

# Senate Banking and Insurance Oversight Subcommittee

## Summary Report on the

### South Carolina Department of Consumer Affairs

November 2016



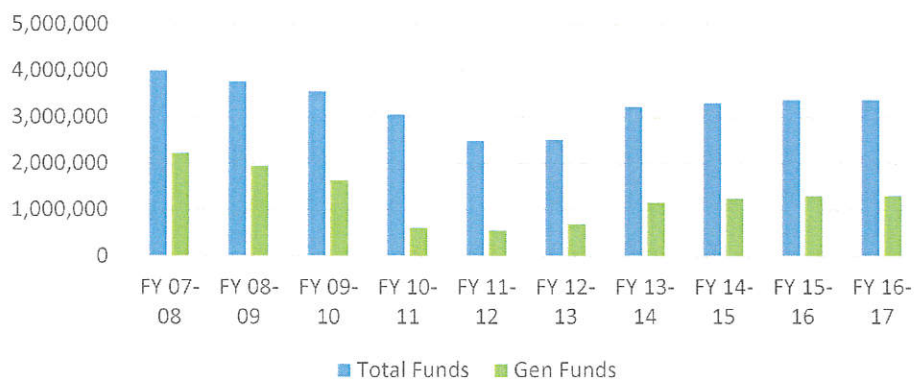
The Department of Consumer Affairs' mission is to protect consumers while giving due regard to those businesses acting honestly and fairly. It advocates for consumer protection issues, mediates complaints, enforces consumer credit regulation, and educates consumers and businesses. Its actions are governed by the Commission on Consumer Affairs and advised by the Council of Advisors on Consumer Credit. To continue its mission with less funding and fewer staff, the department has used technology to improve its efficiency, eliminated some services, and shifted its focus from education to enforcement. To ensure the fees it charges regulated businesses are adequate and appropriate, the department should review its fee structure regularly and make recommendations of changes to the General Assembly. The department is responsible for enforcing two state laws that may not fit within its mission: dispensing of contact lenses and below cost fuel pricing.

### *Agency at a Glance*

Established in 1975, the Department of Consumer Affairs is charged with enforcing the Consumer Protection Code. Its stated mission is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement, and education. In FY 15-16, it issued over 8,000 licenses, received 3,747 complaints, and had 549 enforcement activities such as compliance reviews and inspections. For FY 15-16, it had receipts of \$3.2 million with about 60% coming from fees on regulated industries or penalties from enforcement actions. Over 75% of its expenses are for its 36 full-time staff and 5 temporary employees.

From FY 07-08 to FY 11-12, the department's total budget was decreased 38% while its general funds were cut 75%. The agency's total budget of \$3,373,543 for FY 16-17 is still 15% less than its highest point in FY 07-08.

Last Ten Years of DCA Appropriations



The department implemented cost savings strategies which impacted services and decreased productivity. The department has been able to improve productivity by receiving additional general funds and authorized FTEs over the past four fiscal years. The use of technology has also improved the efficiency of its operations with an online complaint system implemented in 2014 and a licensing database in FY 16-17.

## *Issues*

### FEES

The department is responsible for licensing or regulating about 15 industries. For each of the past two fiscal years, \$1.65 million in fees have been collected. The department is able to keep most of the fees it collects to fund the administration and enforcement of the programs. The amount that the department charges for fees is set by statute for all programs except the fees for the continuing care retirement communities which are set in regulation. In order to ensure that the fees are appropriate and adequate to fund their respective programs, DCA should review them periodically and make recommendations about adjustments to the amounts or purposes of the fees.

- **Agency Recommendation: The Department of Consumer Affairs should review its fee structure regularly and make recommendations of changes to the General Assembly.**

### ENFORCEMENT

#### *Dispensing of Contact Lenses*

Although the department is responsible for enforcing the dispensing of contact lenses, the South Carolina Boards of Examiners in Optometry and Opticianry are responsible for regulating the prescribing and fitting of contact lenses. DCA does not have a regulatory system in place to enforce this statute and any enforcement is based on complaints. In eight southeastern states, all but Kentucky have the boards regulating optometrists and/or opticians responsible for enforcing the dispensing of contact lenses.

