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CHAPTER 25.

 ADULTERATED OR MISBRANDED FOOD AND COSMETICS

**SECTION 39‑25‑10.** Short title.

 This chapter may be cited as the South Carolina Food and Cosmetic Act.

HISTORY: 1962 Code Section 32‑1526; 1972 (57) 2687.

**SECTION 39‑25‑20.** Definitions.

 For the purpose of this chapter ‑

 (a) The "Commissioner" means the Commissioner of Agriculture of South Carolina.

 (b) The term "person" includes individual, partnership, corporation and association.

 (c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

 (d) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

 (e) The term "consumer commodity," except as otherwise specifically provided by this subsection, means any food or cosmetic as those terms are defined by this chapter or by the Federal act. Such term does not include ‑

 (1) Any tobacco or tobacco product;

 (2) Any commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832‑833; 21 U.S.C. 151‑157) commonly known as the Virus‑Serum‑Toxin Act;

 (3) Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

 (4) Any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551‑1610).

 (f) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be of the retail package of such article, or is easily legible through the outside container or wrapper.

 (g) The term "immediate container" does not include package liners.

 (h) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

 (i) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include ‑

 (1) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

 (2) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

 (j) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

 (k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

 (l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food or cosmetics.

 (m) The term "contaminated with filth" applies to any food or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

 (n) The provisions of this chapter regarding food, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food or cosmetic establishment.

 (o) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the South Carolina Economic Poison Law or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., Sections 135‑135K) as now enacted or as hereafter amended and which is used in the production, storage or transportation of raw agricultural commodities.

 (p) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

 (q) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include: (1) a pesticide chemical in or on a raw agricultural commodity; or (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

 (r)(1) The term "color additive" means a material which ‑

 (A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, or

 (B) when added or applied to a food or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the Federal act.

 (2) The term "color" includes black, white and intermediate grays.

 (3) Nothing in clause (1) of Section 39‑25‑20 (q) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

 (s) The term "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

HISTORY: 1962 Code Section 32‑1526.1; 1972 (57) 2687.

**SECTION 39‑25‑30.** Prohibited acts.

 The following acts within the State of South Carolina are prohibited:

 (1) the manufacture, sale, or delivery, holding, or offering for sale of any food or cosmetic that is adulterated or misbranded;

 (2) the adulteration or misbranding of any food or cosmetic;

 (3) the receipt in commerce of any food or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of it for pay or otherwise;

 (4) the distribution in commerce of a consumer commodity, as defined in this chapter, if the commodity is contained in package, or if there is affixed to that commodity a label, that does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter; provided, however, that this prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that persons engaged in packaging or labeling of the commodities or prescribe or specify by any means the manner in which such commodities are packaged or labeled;

 (5) the dissemination of any false advertisement regarding any food or cosmetic;

 (6) the refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by Section 39‑25‑190;

 (7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom he received in good faith the food or cosmetic;

 (8) the removal or disposal of a detained or embargoed article in violation of Section 39‑25‑60;

 (9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food or cosmetic if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

 (10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to the provisions of this chapter or of the federal act;

 (11) the using by any person to his own advantage, or revealing, other than to the commissioner or his authorized representative or to the courts when relevant in any judicial proceeding pursuant to this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection; and

 (12) operating without registering pursuant to Section 46‑3‑20.

HISTORY: 1962 Code Section 32‑1526.2; 1972 (57) 2687; 2010 Act No. 261, Section 3, eff June 11, 2010.

**SECTION 39‑25‑35.** Exception to prohibited acts.

 The provisions of Section 39‑25‑30 do not apply to water‑powered grist mills or their products.

HISTORY: 1990 Act No. 436, Section 3, eff April 24, 1990.

**SECTION 39‑25‑40.** Injunctions.

 In addition to the remedies hereinafter provided the Commissioner is hereby authorized to apply to the appropriate circuit court and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Section 39‑25‑30; irrespective of whether or not there exists an adequate remedy at law.

HISTORY: 1962 Code Section 32‑1526.3; 1972 (57) 2687.

**SECTION 39‑25‑50.** Penalties; effect of guaranty from supplier of article; liability of advertising media.

 (a) Any person who violates any of the provisions of Section 39‑25‑30 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six months or a fine of not more than one thousand dollars, or both such imprisonment and fine at the discretion of the court; for a second or subsequent violation such person shall be subject to imprisonment for not more than two years, or a fine of not more than five thousand dollars, or both such imprisonment and fine at the discretion of the court.

