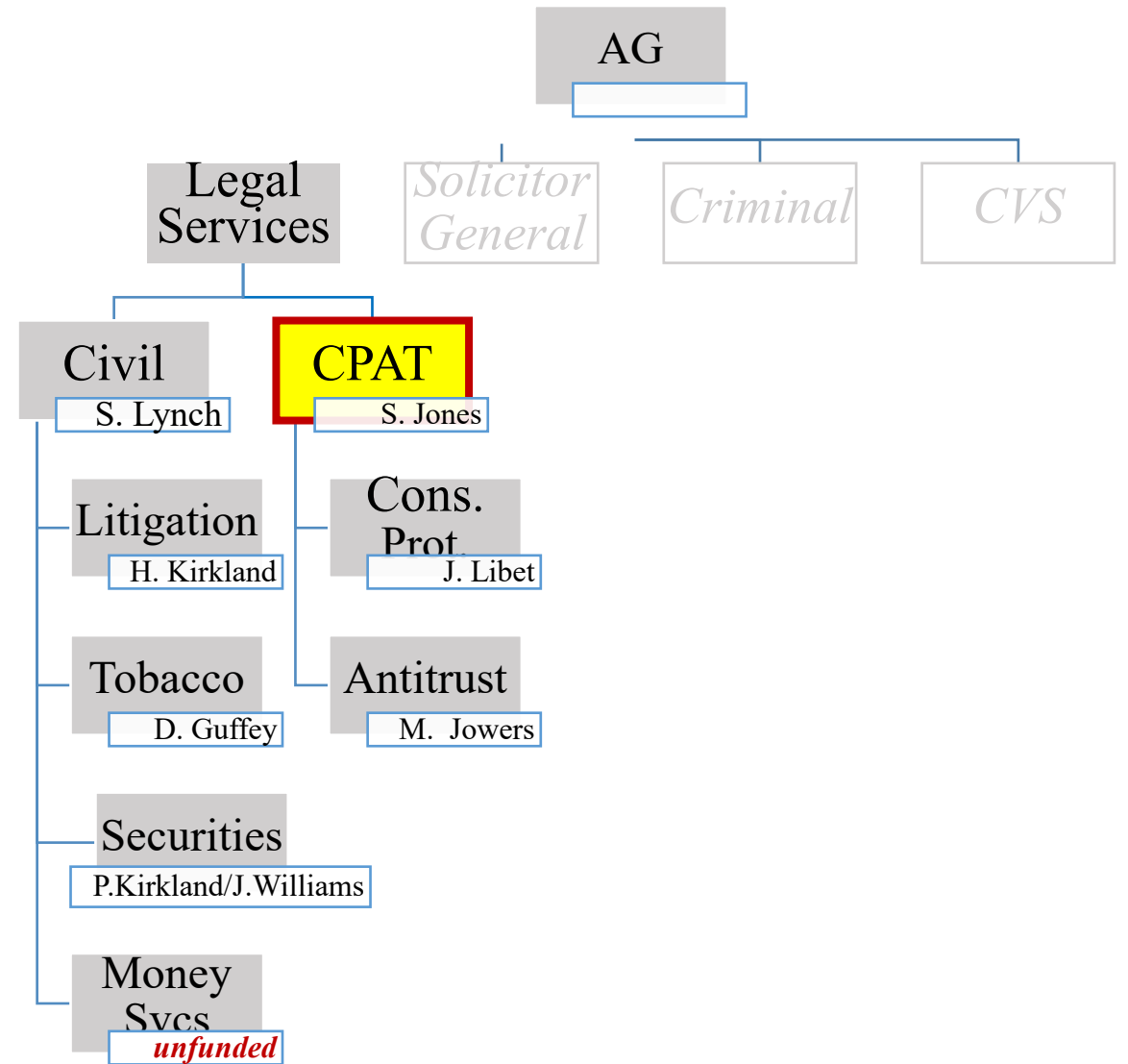




Consumer Protection and Antitrust Section

C.H. "Sonny" Jones, Jr.



Personnel

	Turnover	Number of Employees	
		Leave unit during year	In unit at end of year
2016-17	0%	0	10
2017-18	20%	2	10
2018-19	10%	1	10
2019-20	0%	0	10

Exit interviews or surveys conducted?

2016-17	Not applicable
2017-18	Yes
2018-19	Yes
2019-20	Not applicable

Employee satisfaction tracked?

2016-17	No
2017-18	Yes
2018-19	No
2019-20	No



Mission

Three-pronged mission:

- Protecting S.C. consumers from unfair and deceptive trade practices.
- Protecting S.C. consumers from anticompetitive practices and other antitrust violations.
- Ensuring the terms of charitable trusts are carried out.

Our standard: **Meritorious and compelling state interest**



Associated Services

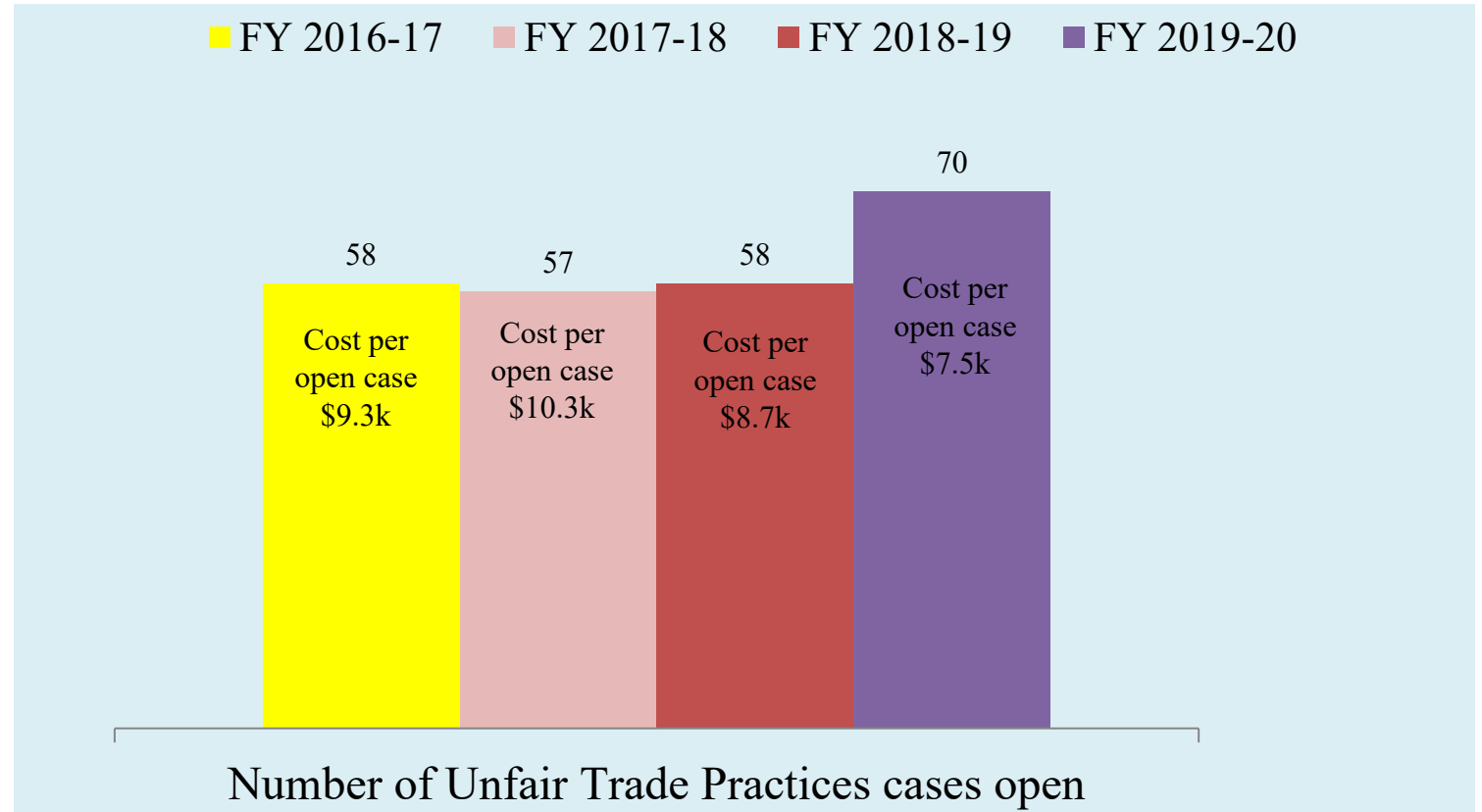
The next slides only contain information on services that are associated with this section of the agency.