- **Legislative Recommendation: The General Assembly should amend S.C. Code §37-25-70 to require the Board of Examiners in Optometry and the Board of Examiners in Opticianry to enforce the dispensing of contact lenses.**

#### *Below Cost Fuel Pricing*

The department and the South Carolina Attorney General are charged with investigating possible violations of S.C. Code §39-5-325(A) which prohibits the sale of motor fuel below cost if the intent or effect is to destroy, lessen, or injure competition. For all other unfair trade practices, the SC Attorney General is responsible for enforcement. In the four other southeastern states with below cost motor fuel laws, the Attorney General enforces the statutes in three of them and the Department of Agriculture and Consumer Services is responsible for enforcement in the other state.

- **Legislative Recommendation: The General Assembly should amend S.C. Code §§39-5-310 through -360 to delete references to the Department of Consumer Affairs so that enforcement of below cost fuel pricing is solely the responsibility of the South Carolina Attorney General.**

Senate Banking and Insurance  
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Report on the Department of Consumer Affairs

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Members of Subcommittee:

Senator Ronnie Cromer, Chair  
Senator Joel Lourie  
Senator Tom Davis

The Department of Consumer Affairs' mission is to protect consumers while giving due regard to those businesses acting honestly and fairly. It advocates for consumer protection issues, mediates complaints, enforces consumer credit regulation, and educates consumers and businesses. Its actions are governed by the Commission on Consumer Affairs and advised by the Council of Advisors on Consumer Credit. To continue its mission with less funding and fewer staff, the department has used technology to improve its efficiency, eliminated some services, and shifted its focus from education to enforcement. To ensure the fees it charges regulated businesses are adequate and appropriate, the department should review its fee structure regularly and make recommendations of changes to the General Assembly. The department is responsible for enforcing two state laws that may not fit within its mission: dispensing of contact lenses and below cost fuel pricing.

## *I. Agency at a Glance*

### *Mission*

The stated mission of the Department of Consumer Affairs is to protect consumers from inequities in the marketplace through advocacy, mediation, enforcement, and education. The department accomplishes its mission by regulating industries which have consumer credit, providing complaint mediation services, intervening in insurance rate filings, providing education for consumers and businesses, and informing the public on identity theft issues.

### *Governing Authority*

Established in 1975, the Department of Consumer Affairs is charged with enforcing the Consumer Protection Code. It is governed by the Commission on Consumer Affairs and advised by the Council of Advisors on Consumer Credit.

### **Commission on Consumer Affairs**

The Commission on Consumer Affairs has nine members: four appointed by the Governor with advice and consent of the Senate, four elected by the General Assembly, and the Secretary of State as an ex officio member. The commission is the policymaking and governing authority of the Department of Consumer Affairs, appoints the administrator and is responsible for enforcement of the Consumer Protection Code.

Member	Location	Appointed by	Appointed Date	Expiration Date
David Campbell, Chair	Columbia	Governor	8/18/05	8/30/13
Eboni Nelson, Vice Chair	Columbia	General Assembly	5/28/14	4/10/18
Caroline Ballington	Conway	General Assembly	4/2/14	4/10/18
Linda Gamble	Lexington	Governor	9/30/14	9/30/18
Donald Jackson	Ware Shoals	General Assembly	5/28/14	4/10/18
Carlisle Kennedy	Leesville	General Assembly	5/28/14	4/10/18
W. Fred Pennington, Jr.	Taylors	Governor	9/20/11	9/30/15
Mark Hammond, Secretary of State				
VACANT		Governor		

## Council of Advisors on Consumer Credit

In addition to the commission, the department is also advised on consumer credit by the Council of Advisors on Consumer Credit which consists of sixteen members, who are appointed by the Governor, to achieve a fair representation from the various segments of the consumer credit industry and the public. The Council advises and consults, may make recommendations, and assists the administrator with the South Carolina Consumer Protection Code.

