CHAPTER 15

Labels and Trademarks

ARTICLE 1

General Provisions

**SECTION 39‑15‑10.** Use of marked beer, soda water or mineral water containers of others.

 It shall be unlawful for any person engaged in the business of manufacturer, bottler or dealer in beer, soda water, or mineral waters to use in the course of his business any kegs, boxes, crates or bottles owned by any other person engaged in such business and rendered capable of identification by the name of the owner or other distinguishing marks stamped, stenciled, engraved, cut or in any other manner fixed thereon, without the consent of such owner in writing. No person shall trade or traffic in any such boxes, crates, bottles, jugs, kegs or other such vessels, except for the consumption of the beer, soda water or mineral waters placed therein by the owners. Any violation of this section shall be a misdemeanor, punishable for each offense by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than ten days nor more than thirty days, or both, at the discretion of the court.

HISTORY: 1962 Code Section 66‑191; 1952 Code Section 32‑1523; 1942 Code Section 5129‑11; 1932 Code Section 1343; Cr. C. '22 Section 232; Cr. C. '12 Section 526; 1902 (23) 1103.

**SECTION 39‑15‑15.** Requirements for labeling product as "peat"; penalties.

 (A) It is unlawful for a person engaged in the business of manufacturer, dealer, distributor, wholesaler, or retailer of peat to label a package or container of the product as "peat", or to market, distribute, sell, or advertise for sale a package or container with the word "peat" in the label or anywhere else on the package or container, unless the product is in actuality partially carbonized vegetable tissue formed by partial decomposition in water of various plants.

 (B) A person who violates any of the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined five hundred dollars or must be imprisoned for thirty days. Each violation constitutes a separate offense.

HISTORY: 1998 Act No. 438, Section 1, eff upon approval (became law without the Governor's signature on June 17, 1998).

**SECTION 39‑15‑20.** Fraud in sale of goods marked "sterling."

 A person who makes, sells, offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise marked, stamped or branded with the words "sterling" or "sterling silver" or encased or enclosed in any box, package, cover, wrapper or other thing in or by which such article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trademark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is silver, sterling silver or solid silver, unless nine hundred and twenty‑five one‑thousandths of the component parts of the metal of which the article is manufactured are pure silver shall be guilty of a misdemeanor.

HISTORY: 1962 Code Section 66‑192; 1952 Code Section 66‑214; 1942 Code Section 1315; 1932 Code Section 1320; Cr. C. '22 Section 212; Cr. C. '12 Section 510; Cr. C. '02 Section 363; 1894 (21) 797.

**SECTION 39‑15‑30.** Fraud in sale of goods marked "coin" or "coin silver."

 A person who makes, sells, offers to sell or dispose of or has in his possession with intent to sell or dispose of any article of merchandise marked, stamped or branded with the words "coin" or "coin silver" or enclosed in any box, package, cover, wrapper or other thing in or by which the article is packed, enclosed or otherwise prepared for sale or disposition, having thereon any engraving or printed label, stamp, imprint, mark or trademark indicating or denoting by such marking, stamping, branding, engraving or printing that such article is "coin" or "coin silver," unless nine hundred and twenty‑five one‑thousandths of the component parts of the metal of which the article is manufactured are pure silver, shall be guilty of a misdemeanor.

HISTORY: 1962 Code Section 66‑193; 1952 Code Section 66‑215; 1942 Code Section 1315; 1932 Code Section 1320; Cr. C. '22 Section 212; Cr. C. '12 Section 510; Cr. C. '02 Section 363; 1894 (21) 797.

**SECTION 39‑15‑40.** Penalties for fraudulent sales of "sterling," "coin" or "coin silver."

 Whoever violates any of the provisions of Section 39‑15‑20 or Section 39‑15‑30 shall, upon conviction, be subject to a fine not exceeding one hundred dollars for each offense or be imprisoned in the county jail for not more than thirty days.

HISTORY: 1962 Code Section 66‑194; 1952 Code Section 66‑216; 1942 Code Section 1315; 1932 Code Section 1320; Cr. C. '22 Section 212; Cr. C. '12 Section 510; Cr. C. '02 Section 363; 1894 (21) 797.

**SECTION 39‑15‑50.** Repealed by 1992 Act No. 349, Section 1, eff May 4, 1992.

Editor's Note

Former Section 39‑15‑50 was derived from 1986 Act No. 442.

Former Section 39‑15‑50 provided for the design, printing, and use of distinctive decals to be displayed wherever barbecue is sold, and provided penalties for falsely using decals.

