

Healthcare and Regulatory Subcommittee

Wednesday, August 9, 2023

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AGENDA



South Carolina
House of Representatives
Legislative Oversight Committee

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

AGENDA

Wednesday, August 9, 2023

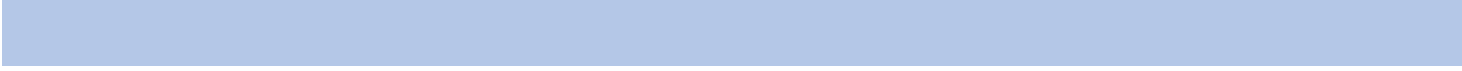
10:30 a.m.

Room 110 - 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

Charles L. Appleby IV
Legal Counsel

Cathy A. Greer
Administration Coordinator

Lewis Carter
Research Director

Roland Franklin
Counsel/Associate General Counsel for Litigation

Riley E. McCullough
Research Analyst

Post Office Box 11867
Columbia, South Carolina 29211
Telephone: (803) 212-6810 • Fax: (803) 212-6811
Room 228 Blatt Building

Thursday, July 20, 2023

10:30am

Blatt Building Room 516

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 Thursday, July 20, 2023, in Room 516 of the Blatt Building. Four subcommittee members (Chair Jefferson; Representative Marvin “Mark” Smith; Representative Roger Kirby; and Representative April Cromer) were present, and one absent (Representative Thomas Duval “Val” Guest, Jr.) for all or a portion of the meeting.

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 Monday, June 5, 2023, meeting and Tuesday, June 27, 2023, meeting. A roll call vote was held, and the motion passed.

Rep. Smith’s motion to approve meeting minutes.	Yea	Nay	Not Voting
Rep. Cromer	✓		
Rep. Guest			✓
Rep. Kirby	✓		
Rep. Smith	✓		
Rep. Jefferson	✓		

Discussion of the Study of the Department on Aging

- I. Chair Jefferson states the purpose of the meeting, which is to continue the Committee’s study of the Department on Aging. No additional staff from the Department on Aging are sworn in prior to testimony.

Director Connie Munn summarized her agency’s experience with the oversight process. She reiterated the role of the Department on Aging, the Area Agencies on Aging, and the provider network. Members of the Committee provided closing statements to conclude the study.

- I. Representative Roger Kirby made a motion to approve the subcommittee’s findings and recommendations as presented in the meeting packet. A roll call vote was held, and the motion passed.

Rep. Kirby’s motion to approve findings and recommendation.	Yea	Nay	Not Voting
Rep. Cromer	✓		
Rep. Guest			✓
Rep. Kirby	✓		
Rep. Smith	✓		
Rep. Jefferson	✓		

- II. Subcommittee Chair Jefferson directed staff to draft the report and provided a copy of it to all subcommittee members by Friday, August 25, 2023.

If any member would like to provide a written statement for inclusion in the report, the deadline for providing those statements will be 5:00 p.m. on Friday, August 18, 2023.

Subcommittee Chair Jefferson will provide notice to the full Committee that a Subcommittee Study is available for consideration, unless he receives a written request for another meeting from a subcommittee member prior to 5:00 p.m. on Friday, August 25, 2023.

Deadlines are subject to change at the Subcommittee Chair's discretion.

Adjournment

- I. There being no further business, the meeting is adjourned.



AGENCY OVERVIEW



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

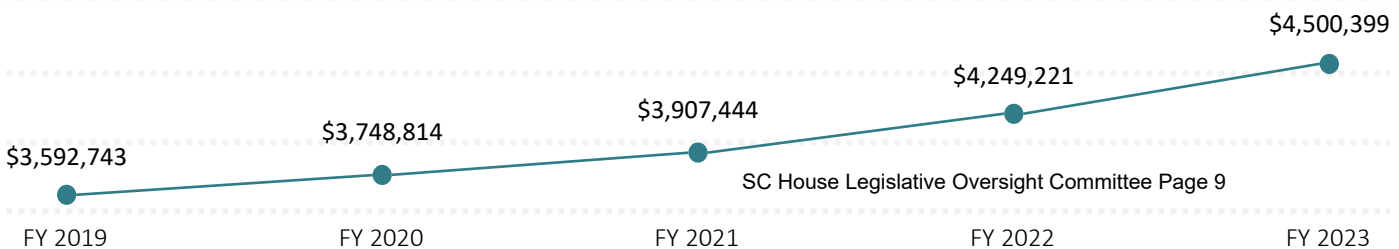


45 State FTEs

120 statutes to administer & enforce



Total Funding by Fiscal Year



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 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

DIVISIONS

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.



AGENCY PRESENTATION



DEPARTMENT OF CONSUMER AFFAIRS: AGENCY OVERVIEW

Carri Grube Lybarker

Administrator/ Consumer Advocate, SC Dept. of Consumer Affairs

Public Hearing Follow-Up



Closing Fees



Motor Clubs



Debit Card Processing Fees



Closing Fees

Issues Raised During Public Hearing

- Criteria DCA uses to determine if a fee over \$225 is reasonable
- Time taken for DCA to approve a Closing Fee filing
- Information DCA can request to determine compliance with the closing fee law
- Essentially, what does the statute allow the agency to do?

2023 Act No. 45 (eff. 5/16/23)

(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.

https://www.scstatehouse.gov/sess125_2023-2024/prever/3952_20230505.htm

In a Nutshell



- Expanded the Definition of a Closing Fee; Added one for Dealers
- Tweaked the Filing Process
- Changed Department Review of Closing Fees Over \$225
- Created a Framework for Reviews & Investigations

CLOSING FEES

Definitions

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



CLOSING FEES

Filing Process

- When to File? Prior to charging and when changing the fee. Certificates are **perpetual**.
- How costs calculated? In accordance with **Generally Accepted Accounting Principles**; Use **preceding 12-month period**; **Actual costs and expenses** falling into the listed, statutory categories:
 - 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.

Date Issued: 06/22/2023
Registration Number: MVL-169476
Expiration Date: 12/31/2099

CLOSING FEES

DCA Reasonableness Review

- Checking to see if costs:

- 1 Meet definition of closing fee,
- 2 Fall within statutory cost category,
- 3 Calculated using GAAP for preceding 12-month period,
- 4 Compare a particular dealer's costs only with other similarly situated dealers

CLOSING FEES

DCA Reasonableness Review cont...

- In determining reasonableness, **shall accept and allow all of the dealer's actual costs & expenses**
- Timeframe for review
 - DCA has **15 days** from **complete** application to provide written notice of intent to review
 - DCA has **30 days** from **complete** application to issue a written order re findings that fee “not reasonable”

CLOSING FEES

2021-2022 Closing Fee Turnaround Data

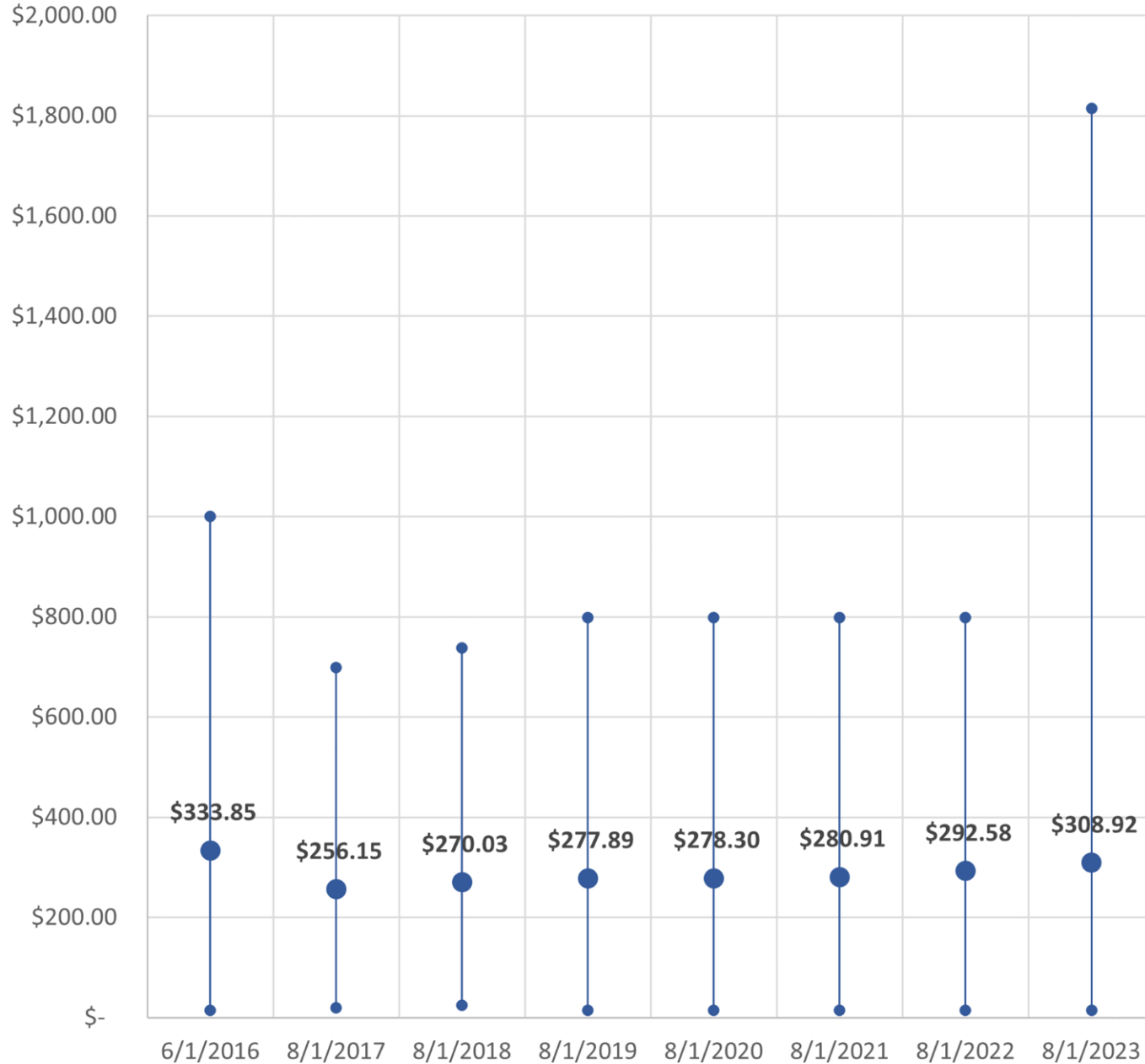
- DCA received 687 filings during 2022 renewal, 40% of which came in 2 weeks prior to the January 31st deadline.
- 258 filed over \$225. 83 requested an increase over the prior year.
- We reviewed/ requested additional information on 89.
 - Over half of those were processed by March 1. Nearly all by April 1.
 - 35 involved negotiations to a lower fee than initially filed.

CLOSING FEES

2022-2023 Closing Fee Turnaround Data

- DCA received 718 filings during 2022 renewal, 32% of which came in 2 weeks prior to the January 31st deadline.
- 265 filed over \$225. 126 requested an increase over the prior year.
- Average number of days to process over \$225 = 10.4 days
- We reviewed/ requested additional information on 76.
 - 63% of those were processed by March 1. Nearly all by April 1.
 - 26 involved negotiations to a lower fee than initially filed.

Minimum, Maximum, Average Closing Fees



As of	Count	Min Fee	Max Fee	Avg Fee
6/1/2016	556	\$ 15.00	\$ 1,000.00	\$ 333.85
8/1/2017	634	\$ 20.00	\$ 699.00	\$ 256.15
8/1/2018	760	\$ 25.00	\$ 738.50	\$ 270.03
8/1/2019	750	\$ 14.50	\$ 798.50	\$ 277.89
8/1/2020	791	\$ 14.50	\$ 798.50	\$ 278.30
8/1/2021	830	\$ 14.50	\$ 798.50	\$ 280.91
8/1/2022	825	\$ 14.50	\$ 798.50	\$ 292.58
8/1/2023	822	\$ 14.50	\$ 1,815.13	\$ 308.92

CLOSING FEES

Authority to Administer & Enforce

- (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. (S.C. Code Ann. 37-2-307)

CLOSING FEES

Authority to Administer & Enforce cont...

- Limited to extent necessary to determine dealer compliance with:
 - Disclosure requirements (advertisement and on contract)
 - Accuracy of dealer's cost and expense information

CLOSING FEES

Authority to Administer & Enforce cont...