Member	Location	Representing	Appointed Date	Expiration Date
Sharon Crawley Bramlett, Chair	Columbia	Attorney	8/15/14	8/15/18
Wendy J. Culler, Vice Chair	Lancaster	Financial Counselor, Credit Union	8/15/14	8/15/18
Kristin M. Bastian	Hanahan	Credit counselor	8/15/13	8/15/17
Randall C. Cole	Florence	CEO, Behavioral Health Facility	8/1/12	8/1/20
James L. Godwin	Columbia	Auto Dealer	8/15/12	8/15/20
Stephen Hall	Greenville	Staffing company	8/15/14	8/15/18
Ruth Ellen Hardee	Columbia	Financial Administrator, Home building	8/15/11	8/15/15
C. Brian McLane, Sr.	Columbia		8/15/11	8/15/15
Victor C. A “Chip” McLeod, III	Columbia	Financial Industry	8/15/11	8/15/15
Virginia “Dale” K. Palmer	Union	Supervised Lender	8/15/11	8/15/15
Scott C. Rhodes	Chapin	Auto Dealer	8/15/15	8/15/19
Cassandra Williams Rush	Columbia	Museum manager	8/15/13	8/15/17
Alethea (Lisa) Samuel	Columbia	Banker	8/15/14	8/15/18
James “Dan” Walters	Simpsonville	Financial services	8/15/13	8/15/17
Brent A. Weaver	Lexington	Banker	8/15/12	8/15/20
Robert Wilkes	Mt. Pleasant	Business owner	8/15/14	8/15/18

### *Operations/Programs*

The department is organized into six divisions: Administration, Consumer Advocacy, Consumer Services, Identity Theft Unit, Legal, and Public Information and Education.

#### Administration

This division provides support and planning services to the department including procurement, accounting, human resources, and information technology.

#### Consumer Advocacy

This division represents the consumer interest in increases for homeowners and workers’ compensation insurance rate cases. When needed, it files an action and submits evidence in hearings to show that the rate request is not justified. For FY 15-16, the department received 598 notices of proposed rate changes and had 38 cases where it

requested the filings for proposed rate increases. It also got a decrease in the workers' compensation loss cost increase from 4.1% to 2.5% which resulted in approximately \$7.2 million in lower costs. This division also issues licenses for professional employer organizations, discount medical plan organizations, and continuing care retirement communities and collected \$58,950 in administrative fines from penalties for unlicensed activity and late filings.

Consumer Services

This division processes and mediates written consumer complaints. The staff takes consumer complaints against businesses regulated by the department, refers complaints that are governed by another agency, and mediates complaints against businesses that are unregulated.

Identity Theft Unit

This division provides education and outreach to consumers about what identity theft is, how consumers can protect themselves, and what consumers should do in the event of identity theft. For identity theft victims, the division gives guidance throughout the process to help resolve the case and to decrease the negative effects. For FY 15-16, the department received 3,448 calls for ID theft, scams, etc. The unit also handles administration and enforcement of state identity theft-related consumer protection laws including security breach notices. In FY 15-16, there were 341,198 SC consumers affected by 41 security breach notices received by the department.

Legal

This division is responsible for the investigative and legal enforcement activities. It administers and enforces the Consumer Protection Code and other statutes including regulation of 15 industries under the department's jurisdiction. For FY 15-16, this division had 148 administrative enforcement actions, sent 40 letters about advertising violations, and its investigators traveled 87,712 miles. Its compliance and enforcement activities have increased from the previous fiscal year:

Activity	FY 14-15	FY 15-16
Advisories	23	18
Compliance Reviews	356	387
Consumer Product Safety Commission	--	51
Contacts	20	14
Inspections	73	79
Total	472	549

Public Information and Education

This division is the main source of education for consumers, businesses, and the media. It informs consumers and businesses about their rights and responsibilities through the media, presentations, and publications. It also maintains the department's social media presence on Facebook, Twitter, and YouTube.