 (b) No person shall be subject to the penalties of subsection (a) of this section, for having violated Section 39‑25‑30(a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of South Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

 (c) No publisher, radio‑broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section for the dissemination of such false advertisement, unless he has refused, on the request of the Commissioner to furnish the Commissioner the name and post‑office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the State of South Carolina who caused him to disseminate such advertisement.

HISTORY: 1962 Code Section 32‑1526.4; 1972 (57) 2687.

**SECTION 39‑25‑60.** Procedure for embargo and condemnation of adulterated or misbranded article; condemnation of poisonous perishable foods.

 (a) Whenever a duly authorized agent of the Commissioner finds or has probable cause to believe, that any food, cosmetic, or consumer commodity, as defined by this chapter, is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

 (b) When an article is adulterated or misbranded, it shall be liable to be proceeded against by petition of the judge of the county, or circuit court in whose jurisdiction the article is located, detained or embargoed for a libel for condemnation of such article. When an authorized agent has found that an article which is embargoed or detained is not adulterated or misbranded, he shall remove the tag or other marking.

 (c) If the court finds that a sampled, detained, or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of an authorized agent, and all court costs and fees, and storage and other proper expense, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to claimant thereof for such labeling or processing under the supervision of an agent of the Commissioner. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the Commissioner that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid.

 (d) Whenever the Commissioner or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the Commissioner, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

HISTORY: 1962 Code Section 32‑1526.5; 1972 (57) 2687.

**SECTION 39‑25‑70.** Duty of solicitors and Attorney General; notice of contemplated criminal proceedings.

 It shall be the duty of each solicitor and/or the office of the Attorney General to whom the Commissioner reports any violation of this chapter, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this chapter is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

HISTORY: 1962 Code Section 32‑1526.6; 1972 (57) 2687.

**SECTION 39‑25‑80.** Minor violations of chapter.

 Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

HISTORY: 1962 Code Section 32‑1526.7; 1972 (57) 2687.

**SECTION 39‑25‑90.** Application of definitions and standards adopted under Federal act.

 (a) Definitions and standards of identity, quality and fill of container and their amendments, now or hereafter adopted under authority of the Federal act are the definitions and standards of identity, quality and fill of container in this State. However, when in his judgment such action will promote honesty and fair dealing in the interest of consumers, the Commissioner may promulgate regulations establishing definitions and standards of identity, quality and fill of container for foods where no Federal regulations exist. In addition, the Commissioner may promulgate amendments to any Federal or State regulations which set definitions and standards of identity, and may promulgate amendments to any Federal or State regulations which set standards of quality and fill of container for foods.

 (b) Temporary permits now or hereafter granted for interstate shipment of experimental packs of food varying from the requirements of Federal definitions and standards of identity are automatically effective in this State under the conditions provided in such permits. In addition, the Commissioner may issue additional permits where they are necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interest of consumers is safeguarded. Such permits are subject to the terms and conditions the Commissioner may prescribe by regulation.

HISTORY: 1962 Code Section 32‑1526.8; 1972 (57) 2687.

**SECTION 39‑25‑100.** Food deemed adulterated.

 A food shall be deemed to be adulterated ‑

 (a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) (A) if it bears or contains any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which is unsafe within the meaning of Section 39‑25‑130(a); or (B) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal act as amended or Section 39‑25‑130(a); (C) if it is or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal act as amended or Section 39‑25‑130(a); provided , that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under Section 408 of the Federal act or Section 39‑25‑130(a), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall notwithstanding the provisions of Section 39‑25‑130 and clause (c) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter, or of an animal that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; (7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 39‑25‑130 or Section 409 of the Federal act.

 (b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

 (c) If it is confectionery, and ‑

 (1) Has partially or completely imbedded therein any nonnutritive object; provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the Commissioner as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health.

 (2) Bears or contains any alcohol other than alcohol not in excess of one half of one per centum by volume derived solely from the use of flavoring extracts; or

 (3) Bears or contains any nonnutritive substance; provided , that this clause shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this chapter; and provided further , that the Commissioner may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, issue regulations allowing or prohibiting the use of particular nonnutritive substances.

 (d) If it is or bears or contains any color additive which is unsafe within the meaning of the Federal act or Section 39‑25‑130(a).

HISTORY: 1962 Code Section 32‑1526.9; 1972 (57) 2687.

**SECTION 39‑25‑110.** Food deemed misbranded.

 A food shall be deemed to be misbranded ‑

 (a) (1) If its labeling is false or misleading in any particular (2) if its labeling or packaging fails to conform with the requirements of Section 39‑25‑160.

 (b) If it is offered for sale under the name of another food.