ARTICLE 3

Trademarks and Service Marks Generally [Repealed]

**SECTIONS 39‑15‑110 to 39‑15‑160.** Repealed by 1994 Act No. 486, Section 5, eff 3 months after July 13, 1994.

Editor's Note

Former Sections 39‑15‑110 to 39‑15‑160 were derived from 1962 Code Sections 66‑201 to 206; 1952 (47) 1845; 1974 (58) 2169; 1981 Act No. 92, Section 1.

Former Sections 39‑15‑110 through 39‑15‑160 pertained to the registration and certification of marks. For similar provisions, see Sections 39‑15‑1105 through 39‑15‑1190.

1994 Act No. 486, Sections 3 and 5, effective 3 months after July 13, 1994, provide as follows:

"SECTION 3. A registration in force on this article's effective date continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the renewal fee as provided for in Section 39‑15‑1130(A) within six months before the expiration of the registration.

"SECTION 5. Article 3, Chapter 15, Title 39 of the 1976 Code is repealed; however, Article 3 is deemed not repealed and is applicable to a pending application, suit, proceeding, or appeal for that purpose only until the application, suit, proceeding, or appeal is finally concluded."

**SECTION 39‑15‑170.** Repealed by 1994 Act No. 486, Section 5, eff 3 months after July 13, 1994.

Editor's Note

Former Section 39‑15‑170 was entitled "Function of Director of the Department of Commerce in sale of mark advertising contents of food products" and was derived from 1962 Code Section 66‑207; 1952 Code Section 66‑205; 1942 Code Section 1249; 1932 Code Section 1249; 1929 (36) 223; 1945 (44) 156; 1954 (48) 1745; 1981 Act No. 92, Section 1; 1993 Act No. 181, Section 847, eff July 1, 1993; 1993 Act No. 184, Section 221, eff January 1, 1994.

1994 Act No. 486, Section 5, effective 3 months after July 13, 1994, provides as follows:

"SECTION 5. Article 3, Chapter 15, Title 39 of the 1976 Code is repealed; however, Article 3 is deemed not repealed and is applicable to a pending application, suit, proceeding, or appeal for that purpose only until the application, suit, proceeding, or appeal is finally concluded."

**SECTIONS 39‑15‑180 to 39‑15‑240.** Repealed by 1994 Act No. 486, Section 5, eff 3 months after July 13, 1994.

Editor's Note

Former Sections 39‑15‑180 to 39‑15‑240 were derived from 1962 Code Sections 66‑208 to 214; 1952 (47) 1845; 1981 Act No. 92, Section 1.

Former Section 39‑15‑180 was entitled "Records of marks shall be public".

Former Section 39‑15‑190 was entitled "Cancellation of registration".

Former Section 39‑15‑200 was entitled "Classes of goods; each application for registration shall be confined to one class".

Former Section 39‑15‑210 was entitled "Civil liability for fraudulent registration".

Former Section 39‑15‑220 was entitled "Civil liability for certain uses of imitation of registered mark".

Former Section 39‑15‑230 was entitled "Injunction and recovery of profits and damages for manufacture, use, display or sale of imitations".

Former Section 39‑15‑240 was entitled "Common law rights not affected by article".

1994 Act No. 486, Section 5, effective 3 months after July 13, 1994, provides as follows:

"SECTION 5. Article 3, Chapter 15, Title 39 of the 1976 Code is repealed; however, Article 3 is deemed not repealed and is applicable to a pending application, suit, proceeding, or appeal for that purpose only until the application, suit, proceeding, or appeal is finally concluded."

ARTICLE 5

Agricultural or Horticultural Brands or Marks

**SECTION 39‑15‑410.** Adoption and use of individual brands or marks.

 Any person being the owner of field boxes, crates, containers or receptacles used in the general production, harvesting, packing, transportation or marketing of fruits or vegetables or their by‑products may adopt for his exclusive use and ownership a particular mark or brand to designate and distinguish his ownership thereto and may identify his field boxes, crates, containers or receptacles so used with such mark or brand in the form of such combinations, initials, symbols, designs or names as he desires, by plainly and distinctly stamping, stenciling, painting, cutting, etching or burning the same into or onto both ends or sides of such field boxes, crates, receptacles or containers.

HISTORY: 1962 Code Section 66‑221; 1952 Code Section 66‑221; 1942 Code Section 6675‑1; 1938 (40) 1769.

