01:05:08.

¹²⁴ August 9, 2023, Minutes and Video. See video at 02:53:36-02:53:49.

¹²⁵ August 9, 2023, Minutes and Video. See video at 03:20:15-03:20:20.

¹²⁶ September 26, 2023, Minutes and Video. See video at 00:57:32-00:57:46.

¹²⁷ September 26, 2023, Minutes and Video. See video at 00:56:02-00:56:10.

¹²⁸ September 26, 2023, Minutes and Video. See video at 00:56:09-00:56:27.

¹²⁹ Agency response to member questions (12.6.2023)

¹³⁰ Ibid.

¹³¹ August 9, 2023, Minutes and Video. See video at 04:22:18-04:22:34.

¹³² <https://www.scstatehouse.gov/code/t37c025.php>

¹³³ November 9, 2023, Minutes and Video. See video at 03:46:24-03:46:53.

¹³⁴ November 9, 2023, Minutes and Video. See video at 03:47:03-03:47:27.

¹³⁵ SECTION 37-25-20. Prescription required.

¹³⁶ November 9, 2023, Minutes and Video. See video at 03:47:03-03:47:27.

¹³⁷ S.C. House of Representatives, Publications, Current State of Agency Reports, 2022-2023 Accountability Reports, under “State of Agency Accountability Reports For Fiscal Year 2022-2023,” under “Labor, Licensing, and Regulation, Department of” (accessed [date of most recent visit to link]). <https://www.scstatehouse.gov/reports/aar2023/R360.pdf>. Hereinafter, “LLR 2022-2023 Accountability Report”.

¹³⁸ November 9, 2023, Minutes and Video. See video at 03:48:06-03:48:49.

¹³⁹ Ibid.

¹⁴⁰ October 19, 2023, Minutes and Video. See video at 01:38:20-01:38:51.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ October 19, 2023, Meeting Packet. See LOC Page 50.

¹⁴⁴ October 19, 2023, Meeting Packet. See LOC Page 65.

¹⁴⁵ November 9, 2023, Minutes and Video. See video at 03:51:14-03:52:22.

¹⁴⁶ November 9, 2023, Minutes and Video. See video at 03:45:35-04:04:06.

¹⁴⁷ November 9, 2023, Minutes and Video. See video at 03:59:20-03:59:37.

¹⁴⁸ November 9, 2023, Minutes and Video. See video at 03:56:42-03:56:57.

¹⁴⁹ <https://consumer.sc.gov/identity-theft-unit/id-theft>

¹⁵⁰ November 9, 2023, Minutes and Video. See video at 03:56:42-03:57:13.

¹⁵¹ November 9, 2023, Minutes and Video. See video at 03:58:02- 03:58:23.

¹⁵² Ibid.

¹⁵³ <https://consumer.sc.gov/about-us>

¹⁵⁴ [https://consumer.sc.gov/business-resourceslaws/licensing/registered-creditors/max-rate#:~:text=The%20Consumer%20Protection%20Code%20Revision,\(MRS\)%20with%20the%20Department.](https://consumer.sc.gov/business-resourceslaws/licensing/registered-creditors/max-rate#:~:text=The%20Consumer%20Protection%20Code%20Revision,(MRS)%20with%20the%20Department.)

¹⁵⁵ August 9, 2023, Minutes and Video. See video at 01:22:50-01:23:05.

¹⁵⁶ August 9, 2023, Minutes and Video. See video at 01:23:05-01:23:22.

¹⁵⁷ Ibid.

¹⁵⁸ August 9, 2023, Minutes and Video. See video at 01:23:26-01:23:46.