Unfair and Deceptive Trade Practices – Unfair Trade Practices Act

(Agency Service #72)

Bring lawsuits

Represent the State, Attorney General’s Office, and select agencies in matters to enforce the South Carolina Unfair Trade Practices Act to protect the public from unfair and illegal trade practices



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
Section 39-5-10, et seq.	Yes
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u>		<u>Units Provided*</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
	Number of Unfair Trade Practices cases open	2016-17	70.00	\$7,497.93	5.95	\$524,855.14	2.67%
		2017-18	58.00	\$8,704.17	5.95	\$504,841.83	0.85%
	*Numbers were transposed on the PER, correct numbers are in this slide	2018-19	57.00	\$10,301.23	5.75	\$587,170.36	0.88%
		2019-20	58.00	\$9,313.51	5.00	\$540,183.77	0.70%



Unfair Trade Practices Act: Private Action v. Enforcement Action

Private Action:

Brought by:

- Private Citizen
- State or Local Entity
 - Agency can be represented by AG

Requires:

- Citizen suffer an actual loss, injury, or damage, and
- Causal connection between the injury-in-fact and the complained of unfair or deceptive acts or practices.

Class actions are not permitted.

Enforcement Action:

Brought by:

- Attorney General's Office

Requires:

- Public interest be involved, and
- Showing of a “tendency to deceive”
 - Requisite capacity to deceive can be found without evidence that anyone was actually deceived

Example:

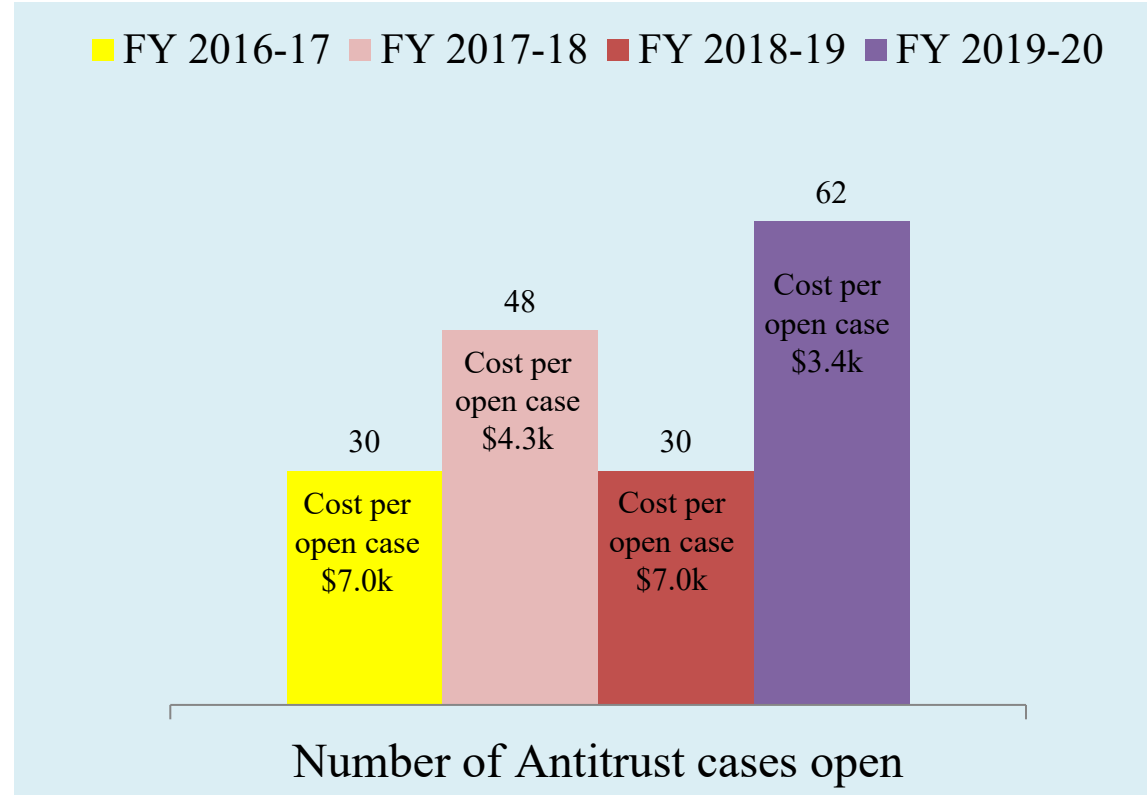
It is in the public interest to prevent the use of false and misleading statements in the conduct of business ... [and] actual deception need not be shown; a finding of a tendency to deceive and mislead will suffice.”

Unfair and Deceptive Trade Practices – Antitrust Cases

(Agency Service #73)

Bring lawsuits

Enforce the state and federal antitrust statutes in cases where South Carolina citizens are directly impacted to protect the State against antitrust violations, to protect the public from unfair and illegal trade practices and ensure a competitive marketplace.



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
Section 39-3-10, et seq.	Yes
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	Single Unit		Units Provided*	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
	Number of antitrust cases open	2016-17	62.00	\$3,427.94	1.83	\$212,532.00	1.08%
		2017-18	30.00	\$7,010.19	2.24	\$210,305.74	0.35%
	*Numbers were transposed on the PER, correct numbers are in this slide	2018-19	48.00	\$4,334.99	2.06	\$208,079.49	0.31%
		2019-20	30.00	\$7,010.84	2.15	\$210,325.20	0.27%



Unfair and Deceptive Trade Practices

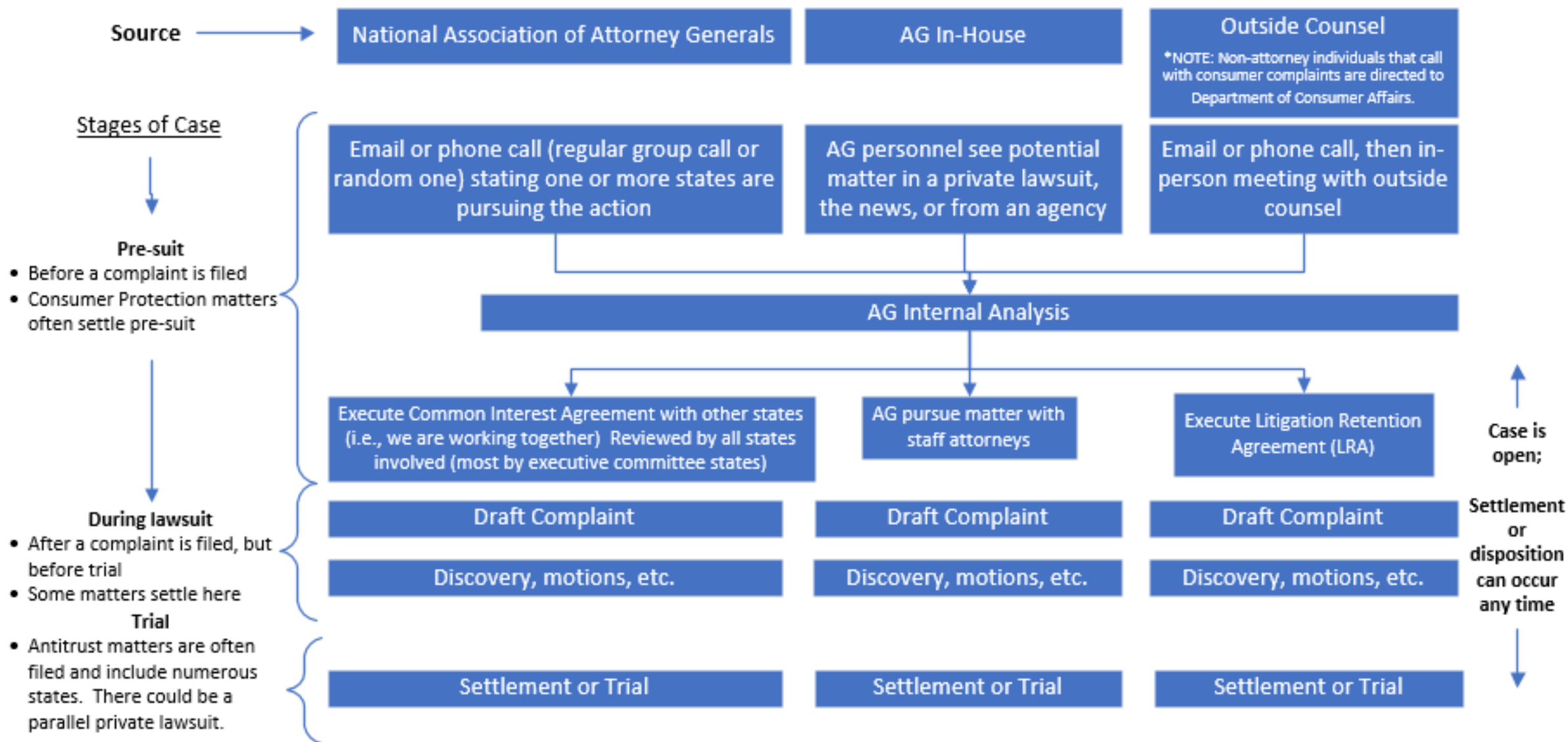
Unfair Trade Practices Act and Antitrust Lawsuits