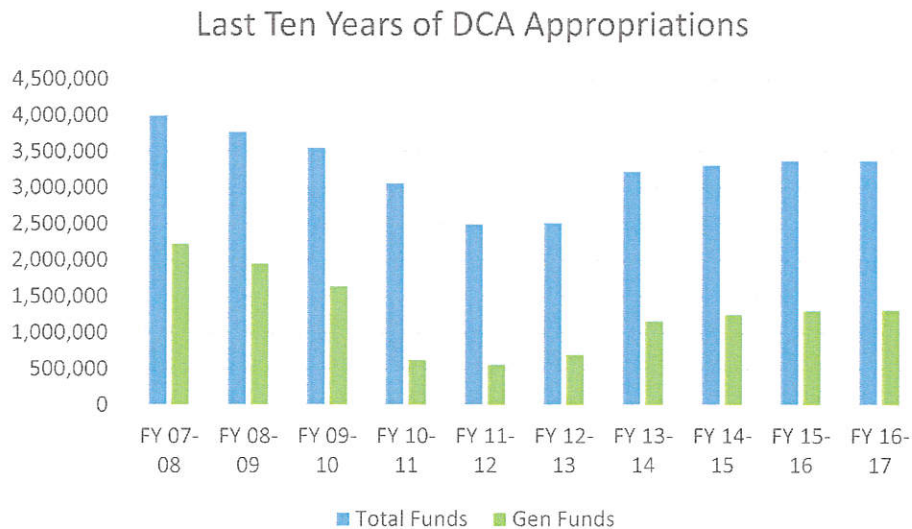
## Finance

For FY 15-16, DCA had receipts of \$3.2 million with about 60% coming from other funds. Only the Identity Theft Unit is funded entirely with general funds. Over 75% of the department's expenditures are for personnel.

Division	FY 14-15				FY 15-16			
	General Funds		Other Funds		General Funds		Other Funds	
	Budget	Expenses	Revenues	Expenses	Budget	Expenses	Revenues	Expenses
Admin	\$257,007	\$340,859	\$175	\$375,121	\$279,007	\$316,133	\$360	\$300,650
Cons Adv	279,731	189,749	282,600	48,653	263,200	217,599	271,100	54,236
Cons Svcs	39,305	40,059	--	319,405	61,305	67,862	2,500	319,948
ID Theft	217,370	218,263	--	--	221,370	219,884	--	--
Legal	170,787	193,822	1,618,710	618,882	170,787	267,691	1,618,665	720,429
Public Inf	84,000	74,429	3,965	--	84,000	88,474	5,000	5,744
Emp Cont	202,768	228,347	--	391,820	229,137	242,375	--	405,020
Total	\$1,250,968	\$1,285,528	\$1,905,450	\$1,753,881	\$1,308,806	\$1,420,018	\$1,897,625	\$1,806,027

## Funding History

Over the last ten fiscal years, the department's budget has shifted from being funded over 50% with state general funds to less than 40% in state funds. Additionally, from FY 07-08 to FY 11-12, its total budget was decreased 38% while its general funds were cut 75%. The agency's total budget of \$3,373,543 for FY 16-17 is still 15% less than its highest point in FY 07-08. The following chart shows the history of DCA's appropriations over the last ten fiscal years.



For its FY 16-17 budget request, the department did not request any additional funds, only the authority to transfer funds among divisions to reflect the changes in operations.

## Staffing

The agency has had an almost 50% decrease in the number of authorized FTEs. It had 65 authorized FTEs through FY 10-11 and then decreased to 33 in FY 11-12. It currently has 40 FTEs authorized in the FY 16-17 appropriations act. As of June 30, 2016, the department had 36 filled FTEs and 5 temporary employees.