**SECTION 39‑15‑420.** Registration of mark or brand with Secretary of State; registered number.

 Any person desiring to avail himself of the benefits of this article may make application to the Secretary of State, and shall file with the Secretary a true copy and description of such identifying mark or brand, which, if entitled thereto under the provisions of this article shall be filed and recorded by the Secretary in a book to be provided and kept by him for that purpose and the name of the owner of such brand or mark shall be likewise entered into such record and the Secretary shall then assign or designate a permanent registered number to the owner of such brand or mark, such numbers to be assigned progressively as marks and brands are received and recorded. The registered number so assigned shall then become a part of the registered brand or mark and shall plainly and distinctly be made to appear on such field boxes, crates, receptacles and containers, together with the identifying mark or brand referred to in Section 39‑15‑410. The Secretary of State shall determine if such brand or mark so applied for is not a duplication of any brand or mark previously recorded by him or does not so closely resemble any such brand or mark as to be misleading or deceiving. If the brand or mark applied for does so resemble or is such a duplication of a previously recorded brand or mark as to be misleading or deceiving, the application shall be denied and the applicant may file some other brand or mark in the manner described above.

HISTORY: 1962 Code Section 66‑222; 1952 Code Section 66‑222; 1942 Code Section 6675‑2; 1938 (40) 1769.

**SECTION 39‑15‑430.** Issuance of certificate; fees; admissibility of certificate as evidence.

 Such application for filing and recording shall be accompanied by a fee of two dollars and thereupon, if consistent with the provisions of this article, the Secretary of State shall issue to the person applying for registration and recordation of such mark or brand a certificate of such recordation and of the registered number assigned thereto and thereafter he shall issue such certificates, in any number, to any person applying therefor, upon the payment of a fee of one dollar for each certificate so issued. Any such certificate shall, in all proceedings in all the courts of this State, be taken and held as proof of the adoption and recordation of such identifying mark or brand.

HISTORY: 1962 Code Section 66‑223; 1952 Code Section 66‑223; 1942 Code Section 6675‑3; 1938 (40) 1769.

**SECTION 39‑15‑440.** Transfer, release or sale of brand or mark; record thereof.

 The owner of any such registered mark or brand may transfer, release or sell it by an instrument in writing evidencing such transfer, release or sale and, upon application to the Secretary of State when such mark or brand is registered for the recordation of such instrument in writing and upon the filing of it with the Secretary and the payment of a fee of two dollars, the Secretary shall cause such instrument of transfer, release or sale to be placed on record in a book provided and kept by him for that purpose and certificates of such transfer, upon application therefor, shall be issued by him in like manner, upon the payment of like fees, as provided for the issuance of certificates under the provisions of Section 39‑15‑430.

HISTORY: 1962 Code Section 66‑224; 1952 Code Section 66‑224; 1942 Code Section 6675‑4; 1938 (40) 1769.

**SECTION 39‑15‑450.** Effect of use of brand or mark.

 The presence of such identifying mark or brand on any field box, crate, container or receptacle, whenever a copy or description thereof shall have been filed and recorded in the office of the Secretary of State as provided in Section 39‑15‑420, shall, in any court and in any proceedings in this State, be prima facie evidence of the ownership of such boxes, crates, containers or receptacles by the person in whose name such mark or brand may have been recorded, provided that such mark or brand shall bear the registered number provided for in Section 39‑15‑420.

HISTORY: 1962 Code Section 66‑225; 1952 Code Section 66‑225; 1942 Code Section 6675‑1; 1938 (40) 1769.

**SECTION 39‑15‑460.** Unauthorized alteration, change, removal or obliteration of registered mark or brand.

 If any person shall alter, change, remove or obliterate the registered mark or brand on any field box, crate, container or receptacle other than his own or shall cause or procure the same to be done, with intent to claim the same, to prevent identification thereof by the true owner or to use or to have in his possession any such field box, crate, container or receptacle on which the registered mark or brand has been altered, changed, removed or obliterated, such person shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in Section 39‑15‑480.

HISTORY: 1962 Code Section 66‑226; 1952 Code Section 66‑226; 1942 Code Section 6675‑6; 1938 (40) 1769.

**SECTION 39‑15‑470.** Purchase or receipt of containers marked or branded from other than registered owner.

 It is unlawful for a person to receive or purchase a field box, crate, container, or receptacle marked or branded with a registered mark or brand as provided in this article from a person other than the registered owner or his duly authorized agent. Proof of such receipt or purchase is prima facie evidence that the person received or purchased the item with knowledge that it was stolen or embezzled property.

 A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both.

HISTORY: 1962 Code Section 66‑227; 1952 Code Section 66‑227; 1942 Code Section 6675‑7; 1938 (40) 1769; 1993 Act No. 184, Section 222, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change the maximum term of imprisonment to conform to the classification established for each offense.

**SECTION 39‑15‑480.** Unauthorized possession of marked or branded containers.

 Any person who shall have in his unauthorized possession any field box, crate, receptacle or container marked or branded with a mark or brand registered under the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty‑five dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment, and the possession by any person of any field box, crate, container or receptacle so marked or branded, in the absence of written authority therefor, shall be prima facie evidence of the violation of the provisions of this section. But the owner of any such recorded or registered mark or brand may, in writing, authorize and designate any person to use or have in his possession any such field boxes, crates, containers or receptacles.