Sources of potential lawsuits

- AG personnel see potential matter from one of the following:
 - notice of private lawsuit claiming violation of S.C. Trade Practices Act from County Clerks of Court (Agency Service #83 – Clerks of Court required to send, see Section 39-5-140(b))
 - news, or
 - an agency
- Outside counsel brings potential case directly to AG
- National Association of Attorney Generals member email or call (regular group call or special one) stating one or more states are pursuing an action (See “Work with other states” for additional information)

Unfair Trade Practice and Antitrust Cases

Sources and Stages of Case



Unfair and Deceptive Trade Practices

Unfair Trade Practices Act and Antitrust Lawsuits

In outside counsel cases, there is a decision to make:

1. Do not take the case; or
2. Take the case, serve as supervising attorney, and...
 - A. have in-house attorneys do all the work, or
 - B. hire outside attorneys to assist with the work

Even when outside counsel approaches the Office, the Office may decide to handle a case internally or in connection with a multistate.

Factors considered when deciding whether to hire outside counsel

- Resources needed to investigate and litigate the case fully,
- Whether particular expertise in certain areas of law (e.g., bankruptcy, environmental) is needed,
- Potential outside counsel's familiarity with a large, complicated matter (such as opioids), and
- Whether State's interests are best served by reallocating the risk of no recovery to outside counsel (and spreading that risk among multiple law firms).

Note: Every case involves an investment of resources involved and no guarantee of the result desired

- Information learned from presentations from potential defendants.

Attorney General continually reviews and evolves Litigation Retention Agreements

- During a prior House Legislative Oversight Committee study, the Committee recommended the process related to drafting and approving litigation retention agreements and settlement agreements be addressed during the House Legislative Oversight Committee's study of the Office of the Attorney General.

- Modified the fee table and percentages:
 - Outside counsel may now receive a percentage of civil penalties.
 - Punitive damages are not handled separately but are combined with the total.
 - Generally lowered the percentages awarded and modified the brackets to which those percentages apply, recognizing the possibility of very large monetary recoveries.
 - Allowed the AG to reduce fees by up to 50% for an early settlement.
 - Required the AG to approve the fee distribution among multiple outside law firms.
- Added a requirement that outside counsel handle appellate proceedings (with a small contingent fee increase for that).
- Added a requirement that outside counsel represent the Office in the event we are sued regarding the LRA, for an hourly fee.
- Removed language where the AG kept 10% of outside counsel's fees.
- Added reimbursement of the AG's costs.
- Allowed outside counsel to use an eDiscovery platform and contract lawyers to review documents (with AG approval).

Additional Evolution Occurring

In the event the Attorney General terminates this Agreement without cause, Special Counsel shall be reimbursed only from the litigation's gross recovery for all properly documented expenses and costs, as defined in Article V of this Agreement rendered prior to termination, and Special Counsel shall be awarded appropriate attorneys' fees as determined by the Attorney General.

- In the event the AG fires outside counsel without cause, those lawyers are still legally entitled to attorney's fees and costs on a *quantum meruit* basis.
- The AG would then determine a fair fee based on the work performed and pay that to former outside counsel.
 - No fees would be paid at all unless there is a monetary recovery.
- While the AG would never pay more under this paragraph than the contract rates, our Office will amend this language to clarify that.

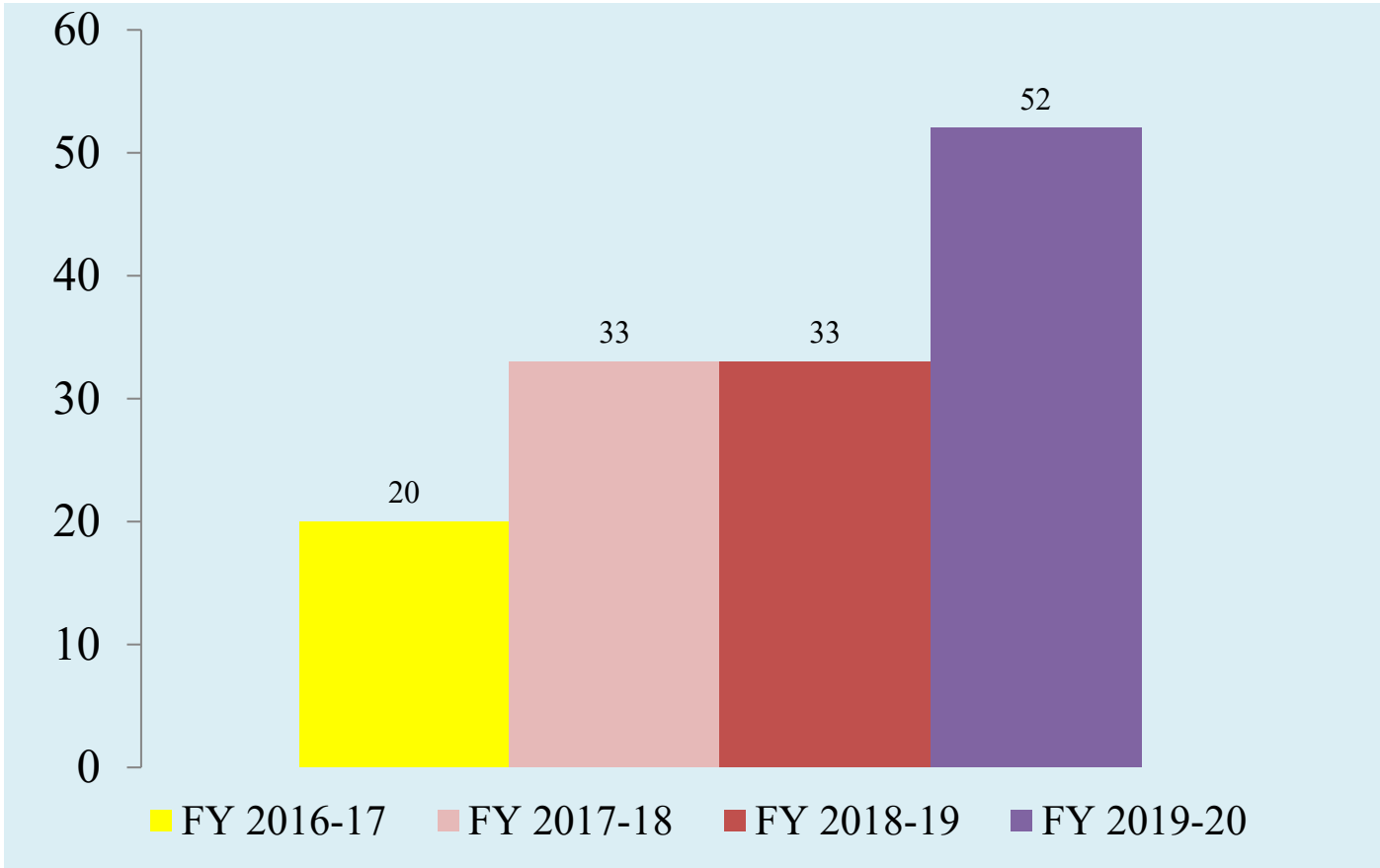
Review CPAT-related Matters on which AG is Requested to Sign-On

(Agency Service #88)

- 2 situations
 - Another state files an amicus brief supporting a position argued to a court
 - Another state sends a letter supporting a position to a federal agency, Congress, etc.