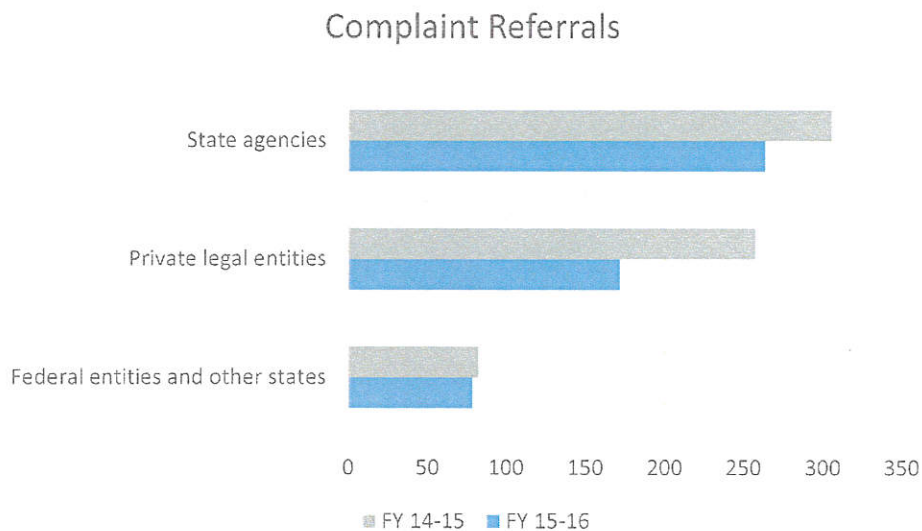
In FY 14-15, 15% of agency staff retired, leaving only one employee with enough years of state service to be eligible for full retirement. However, almost half of its employees have over 10 years of state service as of June 30, 2016. Retaining employees has become a concern with 4 staff members leaving within an 8-month period.

## II. Issues

### A. Complaints

S.C. Code §37-6-117 gives the administrator of the Department of Consumer Affairs the authority to receive complaints about consumer transactions, evaluate the merit of those complaints, and assist consumers with complaints that are not governed by any regulatory or enforcement agency. The department is in the process of reorganizing to have the consumer services division resolve complaints against companies that are not handled by another entity and the legal division assist with complaints against businesses regulated by the department.

The department refers about 15% of the complaints it receives annually to other state, federal or private entities that have responsibility for those areas. Most of the complaints referred to other state agencies are to the Real Estate Commission and the Department of Insurance. They do not track the results of those complaints. The number of complaints referred decreased from FY 14-15 to FY 15-16.