- Reviews & Investigations:
 - Receipt of complaint or other credible evidence re closing fees
 - DCA will provide written notice to dealer. Notice shall:
 - include sufficient info to identify related documents
 - request only info reasonably related to alleged violation
 - state dealer may provide written response

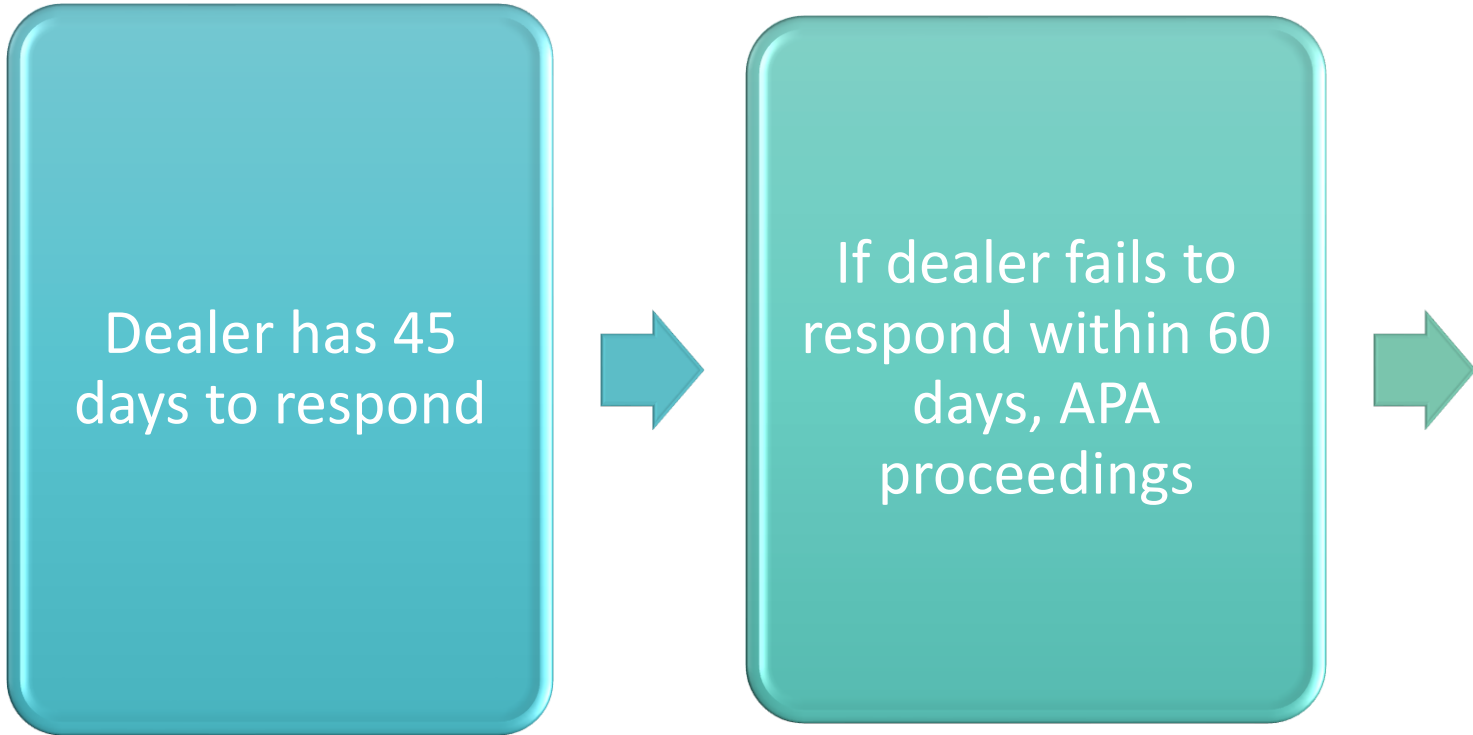


CLOSING FEES



Authority to Administer & Enforce cont...

- Reviews & Investigations:



NEW

If intentional:

- Dealer must refund excess charge paid by consumer within 30 days of notice from DCA

1st violation: written warning notice

2nd violation: \$500 penalty

3rd violation: up to \$1,000 penalty

NEW

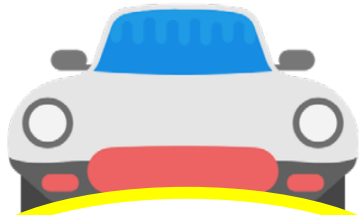
4th & subsequent violations: up to \$5,000 penalty

- Cumulative penalties shall not exceed \$100,000 in 12-month period

CLOSING FEES

Example of Proper Closing Fee Disclosure under prior law

Recent price drop!



Price \$30,500*

*Fineprintfineprintfineprintfineprintfineprint. Includes \$500 closing fee. Excludes tax, tag, title, registration.

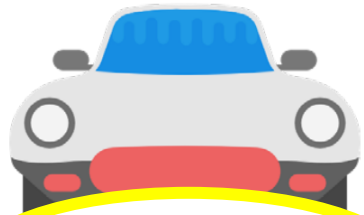
Sales Contract

Price of Vehicle	<u>\$ 30,000.00</u>
Closing Fee	<u>\$ 500.00</u>

CLOSING FEES

Example of Proper Closing Fee Disclosure eff 5/16/23

Recent price drop!



Price \$30,000*

*Excludes \$500 closing fee, tax, tag, title, registration.

Sales Contract

Price of Vehicle	<u>\$ 30,000.00</u>
Closing Fee	<u>\$ 500.00</u>



Motor Clubs & Debit Card Fees

Prior to 1982

With respect to a consumer loan, including a loan pursuant to open-end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) the total of:

(i) 36% per year on that part of the unpaid balances of the amount financed which is [\$390.00] or less;

(ii) 21% per year on that part of the unpaid balances of the amount financed which exceeds [\$390.00] but does not exceed [\$1,300.00]; and

(iii) 15% per year on that part of the unpaid balances of the amount financed which exceeds [\$1,300.00]. ... (Emphasis added) [Amounts adjusted pursuant to §37-1-109 (Cum. Supp. 1980)]

Prior to 1982

South Carolina

- 36% for very small loans
- 21% for slightly larger loans
- 15% for larger loans

18%

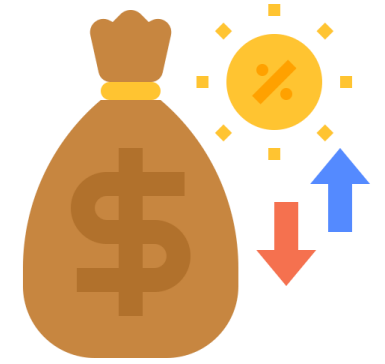
1982 National Prime Rate

20%

General Assembly Response



Filing: Maximum Rate Schedules



CONSUMER CREDIT SALES:

- Can charge up to 18% without doing anything
- To charge above 18%, must file MRS and post it in a conspicuous place

CONSUMER LOANS:

- Any lender can charge up to 12% without doing anything
- Supervised or Restricted Lenders can charge up to 18%
- To charge above 18%, must file MRS and post it in a conspicuous place

“Finance Charge”



- Any charge imposed because of the extension of credit = a finance charge
 - unless the charge is specifically allowed as a *permissible additional charge*
- SCCPC specifically permits certain additional charges
- Additional charges:
 - can be added to the principal amount of the debt
 - do not have to be made a part of the finance charge

Permissible Additional Charges



- Official Fees and Taxes
 - Fees and charges actually are or will be paid to public officials to perfect or release security interest related to credit sale, lease, or loan
 - DMV fees (\$15 title fee)
 - Premiums paid for insurance in lieu of perfecting a security interest

Permissible Additional Charges



Permissible Additional Charges

- Include in principal amount
- ***Don't*** include in finance charge

15%

Not Permissible...

- Include in finance charge
- ***Don't*** include in principal amount

20%

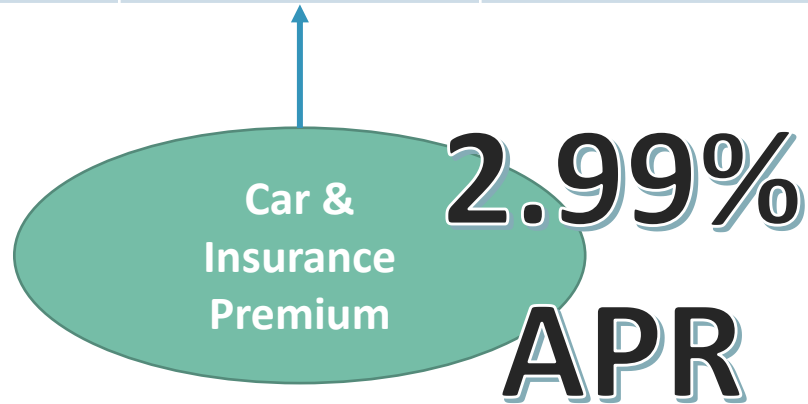
Car \$8,167

Insurance Premium \$380

Interest \$363

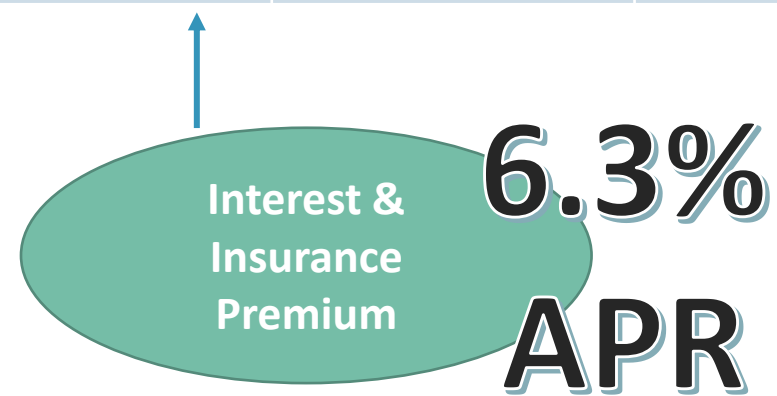
Permissible Additional Charge

Finance Charge	Amount Financed	Total Payments
\$ 363	\$ 8,547	\$ 8,910

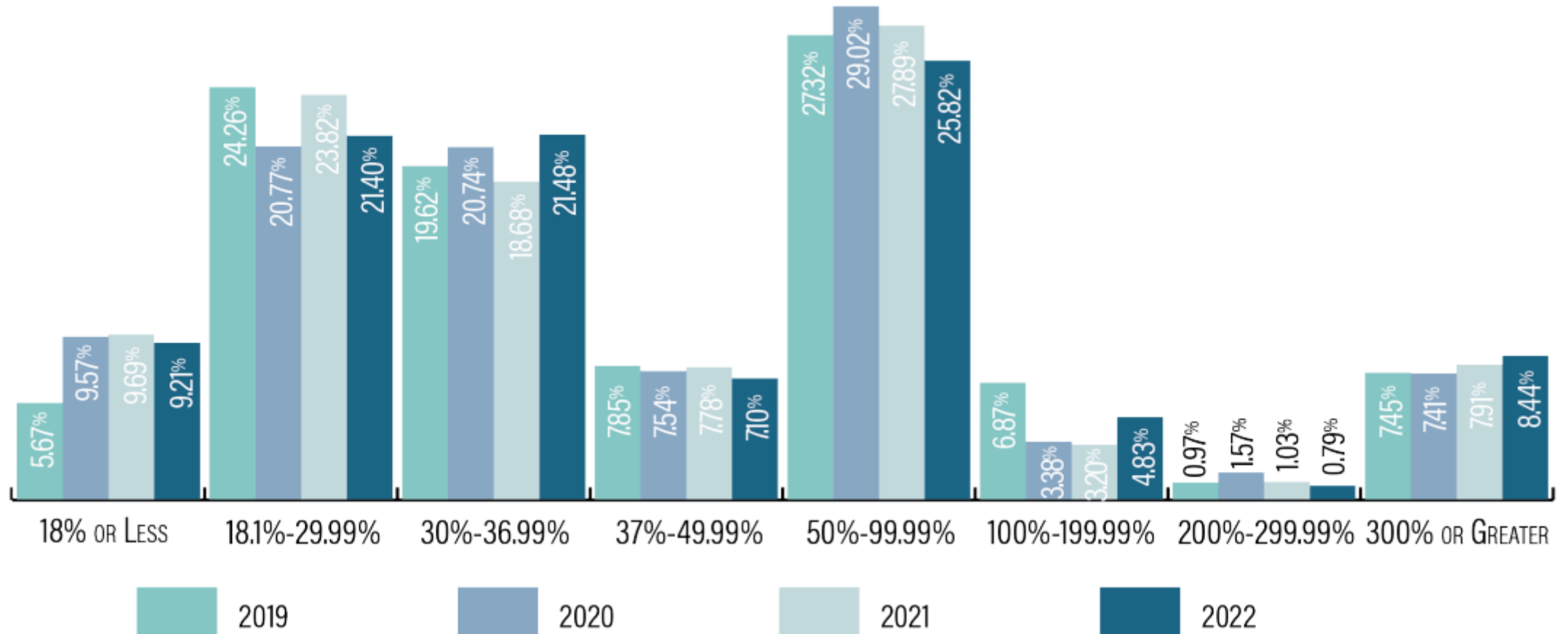


Not Permissible...

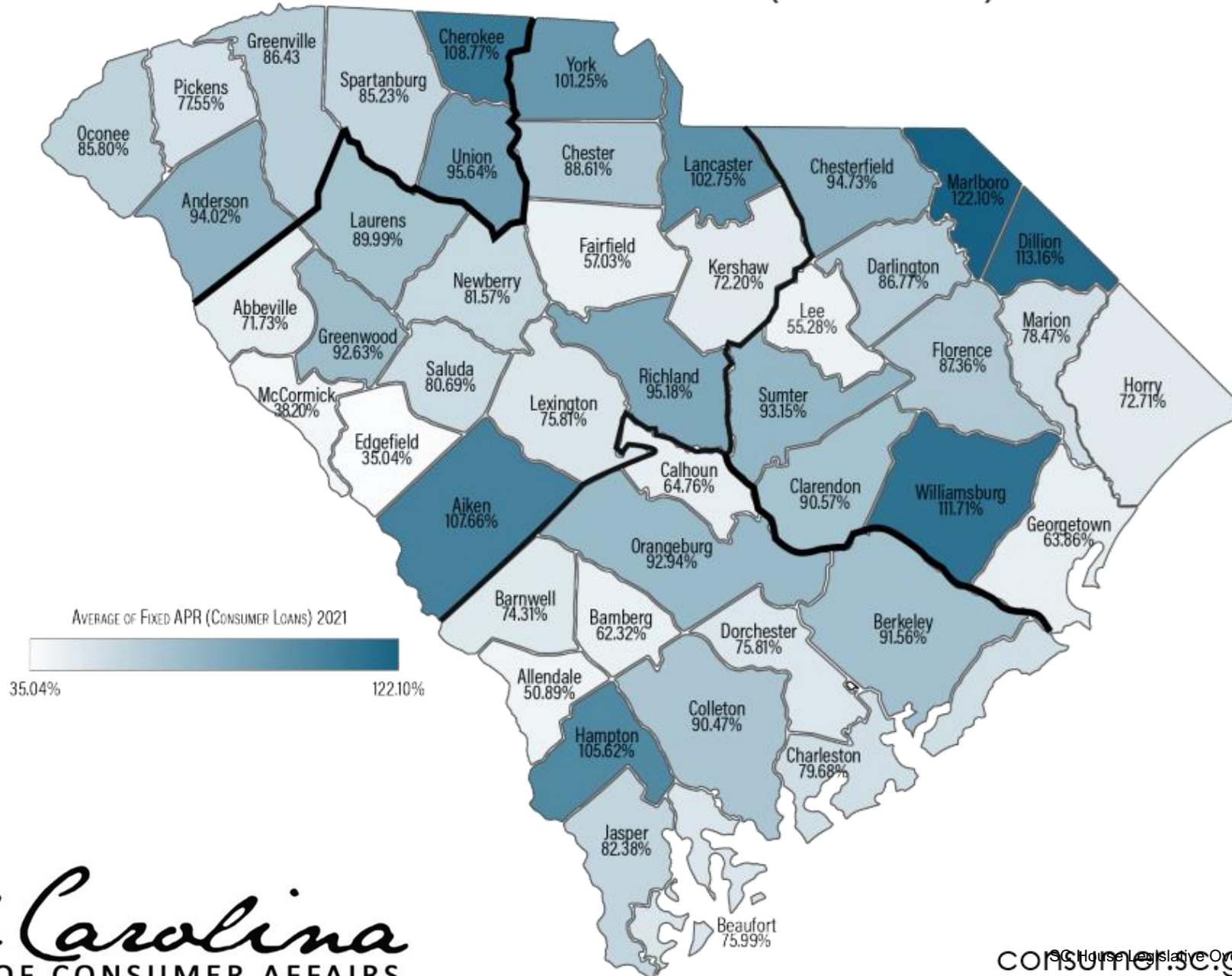
Finance Charge	Amount Financed	Total Payments
\$ 743	\$8,167	\$8,910