- AG determines whether South Carolina will sign on to support the position as the issue may impact South Carolina

- Examples*:
 - Robocalls
 - Opioids



*Only relates to CPAT issues

Note: Employee equivalents and costs for 2019-20 will be updated after the presentation.

Single Unit		Units provided	Cost per unit	Employee equivalents	Total Cost of service	% of total agency costs
Number of Recommendations	2016-17	20.00	\$2,259.91	0.59	\$45,198.21	0.23%
	2017-18	33.00	\$1,461.54	0.61	\$48,230.74	0.08%
	2018-19	33.00	\$1,448.87	0.58	\$47,812.86	0.07%
	2019-20	52.00	\$0.00	0.00	\$0.00	0.00%

Other Acts the AG Investigates and Enforces

(Agency Service #80 and 81)

Health Care Cooperative Agreements

See, S.C. Code Sections 44-7-520(A) and 44-7-550 (1994 Act No. 437 § 1)

- Review applications for health care cooperative agreements when referred by the Department of Health and Environmental Control (DHEC).
- Why review the agreements? The state direction, supervision, regulation, and control of cooperative agreements provide immunity for health care providers, health provider networks, or purchasers who participate in discussions or negotiations authorized by this article from civil liability and criminal prosecution under federal or state antitrust laws.
- There have been no referrals from DHEC since at least fiscal year 2017.

Telephone use

See, S.C. Code Section 37-21-90

- Enforce the S.C. Telephone Privacy Protection Act to preclude telephone solicitation to a number on the National Do Not Call Registry maintained by the federal government pursuant to the Telemarketing Sales Rule
- To protect citizens and the State from violations of the Act
- The AG has reviewed no matters since the Act became effective May 18, 2018. The AG is allowed, but not required to review matters.

Other Acts the AG Investigates and Enforces

(Agency Service #82 and 85)

Assertions of Patent Infringement

See, S.C. Code Section 39-4-130

- Enforce the Bad Faith Assertion of Patent Infringement Act by requiring the posting of bonds
- To protect the State and citizens from bad faith assertions of patent infringement.
- The AG has reviewed no matters since the Act became effective July 1, 2016. The AG is allowed, but not required to review matters.

Sale, rental and lease of motor vehicles

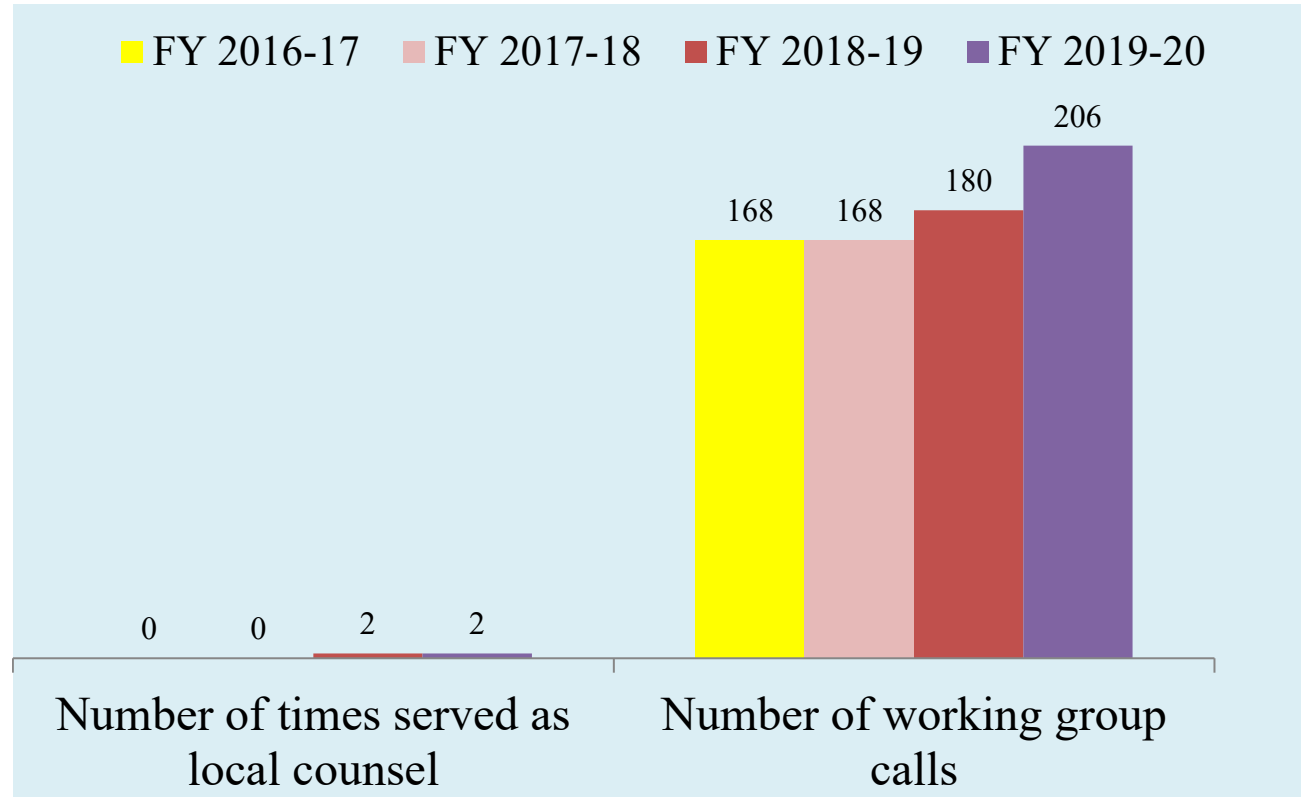
See, S.C. Code Section 56-15-40(5)

- Serve as Administrator under the Motor Vehicle Act to investigate, issue cease and desist orders and injunctive relief on any valid abuse of the Act
- To protect citizens in connection with the sale, rental, and lease of motor vehicles and to protect the public interest
- The AG has taken no action as administrator from fiscal year 2017 through fiscal year 2020.

Work with Other States

(Agency Service #74 and 87)

- Aid by serving as local counsel to other state Attorney General Offices and assist with their litigation in S.C. when they are admitted pro hac
- Participate in working group calls.
 - AG may be a lead, on the executive committee, a participating state, or simply monitoring.
 - Degree of participation is dependent upon the status and the needs of S.C. citizens.
 - Purpose is to maintain awareness of activity in other states and work collaboratively to assess national trends and their application within S.C.



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
	No
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>	
	Working Group Calls	2016-17	168.00	\$135.81	0.22	\$22,816.80	0.12%
		2017-18	168.00	\$127.91	0.22	\$21,488.27	0.04%
		2018-19	180.00	\$120.87	0.26	\$21,756.37	0.03%
		2019-20	206.00	\$251.90	0.58	\$51,891.54	0.07%