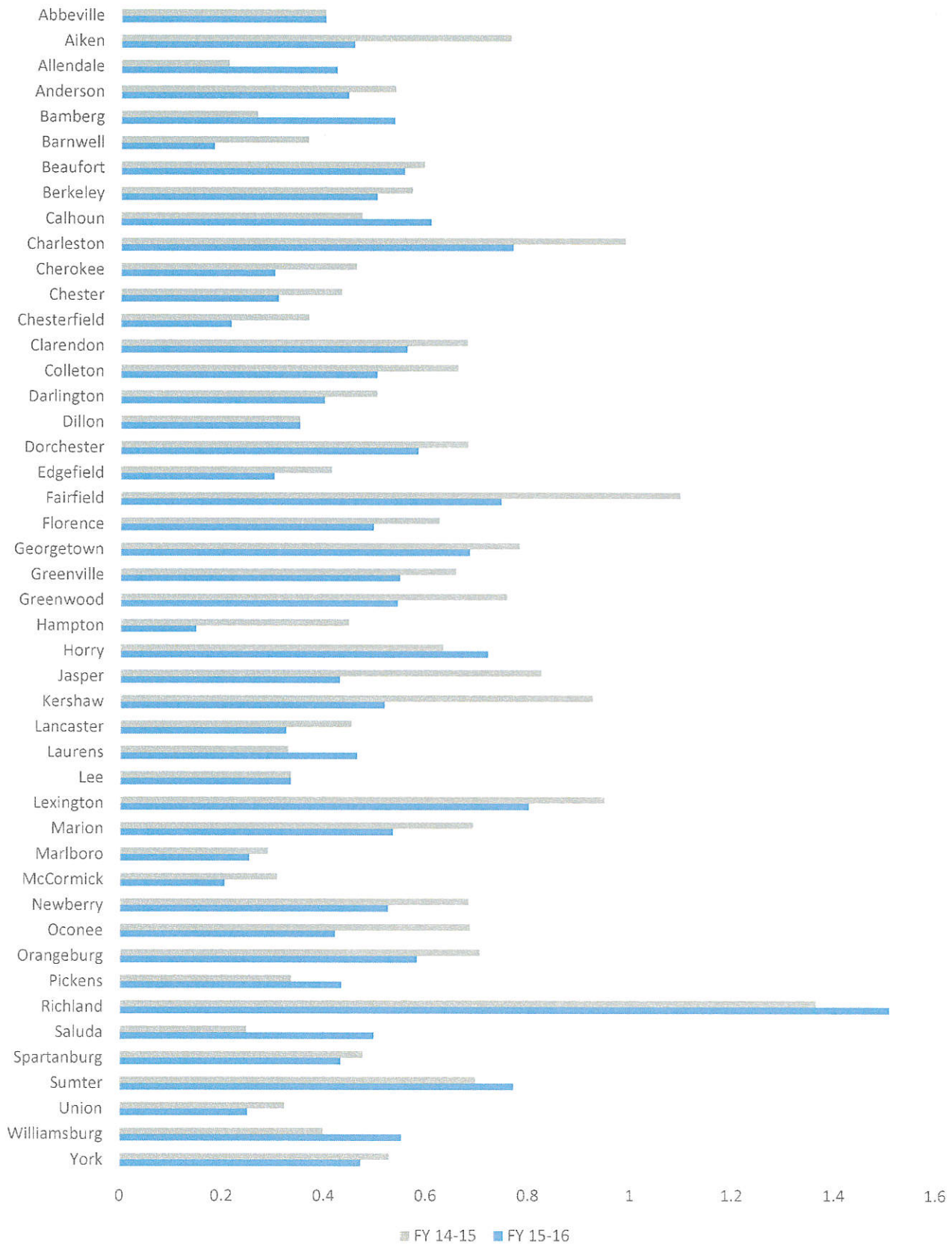
The number of complaints received by the department decreased 10% from 4,162 in FY 14-15 to 3,747 in FY 15-16. About 62% of all the complaints in FY 15-16 were closed as satisfied which means that either a business response was received that the consumer considered satisfactory or the business provided an adequate response which answered the points in the complaint. About 8% were closed as unsatisfactory which meant that no response was received from the business after several contacts. The remaining 30% were referred to



another entity, were information only, or the department was unable to determine which side is right, usually due to disputed facts. The areas with the most complaints for FY 15-16 were vehicles, utilities, and debt collection. The amount of funds recovered for consumers increased from \$1.2 million in FY 14-15 to \$1.6 million in FY 15-16.

The department bases the county of the complaint on the location of the consumer. The most complaints per capita were in Richland County but, for FY 14-15, Fairfield County had the second highest per capita complaints and, for FY 15-16, Sumter County had the third highest per capita complaints although the populations of those counties are not that high.

## Complaints per 1,000 people by County



According to staff, the department uses the information on the categories of complaints received and the locations of the consumers to identify areas to target its public education and information efforts.

*B. Fees*

The department is responsible for licensing or regulating about 15 industries. For each of the past two fiscal years, \$1.65 million in fees have been collected.