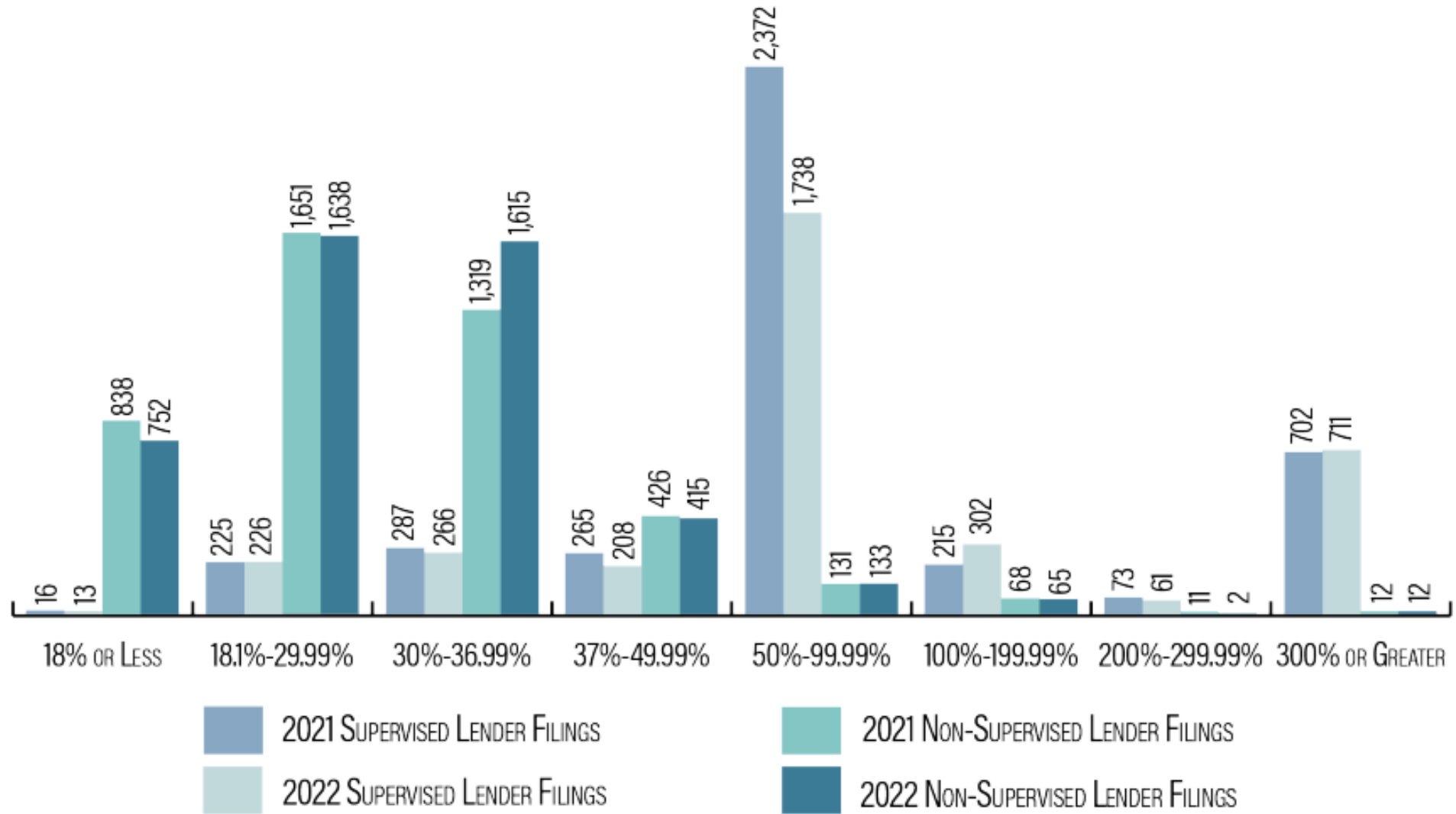
MAXIMUM RATE FILINGS BY APR RANGE: YEAR OVER YEAR COMPARISON (2019 - 2022)



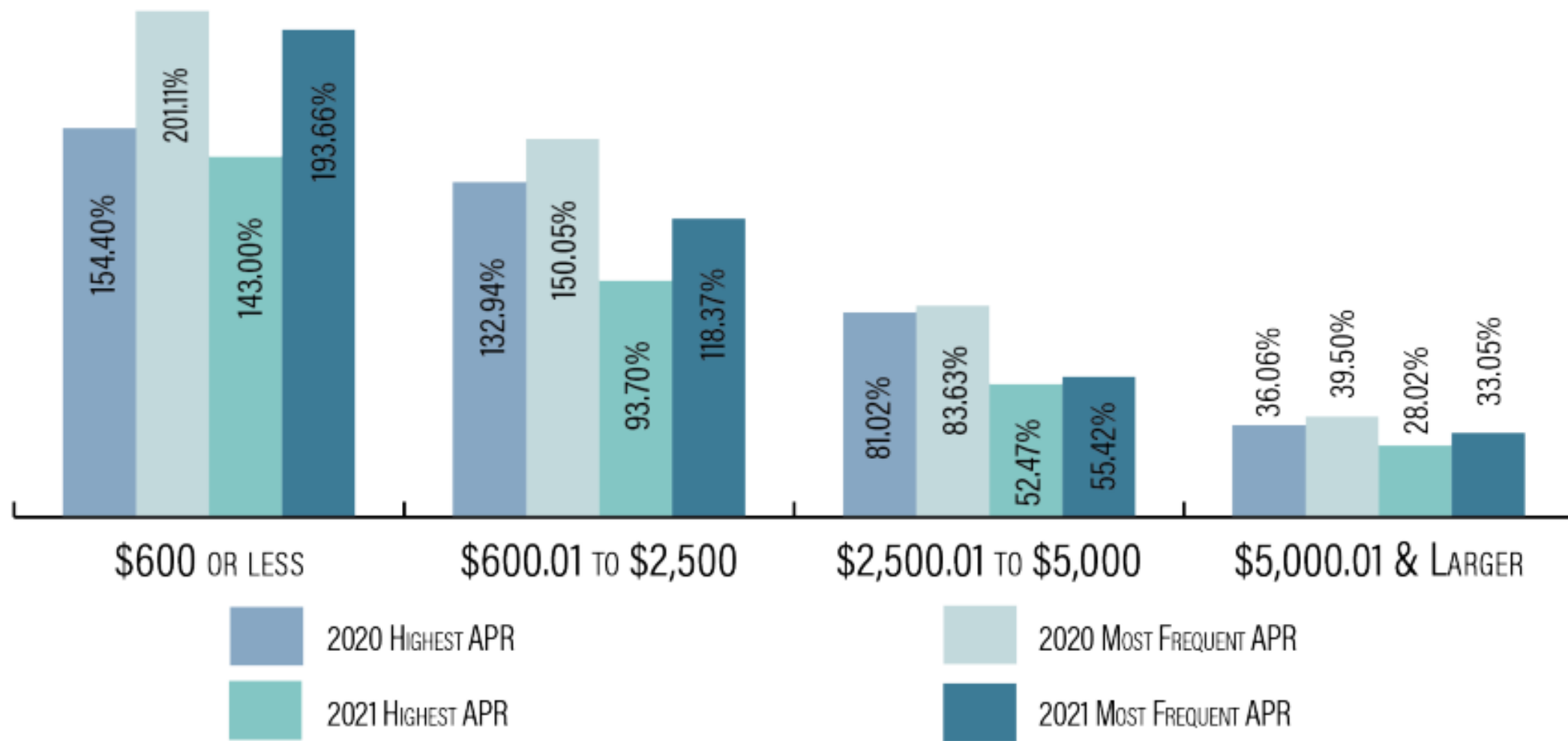
AVERAGE OF FIXED MAXIMUM APR FILED BY COUNTY (CONSUMER LOANS) 2022



MAXIMUM RATE FILINGS BY RANGE: SUPERVISED LENDERS & NON-SUPERVISED LENDERS (2021/2022)



HIGHEST AND MOST FREQUENT APR CHARGED BY LOAN AMOUNT (WEIGHTED AVERAGES)



Motor Club and Other Ancillary Products

October 1, 1976

Motor Club and Other Ancillary Products

1976-2007

- DCA issues informal opinions permitting auto and home security systems be sold pursuant to 3.202-7608 framework

2007-2008

Motor Club and Other Ancillary Products

2009-2014

3rd Party Processing Fees

Cost to process payment made on a consumer transaction:

if imposed directly or indirectly by creditor

= finance charge.

Administrative Interpretation
3.109,503-1603

3rd Party Processing Fees: Factors Considered

01

Whether or not the fee imposed by a third party payment processor is absorbed by the creditor.

02

Appearance the consumer does not have a choice in utilizing a payment processor and/or who to utilize as a payment processor

03

Co-branding (creditor and third party processor) of advertising, contracts, or other documents provided to the consumer in the transaction, or websites

04

The relationship between the creditor and processor, including any payments, referrals or other consideration exchanged for business

05

Whether the service is a “self-service” or if the service can only be utilized through the creditor

QUESTIONS?





DEPARTMENT OF CONSUMER AFFAIRS: AGENCY OVERVIEW

Carri Grube Lybarker

Administrator/ Consumer Advocate, SC Dept. of Consumer Affairs

SCDCA Overview



Created when the SC Consumer Protection Code was adopted in 1974, becoming effective Jan. 1, 1975.



45 FTEs | 1 office location



120 statutes to administer & enforce, + accompanying regulations

Includes Title 37, SC Consumer Protection Code

Our Mission

Our mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement and education.

Values

The Department strives to be a CREDIT to our State by holding the following values as essential in our relationships and decision-making:

Competence

Respect

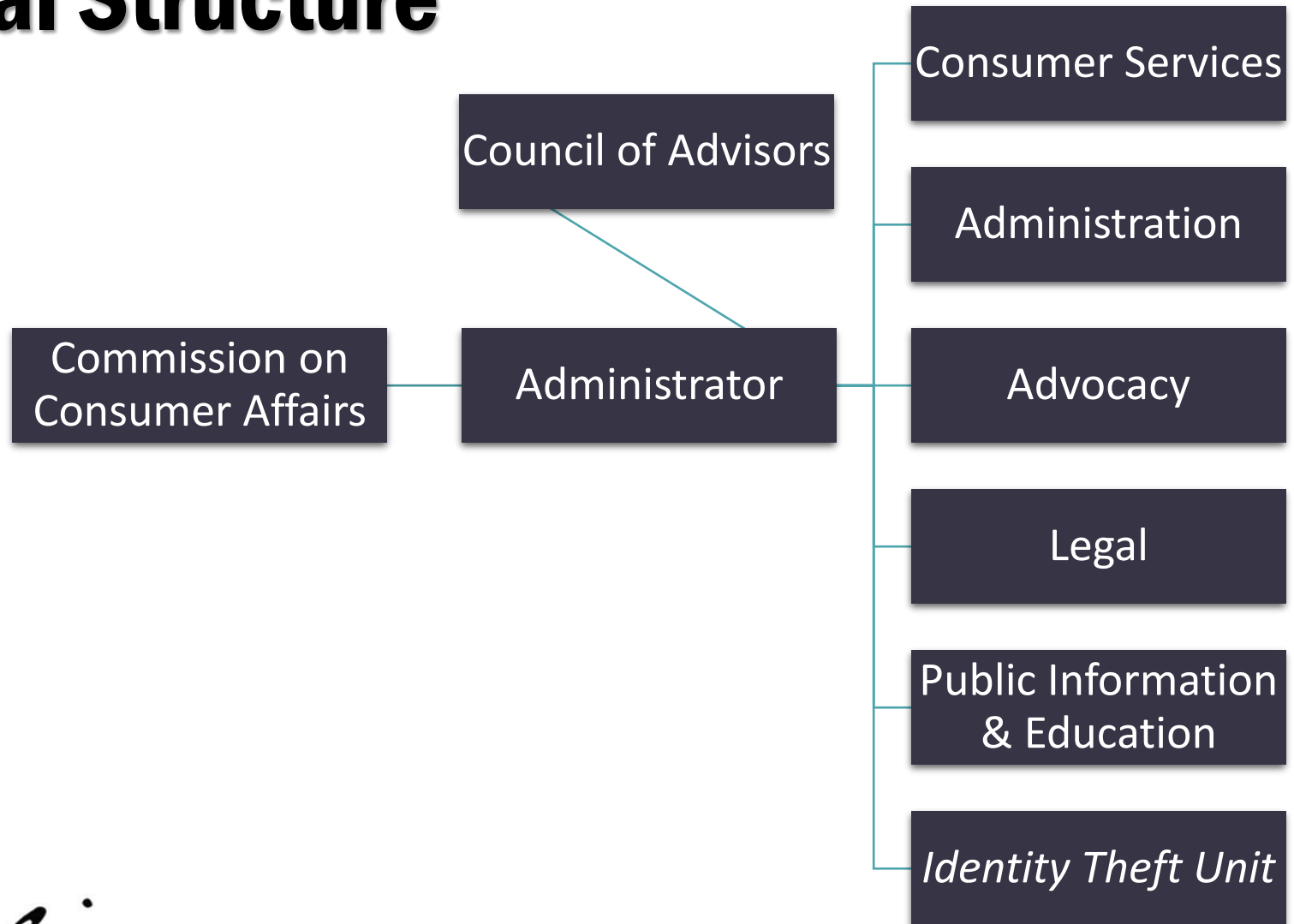
Equality

Dedication

Integrity

Timeliness

Organizational Structure





SCDCA Overview *continued...*

The Department is headed by the Administrator:

- The Administrator is hired/appointed by the Commission on Consumer Affairs. The Commission is made up of 9 members:
 - four appointed by the Governor,
 - four elected by the General Assembly, and
 - the Secretary of State

Commission on Consumer Affairs

Commissioner	Profession	Began Serving	Seat Type Term Expiration Date
David Campbell, Chair	Chernoff Newman Vice-Chair and COO	Aug. 30, 2009	Governor's Appointee Aug. 30, 2021
Mark Hammond	SC Secretary of State		Elected Official, Ex Officio
W. Fred Pennington, Jr.	Co-owner of Lawrence Fabrication, Inc. Treasurer/ Vice President.	April 2, 2014	Governor's Appointee Sept. 20, 2019
James E. Lewis	Attorney	May 8, 2019	General Assembly June 30, 2023
Renee I. Madden	Attorney	May 8, 2019	General Assembly June 30, 2023
Jack Pressly	Medical Consultant	May 14, 2019	Governor's Appointee Sept. 30, 2022
Vacant - March 6, 2023			General Assembly June 30, 2023
Vacant - June 30, 2023			General Assembly June 30, 2023
Vacant – September 4, 2011			Governor's Appointee

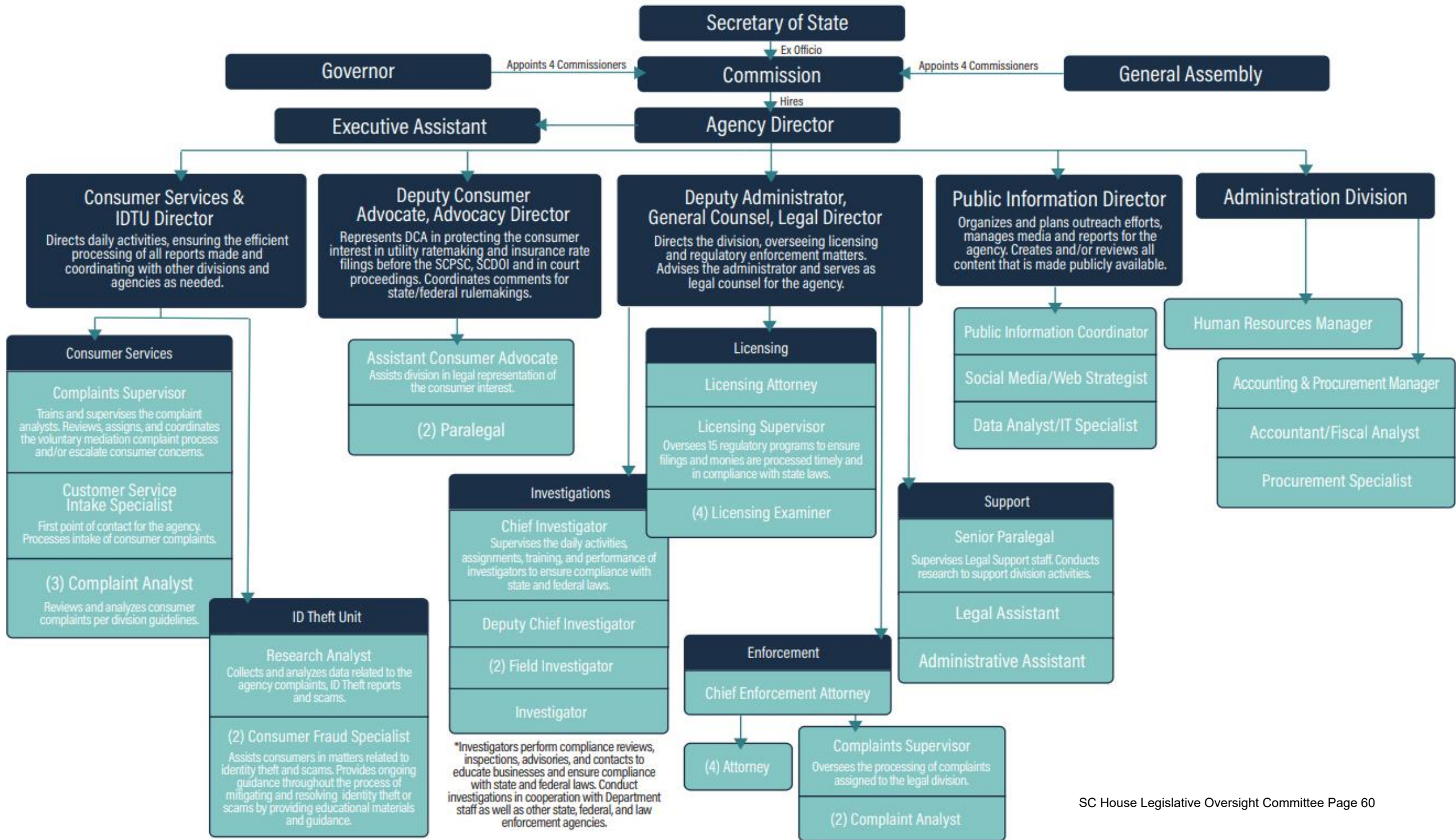
SCDCA Overview *continued...*

The Administrator also has a Council of Advisors from most areas of the creditor community to advise her on credit issues.

- The members of the Council are appointed by the Governor, and
- The Governor appoints the chair of the Council

Council of Advisors on Consumer Credit

Council Member	Profession	Began Serving	Term Expiration
Sharon Crawley Bramlett, Chair	Attorney	March 17, 2001	Aug. 15, 2018
Kristin M. Bastian, Vice Chair	Grants & Operations Director at Origin SC & Credit Counselor	Nov. 3, 2015	Aug. 15, 2017
Randall C. Cole	VP of Clinical Operations for SC OVP Health	Aug. 9, 2016	Aug. 15, 2020
Alethea Gadson	Branch Manager at South State Bank	July 2005	Aug. 15, 2018
James L. Godwin	Owner of Godwin Motors	Aug. 9, 2016	Aug. 15, 2020
Ruth Ellen Hardee	Financial Administrator at Home Builders Association of Greater Columbia	Apr. 2004	Aug. 15, 2019
Victor C. "Chip" McLeod III	Senior VP/ Financial Advisor for Merrill Lynch	Aug. 17, 2015	Aug. 15, 2019
Virginia "Dale" K. Palmer	"1st Franklin Financial Corporation Senior Vice President over Operations Administration"	Aug. 17, 2015	Aug. 15, 2019
Scott C. Rhodes	GM for Galeana	Nov. 13, 2015	Aug. 15, 2019
James "Dan" Walters	CEO of Credit Central	Aug. 14, 2014	Aug. 15, 2017
Robert "Bob" J. Wilkes	CEO and President KB Kitchen	Aug. 9, 2016	Aug. 15, 2018
5 Vacancies			





Consumer Services Division

- The Consumer Services Division 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.

Consumer Services Division *continued...*

- The Services Division receives approximately 4,000 written complaints annually.
- The Division has consistently resolved about 85% of the complaints in a satisfactory manner.
- Over \$1 million to consumers in credits, refunds & adjustments annually



Administration Division

- Provides support for the other Divisions including personnel, accounting, data processing and purchasing
- Houses the Administrator's Office:
 - Issues interpretations
 - Drafts legislation, regulations
 - Advises the Governor and Legislature on issues affecting consumers



Consumer Advocacy Division

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 Division

Helps the Administrator administer and enforce applicable laws

Processes regulatory filings

Investigates potential issues

Brings enforcement actions

Public Information Division

- Serves as the main consumer education portal for consumers, business and media
- Makes presentations and sponsors webinars on ID Theft, debt collection, foreclosures, credit and other popular topics
- Answers hundreds of calls per month pertaining to consumer scams and laws and disseminates press releases and consumer education brochures
- Launched SCDCA-TV on YouTube and uses Twitter, Facebook, Nextdoor

Identity Theft Unit



Field scam reports

Answer identity theft questions

Assist in identity theft mitigation

Outreach/education

Background

History

Laws

Snapshots

History of Consumer Credit Laws

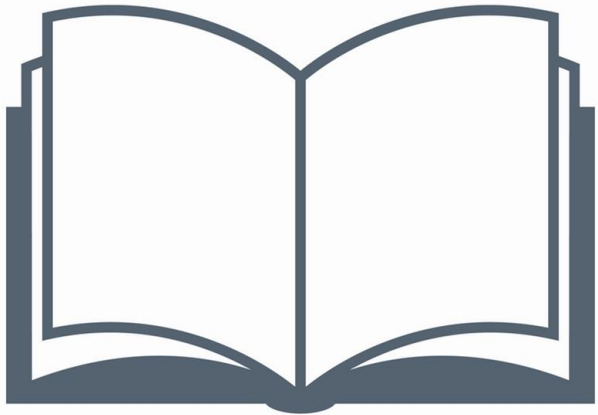
1968

History of Consumer Credit *continued...*

1976

SC CONSUMER PROTECTION CODE (SCCPC) - HISTORY

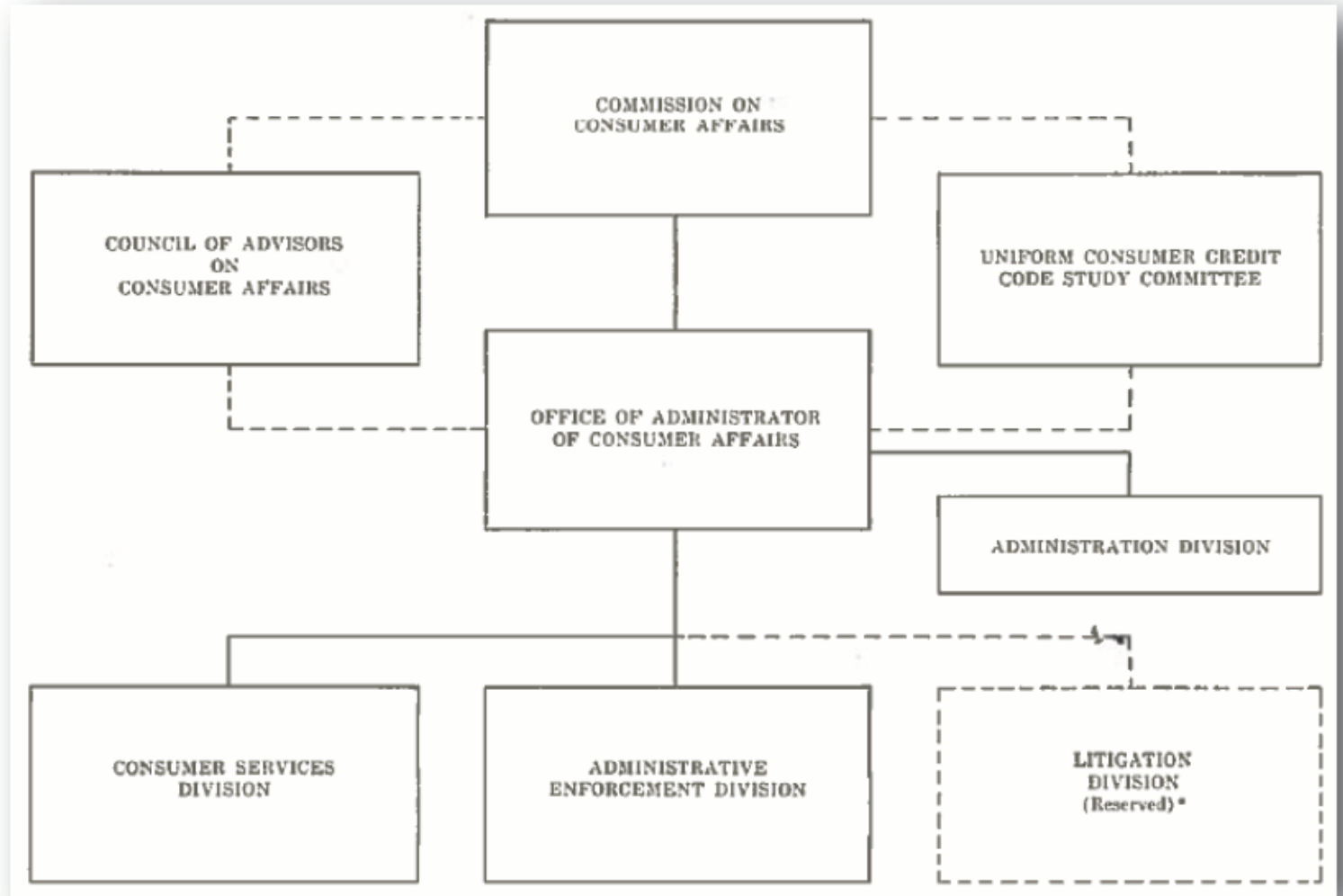
- Prior to implementation of SCCPC, little protection existed for consumers in the marketplace
- The SCCPC is Title 37 of the *Code of Laws of South Carolina*. It was adopted in 1974 and became effective January 1, 1975.
 - Major amendments were made to the SCCPC in 1976 and 1982.
 - The 1976 amendments added the Chapter on Consumer Loans
 - The 1982 amendments deregulated interest rates in SC
 - Significant amendments were made to the Chapter on Credit Insurance in 1999



SCCPC - HISTORY *continued...*

The Consumer Protection Code is a version of the Uniform Consumer Credit Code (UCCC or U3C).