HISTORY: 1962 Code Section 66‑228; 1952 Code Section 66‑228; 1942 Code Section 6675‑5; 1938 (40) 1769.

**SECTION 39‑15‑490.** Effect of refusal to deliver containers to lawful owner.

 The refusal of any person in possession thereof to deliver any field box, crate, container or receptacle so marked or branded and registered as provided in this article to the registered owner thereof or his duly authorized agent, upon the demand of such registered owner or authorized agent, when such demand is accompanied with a display of the certificate of recordation and number thereof, as furnished to the registered owner by the Secretary of State, shall be prima facie evidence in any court of this State of a fraudulent intent to convert such field box, crate, container or receptacle to the use of the person so in possession thereof and to deprive the registered owner thereof and any person convicted of a violation of the provisions of this section shall be subject to the penalty provided in Section 39‑15‑480.

HISTORY: 1962 Code Section 66‑229; 1952 Code Section 66‑229; 1942 Code Section 6675‑8; 1938 (40) 1769.

**SECTION 39‑15‑500.** Taking or sending containers out of State without consent of owner.

 Any person who shall take or send out of the State or cause to be taken or sent out of the State any field box, crate, container or receptacle so registered or branded as provided in this article without the permission of the owner thereof shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment of not more than one year or by both such fine and imprisonment in the discretion of the court.

HISTORY: 1962 Code Section 66‑230; 1952 Code Section 66‑230; 1942 Code Section 6675‑9; 1938 (40) 1769.

**SECTION 39‑15‑510.** Situation in which article shall be inapplicable.

 The provisions of this article shall not be construed to apply when fruits, vegetables or their by‑products are wrapped or packed in such accepted or prescribed standard containers as are prescribed and designated by the Bureau of Standards, United States Department of Agriculture, and are used only as receptacles or containers for fruits, vegetables or their by‑products when offered for transportation or sale only.

HISTORY: 1962 Code Section 66‑231; 1952 Code Section 66‑231; 1942 Code Section 6675‑10; 1938 (40) 1769.

**SECTION 39‑15‑520.** Article shall be cumulative.

 The provisions of this article shall be cumulative to all other provisions of law on the subject.

HISTORY: 1962 Code Section 66‑232; 1952 Code Section 66‑232; 1942 Code Section 6675‑11; 1938 (40) 1769.

ARTICLE 7

Trademark as Brand for Timber

**SECTION 39‑15‑710.** Definitions.

 (1) The terms "owner" and "purchaser" as used in this article shall include any person acting either in his own behalf or as an employee, agent or representative of any other person.

 (2) The term "timber" as used in this article shall include trees, lying or prepared for sale, sawlogs and all other logs, crossties, boards, planks, staves, headings and all other timber cut or prepared for use or sale.

HISTORY: 1962 Code Section 66‑241; 1952 Code Section 66‑241; 1942 Code Section 1250; 1932 Code Section 1250; 1925 (34) 27.

**SECTION 39‑15‑720.** Authority to use trademark on timber.

 A person who has adopted or used a label, trademark, term, design, or device and has obtained a registration for it pursuant to Article 11 of this chapter may use it to mark and identify timber and when the label, trademark, term, design, or device is stamped, impressed, or indented on timber it constitutes a "brand" within the meaning of this article and is notice to the world that the owner of the brand is the owner of or has some property right or interest in the timber or lien on the timber, as set forth in this article.

HISTORY: 1962 Code Section 66‑242; 1952 Code Section 66‑242; 1942 Code Section 1250; 1932 Code Section 1250; 1925 (34) 27; 1994 Act No. 486, Section 2, eff 3 months after July 13, 1994.

Effect of Amendment

The 1994 amendment substituted "has obtained a registration for it pursuant to Article 11" for "has filed it for record in the office of the Secretary of State as provided in Article 3", and made other minor grammatical changes.

**SECTION 39‑15‑730.** Purchaser's lien on branded timber.

 When any owner of timber shall agree to sell it, receive any portion of the purchase price therefor and consent to the purchaser's brand being placed thereon, such purchaser shall have a lien on such timber to secure him in the amount of the purchase price paid to such owner, which shall exist so long as such purchaser is not in default under the contract of purchase. But this section shall not prevent the title to such timber passing to the purchaser either by agreement of the parties or operation of law and the provisions of this section shall apply also to such cases in which the title has passed to the purchaser.

HISTORY: 1962 Code Section 66‑243; 1952 Code Section 66‑243; 1942 Code Section 1250; 1932 Code Section 1250; 1925 (24) 27.

