

What We Learned from ... South Carolina: Leveling the Playing Field in Consumer Protection

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South Carolina Attorney General Alan Wilson and Jared Libet, Assistant Deputy Attorney General in the Consumer Protection Unit, recently joined a Kelley Drye webinar to discuss the core philosophy behind their office's practice and the state's approach to consumer protection.

Attorney General Wilson kicked off the webinar by laying out the guiding principles with which he runs his office: neutrality, predictability, and transparency.

Attorney General Wilson described his office as a "referee on a football field," whose goal is not to target companies or individuals, but to "protect[] the players on the field from unfair competitive advantages or deceptive advantages." He does not guarantee outcomes but guarantees process. According to Wilson, he understands that sometimes the offense is of such nature that should disqualify one from the game, but "[s]ometimes, it's just an offside." His guiding principles—neutrality, predictability, and transparency—shape how consumer protection is handled in South Carolina.

"We don't hide our cards," Wilson said. "We always try to play with an open hand." He emphasized that his office aims to make its processes foreseeable and open, ensuring that all parties involved in a complaint are heard before any action is taken. "If a person's complaining and they want to seek to bring a consumer protection complaint in South Carolina, I'm certainly open to that. But I'm equally open to reaching out to the person who's been alleged to have violated that and give them a chance. We never, ever make a decision or take an action without inviting the complaine."e.

As part of his commitment to transparency, Wilson shared a framework he uses to evaluate consumer protection claims that he calls the Meritorious and Compelling State Interest Test. After hearing from all parties, he asks:

1. Is the allegation facially meritorious?
2. If so, is legal action necessary, or is there a compelling state interest that justifies litigation over alternative remedies?

Wilson summarized his approach as "meek with power," clarifying that "meekness is not weakness." He explained that power should be exercised with care and tact, and that his office has a duty to conduct thorough due diligence before taking action.

Wilson closed by emphasizing the value of building relationships with his office. Trust, he explained, fosters smoother and more efficient interactions. “Once I develop a relationship with someone, the last thing I want to do is burn it,” he said. Once trust is established and it’s clear that his office acts as a neutral and predictable enforcer, Wilson finds that communications become smoother and more productive.

Lightning Round: Consumer Protection in South Carolina

The conversation then turned to Deputy Libet who emphasized that the structure and operations of the office are shaped by its relatively small size compared to other states.

Libet described the office’s prioritization approach as an organic process, both top-down and bottom-up. The small size fosters frequent communication between the Attorney General, the Chief Deputy, and staff attorneys. Major cases may originate directly from the Attorney General’s desk or be flagged internally and elevated through the ranks.

Multistate investigations play a significant role in South Carolina’s consumer protection efforts. Participating in these collaborations allows the office to share resources and expand its reach despite limited capacity.

Libet also clarified that the Attorney General’s office does not receive direct consumer complaints. In South Carolina, that responsibility falls to the Department of Consumer Affairs, which operates under a separate statutory framework. While the two offices share information, they enforce distinct sections of the state code.

South Carolina Unfair Trade Practices Act. South Carolina’s primary consumer protection statute is the South Carolina Unfair Trade Practices Act, codified at S.C. Code § 39-5-10. It includes a three-year statute of limitations, governed by the discovery rule: the clock starts when the office knew or reasonably should have known of the conduct. Additionally, the continuing violation doctrine, adopted by the South Carolina Supreme Court, allows the office to pursue conduct that has occurred within the most recent three years, even if it began earlier.

Before filing suit, the statute requires a three-day pre-suit notice, along with an opportunity for the respondent to present reasons why a proceeding should not be instituted. Libet emphasized that the office takes this requirement seriously and is typically accommodating if more time is needed. The statute does provide an exception to the notice requirement if the Attorney General believes that delay would substantially impair the purposes of the law.

The Act authorizes a civil penalty of \$5,000 to be imposed if a party is found in willful violation of the law. Libet explained that “willfulness” means the party “knew or should have known” about the violation.

Restitution, or what South Carolina law refers to as an “ascertainable loss”, does not require a showing of willfulness. While the statute does not explicitly mention disgorgement, Libet noted that if a violation is “willful” or “knowing”, the law grants courts broad authority to award any relief deemed necessary and proper. His office interprets this to include the ability to seek disgorgement.

Stay tuned for our coverage of part 2 of our conversation with South Carolina’s Jared Libet, where he discusses IRS regulations affecting consumer protection settlements.