DCA's 1st Organizational Chart



SCCPC – PURPOSES

§ 37-1-102

01

Simplify, clarify and modernize consumer credit law

02

Provide rate ceilings to assure an adequate supply of credit to consumers

03

Educate consumers and foster competition among businesses so that consumers may obtain credit at reasonable cost

04

Protect consumers against unfair practices, while having due regard for the interests of legitimate and scrupulous creditors

05

Permit and encourage the development of fair and economically sound consumer credit practices

06

Conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act

07

Make the law uniform among the various jurisdictions

SCCPC – ADMINISTRATOR RESPONSIBILITIES

§ 37-6-117

Process	Process consumer complaints (intake, mediate, refer)
Cooperate	Cooperate with/assist SC Attorney General and other federal, state and local agencies dealing with consumer protection
Educate	Educate consumers
Encourage	Encourage honest, fair business practices, and public responsibility
Recommend	Recommend new laws and amendments to protect consumers
Initiate	Initiate actions or otherwise represent the consumer interest
Develop	Develop specified educational material

SCCPC – CHAPTER BREAKDOWN

Chapter 1 – General provisions and definitions	Chapter 2 – Consumer credit sales (including home solicitations)	Chapter 3 – Consumer loans	Chapter 4 – Consumer credit insurance	Chapter 5 – Remedies and penalties (including unconscionability provisions)
Chapter 6 – Administration	Chapter 7 – Consumer credit counseling	Chapter 10 – Miscellaneous loan provisions (attorney/insurance preference, etc.)	Chapter 11 – Continuing care retirement communities	Chapter 13 – Subleasing and loan assumption of motor vehicles
Chapter 15 – Prizes and gifts	Chapter 16 – Pre-paid legal services	Chapter 17 – Prescription drug discount cards	Chapter 20 – Identity theft protection	Chapter 21 – Telephone privacy protection
Chapter 22 – Mortgage lending	Chapter 23 – High-cost home loans	Chapter 25 – Dispensing of ophthalmic contact lens	Chapter 30 – Guaranteed Asset Protection	

SCCPC – KEY DEFINITIONS

Consumer

§ 37-1-301(10) - “the buyer, lessee or debtor to whom credit is extended in a consumer credit transaction.”

Creditor

§ 37-1-301(13) - person who grants credit in a credit transaction, or an assignee of a creditor's right to payment

Transaction

§ 37-1-301(11) - a consumer credit sale (§ 37-2-104), consumer loan (§ 37-3-104), consumer lease (§ 37-2-106), or consumer rental-purchase agreement (§ 37-2-701)

Must be entered into for a consumer purpose (personal, family or household use)

SCCPC - EXPANDING AUTHORITY

- Initially created to take consumer complaints, regulate consumer credit marketplace and intervene in certain ratemaking actions
- Addition of regulated industries over time

Mid-Late 1980s

+4 (Motor Clubs, Physical Fitness, Pawn Brokers, Mortgage Brokers)

Early 2000s

+3 (Prepaid Legal, Discount Medical Plan Organizations, Motor Vehicle Closing Fees)

+3 (Continuing Care Retirement Communities, Athlete Agents, Professional Employer Organizations)

Early 1990s

+3 (Mortgage Loan Originators, Credit Counseling, Preneed Funeral Contracts)

Mid 2000s

OTHER LAWS

Athlete Agents

Loan Brokers

Mortgage Brokers

Motor Club
Services

Security Breaches
(Businesses &
Public Bodies)

Pawnbrokers

Physical Fitness
Services

Preneed Funeral
Contracts

Professional
Employer
Organizations

Complaints:
Homeowners
Associations &
Cable

Required Reports



South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

Required Reports

2022

STAR
R

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

2022 MORTGAGE LOG DATA REPORT

JUNE 30, 2023

ADMINISTRATOR: CARRI GRUBE LYBARKER
PO BOX 5757 • COLUMBIA,
(800) 922-1594 • [WWW.CONSUMER.SC.GOV](http://www.consumer.sc.gov)

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

ADMINISTRATOR/ CONSUMER ADVOCATE: CARRI GRUBE LYBARKER

293 GREYSTONE BLVD., SUITE 400 / P.O. BOX 5757

COLUMBIA, SOUTH CAROLINA 29250

803-734-4200 | FAX: 803-734-4229

CONSUMER.SC.GOV

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

Required Reports

2022

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
START
REPORT

2022 MORTGAGE DATA REPORT

JUNE 30, 2023

Homeowners Association Complaint Reports

Background

A 2018 change to state law (S.C. Code Ann. Â§ 27-30-340) requires DCA to collect certain data from complaints involving homeowners associations (HOA). Information collected is to be reported to the Governor, General Assembly and the public by January 31st each year. The Department issued the first report on January 31, 2019. The report is in a categorized, filterable and searchable format. The Department is reviewing the complaint data received in conjunction with the complaints forms for potential improvements. Any suggestions for content or process improvements may be submitted to DCA by [e-mail](#) or [snail mail](#).

For more information on the Homeowners Association Act, click [here](#).

[View tips on searching and filtering data within the spreadsheet \(PDF\)](#).

Special Report Information

[View the 2023 Five-Year Complaint Report \(PDF\)](#) - In celebration of the "Homeowners Association Act" fifth anniversary, SCDCA is releasing a compilation of the HOA complaint data received from June 1, 2018 - December 31, 2022. Individual annual reports can be found below.

Current Report Information

[View the 2023 HOA Complaint Report \(XLS\)](#) - The information contained in the report is compiled from complaints received January 1, 2022 - December 31, 2022.

2023 Executive Summary

- The 2023 report contains information from **276 complaints*** filed against **208 HOAs/ Management Companies**. There was a **7% increase** in 2022 of the number of complaints filed from January 1, 2021-December 31, 2021. Although the number of complaints increased, the number of concerns decreased by eight percent.
- The complaints raised **651 concerns** with multiple included in a single complaint. The **top three types** of issues raised were: (1) Failure to adhere to and/or enforce covenants and bylaws (15.1%), (2) Concerns regarding maintenance and repairs (12.4%), (3) Failure to notify residents of Board actions (11.5%).
- **Sixty-six percent** of complaints were closed indicating an adequate business response was received. Consumers were satisfied with the outcome of the complaint resolution process in **thirteen** complaints (**4.7%**). Examples of satisfactory resolutions include refunds/credits/adjustments being issued (**\$1,260.93**), requested financial information being provided and repairs or maintenance being made.
- **Ten percent** of complaints were closed as "**Abandoned**" due to the complainant's failure to submit the required HOA Supplemental Questionnaire. **Nineteen percent** were also closed "**Undetermined**" due to disputed facts. A majority of these complaints were complex in nature and concerned the transfer of the HOA from the developer to residents, fair elections and misappropriation of funds, among other issues.

South Carolina
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CONSUMER.SC.GOV

ADMINISTRATOR: CARRI GRUBBS
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(800) 922-1594 • [WWW.CONSUMER.SC.GOV](#)

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS

REGULATIONS- CHAPTER 28



41 regulations

*General agency
Operations,
Filings, Specific
regulated
industries*



Review annually

2013- deleted 8
regulations &
amended 10;
2018- amended 5.

Snapshot



1975

1,242
complaints filed

3,118
regulatory filings

regulatory programs:
registered creditors

Headlines During Parker's Tenure



Irvin Parker, 1975-1981

12/16
1978
Parker's Set
To Challenge
Milk Pricing

12/23
1978
Consumer advocate
challenges milk hike

Ledger, Monday, October 6, 1980
Auto Repairs No. 1 Consumer Headache
10/06
1980

SCDCA CASE SPOTLIGHT

1980

THE DEPARTMENT CONDUCTED 47 INVESTIGATIONS CONCERNING ODOMETER ROLLBACKS. THESE INVESTIGATIONS RESULTED IN THE RECOVERY OF NEARLY \$40,000 FOR CONSUMERS.

Snapshot



1986

4,746
complaints filed

5,635
regulatory filings

regulatory programs:
registered creditors, maximum rate and credit grantor

Headlines During Hamm's Tenure

March 10, 1984
S.C. Consumer Affairs
THE CHRONICLE-South Carolina's Fastest
Poor Merchandise? You Can Fight Back!
COLUMBIA, SC

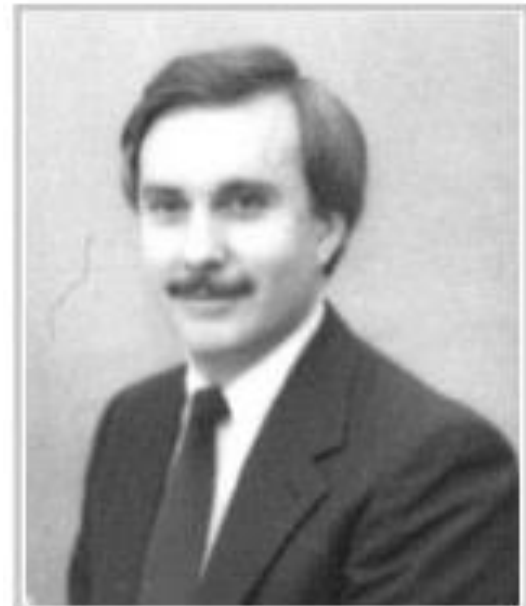
03/10
1984

²⁰⁸
Hamm tries
to protect
consumers

04/05
1993

205
Consumer Advocate
Success Of Special Office Hard To Determine

08/23
1982



Steve Hamm, 1981-1994

SCDCA CASE SPOTLIGHT

1989 SCDCA FILED A LAWSUIT AGAINST A FINANCE COMPANY FOR NOT PROVIDING CONSUMERS WITH A NOTICE OF RIGHT TO CURE BEFORE REPOSSESSING CARS. THE SETTLEMENT RESULTED IN CONSUMER REDRESS, PENALTIES AND INVESTIGATIVE COSTS EXCEEDING \$1.5 MILLION.

Snapshot



1995

4,152
complaints filed

12,808
regulatory filings

regulatory programs:

registered creditors, maximum rate and credit grantor, pawnbrokers, mortgage brokers, athlete agents, physical fitness, motor clubs, professional employer organizations, continuing care retirement communities.

Headlines During Porter's Tenure

CONSUMER AFFAIRS
Agency gives prompt, efficient service

06/17
1997

Conference on fraud planned
BEAUFORT — The S.C. Department of Consumer Affairs and the American Association of Retired Persons South Carolina is sponsoring a teleconference on frauds and schemes from 8:30 to 11:30 a.m. Dec. 1 in the Technical College of the Lowcountry auditorium. For more information, call (800) 922-1594 ext. 170.

11/11
1998

State agency can help consumers
The South Carolina Department of Consumer Affairs is celebrating 25 years of service to South Carolina consumers.

02/20
2000



Phil Porter, 1995-2002

SCDCA CASE SPOTLIGHT

2004 SCDCA ANNOUNCED A SETTLEMENT AGREEMENT WITH BELL SOUTH TELECOMMUNICATIONS, INC. ON A LAWSUIT CONCERNING THE COMPANY'S LEVEL OF EARNINGS IN SOUTH CAROLINA DURING THE YEARS 1996-1998. THE SETTLEMENT RESOLVED A NEARLY DECADE OLD DISPUTE AND SAVED CONSUMERS MORE THAN \$100 MILLION.

Snapshot



2007

6,696
complaints filed

23,304
regulatory filings

regulatory programs:

registered creditors, maximum rate and credit grantor, pawnbrokers, mortgage brokers, athlete agents, physical fitness, motor clubs, professional employer organizations, credit counselors, preneed funeral contract providers, prepaid legal, continuing care retirement communities, discount medical plan organizations.

Headlines During Pinkston's Tenure

04/26 2004 *Consumer Affairs shows its worth* **75044**

08/20 2003 *Consumer Affairs working with one third less budget* **75044**

S.C. DEPARTMENT OF CONSUMER AFFAIRS

- Acting administrator: Brandolyn Thomas Pinkston
- Employees in 2001: 45
- Employees today: 32
- Budget in FY 2001: \$2,388,392
- Budget in FY 2004: \$1,669,612
- Difference: down 30 percent

2003



Brandolyn Thomas Pinkston,
2002-2011

SCDCA CASE SPOTLIGHT

2005 THE DEPARTMENT OF CONSUMER AFFAIRS MADE A ROCK HILL AUTOMOBILE DEALERSHIP REFUND OVER \$1.3 MILLION DOLLARS TO APPROXIMATELY 1,300 CONSUMERS, FOR EXCESSIVE INTEREST CHARGED ON VEHICLE SALES FROM JANUARY 31, 2000 THROUGH SEPTEMBER 24, 2001.

SCDCA has saved consumers and businesses

\$2,974,514,524

through each Division since 1975!

1975-
2015

**THE
ADVOCACY
DIVISION**

\$2.9 BILLION
in savings through
intervention in utility
and insurance rate
filings.

**THE
SERVICES
DIVISION**

\$25 MILLION
in consumer credits,
refunds, and
adjustments.

**THE
LEGAL
DIVISION**

\$9.5 MILLION
in consumer credits,
refunds, and
adjustments.

**THE
ID THEFT
UNIT**

\$141K
in consumer credits,
refunds, and
adjustments.