**SECTION 39‑15‑740.** Loss of lien of purchaser by default in payments; removal of brand.

 The lien of the purchaser upon such timber when the title has not passed to such purchaser shall cease to exist immediately upon his becoming in default under the contract of purchase and it shall then be lawful for the owner of such timber to deface, destroy or otherwise remove the brand of the purchaser therefrom and resume full possession and control thereover.

HISTORY: 1962 Code Section 66‑244; 1952 Code Section 66‑244; 1942 Code Section 1250; 1932 Code Section 1250; 1925 (34) 27.

**SECTION 39‑15‑750.** Destruction of brand or removal or transfer of timber.

 The owner of such timber or any other person who shall cut out or off, obliterate or in any manner deface or destroy the brand of the purchaser or owner upon such timber or who shall injure, remove, secrete, take, receive or attempt to sell or purchase such timber so long as such brand lawfully remains thereon shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned for a term of not less than thirty days nor more than three years and be fined not less than one hundred dollars nor more than three thousand dollars, either or both.

HISTORY: 1962 Code Section 66‑245; 1952 Code Section 66‑245; 1942 Code Section 1250; 1932 Code Section 1250; 1925 (34) 27.

ARTICLE 9

Advertising by Household Goods Carriers

**SECTION 39‑15‑910.** Regulation of use of name or trade name in advertising, soliciting and the like.

 Household goods carriers in intrastate commerce shall not use any name in the advertising, soliciting or handling of intrastate business other than the name or trade name in which their operating authority is issued from the Public Service Commission. The printed advertising shall also include the certificate or docket number issued to the carrier by the commission.

 If such carrier uses joint advertising with a national carrier with which it has an affiliation, the advertising shall state clearly that all intrastate hauling is to be done solely by the South Carolina carrier.

HISTORY: 1978 Act No. 527 Section 1.

**SECTION 39‑15‑920.** Penalties.

 Any carrier violating the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars or imprisoned for not more than thirty days. Each violation shall constitute a separate offense.

HISTORY: 1978 Act No. 527 Section 2.

ARTICLE 11

Trademarks and Service Marks

Editor's Note

1994 Act No. 486, Section 4, effective 3 months after July 13, 1994, provides as follows:

"SECTION 4. The intent of this act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal act should be examined as persuasive authority for interpreting and construing this act."

ARTICLE 11 contains provisions similar to those in former

ARTICLE 3 of this chapter (Section 39‑15‑110 et seq.).

**SECTION 39‑15‑1105.** Definitions.

 As used in this article:

 (1) "Applicant" means the person filing an application for registration of a mark under this article and the legal representatives, successors, or assigns of that person.

 (2) "Dilution" means the lessening of the capacity of a registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of competition between the parties or the likelihood of confusion, mistake, or deception.

 (3) "Mark" includes a trademark or service mark entitled to registration under this article whether registered or not.

 (4) "Person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this article includes a juristic person, as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

 (5) "Registrant" means the person to whom the registration of a mark under this article is issued and the legal representatives, successors, or assigns of that person.

 (6) "Secretary" means the Secretary of State or the designee of the secretary charged with the administration of this article.

 (7) "Service mark" means a word, name, symbol, or device or any combination of these used by a person to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs, motion pictures, newspapers, or magazines may be registered as service marks notwithstanding that they or the programs, may advertise the goods of the sponsor.

 (8) "Trade name" means a name used by a person to identify a business or vocation of that person.

 (9) "Trademark" means a word, name, symbol, or device or any combination of these used by a person to identify and distinguish the goods of that person, including a unique product, from those manufactured and sold by others and to indicate the source of the goods, even if that source is unknown. "Trademark" also means, but is not limited to, the symbol, emblem, sign, insignia, or any combination thereof, of the United States Olympic Committee or the International Olympic Committee.

 (10) "Use" means the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark. For the purposes of this article, a mark is considered in use:

 (a) on goods when it is placed in any manner on the:

 (i) goods or other containers or the displays associated with the goods or containers;

 (ii) tags or labels affixed to the goods or containers; or

 (iii) if the nature of the goods makes placement impracticable, then on documents associated with the goods or other sale and the goods are sold or transported in commerce in this State; and

 (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this State. For purposes of this article, a mark is considered "abandoned" when:

 (i) its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years constitutes prima facie evidence of abandonment; or

 (ii) a course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994; 1995 Act No. 27, Section 1, eff April 10, 1995.

Effect of Amendment

The 1995 amendment revised the definition in paragraph (9) so as to provide that "trademark" also means, but is not limited to, the symbol, emblem, sign, insignia, or any combination of these, of the United States Olympic Committee or the International Olympic Committee.

**SECTION 39‑15‑1110.** Conditions precluding registration of distinguishing mark for goods or services; exception for distinctive mark.