 (c) If it is an imitation of another food unless its label bears in type of uniform size and prominence, the word, "imitation," and, immediately thereafter, the name of the food imitated.

 (d) If its container is so made, formed, or filled as to be misleading.

 (e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner.

 (f) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

 (g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Section 39‑25‑90, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

 (h) If it purports to be or is represented as ‑

 (1) A food for which a standard of quality has been prescribed by regulations as provided by Section 39‑25‑90 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

 (2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by Section 39‑25‑90 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

 (i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except the spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner.

 (j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

 (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner. The provisions of this paragraph and paragraphs (g) and (i) with respect to artificial coloring do not apply to butter, cheese or ice cream. The provisions of the paragraph with respect to chemical preservatives do not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

 (l) If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical; provided, however , that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

 (m) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

 (n) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the Federal act.

HISTORY: 1962 Code Section 32‑1526.10; 1972 (57) 2687.

**SECTION 39‑25‑115.** Finding of contamination; regulations for temporary period to protect public health; access to factories for inspection.

 (A) When the commissioner finds, upon investigation, that the distribution in South Carolina of any class of food may, by reason of contamination with microorganisms during manufacturing, processing, or packaging in any locality, be injurious to human health and that the injurious nature cannot be adequately traced back after the articles have entered commerce, he shall promulgate regulations providing for the issuance to manufacturers, processors, or packagers of the class of food in the locality of permits to which must be attached the conditions governing the manufacturing, processing, or packaging of the class of food, for the temporary period of time as may be necessary to protect the public health. After the effective date of the regulations and during the temporary period, a person may not introduce or deliver for introduction into commerce any food manufactured, processed, or packaged by any manufacturer, processor, or packager unless the manufacturer, processor, or packager holds a permit issued by the commissioner as provided by the regulations.

 (B) An officer or employee duly designated by the commissioner shall have access to a factory or establishment, the operator of which holds a permit from the Department of Agriculture, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for the inspection is grounds for suspension of the permit until the access is freely given by the owner or operator.

HISTORY: 2010 Act No. 261, Section 1, eff June 11, 2010.

**SECTION 39‑25‑120.** Promulgation of regulations containing exemptions for food from labeling requirement; effect of Federal regulations.

 The Commissioner shall promulgate regulations exempting from any labeling requirement of this chapter food which is, in accordance with the practice of the trade to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such food is not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

 Regulations now or hereafter adopted under authority of the Federal act relating to such exemptions are automatically effective in this State. However, the Commissioner may promulgate additional regulations or amendments to existing regulations concerning exemptions.

HISTORY: 1962 Code Section 32‑1526.11; 1972 (57) 2687.

**SECTION 39‑25‑130.** Unsafe additives; authority of Commissioner to prescribe tolerances for additives and pesticide chemicals.

 (a) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of clause (2) of Section 39‑25‑100(a) with respect to any food, or Section 39‑25‑140(a) with respect to any cosmetic, unless there is in effect a regulation pursuant to Section 39‑25‑160 or subsection (b) of this section limiting the quantity of such substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a food or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations, be considered adulterated within the meaning of clause (1), Section 39‑25‑100(a) or Section 39‑25‑140(a).

 (b) The Commissioner, whenever public health or other considerations in the State so require, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the Federal act, prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes, upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish by data submitted to the Commissioner that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the Commissioner to form an opinion, he may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending, or repealing regulations relating to such substances the Commissioner shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

 (1) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

 (2) The probable composition of any substance formed in or on a food, or cosmetic resulting from the use of such substance.

 (3) The probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet.

 (4) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

 (5) The availability of any needed practicable methods of analysis for determining the identity and quantity of (i) such substance in or on an article, (ii) any substance formed in or on such article because of the use of such substance, and (iii) the pure substance and all intermediates and impurities.

 (6) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

HISTORY: 1962 Code Section 32‑1526.12; 1972 (57) 2687.

**SECTION 39‑25‑140.** Cosmetic deemed adulterated.

 A cosmetic shall be deemed to be adulterated ‑

 (a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual. Provided, that this provision shall not apply to coal‑tar hair dye, the label of which bears the following legend conspicuously displayed thereon; "Caution ‑ This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness." and the labeling of which bears adequate directions for such preliminary testing. For the purpose of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

 (b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

 (c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

 (d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

 (e) If it is not a hair dye and it is, or it bears or contains a color additive which is unsafe within the meaning of the Federal act or Section 39‑25‑130(a).

HISTORY: 1962 Code Section 32‑1526.13; 1972 (57) 2687.