Fees	FY 14-15	FY 15-16
Credit Grantor Notification	\$619,372	\$589,777
Professional Employer Organizations	201,250	192,850
Maximum Rate	166,359	165,799
Mortgage Broker/Originator	142,950	135,125
Preneed Burial Contract	117,805	157,085
Prepaid Legal Fees	107,320	113,240
Pawnbroker	68,525	66,650
Continuing Care Retirement Communities	59,600	61,000
Motor Club	47,140	52,420
Credit Counseling	45,250	42,370
Physical Fitness	30,170	25,500
Athlete Agents	23,200	25,700
Discount Medical Plans	21,750	17,250
Motor Vehicle Closing Cost	7,033	9,856
Total	\$1,657,724	\$1,654,622

The department is able to keep most of the fees it collects to fund the administration and enforcement of the programs by statute or proviso.

The amount that the department charges for fees is set by statute for all programs except the fees for the continuing care retirement communities which are set in regulation.

Program/Activity	Fees Kept by DCA	Licenses/Fees in FY 15-16
Athlete Agents	\$500 initial, \$300 renewal (biannually)	50
Continuing Care Retirement Communities	\$2000 initial and renewal + \$500 for each additional location	74
Credit Card Filing Fees	\$20 per filing	14
Credit Counseling Organizations	\$50 initial investigation, \$100 per location initial and renewal, \$40 per counselor	785
Credit Grantor Notification Fees	\$120 per location, initial and renewal	4,915
Discount Medical Plan Organization Fees	\$500 up to 50, \$750 for 51-100, \$1000 for 101+ representatives	26
Maximum Rate Fees	\$40 per location, initial and renewal	4,112
Mortgage Broker Fees	\$550 broker, \$150 location, \$50 originator, initial and annual	896
Motor Club Fees	\$500 company, \$20 representative, initial and renewal	1,956
Motor Vehicle Disclosure Fees	\$10 per location, initial and annual	985
Pawnbroker Fees	\$275 per location	247
Physical Fitness Fees	\$50 per location, initial and renewal	271
Preneed Provider	\$250 per location initial, \$100 per location biennial renewal	287
Preneed Contracts	\$15 per contract	8,082
Prepaid Legal Services Fees	\$800 company, \$40 representative, initial and renewal	3,293
Professional Employer Organizations	Total licensure fee and biennial assessments cannot exceed \$8,750 for single PEO or \$10,000 for group PEO	178

In order to ensure that the fees are appropriate and adequate to fund their respective programs, DCA should review them periodically and make recommendations about adjustments to the amounts or purposes of the fees.

- **Agency Recommendation**

The Department of Consumer Affairs should review its fee structure regularly and make recommendations of changes to the General Assembly.

### C. *Effect of Budget Cuts*

As a result of budget cuts from FY 07-08 to FY 11-12 when its total budget was decreased 38% while its general funds were cut 75%, the department implemented cost savings strategies which impacted services.

- Personal Services - Reduction in force of 24 employees, 40% of full-time staff  
Termination of 10 temporary employees  
Staff furlough of 29 days

- Operating Costs - Moved to state building  
Turned in leased vehicles  
Reduced travel
- Service cuts - Stopped producing Buyer Beware List  
Closed satellite office locations throughout state  
Stopped after hour services such as presentations and complaint intake  
Discontinued “Ask Consumer Affairs” chat feature and Mortgage Fraud Hotline

The cost savings measures also decreased the department’s productivity.

### Consumer Services Division

Before the budget cuts, the division processed complaints in about 25 days. In FY 09-10, it took 60 days to process a complaint. With the new complaint system in 2014, the average decreased to 30 days. Savings for consumers also decreased from \$1.45 million in FY 08-09 to a low of \$658,567 in FY 10-11. In FY 15-16, the division surpassed the FY 08-09 level, recovering about \$1.6 million.