 (A) A mark by which the goods or services of an applicant for registration may be distinguished from the goods or services of others may not be registered if the mark:

 (1) consists of or includes immoral, deceptive, or scandalous matter;

 (2) consists of or includes matter which may disparage or falsely suggest a connection with or bring into contempt or disrepute a person, living or dead, an institution, belief, or national symbol;

 (3) consists of or includes the flag or coat of arms or other insignia of the United States, a state or municipality, or a foreign nation or a simulation of the flag, coat of arms, or other insignia of any of these;

 (4) consists of or includes the name, signature, or portrait identifying a particular living individual, except by the individual's written consent;

 (5) consists of a mark which:

 (a) when used on or in connection with the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them;

 (b) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

 (c) is primarily merely a proper name or surname;

 (6) consists of or includes a mark which so resembles a mark registered in this State or a mark or trade name previously used by another person in this State and not abandoned as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

 (B) However, nothing in subsection (A)(5) prevents the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, by proof of continuous use as a mark by the applicant in this State for the five years before the date on which the claim of distinctiveness is made.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994; 2002 Act No. 279, Section 1, eff May 28, 2002.

Effect of Amendment

The 2002 amendment, in paragraph (A)(6), inserted "person in this State".

**SECTION 39‑15‑1115.** Application for registration of mark; required information.

 (A) Subject to the limitations set forth in this article, a person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, this information:

 (1) the name and business address of the person applying for the registration; and if a corporation, the state of incorporation or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

 (2) the goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with these goods or services, and the class in which these goods or services fall;

 (3) the date when the mark was first used anywhere and the date when it was first used in this State by the applicant or a predecessor in interest;

 (4) a statement that the applicant is the owner of the mark, that the mark is in use, and that to the knowledge of the person verifying the application no other person has registered either federally or in this State, or has the right to use this mark in its identical form or in near resemblance as to be likely, when applied to the goods or services of another person, to cause confusion or to cause mistake or to deceive.

 (B) The secretary may also require a statement whether an application to register the mark or portions or a composite of the mark has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and if so, the applicant shall provide full particulars including the filing date and serial number of each application, the status of the application, and if an application was finally refused registration or has otherwise not resulted in a registration, the reasons for this.

 (C) The secretary also may require that a drawing of the mark, complying with requirements as the secretary may specify, accompany the application.

 (D) The application must be signed and verified by oath, affirmation, or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying.

 (E) The application must be accompanied by three specimens showing the mark as actually used and accompanied by the application fee payable to the Secretary of State.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1120.** Examination and amendment by secretary of application for registration of mark.

 (A) Upon the filing of an application for registration and payment of the application fee, the secretary may examine the application for conformity with this article.

 (B) The applicant shall provide additional pertinent information requested by the secretary including a description of a design mark and may make or authorize the secretary to make amendments to the application as may be reasonably requested by the secretary or considered by the applicant to be advisable to respond to a rejection or objection.

 (C) The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer may prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or becomes distinctive of the applicant's or registrant's goods or services.

 (D) Amendments may be made by the secretary to the application submitted by the applicant with the applicant's consent, or the secretary may require that the applicant submit a fresh application.

 (E) If the applicant is found not to be entitled to registration, the secretary shall notify the applicant of this and of the reasons registration was denied. The applicant must be given a reasonable period of time specified by the secretary in which to reply or to amend the application, after which the application must be reexamined. This procedure may be repeated until the secretary finally refuses registration of the mark or the applicant fails to reply or amend within the specified period, at which time the application is deemed to have been abandoned.

 (F) If the secretary finally refuses registration of the mark, the applicant may appeal the decision to the circuit court in Richland County in accordance with the Administrative Procedures Act without costs to the secretary.

 (G) In the instance of applications concurrently being processed by the secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a prior‑filed application is granted a registration, the other application or applications must be rejected. A rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark in accordance with Section 39‑15‑1145 of this article.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1125.** Certificate of registration; issuance; admissibility as evidence.

 (A) Upon compliance by the applicant with the requirements of this article, the secretary shall issue a certificate of registration to the applicant under the signature of the secretary and the seal of the State. The certificate shall show the name and business address and if a corporation, the state of incorporation or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere, the date claimed for the first use of the mark in this State, the class of goods or services, a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date, and the term of the registration.

 (B) A certificate of registration issued by the secretary under this section or a copy of a certificate certified by the secretary is admissible in evidence as competent and sufficient proof of the registration of the mark in an action or judicial proceeding in any court of this State.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1130.** Effective period of registration of mark; renewal.

 (A) A registration of a mark is effective for five years from the date of registration, and upon application filed within six months before the expiration of the registration in a manner complying with the requirements of the secretary, the registration may be renewed for five years. A renewal fee payable to the secretary shall accompany the application for renewal of the registration. A registration may be renewed for successive periods of five years as provided for in this subsection.