**SECTION 39‑25‑150.** Cosmetic deemed misbranded.

 A cosmetic shall be deemed to be misbranded ‑

 (a)(1) If its labeling is false or misleading in any particular.

 (2) If its labeling or packaging fails to conform with the requirements of Section 39‑25‑160.

 (b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner.

 (c) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

 (d) If its container is so made, formed or filled as to be misleading.

 (e) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the Federal act. This paragraph shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of Section 39‑25‑140(a)).

 (f) A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter while it is in transit in commerce from the establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all applicable provisions of this chapter.

HISTORY: 1962 Code Section 32‑1526.14; 1972 (57) 2687.

**SECTION 39‑25‑160.** Labeling and packaging of consumer commodities.

 (a) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of section 4 of the Fair Packaging and Labeling Act (15 USC 2451, et seq.) and the regulations promulgated pursuant thereto; provided t, hat consumer commodities exempted from such requirements of section 4 of the Fair Packaging and Labeling Act shall also be exempt from this subsection.

 (b) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

 (c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents; provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

 (d) Whenever the Commissioner determines that regulations containing prohibitions or requirements other than those prescribed by Section 39‑25‑160(a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the Commissioner shall promulgate with respect to that commodity regulations effective to ‑

 (1) Establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

 (2) Regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, or any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

 (3) Require that the label on each package of a consumer commodity bear (a) the common or usual name of such consumer commodity, if any, and (b) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredients, listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

 (4) Prevent the nonfunctional slack‑fill of packages containing consumer commodities. For the purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack‑filled if it is filled to substantially less than its capacity for reasons other than (a) protection of the contents of such package or (b) the requirements of machines used for enclosing the contents in such package; provided , that the Commissioner may adopt any regulations promulgated pursuant to the Fair Packaging and Labeling Act which shall have the force and effect of law in this State.

HISTORY: 1962 Code Section 32‑1526.15; 1972 (57) 2687.

**SECTION 39‑25‑170.** Advertisement deemed false.

 An advertisement of a food, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

HISTORY: 1962 Code Section 32‑1526.16; 1972 (57) 2687.

**SECTION 39‑25‑180.** Promulgation of regulations; hearings; adoption of Federal regulations.

 (A) The authority to promulgate regulations for the efficient enforcement of this chapter is vested in the commissioner. The commissioner is authorized to make the regulations promulgated pursuant to this chapter conform, insofar as practicable, with those promulgated under the federal act.

 (B) Hearings authorized or required by this chapter must be conducted by the commissioner or the officer, agent, or employee the commissioner may designate for the purpose.

 (C) Pesticide chemical regulations and their amendments now or hereafter adopted pursuant to authority of the federal Food, Drug, and Cosmetic Act are the pesticide chemical regulations in this State. However, the commissioner may adopt a regulation that prescribes tolerances for pesticides in finished foods in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (D) Food additive regulations and their amendments now or hereafter adopted pursuant to authority of the federal Food, Drug, and Cosmetic Act are the food additive regulations in this State. However, the commissioner may adopt a regulation that prescribes conditions under which a food additive may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (E) Color additive regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the color additive regulations in this State. However, the commissioner may adopt a regulation that prescribes conditions under which a color additive may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (F) Special dietary use regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the special dietary use regulations in this State. However, the commissioner may, if he finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use regulations whether or not in accordance with regulations promulgated pursuant to the federal act.

 (G) Regulations and their amendments now or hereafter adopted pursuant to the Fair Packaging and Labeling Act are the regulations of this State. However, the commissioner may, if he finds it necessary in the interest of consumers, prescribe packaging and labeling regulations for consumer commodities, whether or not in accordance with regulations promulgated pursuant to the federal act; provided, that no regulation may be promulgated that is contrary to the labeling requirements for the net quantity of contents required pursuant to Section 4 of the Fair Packaging and Labeling Act and the regulations promulgated pursuant to it.

 (H) Good manufacturing practice regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the good manufacturing regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which good manufacturing processes may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (I) Regulations and their amendments adopted referencing thermally processed low‑acid foods packaged in hermetically sealed containers pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the low‑acid food regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which thermally processed low‑acid foods packaged in hermetically sealed containers may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (J) Regulations and their amendments adopted referencing acidified foods pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the acidified food regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which acidified foods may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (K) Regulations and their amendments adopted with regard to fish and fishery products pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the fish and fishery products regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which fish and fishery products may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

 (L) Regulations and their amendments now or hereafter adopted with regard to Hazard Analysis and Critical Control Point (HACCP) Systems pursuant to the authority of the federal Food, Drug, and Cosmetic Act as they are used to monitor various food products, including juice, for biological, chemical, and physical contaminants.