Charitable Trusts

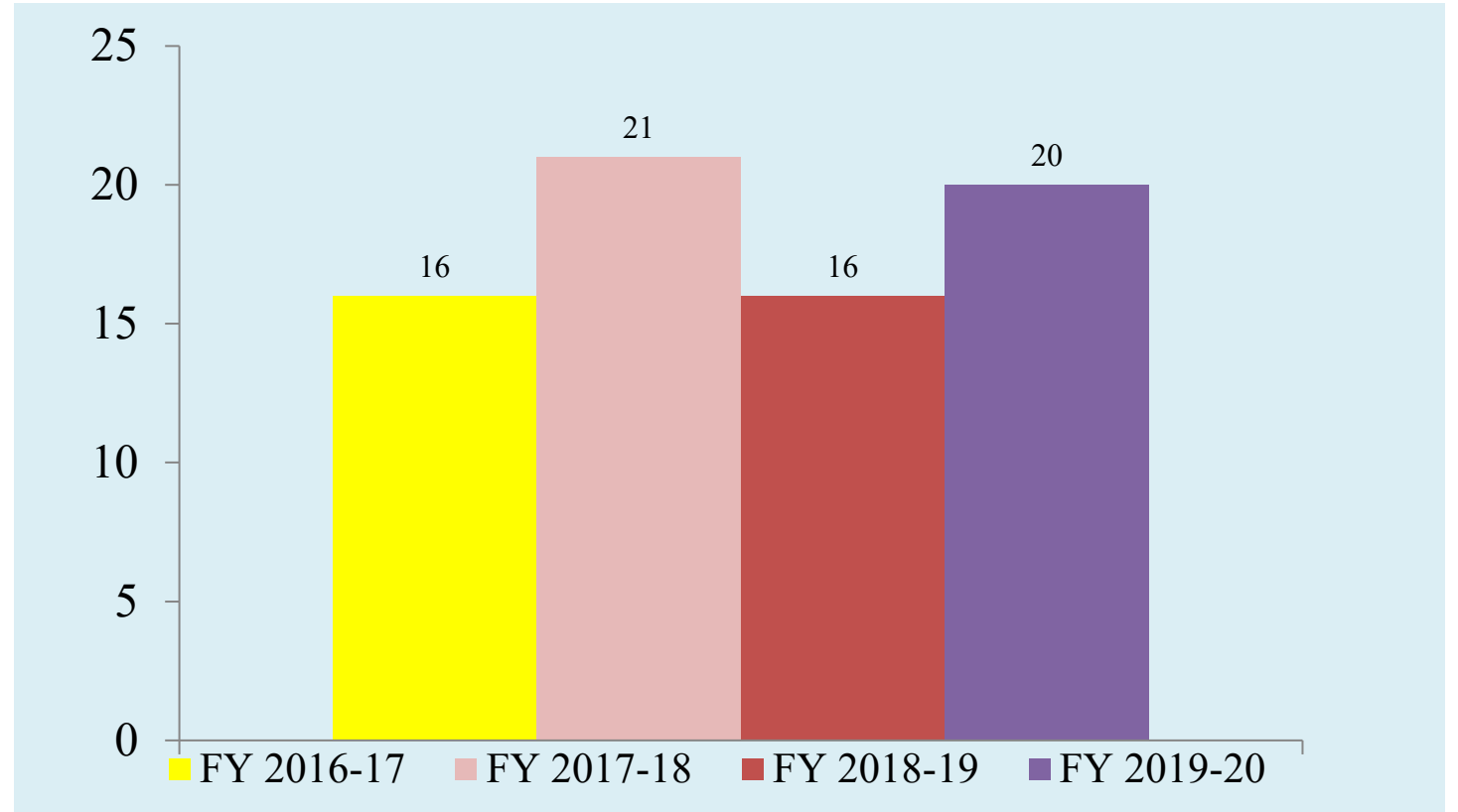
(Agency Service #76)

Bring and Defend lawsuits

Protect public charities and charitable trusts when questions arise as to conflicts of interest, breach of fiduciary duty, and other violations. Enforce charitable trusts to ensure the donor's intent is achieved.

What is a charitable trust?

Trust created for a charitable purpose which is beneficial to the community.



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
Section 1-7-130	Yes
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

NOTE:

Employee equivalents means number of employees required (37.5 hour per week units)

	<u>Single Unit</u>		<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
	Number of charitable trust cases open	2016-17	16.00	\$5,788.55	0.75	\$92,616.75	0.47%
		2017-18	21.00	\$4,923.97	0.80	\$103,403.36	0.17%
		2018-19	16.00	\$6,869.75	0.71	\$109,915.99	0.16%
		2019-20	20.00	\$5,683.40	0.86	\$113,668.04	0.15%

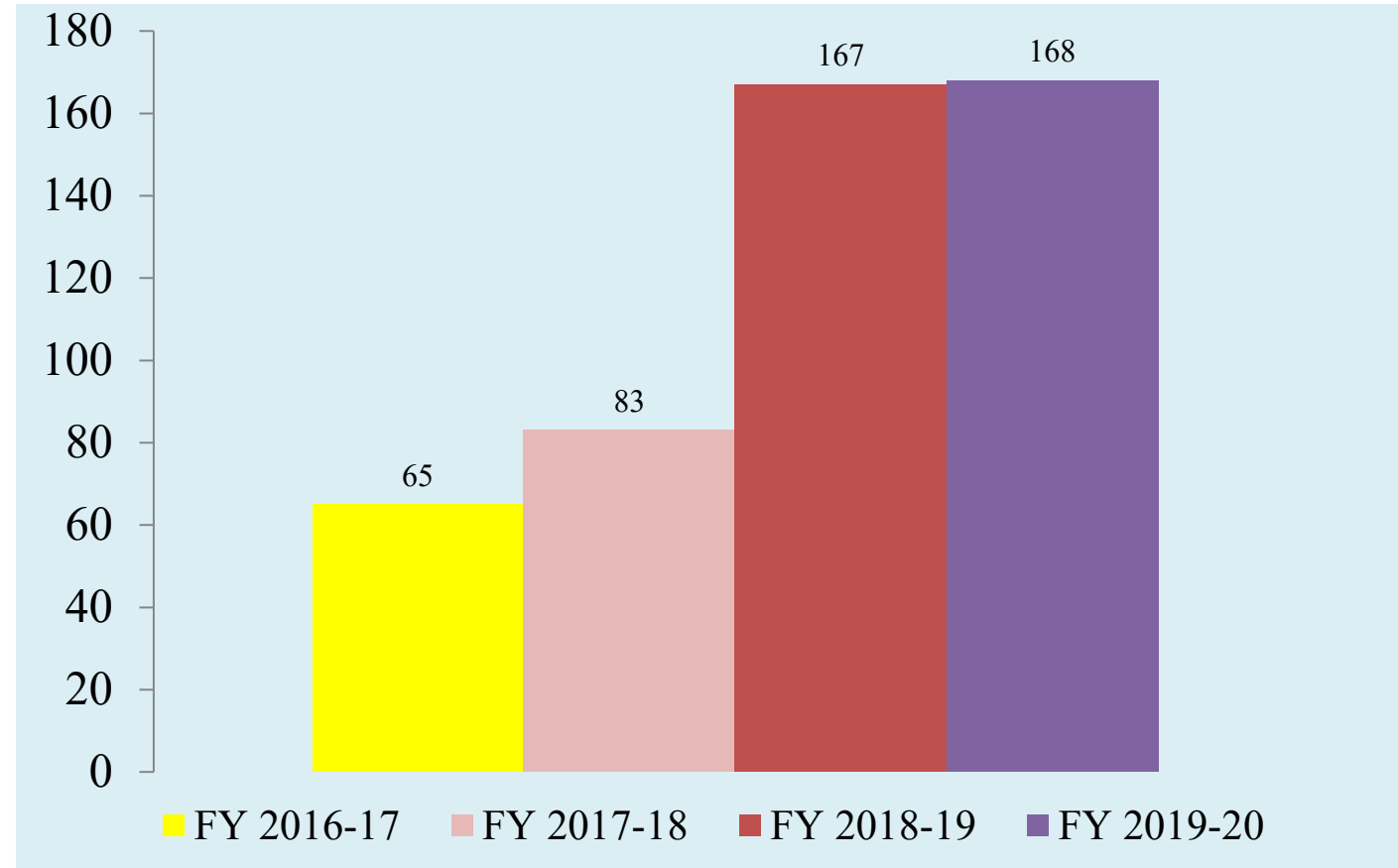
Nonprofit Corporations – Dissolutions and Sales

(Agency Service #78)

Receive and Review

- Receive and review notices of nonprofit dissolutions and sales of certain nonprofit assets to make sure nonprofits are properly and legally dissolved

Note: Upon review, the recent spike could be because the Secretary of State is increasingly proactive in making sure the Attorney General gets notice.