Challenges

Budget

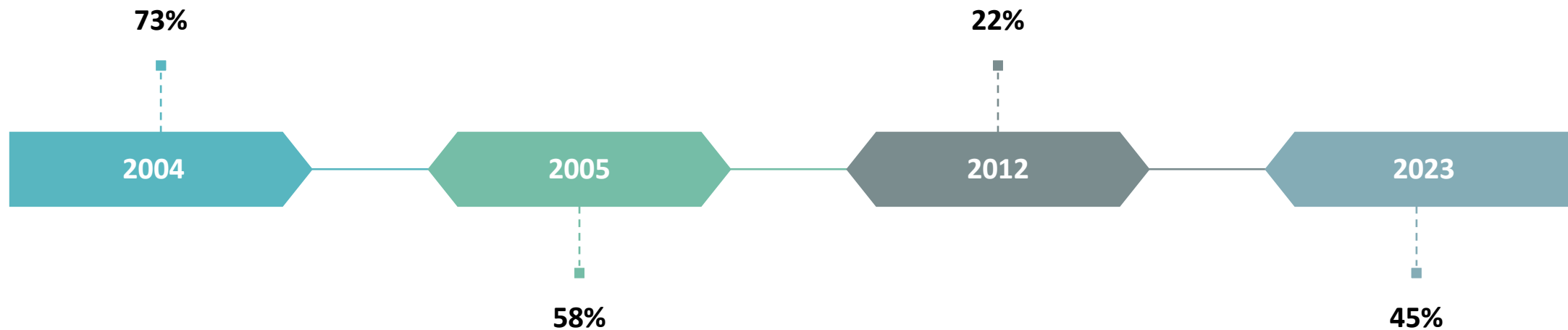
Staff Retention

Public Awareness

Challenges – Budget

- Traditionally, majority of funding came from general funds
- Early 2000s, shifted

% of funding from general fund by year



Challenges – Budget *continued...*

75% base appropriations cut over 4 years



General fund cut 50% for FY11



10% for FY12

FY10- DCA implemented a Reduction in Force (RIF)



Resulted in the loss of 40% of staff

Staff furloughed 29 days in FY 07, 08 & 09



Also cut costs by moving into a state-owned building (January 2011)



Turning in several leased vehicles



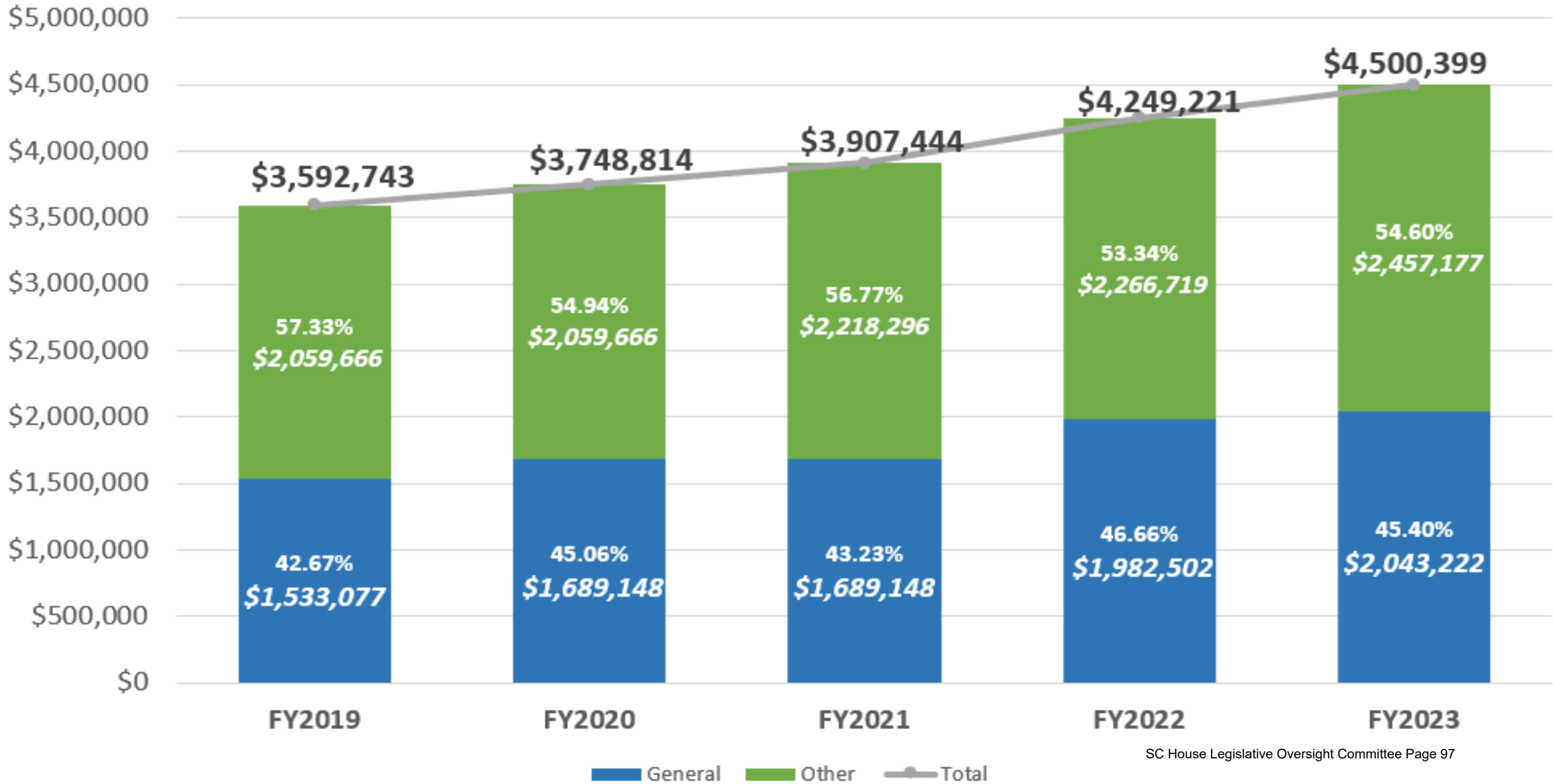
Ceasing/ limiting certain services, including Buyer Beware List, satellite office locations and Mortgage Fraud Hotline

These factors resulted in a severe depletion of resources, including overall agency funding, human capital and technological enhancements.

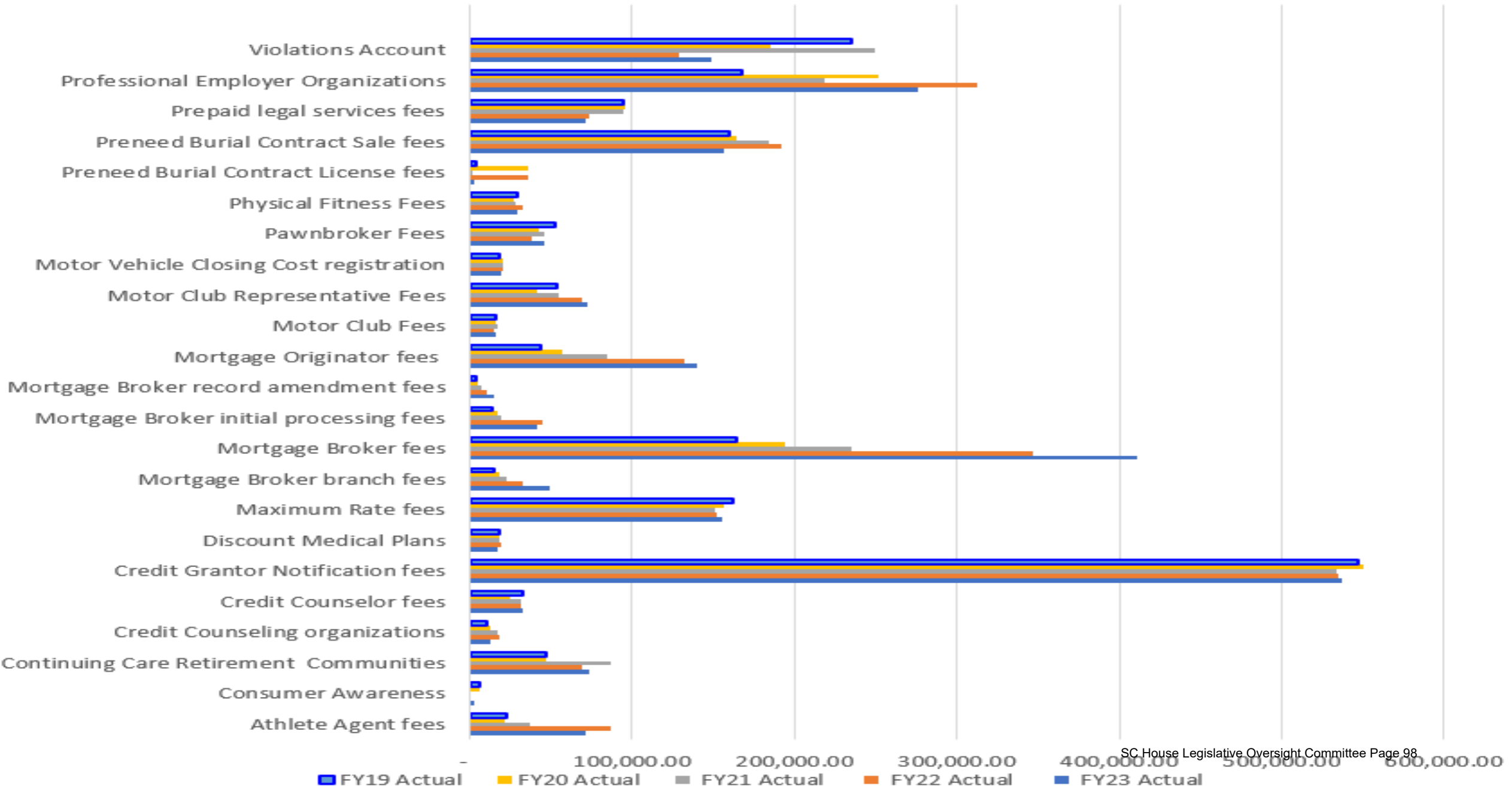
Challenges – Budget *continued...*

General Fund Increases for FY13- FY16			
FY13 Increase - \$124,000	FY14 Increase - \$466,861 (creation of Identity Theft Unit)	FY15 Increase - \$82,000 (DTO)	FY16 Increase - \$33,823 (New FTE)