 (B) An application for renewal under this article, whether of a registration made under this article or of a registration effected under any prior law, shall include a verified statement that the mark has been and is still in use and a specimen showing actual use of the mark on or in connection with the goods or services.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

Editor's Note

1994 Act No. 486, Section 3, effective 3 months after July 13, 1994, provides as follows:

"SECTION 3. A registration in force on this article's effective date continues in full force and effect for the unexpired term of the registration and may be renewed by filing an application for renewal with the secretary complying with the requirements of the secretary and paying the renewal fee as provided for in Section 39‑15‑1130(A) within six months before the expiration of the registration."

**SECTION 39‑15‑1135.** Assignment of mark and registration; certificate of change of name; recording.

 (A) A mark and its registration under this article is assignable with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment is by instruments in writing properly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary who upon recording of the assignment shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal of the registration. An assignment of a registration under this article is void against a subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three months after the date of the assignment or before the subsequent purchase.

 (B) A registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon payment of the recording fee. The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee a new certificate or registration for the remainder of the term of the registration or last renewal of the registration.

 (C) Other instruments which relate to a mark registered or application pending pursuant to this article including, but not limited to, licenses, security interests, or mortgages, may be recorded in the discretion of the secretary if the instrument is in writing and properly executed.

 (D) Acknowledgement is prima facie evidence of the execution of an assignment or other instrument, and when recorded by the secretary, the record is prima facie evidence of execution.

 (E) A photocopy of an instrument referred to in subsections (A), (B), or (C) must be accepted for recording if it is certified to be a true and correct copy of the original by a party to the instrument or their successors.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1140.** Public record of registered or renewed marks and associated documents.

 The secretary shall keep for public examination a record of all marks registered or renewed under this article and a record of all documents recorded pursuant to Section 39‑15‑1135.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1145.** Cancellation of registration of mark from register; conditions.

 The secretary shall cancel from the register, in whole or in part:

 (1) a registration concerning which the secretary receives a voluntary request for cancellation of it from the registrant or the assignee of record;

 (2) a registration granted under this article and not renewed in accordance with this article;

 (3) a registration concerning which a court of competent jurisdiction finds that the:

 (a) registered mark has been abandoned;

 (b) registrant is not the owner of the mark;

 (c) registration was granted improperly;

 (d) registration was obtained fraudulently;

 (e) mark is or has become the generic name for the goods or services or a portion of the goods or services for which it has been registered;

 (f) registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office before the date of the filing of the application for registration by the registrant under this article, and not abandoned; however, if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this State, the registration under this article may not be canceled for that area of the State; or

 (4) a registration when a court of competent jurisdiction orders cancellation of the registration on any ground.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1150.** Classification of goods and services.

 (A) The general classification of goods and services provided for in subsections (B) and (C) are established for convenience of administration of this article but does not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include goods upon which or services with which the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class. To the extent practical the classification of goods and services shall conform to the classification adopted by the United States Patent and Trademark Office.

 (B) The following is the international schedule of classes of goods:

 (1) chemical products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids, or pastes for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs, tanning substances, adhesive substances used in industry;

 (2) paints, varnishes, lacquers; preservatives against rust and against deterioration of wood, coloring matters, dyestuffs, mordants, natural resins; metals in foil and powder form for painters and decorators;

 (3) bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices;

 (4) industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights, and wicks;

 (5) pharmaceutical, veterinary, and sanitary substances; infants' and invalids' foods; plasters, material for bandaging; material for stopping teeth, dental wax, disinfectants; preparations for killing weeds and destroying vermin;

 (6) unwrought and partly wrought common metals and their alloys, anchors, anvils, bells, rolled and cast building materials, rails and other metallic materials for railway tracks, chains (except driving chains for vehicles), cables and wires (nonelectric), locksmiths' work; metallic pipes and tubes; safes and cash boxes, steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; ores;

 (7) machines and machine tolls; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators;

 (8) hand tools and instruments; cutlery, forks, and spoons; side arms;

 (9) scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life‑saving and teaching apparatus and instruments; coin or counterfreed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus;

 (10) surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes and teeth);

 (11) installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes;

 (12) vehicles; apparatus for locomotion by land, air, or water;

 (13) firearms; ammunition and projectiles; explosive substances; fireworks;

 (14) precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks, and spoons); jewelry, precious stones, horological and other chronometric instruments;

 (15) musical instruments (other than talking machines and wireless apparatus);

 (16) paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and cliches (stereotype);

 (17) gutta percha, india rubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in manufacture, materials for packing, stopping, or insulating; asbestos, mica and their products; hose pipes (nonmetallic);