 (M) Food allergen and labeling regulations and their amendments now or hereafter adopted by the Food Allergen Labeling and Consumer Protection Act pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the food allergen and labeling regulations of this State.

 (N) A federal regulation automatically adopted pursuant to this chapter takes effect in this State on the date it becomes effective as a federal regulation. The commissioner shall publish all other proposed regulations in the official state newspaper or publication prescribed by the commissioner. A person who may be adversely affected by a regulation may, within thirty days after a federal regulation is automatically adopted, or within thirty days after publication of any other regulation, file objections with the commissioner, in writing, and a request for a hearing. The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the regulation in the State of South Carolina.

 (O) If no substantial objections are received and no hearing is requested within thirty days after publication of a proposed regulation, the regulation takes effect on a date set by the commissioner. The effective date shall be at least sixty days after the time for filing objections has expired.

 (P) If timely substantial objections are made to a federal regulation within thirty days after it is automatically adopted or to a proposed regulation within thirty days after it is published, the commissioner, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections. Any interested person or his representative may be heard. The commissioner shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable. The order must be based on substantial evidence in the record of the hearing. If the order concerns a federal regulation, it may reinstate, rescind, or modify it. If the order concerns a proposed regulation, it may withdraw it or set an effective date for the regulation as published or as modified by the order. The effective date must be at least sixty days after publication of the order.

HISTORY: 1962 Code Section 32‑1526.17; 1972 (57) 2687; 2010 Act No. 261, Section 4, eff June 11, 2010.

**SECTION 39‑25‑190.** Authority to enter and inspect premises and copy records; reports; analysis of samples.

 (A) For purposes of enforcement of this chapter, the commissioner or any of his authorized agents upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

 (1) enter at reasonable times any factory, warehouse, or establishment in which food or cosmetics are manufactured, processed, packaged, or held for introduction into commerce or after introduction or enter any vehicle being used to transport or hold this food or cosmetics in commerce;

 (2) inspect at reasonable times and within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling and to obtain samples necessary for the enforcement of this chapter; and

 (3) have access to and to copy all records of carriers in commerce showing the movement in commerce of any food or cosmetic, or the holding of it during or after movement, and the quantity, shipper, and consignee of it. Evidence obtained pursuant to this subsection may not be used in a criminal prosecution of the person from whom obtained. Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food or cosmetics in the usual course of business as carriers.

 (B) Upon completion of an inspection of a factory, warehouse, or other establishment, and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food or cosmetic in the establishment consists in whole or in part of any filthy, putrid, or decomposed substance or has been prepared, packaged, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health. A copy of the report must be sent promptly to the commissioner.

 (C) If the authorized agent making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

 (D) When in the course of an inspection of a factory or other establishment in which food is manufactured, processed, or packaged, the officer or employee making the inspection obtains a sample of the food and analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis must be furnished promptly to the owner, operator, or agent in charge.

 (E) The analytical work necessary for the proper enforcement of this chapter and regulations adopted by the department in regard to food must be undertaken by the department or under the direction of the department.

 (F) The department may perform laboratory services relating to, or having potential impact on, food safety or the compliance of food with the requirements of this chapter for any person or public agency.

HISTORY: 1962 Code Section 32‑1526.18; 1972 (57) 2687; 2010 Act No. 261, Section 5, eff June 11, 2010.

**SECTION 39‑25‑200.** Publication of judgments and orders and other information.

 (a) The Commissioner may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

 (b) The Commissioner may also cause to be disseminated such information regarding food and cosmetics as the Commissioner deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting and illustrating the results of the investigations of the Commissioner.

HISTORY: 1962 Code Section 32‑1526.19; 1972 (57) 2687.

**SECTION 39‑25‑210.** Persons subject to inspection pursuant to this chapter; registration requirements; exceptions; annual renewal; civil and criminal penalties.

 (A) A person subject to inspection pursuant to this chapter may not engage in the business of manufacturing, processing, warehousing, or packaging food in any manner without first registering with the department. This section shall not apply to facilities inspected and regulated by the United States Department of Agriculture (USDA) or the Clemson Livestock‑Poultry Health Meat Inspection Division. Registration is required beginning January 1, 2011, and must be renewed annually thereafter on or before the first day of January on forms provided by the department.

 (B) A person who wilfully violates the provisions of this section is subject to a civil penalty of up to one thousand dollars for each violation as determined by the department. Any person violating this section is also guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days.

HISTORY: 2010 Act No. 261, Section 2, eff June 11, 2010.