### Legal Division

In FY 08-09, Regulatory Enforcement processed 26,000 filings but only processed 22,815 in FY 09-10 which also decreased the amount of other funds collected. By FY 13-14, 26,790 filings were processed. Compliance reviews and inspections dropped almost 70% from 931 in FY 08-09 to 291 in FY 11-12. By FY 15-16, the division completed 549 reviews, still 40% less than in FY 08-09. The administrative actions initially decreased from an average of 33 annually to 26, but, by FY 15-16, the department initiated 148 actions.

### Public Information

The presentations and trainings for consumers and businesses reached a high of 214 in FY 08-09, decreased to a low of 33 in FY 10-11, and only increased to 95 by FY 14-15.

The department has been able to improve productivity by receiving additional general funds and authorized FTEs over the past four fiscal years. It has also reevaluated its processes and staff and shifted its focus from education to enforcement. The use of technology has also improved the efficiency of its operations with an online complaint system implemented in 2014 and a licensing database in FY 16-17.

## *D. Enforcement Issues*

The department is responsible for enforcing two state laws that may not fit within its mission: dispensing of contact lenses and below cost fuel pricing.

### Dispensing of Contact Lenses

The department is responsible for enforcing state law regarding the dispensing of contact lenses. According to S.C. Code §37-25-20, “It is unlawful for a person to dispense an ophthalmic contact lens or lenses without first having obtained a valid, unexpired contact lens prescription from a licensed optometrist or ophthalmologist.” The contact lenses governed by state law include those with or without power sold for any reason. S.C. Code §37-25-70(A) provides that “a person who offers to dispense or dispenses contact lenses in violation of this

chapter ... is subject to a civil penalty imposed by the Department of Consumer Affairs in an amount not to exceed five thousand dollars for each violation.”

DCA does not have a regulatory system in place to enforce this statute as it does not have any other authority over the entities which typically sell the contact lenses, gas stations and beauty supply stores. Any enforcement is based on complaints. From 2005, when the law was passed, to 2016, the department has issued 36 warning letters, had 8 administrative enforcement actions, and collected \$7,250 in fines.

Although the department is responsible for enforcing the dispensing of contact lenses, the Boards of Examiners in Optometry and Opticianry are responsible for regulating the prescribing and fitting of contact lenses. In eight southeastern states, all but Kentucky have the boards regulating optometrists and/or opticians responsible for enforcing the dispensing of contact lenses. At the federal level, the Food and Drug Administration is responsible for regulating contact lenses as medical devices, but the Federal Trade Commission enforces the requirements. The SC Department of Consumer Affairs does not have responsibility for any other medical devices.

- **Legislative Recommendation**

The General Assembly should amend S.C. Code §37-25-70 to require the Board of Examiners in Optometry and the Board of Examiners in Opticianry to enforce the dispensing of contact lenses.

Below Cost Fuel Pricing

The department and the Attorney General are charged with investigating possible violations of S.C. Code §39-5-325(A) which prohibits the sale of motor fuel below cost if the intent or effect is to destroy, lessen, or injure competition. The department does not have a system in place to monitor gas pricing and has received complaints about 54 businesses from 2001 through 2015.

	2001	2002	2003	2005	2006	2007	2010	2011	2012	2015
Businesses filing complaints	2	6	1	2	1	2	1	1	6	1
Businesses complained against	2	21	1	2	2	7	1	5	9	4

For all other unfair trade practices, the Attorney General is responsible for enforcement. Department staff indicate that they do not work with the Attorney General on the below cost fuel prices other than receiving forwarded complaints from them. In the four other southeastern states with below cost motor fuel laws, the Attorney General enforces the statutes in three of them and the Department of Agriculture and Consumer Services is responsible for enforcement in the other state.

- **Legislative Recommendation**

The General Assembly should amend S.C. Code §§39-5-310 through -360 to delete references to the Department of Consumer Affairs so that enforcement of below cost fuel pricing is solely the responsibility of the South Carolina Attorney General.