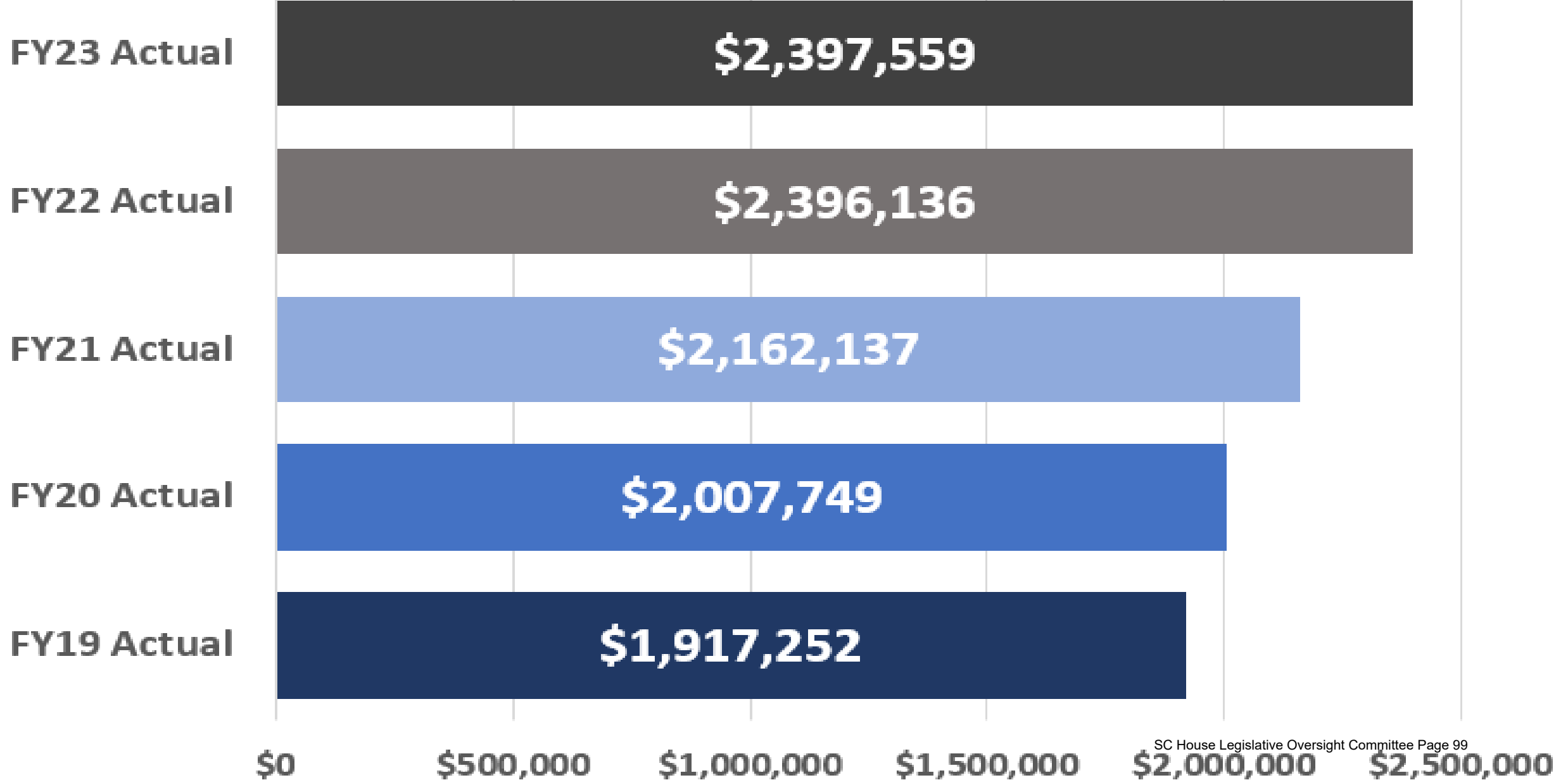
Source of Funding By Fiscal Year



Actual Revenue by Fiscal Year

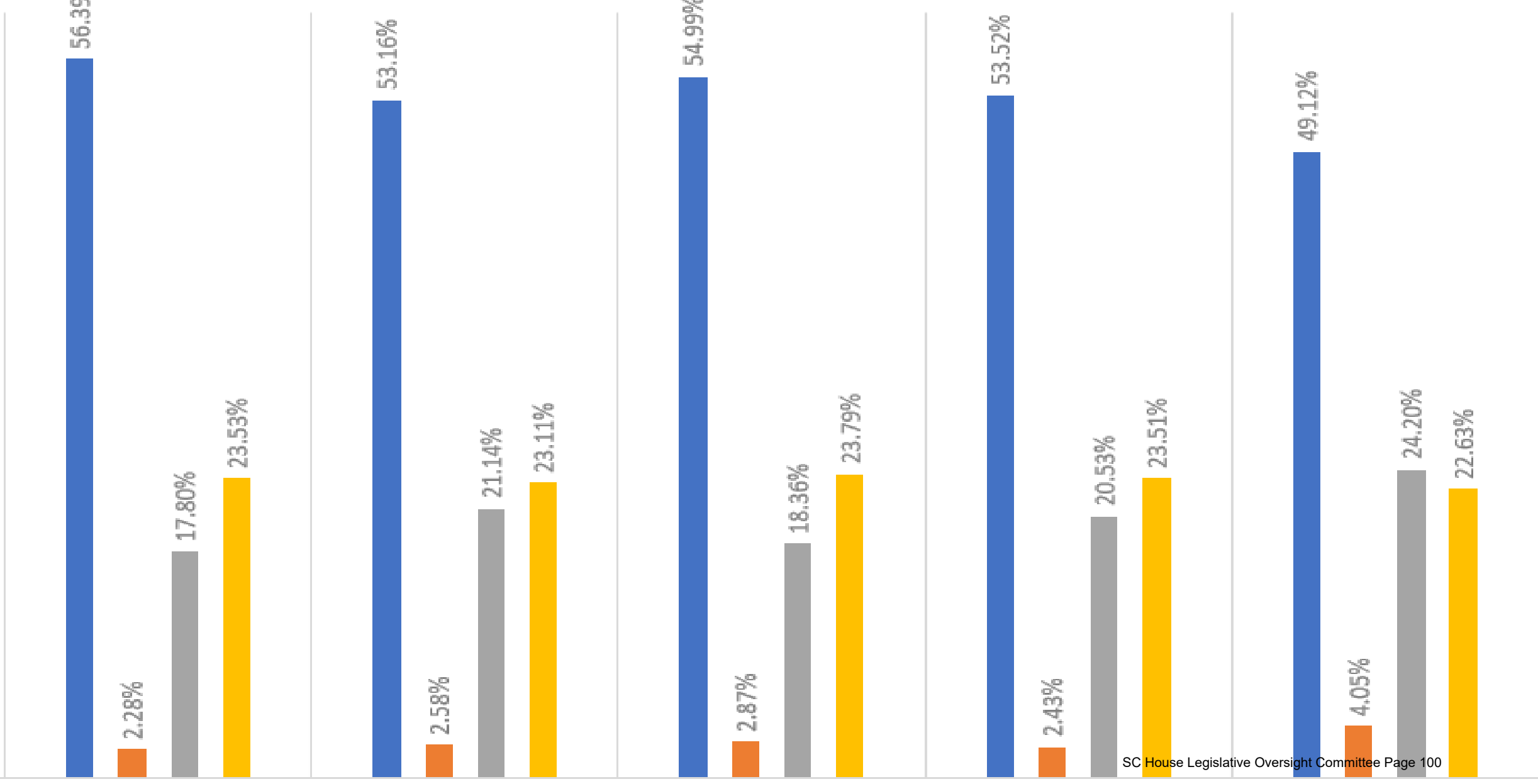


Total Revenue Processed by Fiscal Year



ACTUAL EXPENDITURES PERCENTAGE BY FISCAL YEAR

Salaries Temporary Operating Fringe



Challenges – Staff Retention

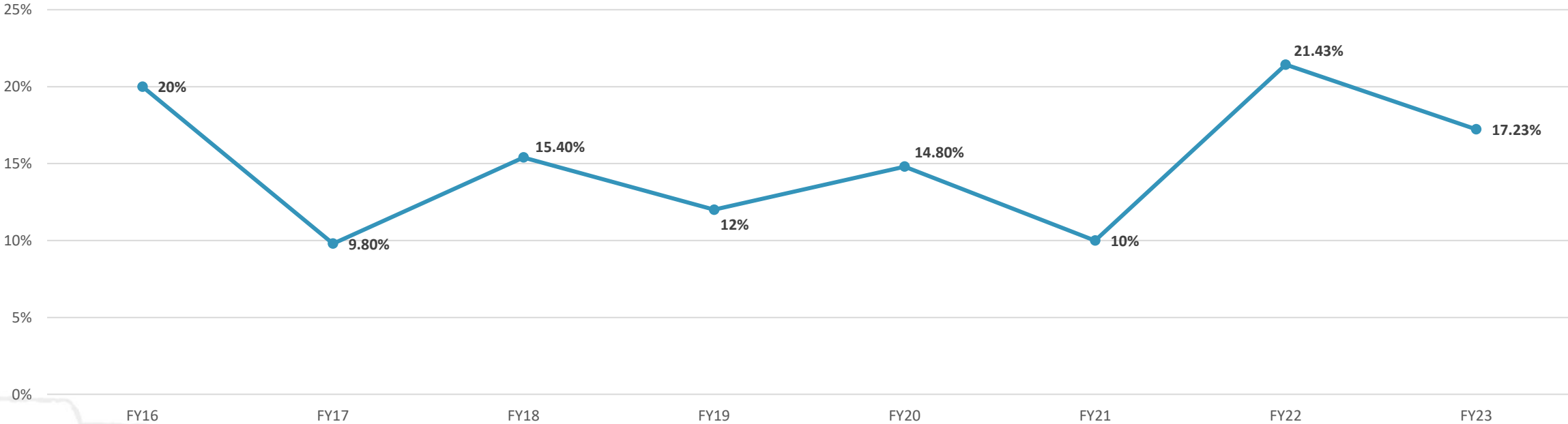
Different problem: STAFF RETENTION

- Traditionally, persons hired by the Department remained on staff for decades, often until retirement.
- Due to hiring fluctuations over the years, several staffers became eligible for retirement during FY15.
- Since then, average 15% turnover each FY

Challenges – Staff Retention

- Traditionally, persons hired by the Department remained on staff for decades, often until retirement.
- 15% of agency staff retired in FY15

SCDCA Turnover Rate by Fiscal Year



Challenges – Staff Retention *continued...*

- Majority leave for jobs with other state agencies or in public sector
- Difficulties:
 - Finding qualified candidates
 - Time hiring process takes away from regular job duties
 - Learning curve
 - Complex, regulatory statutes. Investment in training to build knowledge, etc.

Challenges – Staff Retention

continued...



DTO administered
computers/host
systems

2015



Online Complaint
System

2014 (SC.GOV)



Online Licensing
System

Launched June
2016,
completed
March 2021

Challenges – Staff Retention *continued...*

Internal Reorganization:

- Silver lining (assess current job duties and overall operations and identify gaps and/or improvements)
 - **Legal/ Advocacy**
 - All regulatory programs were placed under the supervision of a single Deputy, as opposed to two.
 - With implementation of new licensing database, all programs in one Division
 - Advocacy focus on core mission representing consumer interest in ratemaking proceedings, etc.

Challenges – Staff Retention *continued...*

Internal Reorganization:

- **Services/ Legal**
 - Create pathways for complaints: regulated vs. unregulated (falling within DCA's jurisdiction)
 - Complaints= id illegal activity, best suited in Legal
 - Separate voluntary mediation from enforcement/compliance

Challenges – Public Awareness

01

Consumers

02

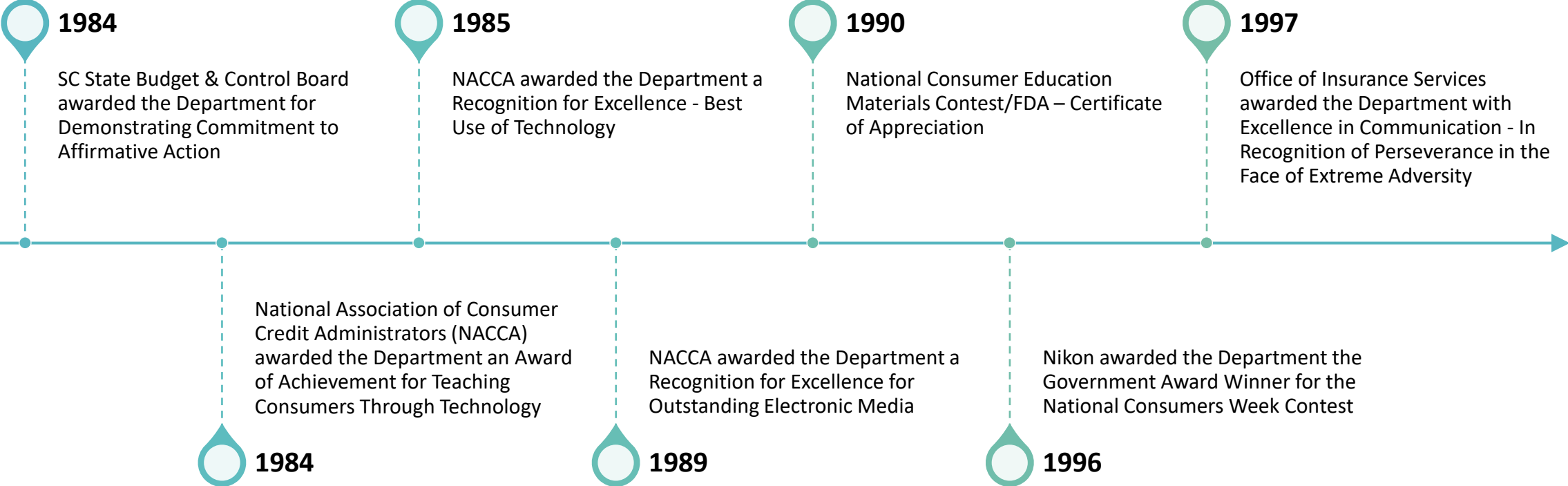
Businesses

03

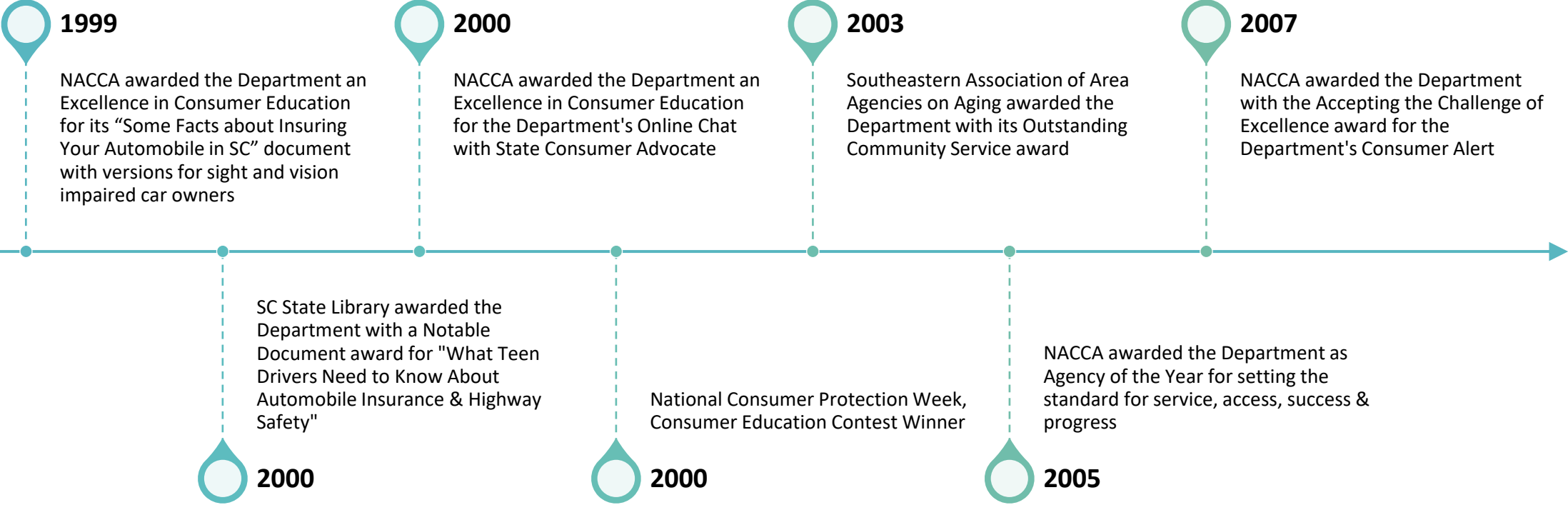
Potential
Partners

Awards

Agency Awards



Agency Awards *continued...*



Agency Awards *continued...*

2008

NACCA awarded the Department with the Accepting the Challenge of Excellence award for An Outstanding Comprehensive Program of Consumer Education, Legislation & Enforcement

2010

BBB Central SC & Charleston awarded the Department for Outstanding Service to SC Consumers

2008

The SC Press Association awarded the Department 1st Place for its Public Relations Campaign, 1st Place for Innovative Concepts, 1st Place for Event Marketing

2011

SC State Library awarded the Department with a Notable Document award for its Consumer Alert

Agency Awards *continued...*



Agency Awards *continued...*





Protecting Consumers from Inequities in the Marketplace

How Do I ... ▾

- [File a complaint?](#)
- [Get a license?](#)
- [Background a business?](#)
- [Report identity theft?](#)
- [Report a scam?](#)
- [Request a presentation?](#)

QUESTIONS?



Contact

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clybarker@scconsumer.gov

(803) 734-4297/4233



AGENCY CORRESPONDENCE



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 Chair
 Columbia
W. Fred Pennington, Jr.
 Vice Chair
 Simpsonville
Mark Hammond
 Secretary of State
 Columbia
William Geddings
 Florence
James E. Lewis
 Myrtle Beach
Renee I. Madden
 Columbia
Jack Pressly
 Columbia
Lawrence D. Sullivan
 Summerville

Carri Grube Lybarker
 Administrator/
 Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

July 28, 2023

Via Electronic Mail Only

Mr. Lewis Carter
 House of Representatives Legislative Oversight Committee
 P O Office Box 11867
 Columbia SC 29211

RE: Review of Department of Consumer Affairs: Public Input Meeting Follow-Up

Dear Lewis:

Please find below the Department of Consumer Affairs' responses to certain issues that arose during the House Legislative Oversight Committee Public Input Meeting on February 22, 2023. These consist of items the Department was unable to provide a response for during the meeting as well as information to clarify a response that was given.

Issues and Responses

Penalty for noncompliance with a cease-and-desist order

Pursuant to S.C. Code section 37-6-118, a person subject to a cease-and-desist order may contest the order by requesting a hearing before the Administrative Law Court. If a contested case is filed, it stays the cease and desist order for at least 90 days. If a hearing is not requested within 30 days, the Department may request the Administrative Law Court enforce the order. The Department must show the order was: (1) issued in compliance with the law, (2) a contested case hearing was not requested within 30 days after the order was received, and (3) the person receiving the order is subject to the Administrative Law Court's jurisdiction.

Distinction between Preneed Funeral Statute and Motor Vehicle Closing Fee Statute in regard to frequency of audits/ compliance reviews

The Preneed Funeral Contract statute requires the Department to examine the books, accounts and records of providers at least once every two years. (See S.C. Code Ann. § 32-7-70(B)). It is



the only statute under the Department's jurisdiction that requires the Department do an audit/compliance review at specific intervals. Generally, statutes simply state the Department may access the books, accounts, and records in to administer and enforce the statute, which was the case for the Motor Vehicle Closing Fee statute prior to the 2023 amendments. The Department has an Accountability measure to review at least 25% of industries registered/licensed each fiscal year.

