

# Healthcare and Regulatory Subcommittee

## Thursday, March 28, 2024

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## AGENDA



# South Carolina House of Representatives Legislative Oversight Committee

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## HEALTHCARE AND REGULATORY SUBCOMMITTEE

Chairman Joseph H. "Joe" Jefferson, Jr.

The Honorable April Cromer

The Honorable Roger K. Kirby

The Honorable Thomas Duval "Val" Guest, Jr.

The Honorable Marvin "Mark" Smith

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## AGENDA

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Thursday, March 28, 2024

9:00 a.m.

108 - Blatt Building

Pursuant to Committee Rule 4.7, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

### AGENDA

- I. Approval of Minutes
- II. Discussion of the study of the Department of Consumer Affairs
- III. Adjournment



## MINUTES



# South Carolina House of Representatives Legislative Oversight Committee

## Chair Jeffrey E. “Jeff” Johnson

William H. Bailey  
Gary S. Brewer  
April Cromer  
Kambrell H. Garvin  
Leon Douglas “Doug” Gilliam  
Thomas Duval “Val” Guest, Jr.

William M. “Bill” Hixon  
Joseph H. “Joe” Jefferson, Jr.  
Wendell Keith Jones  
Roger K. Kirby  
Josiah Magnuson  
John R. McCravy, III

## First Vice-Chair Chris Wooten

Timothy A. “Tim” McGinnis  
Adam M. Morgan  
Travis A. Moore  
Russell L. Ott  
Marvin R. Pendarvis  
Marvin “Mark” Smith

Lewis Carter  
Research Director

Roland Franklin  
Counsel/Associate General Counsel for Litigation

Cathy A. Greer  
Administration Coordinator

Riley E. McCullough  
Research Analyst

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**Tuesday, March 5, 2024**

10:30am

Blatt Building Room 110

### Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.7, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly’s website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

### Attendance

- I. The Healthcare and Regulatory Subcommittee meeting was called to order by Chair Joseph H. Jefferson, Jr. on Tuesday, March 5, 2024, in Room 110 of the Blatt Building. Four subcommittee members (Chair Jefferson; Representative Marvin “Mark” Smith; Representative Roger Kirby; and Thomas Duval “Val” Guest, Jr.) were present, and one absent (Representative April Cromer).

### Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings.

## Approval of Minutes

Representative Smith made a motion to approve the meeting minutes from the Tuesday, November 9, 2023, meeting. A roll call vote was held, and the motion passed.

<b>Rep. Smith's motion to approve meeting minutes.</b>	Yea	Nay	Not Voting
Rep. Cromer			✓
Rep. Guest	✓		
Rep. Kirby	✓		
Rep. Smith	✓		
Rep. Jefferson	✓		

## Discussion of the Study of the Department of Consumer Affairs

- I. Chair Jefferson states the purpose of the meeting, which is to conduct the fifth meeting with the South Carolina Department of Consumer Affairs and to consider findings and recommendations for inclusion in the subcommittee's study report.
- II. Carrie Grube Lybarker, Administrator/ Consumer Advocate, of the South Carolina Department of Consumer Affairs, was recognized and presented final remarks as the agency's formal presentations were concluded.
- III. The subcommittee chair permitted additional public comment regarding the proposed findings and recommendations. One member of the public provided comments.
- IV. The subcommittee did not vote on the proposed findings and recommendations due to time constraints.
- V. The meeting is adjourned.



## AGENCY SNAPSHOT



# South Carolina House of Representatives Legislative Oversight Committee

## DEPARTMENT OF CONSUMER AFFAIRS

### ABOUT

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.

### HISTORY



- Prior to implementation of South Carolina Consumer Protection Code (SCCPC), little protection existed for consumers in the marketplace.
- The SCCPC is Title 37 of the *Code of Laws of South Carolina*. It was adopted in 1974 and became effective January 1, 1975.
  - Major amendments were made to the SCCPC in 1976 and 1982.
    - The 1976 amendments added the Chapter on Consumer Loans.
    - The 1982 amendments deregulated interest rates in South Carolina.
  - Significant amendments were made to the Chapter on Credit Insurance in 1999.
- Other states having a version of the uniform code are:
  - Colorado, Maine, Indiana, Oklahoma, Iowa, Wisconsin, Utah, Kansas, and Wyoming.

### OVERVIEW



45 State FTEs

120 statutes to  
administer &  
enforce



#### Total Funding by Fiscal Year





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# LEADERSHIP

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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 was named Acting Director of Public Information in July 2010 then Deputy Director of Public Information, Consumer Services and Education in October 2010.
- 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

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## DIVISIONS

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The Department of Consumer Affairs is organized into six divisions.

### Administration

- Provides support for the other Divisions including personnel, accounting, data processing and purchasing.

### Public Information and Education

- Serves as the main consumer education portal for consumers, business and the media.
- Informs consumers and businesses on their rights and responsibilities in the marketplace through traditional and alternative media distribution.

### Consumer Services

- Takes and attempts to resolve consumer complaints against businesses, with due regard for the rights of the business.
- Handles complaints against industries we regulate, and those where no one else has jurisdiction.

### Identity Theft Unit

- Provides education and outreach to consumers across the state to increase public awareness about what identity theft is, the steps consumers can take to protect themselves, and what consumers should do in the event of identity theft.

### Advocacy

- Represents the public at large in intervening in rate cases/filings. (Includes investor-owned utilities, homeowner's insurance and worker's compensation insurance).
- Intervenes in state and federal agency rulemaking process when attempting to fix prices for consumer goods or services.

### Legal

- Helps the Administrator administer and enforce applicable laws.
- Processes regulatory filings, investigates potential issues, and brings enforcement actions.



## DRAFT FINDINGS AND RECOMMENDATIONS



South Carolina  
House of Representatives  
Legislative Oversight Committee

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## DEPARTMENT OF CONSUMER AFFAIRS

# Findings & Recommendations

# FINDINGS

## 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.

## 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.

## 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.

## 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.

## 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.

## 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.).

## 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.

## FINDING 8

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

## 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.

## FINDING 10

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

## FINDING 11

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

## 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.).

### 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.

### 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. 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.

### 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. In some cases, this reporting requirement has not prevented creditors from setting interest rates as high as 850%, a rate considered predatory by DCA.

# RECOMMENDATIONS

## 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.

## 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.).

## 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. 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.

## RECOMMENDATION 4

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

## 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.

## 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.

## RECOMMENDATION 7

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

## 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.).

## 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.

#### **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. The Department of Labor, Licensing, and Regulation proposes the applicable statutes be moved to its code section.

#### **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.

#### **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.

#### **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.

#### **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.