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
Section 33-31-1403	Yes
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

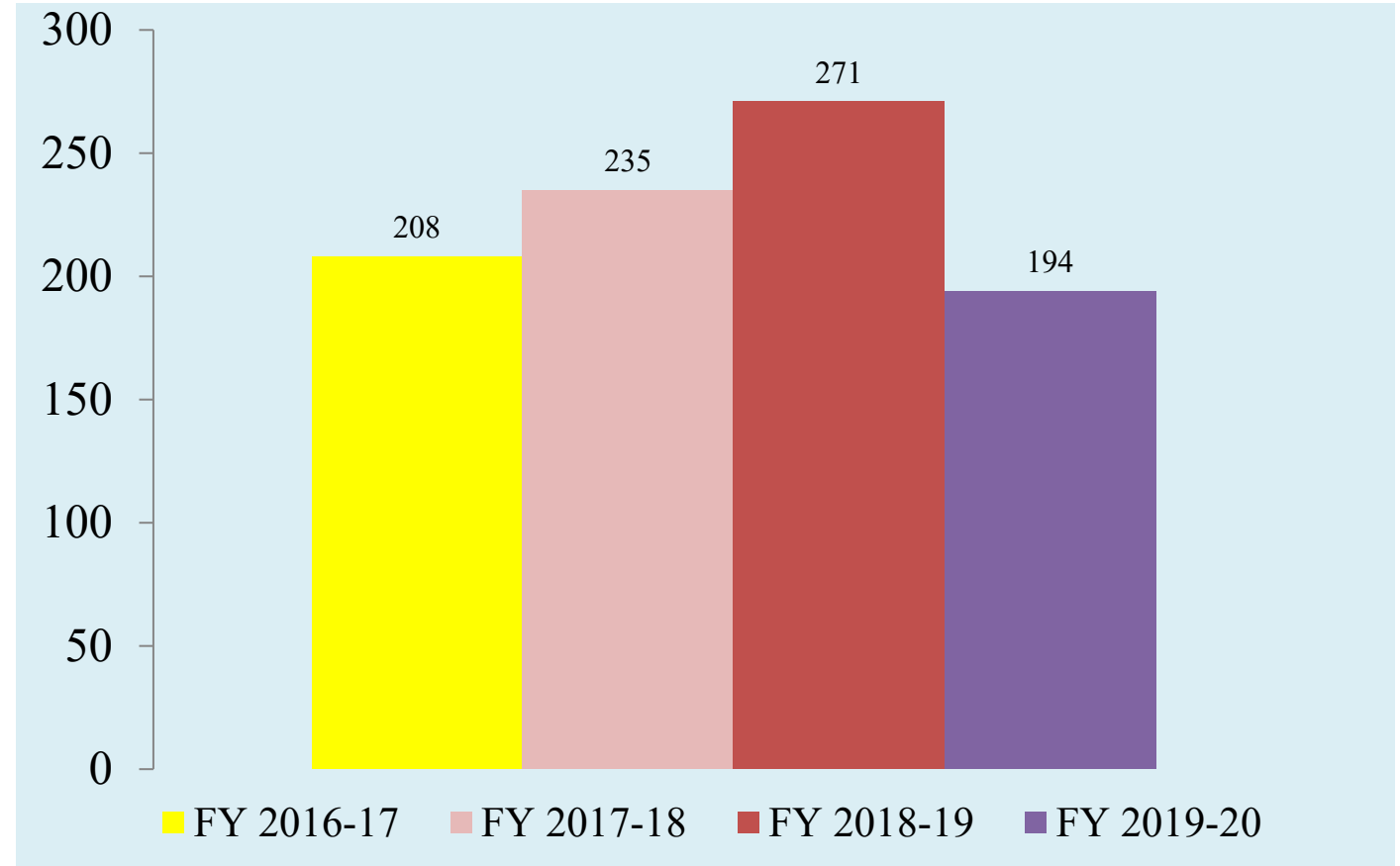
<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u>		<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
Number of notices received and reviewed	2016-17	65.00	\$366.98	0.39	\$23,853.38	0.12%	
	2017-18	83.00	\$350.67	0.39	\$29,105.34	0.05%	
	2018-19	167.00	\$175.89	0.29	\$29,373.34	0.04%	
	2019-20	168.00	\$204.32	0.49	\$34,326.10	0.04%	

Federal Tax Form 990 for Foundations

(Agency Service #86)

Receive and Review

- Federal regulations require private foundations send these forms to the Attorney General's Office. There is no state law requirement that they be sent to the Office.
- “ . . . every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe . . .” 26 USCA § 6033(a)(1).



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
26 C.F.R. § 1.6033-3(c)(1)	Yes
<u>Customers:</u>	
State of South Carolina	

<u>Units Provided & Costs to Provide:</u>

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u> Number of 990s received	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>	
	Note: Employee equivalents and costs for 2019-20 will be updated after the presentation.	2016-17	208.00	\$2.01	0.05	\$418.19	0.00%
		2017-18	235.00	\$1.78	0.05	\$418.19	0.00%
		2018-19	271.00	\$1.54	0.05	\$418.19	0.00%
		2019-20	194.00	\$0.00	0.00	\$0.00	0.00%

Nonprofit Corporations – Conduct and Management

(Agency Service #77)

Investigate and Enforce

Investigate the conduct and management of nonprofits to protect the public from nonprofits that are violating the S.C. Nonprofit Corporations Act.

See process on next slide

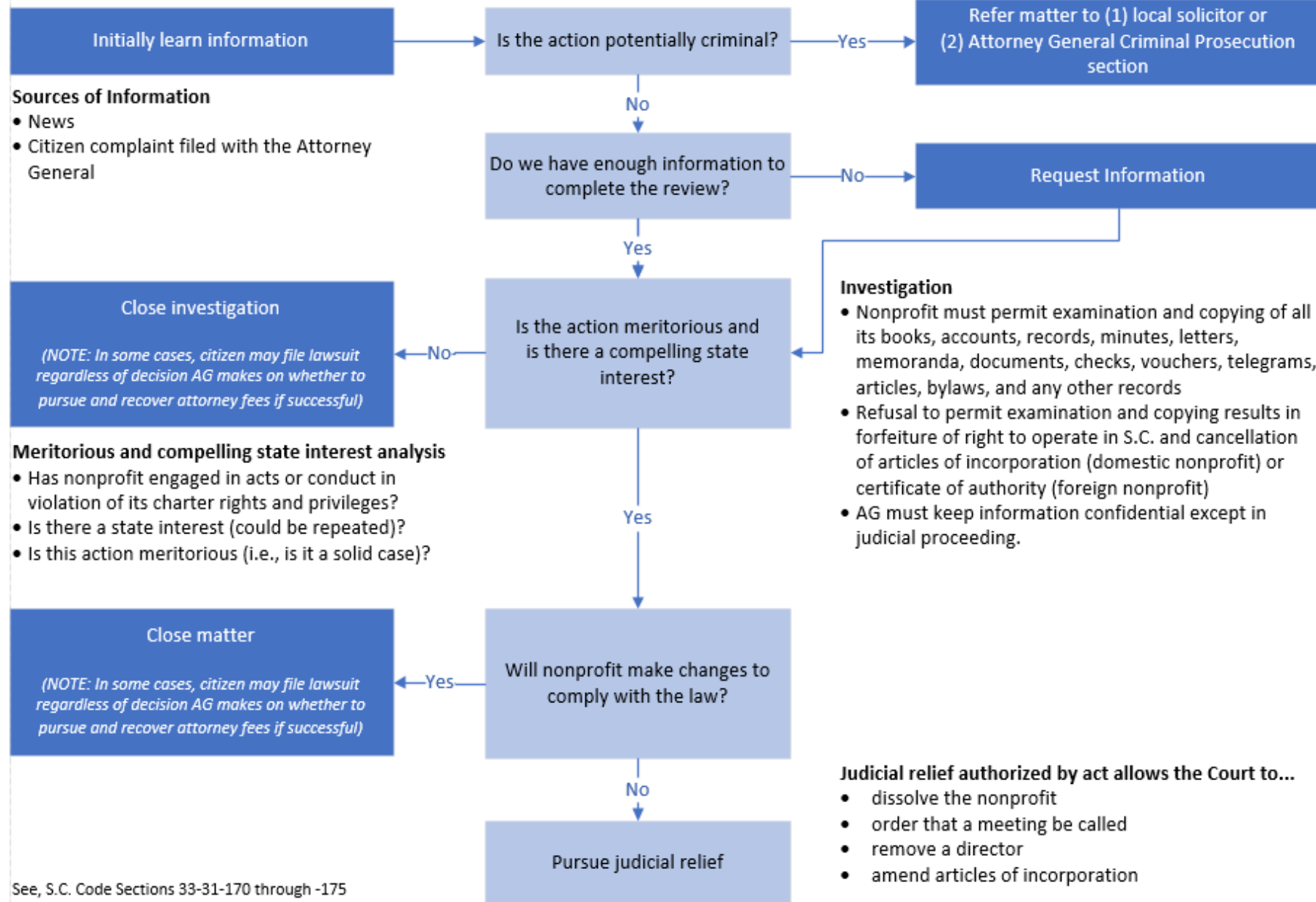
<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
Section 33-31-171	No
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>	
	Number of investigations open pursuant to statute	2016-17	1.00	\$11,335.82	0.15	\$11,335.82	0.06%
		2017-18	0.00	Insufficient data provided.	0.00	\$0.00	0.00%
		2018-19	1.00	\$16,268.20	0.10	\$16,268.20	0.02%
		2019-20	2.00	\$1,067.55	0.01	\$2,135.09	0.00%