Communication with the Automobile Dealers' Associations

The Department has historically reached out to, or otherwise communicated with, the franchise dealers' association (SCADA) as well as the independent dealers' association (CIADA) to seek input on updates to consumer and dealer educational brochures, outreach/ educational initiatives, compliance issues and to answer questions or receive feedback from them. As an example, in 2021 the Department began updating its Auto Dealer Guide that reviews certain laws applicable to the industry. We distributed drafts to the directors of both associations as well as to a selected group of dealers for review and comment. Upon completion in February 2022, we forwarded the final version to the directors of the associations for distribution to their respective memberships. The Department held five webinars of interest to auto dealers in 2022 and sent direct invites to dealers while copying the directors of the associations. Topics included compliance with the closing fee statute, updates on agency reviews and findings, recent cases applicable to the industry, filing renewal and an overview of state and federal privacy laws. We also gave advance notice to the association Directors prior to issuing the February 18, 2022, memorandum regarding dealer practices. Links to the Auto Guide and additional dealer education can be viewed at <https://consumer.sc.gov/business-resourceslaws/business-education-tools>.

Difference in Department response to real estate and contractor complaints versus motor vehicle complaints when real estate complaints increased 51%, contractors 69% and vehicles 7% in 2022.

The Department approaches the investigation of business practices differently depending on its authority to regulate the industry or issue at hand. If a complaint comes in and falls under the purview of the Department, the complaint will be reviewed in light of applicable statutes to determine compliance. In its review, the Department may find violations or issues the consumer did not identify or otherwise was not aware of. It is important to note that just because a complaint is filed does not mean a business violated the law. Further, just because a complaint is not received from a consumer, does not mean a business is in compliance with the law. If the business or issue is not regulated, the complaint will undergo a voluntary mediation process. If the business or issue is regulated by another state or federal agency, it will be referred appropriately.

The Department receives several types of communications from consumers regarding issues or concerns with business practices. It could be in the form of a simple tip via telephone, email or



post/message or via our formal complaint process. Industry representatives also make the Department aware of potential noncompliance. When a concern or issue is raised outside the formal complaint process, it is not tracked via the Complaint System and is forwarded to an appropriate staff member in the Legal Division depending on its subject matter for review and next steps.

While the Department has direct regulatory authority over motor vehicle dealers, the agency generally does not for real estate and contractors. Therefore, we review motor vehicle dealer issues differently.

Vehicles: The Department is charged with administering and enforcing the Motor Vehicle Closing Fee Statute. Under the prior version of the statute that was in effect from June 2016 to May 2023, dealers were required to provide the Department access to books, accounts and records so compliance could be determined. The Department also administers and enforces several other statutes applicable to motor vehicle dealers, including, but not limited to:

- a. Credit sales and leases generally: includes Truth in Lending Act, Motor Vehicle Closing Fee, Motor Vehicle Advertising and Maximum Rate statutes (Title 37, Chapter 2 of the S.C. Code of Laws);
- b. Credit Grantor Notification (Title 37, Chapter 6);
- c. Guaranteed Asset Protection (Title 37, Chapter 30 of the S.C. Code of Laws);
- d. Repossessions (S.C. Code Ann. § 37-5-109, -110, -111);
- e. Prizes and Gifts Act (Title 37, Chapter 15 of the S.C. Code of Laws);
- f. Unconscionable debt collection (S.C. Code Ann. § 37-5-108);
- g. Financial Identity Fraud and Identity Theft Protection Act (Title 37, Chapter 20 of the S.C. Code of Laws);
- h. Security breach provisions for businesses (S.C. Code Ann. § 39-1-90);
- i. Enforcement of Motor Vehicle Express Warranties (“Lemon Law”) (Title 56, Chapter 28).

Real Estate: Out of the 622 real estate related complaints received in 2022, 331 regarded Homeowners Associations (as compared to 49 in 2017) and 254 pertained to timeshares (as compared to 221 in 2017):

- Pursuant to a law change in 2018, the Department is required to receive homeowners’ associations (HOAs) complaints, compile specific data from such complaints and report annually on them to the Governor, Legislature and public. However, the Department is prohibited from either regulating or serving as an arbiter in HOA disputes. (*See* S.C. Code Ann. § 27-30-340 (A), (E)(1)–(2)). (*See* S.C. Code Ann. § 27-30-340(D); *See also* <https://www.consumer.sc.gov/HOA-reports>). While the Department cannot require a specific action be taken, or even a HOA to participate in the complaint process, the information gathered in complaints is used to formulate educational initiatives (*See* <https://consumer.sc.gov/HOA-Ed>).
- Timeshare companies are also subject to limited regulation by the Department. If the sales are made at locations other than the business location, the Door-to-Door Sales Rule



applies, triggering certain disclosures and a right to cancel. (*See* S.C. Code Ann. § 37-2-501 *et seq.*) The Department is also charged with enforcing compliance with the timeshare resale provisions of the Vacation Time Sharing Act. (*See* S.C. Code Ann. § 27-32-55).

The Department of Labor, Licensing and Regulation (LLR) is the primary regulator of timeshare companies; however, depending on the issue in dispute, the agency may consider the complaint outside its jurisdiction. In that case, the Department engages in voluntary mediation. While the Department does not have authority over the majority of timeshare complaints, the agency tracks trends and creates correlating educational materials and uses the information to guide recommendations for the Legislature and Governor. The timeshare resale law was a product of such efforts in 2017 and came about through collaboration with the American Resort Development Association and LLR. The Department also hosted a Timeshare Roundtable in late 2017 with members from the timeshare and timeshare resale industries, Federal Trade Commission and Better Business Bureau to discuss the state of the timeshare market, including common complaints, industry best practices, and potential solutions.

Contractors: The Department does not have specific statutory jurisdiction over contractors. LLR is the primary regulator of contractors; however, depending on the issue in dispute, the agency may consider the complaint outside its jurisdiction, such as with contract disputes. In that case, the Department engages in voluntary mediation unless the contractor otherwise falls under its general jurisdiction. In 2022, the Department received 475 contractor complaints, the majority of which were handled via voluntary mediation because the Department does not hold specific statutory authority to investigate the matters. When the Department notices patterns or an increase in certain complaints, in addition to voluntary mediation, the agency engages in outreach and education with consumers and the industry to address issues raised.

The largest subcategory of contractor complaints in 2022 was “solar” with 124 (as compared to 43 in 2017). Solar-related complaints have consistently grown over the past five years (from 2017 to 2022 there was a 343% increase, with complaints doubling from 2021 to 2022). The Department held, and continues to engage in, outreach and education with the industry and consumers on laws applicable to the sale or lease of solar facilities. In 2021, pursuant to the South Carolina Energy Freedom Act (2019 Act No. 62), the Department promulgated Regulation 28-78, Sale or Lease of Renewable Energy Facilities. The regulation provides guardrails for the marketing and sale of renewable energy, including the requirement to provide a standardized marketing pamphlet and contract terms. (*See* https://consumer.sc.gov/sites/consumer/files/Documents/Marketing_Brochure.pdf; https://consumer.sc.gov/sites/consumer/files/Documents/Standard_Disclosure.pdf). The regulation addresses many of the complaint issues identified over prior years and gives the agency specific jurisdiction to investigate them accordingly.



How information received via compliance reviews is stored and disposed of.

Information collected via agency compliance reviews is stored in paper and/or electronic form. Department Information Security Policies and Procedures, specifically the Physical and Environmental Security, Human Resources and Security Awareness, Access Control and Data Protection Privacy policies and their accompanying procedures apply to the manner in which the information is handled. Access is limited to only those needing it to perform their necessary job functions. As such, no matter the form the information takes, access to the information is restricted either by physically locking it up or by requiring specific user permissions for electronically stored data. Records are kept for a term in accordance with the agency's record retention policy. The Department recognizes a majority of information received by the agency through filings and investigative activities is privileged and confidential. It is the Department's practice to notify a business should the agency receive a Freedom of Information Act request for items it deems privileged and confidential or proprietary and trade secret.

Commission appointment authority

The Commission on Consumer Affairs is composed of nine members, one of whom is the Secretary of State who serves *ex officio*. Of the remaining eight members, the General Assembly elects four members and the Governor appoints four members who are confirmed by the Senate. (See S.C. Code Ann. § 37-6-502).

Department investigators as certified police officers, brandishing guns & badges

Some Department investigators are limited duty constables which permits them to enforce the criminal provisions in the Department's statutes; however, the Department's investigators do not brandish guns and badges when performing daily duties and did not when they went into dealerships to conduct compliance reviews. Further, no one has ever reported this to the Department or proper authorities, testified that this ever happened, or included it in any legal filings pertaining to the Department's compliance reviews of dealerships. If inappropriate or unnecessary handling or brandishing of a firearm actually happened, those actions would be thoroughly investigated as a violation of Department policies and state law. Regarding badges, the Department can only surmise that the logo of the state seal on the investigators' shirts were mistaken to be badges.

If an authorized investigator were to carry a firearm, it would have to be done related to a criminal matter and Department policy requires the individual to carry it in a concealed manner. The policy only contains two exceptions that authorize an investigator to carry in an exposed manner and in those situations the investigator is required to display his or her badge. An investigator is authorized to carry in an exposed manner:

1. When performing his or her duties in conjunction with a law enforcement agency (less than 5% of overall investigator activities since 2012). An example of this situation is



when the investigators accompany agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives to serve a search warrant on a pawn shop that is selling guns.

2. When performing special investigations of regulated entities (this has never occurred). While this exception is in the policy, in practice Department investigators have **never** openly carried firearms into a business without accompanying a law enforcement agency.

Department adjustments to documents requested from dealerships during compliance reviews

The Department conducted a total of 20 compliance reviews at motor vehicle dealerships. The compliance reviews began with 11 dealerships in March 2022. Initially, investigators would go through a contract/buyer's order with the dealership to get an explanation of the fees included. During these initial reviews, investigators asked for access to 8–10 deals in order to get copies of 4 items (buyer's order, quick sheet/pencil sheet, menu sheet, and advertising info).

In the first couple weeks of March, a dealer offered a "sales report" to use to randomly select deals. This report consisted of a spreadsheet of daily sales with various information about the sale. After that interaction, investigators started asking other dealerships for a sales report because it was the Department's understanding all dealers would have these reports (i.e., didn't have to be created and would expedite the process). When the Department received pushback from some dealers on providing that particular report, investigators began asking for a spreadsheet with limited information about the sales instead.

By the end of March, a list of transactions for a 3-month period was requested so investigators could randomly pick 10–15 total from the list. Once deals were selected, the buyer's order, quick sheet/pencil sheet, optional menu/menu sheet, and advertising were requested for each.

No unannounced visits were made to dealerships after March 30, 2022. After March, the Department standardized a letter requesting a spreadsheet of 3 months of deals and a date the dealer would be amenable for a site visit. This letter was sent to the remaining dealerships starting in June 2022. Upon meeting at the prearranged time, investigators would again go through sample contract/buyer's orders with the dealership to get an explanation of the fees included. After selecting 30 deals (10 from each of the 3 months), investigators would ask the dealer to provide the pencil sheet, clean sheet/middle sheet, purchase contract/buyers order, and advertised price on the day of the deal. The Department's letter, information requests, and procedures remained the same for all compliance reviews initiated since June 2022. The Closing Fee Statute amendments, however, will impact the format of compliance reviews going forward. (See S.C. Code Ann. § 37-2-307(E)).

The Department's role in educating the public

Education is a core component of the Department's mission and heavily emphasized in our enabling statutes. Examples include:



- S.C. Code Ann. § 37-1-102(1)(c), (d), (e): further consumer understanding of credit, foster competition among suppliers of credit, protect consumers against unfair practices by creditors, encourage development of fair and sound credit practices;
- S.C. Code Ann. § 37-6-104(b), (c): counsel persons and groups on their rights and duties under Title 37 and establish programs for the education of consumers with respect to credit practices and problems;
- S.C. Code Ann. § 37-6-117(e): initiate and encourage programs to inform consumers of market practices and schemes which are fraudulent, deceptive, or illegal, teach how to avoid becoming a victim and remedies under the law;
- S.C. Code Ann. § 37-6-117(f): undertake activities to encourage industry to maintain high standards of honesty, fairness and public responsibility in marketing and sale of consumer products and services.

The Department is uniquely situated—through its regulatory authority, charge to receive and mediate consumer complaints and general interaction with the public—to become aware of matters with which the public should be wary as well as to educate consumers and businesses alike on their rights and responsibilities under various laws. Preventing illegal activities and arming consumers with the knowledge they need to protect themselves in the marketplace is a group effort. We partner with several nationwide consumer groups, such as AARP and Better Business Bureau, as well as federal, state and local agencies to magnify these efforts.

Closing

We appreciate the opportunity to provide a response and hope this information is helpful. Please feel free to reach me at 803-734-4233 or CLybarker@scconsumer.gov with any questions.

Best regards,

Carri Grube Lybarker, Esq.



PUBLIC INPUT – AMENDED TESTIMONY



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VIA ELECTRONIC MAIL

June 12, 2023

The Honorable Jeffrey E. Johnson
Legislative Oversight Committee
S.C. House of Representatives
228 Blatt Building
Columbia, SC 29201

Dear Representative Johnson:

I am writing to you because I would like to modify a statement made during my testimony on February 23, 2023 during the House Legislative Oversight Public Input Meeting. I made the statement that "I specifically asked questions and it's been a year and I still don't know for example, is the Manufacturer's suggested retail price an advertisement." During the testimony, Jim Copeland from Department of Consumer Affairs contacted my attorney, Skip Hardin, and let him know that Phil Porter from Department of Consumer Affairs had responded to the question I referenced in my testimony by writing a letter on April 29, 2022 to my former attorney, Grey Studemeyer. Mr. Copeland provided a copy of that letter to Mr. Hardin. I request that you strike that statement from my testimony as I was unaware of this correspondence that addressed my question.

I am happy to discuss via telephone if you have any question regarding this request for modification.

Respectfully Submitted,

Karyn L. Heimes
Chief Financial Officer

cc: Lewis Carter