S.C. Nonprofit Corporation Act Investigations

Attorney General's Office analysis of whether to move forward with investigation

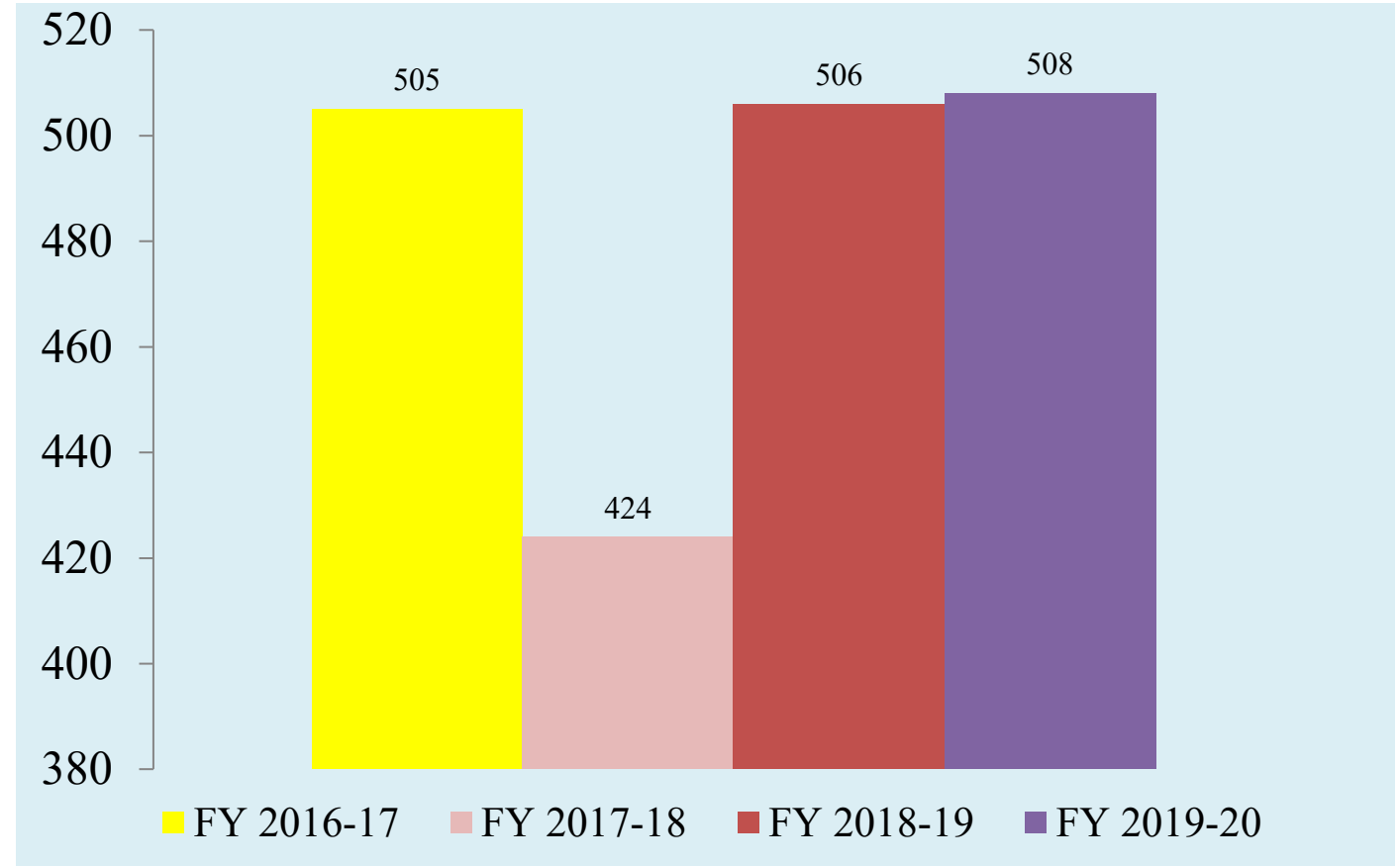


Class Action Settlements in Private Lawsuits

(Agency Service #75)

Receive and Review

Review settlements under the Class Action Fairness Act to ensure fairness to the class action members, many of whom are uninvolved in the settlement but may be bound by its outcome.



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
28 U.S. Code § 1715	Yes
<u>Customers:</u>	
State of South Carolina	

Units Provided & Costs to Provide:

NOTE:

Employee equivalents means number of employees required (37.5 hour per week units)

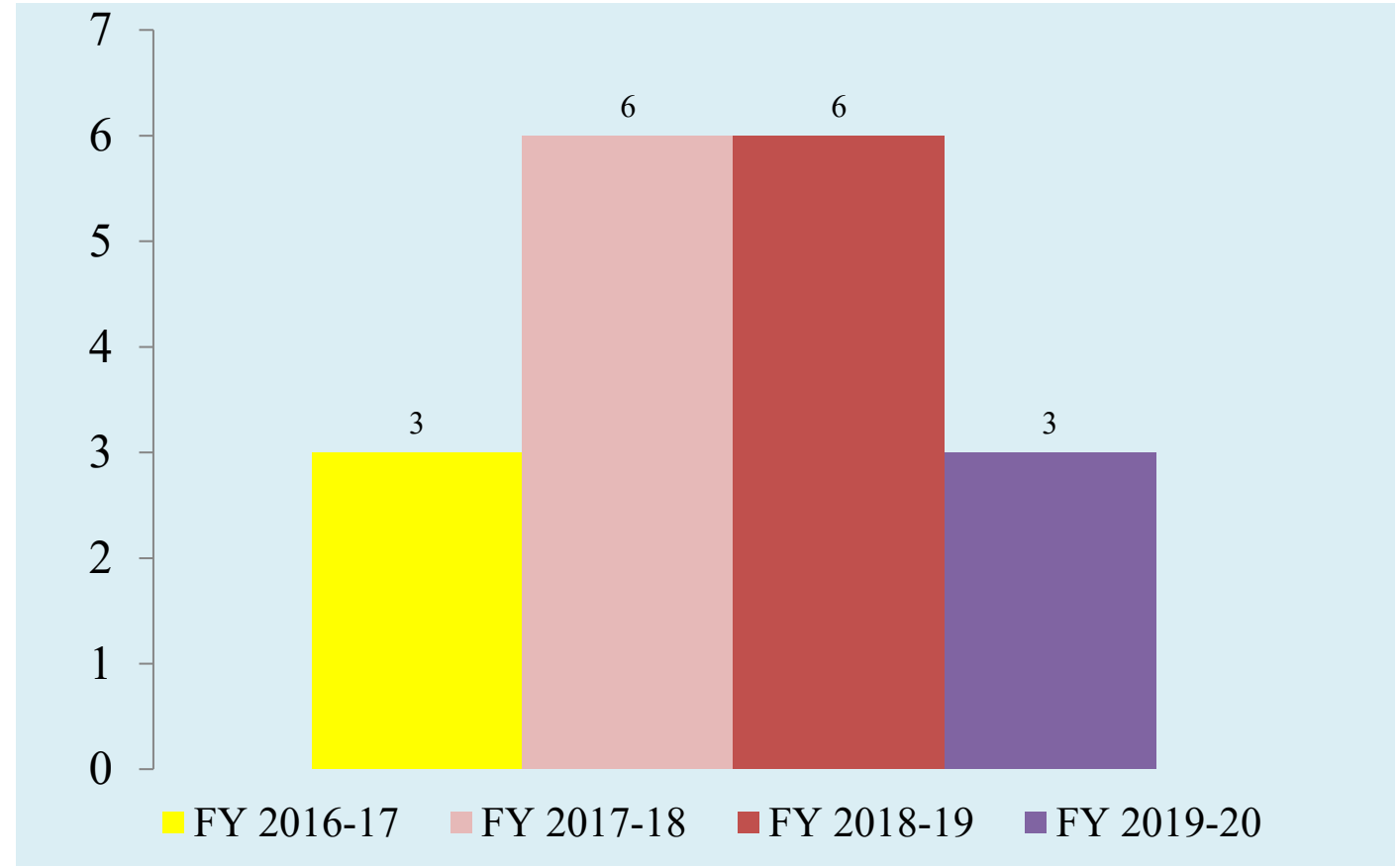
	<u>Single Unit</u>	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>
2016-17	Number of Class Action Settlements received and reviewed	505.00	\$55.34	0.15	\$27,947.81	0.14%
2017-18		424.00	\$66.04	0.40	\$27,999.50	0.05%
2018-19		506.00	\$47.57	0.40	\$24,068.92	0.04%
2019-20		508.00	\$60.71	0.45	\$30,841.86	0.04%

Data Breach Letters

(Agency Service #84)

Receive, Return, and Redirect

- Receive and redirect data breach notice letters to the Department of Consumer Affairs.
- Per the statute, these notices are to be sent to the Consumer Protection Division of the South Carolina Department of Consumer Affairs.
- Sometimes they are incorrectly sent to the Attorney General's Office. If that happens, the AG notifies the entity that the notice should be sent to the S.C. Department of Consumer Affairs.



<u>Assoc. Law(s):</u>	<u>Does law require it:</u>
Section 39-1-90(k)	Does not require AG
<u>Customers:</u>	
State of South Carolina	

<u>Units Provided & Costs to Provide:</u>

<i>NOTE: Employee equivalents means number of employees required (37.5 hour per week units)</i>	<u>Single Unit</u> Number of data breach letters received	<u>Units provided</u>	<u>Cost per unit</u>	<u>Employee equivalents</u>	<u>Total Cost of service</u>	<u>% of total agency costs</u>	
		2016-17	3.00	\$303.04	0.01	\$909.12	0.00%
	Note: Employee equivalents and costs for 2019-20 will be updated after the presentation.	2017-18	6.00	\$151.52	0.01	\$909.12	0.00%
		2018-19	6.00	\$151.52	0.01	\$909.12	0.00%
		2019-20	3.00	\$0.00	0.00	\$0.00	0.00%



Law Recommendations

The next slides only contain information on recommendations for law changes that are associated with this section of the agency.

LAW CHANGE RECOMMENDATION #6

- Law: S.C. Code Section 1-7-117 - Duties of Division of Public Charities devolved upon Attorney General.
- Current Law: Devolved duties, functions, and responsibilities of the Public Charities Division to the Attorney General's Office in 1996.
- Recommendation: Repeal entire statute
- Basis for Recommendation: 1998 Act No. 368 devolved the duties, functions, and responsibilities of the Public Charities Section of the Attorney General's Office upon the Secretary of State's Office on July 1, 1998. The Public Charities Division has remained with the Secretary of State's Office since that time, and Section 1-7-117 is no longer accurate.

NOTE: This issue was previously addressed in the Secretary of State's Legislative Oversight review. There is pending legislation for this correction

SECTION 1-7-117. Duties of Division of Public Charities devolved upon Attorney General.

(A) The duties, functions, and responsibilities of the Division of Public Charities of the office of the Secretary of State are devolved upon the Attorney General's office on July 1, 1996. All personnel, appropriations, and full-time equivalent positions of the Division of Public Charities also are transferred to the Attorney General's office on July 1, 1996.

(B) The Attorney General shall administer the "South Carolina Solicitation of Charitable Funds Act" as contained in Chapter 56 of Title 33 of the 1976 Code.

HISTORY: 1996 Act No. 458, Part II, Section 28A, B.

LAW CHANGE RECOMMENDATION #7

- Law: S.C. Code Section 44-11-110. Easements and rights of way on grounds of facilities.
- Current Law: Requires written approval from the Attorney General for any grant of easements, permits or rights of way on, over or under the grounds of Department of Mental Health facilities.
- Recommendation: Repeal entire statute
- Basis for Recommendation: The Department of Mental Health has its own attorneys who are in a position to review and evaluate easements, permits, or rights of way.

Section 44-11-110. Easements and rights of way on grounds of facilities.

Universal Citation: SC Code § 44-11-110 (2012)

The Mental Health Commission may, by resolution recorded on the minutes of its meetings, grant easements, permits or rights of way on, over or under the grounds of the facilities, but none may be granted unless approved in writing by the Attorney General before delivery.

HISTORY: 1962 Code Section 32-941; 1952 Code Sections 32-981, 32-982; 1942 Code Section 6245; 1932 Code Section 6245; Civ. C. '22 Section 5107; Civ. C. '12 Section 3372; Civ. C. '02 Section 2261; 1894 (21) 835; 1920 (31) 704; 1941 (42) 188; 1942 (42) 1685; 1952 (47) 2042.

LAW CHANGE RECOMMENDATION #8

- Law: S.C. Code Section 39-5-80. Additional powers of Attorney General in administration of article.
- Current Law: Section 3-1-30 governs retention of public records, and prohibits the Attorney General from either returning to the producing party, or destroying documents obtained pursuant to civil investigative demand (CID) under Section 39-5-70 of the South Carolina Unfair Trade Practices Act (SCUTPA). Although documents received pursuant to CID are public records under Section 30-4-40, they are confidential and not subject to FOIA under 39-5-80 of SCUTPA
- Recommendation: Add to Section 39-5-80 a provision allowing the Attorney General to return confidential documents produced pursuant to CID to the producing party, to destroy them, or to retain in accordance with records retention policies.
- Basis for Recommendation:
 - During SCUTPA investigation, companies request provisions in confidentiality agreements or settlement agreements to protect confidential information, requiring the return or destruction of information they produce, which may include trade secrets and other sensitive information.
 - Furthermore, CID productions are voluminous, and are often produced via electronic media, such as hard drive, flash drive, or CD, and understand that we do not have a temperature-controlled state records facility that can accommodate electronic media once our case is closed.
 - The return or destruction documents received via CID furthers the producing party's goals of protecting the confidentiality of the information they produce, while also alleviating storage costs and limiting potential liability for data or security breaches.

SECTION 39-5-80. Additional powers of Attorney General in administration of article.

To accomplish the objectives and to carry out the duties prescribed by this article, the Attorney General, in addition to other powers conferred upon him by this article, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force and effect of law; provided, however, that none of the powers conferred by this article shall be used for the purpose of compelling any person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided, further, that information obtained pursuant to the powers conferred by this article shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law-enforcement purposes in the public interest. At the conclusion of the investigation, the Attorney General may return information obtained pursuant to the powers conferred by this article to the producing party, destroy the information, or maintain it in accordance with applicable document retention policies.



Associated Performance Measures

The next slides only contain information on performance measures that are associated with services covered earlier in this presentation.

Performance

Metrics tracked include:

Matters completely resolved pursuant to:

- S.C. Unfair Trade Practices Act
- State and federal Authority
- Charitable Trust authority

Performance

Metrics tracked include:

Matters timely enforced pursuant to:

- Telephone Privacy Protection Act
- Bad Faith Assertion of Patent Infringement Act

Timely review of the following:

- Notices of Unfair Trade Practices Act cases from County Clerks of Court
- Notices of nonprofit dissolutions and sales of certain nonprofit assets
- Grants of easements, permits, and rights of way over Department of Mental Health facilities
- Applications for health care cooperative agreements when referred by DHEC
- Settlements under the Class Action Fairness Act
- Data breach notice letters (and response to them)

Numbers tracked for the following:

- Matters resolved as Administrator under the Motor Vehicle Act
- Timely participation in or review of working group calls
- Timely handle investigations under the S.C. Nonprofit Corporations Act
- Federal tax form 990 received and filed
- Matters with service as local counsel to other AG Offices
- Timely recommendations made to the Attorney General's Office for sign-ons related to the Section