 (18) leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery;

 (19) building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; roadmaking materials; asphalt, pitch and bitumen, portable buildings; stone monuments; chimney pots;

 (20) furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother‑of‑pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics;

 (21) small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges, brushes (other than paint brushes); brushmaking materials, instruments and material for cleaning purposes, steel wool; unworked or semi‑worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes;

 (22) ropes, string, nets, tents, awnings, tarpaulins, sails, sacks, padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials;

 (23) yarns, threads;

 (24) tissues (piece goods); bed and table covers; textile articles not included in other classes;

 (25) clothing (including boots, shoes, and slippers);

 (26) lace and embroidery, ribands, and braid; buttons, press buttons, hooks and dyes, pins and needles; artificial flowers;

 (27) carpets, rugs, mats, and matting; linoleum and other materials for covering existing floors; wall hangings (nontextile);

 (28) games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees;

 (29) meats, fish, poultry, and game; meat extracts; preserved, dried, and cooked fruits and vegetables; jellies, jams; eggs, milk, and other dairy products; edible oils and fats; preserves, pickles;

 (30) coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour and preparations made from cereals; bread, biscuits, cakes, pastry, and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice;

 (31) agricultural, horticultural, and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt;

 (32) beer, ale, and porter; mineral and aerated waters and other nonalcoholic drinks; syrups and other preparations for making beverages;

 (33) wines, spirits, and liqueurs;

 (34) tobacco, raw, or manufactures; smokers' articles; matches.

 (C) The following is the international schedule of classes of services:

 (1) advertising and business;

 (2) insurance and financial;

 (3) construction and repair;

 (4) communication;

 (5) transportation and storage;

 (6) material treatment;

 (7) education and entertainment;

 (8) miscellaneous.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1155.** Fraudulent filing or registration of mark; liability.

 A person who procures or who on behalf of another person procures the filing or registration of a mark in the office of the secretary under the provisions of this article by knowingly making a false or fraudulent representation or declaration orally, in writing, or by any other fraudulent means is liable to pay all damages sustained in consequence of the filing or registration to be recovered in a court of competent jurisdiction by or on behalf of the party injured.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1160.** Liability for unapproved use of registered mark.

 (A) Subject to Section 39‑15‑1180 and subsection (B) of this section, a person is liable in a civil action by the registrant for the remedies provided in Section 39‑15‑1170 if the person:

 (1) uses without the consent of the registrant a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this article in connection with the sale, distribution, offering for sale, or advertising of goods or services on or in connection with which this use is likely to cause confusion or mistake or to deceive as to the source of origin of these goods or services; or

 (2) reproduces, counterfeits, copies, or colorably imitates a mark and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print, package wrapper, receptacle, or advertisement intended to be used on or in connection with the sale or other distribution in this State of these goods or services.

 (B) Notwithstanding subsection (A) a person liable under subsection (A)(2) is not entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1165.** Famous mark; factors used in determining; injunctive or other relief against use by another.

 (A) The owner of a mark which is famous in this State is entitled, subject to the principles of equity, to an injunction against another's use of a mark commencing after the registrant's mark becomes famous which causes dilution of the distinctive quality of the registrant's mark and to obtain other relief as is provided in this section. In determining whether a mark is famous, a court may consider, but is not limited to considering, these factors:

 (1) the degree of inherent or acquired distinctiveness of the mark in this State;

 (2) the duration and extent of use of the mark in connection with the goods and services;

 (3) the duration and extent of advertising and publicity of the mark in this State;

 (4) the geographical extent of the trading area in which the mark is used;

 (5) the channels of trade for the goods or services with which the registrant's mark is used;

 (6) the degree of recognition of the registrant's mark in its and in the other's trading areas and channels of trade in this State; and

 (7) the nature and extent of use of the same or similar mark by third parties.

 (B) The registrant is entitled only to injunctive relief in this State in an action brought under this section unless the subsequent user wilfully intended to trade on the registrant's reputation or to cause dilution of the owner's mark. If wilful intent is proven, the owner is entitled to the remedies set forth in this article, subject to the discretion of the court and the principles of equity.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1170.** Action to enjoin counterfeit or imitation use of registered mark; damages.

 (A) An owner of a mark registered under this article may bring an action to enjoin the manufacture, use, display, or sale of a counterfeit or imitation of the registered mark, and a court of competent jurisdiction may grant an injunction to restrain the manufacture, use, display, or sale as the court considers just and reasonable and may require a defendant to pay the owner profits derived from or damages suffered due to the wrongful manufacture, use, display, or sale or to pay both profits and damages. The court also may order that the counterfeit or imitation in the possession or under the control of a defendant be delivered to an officer of the court or to the complainant to be destroyed. The court in its discretion may enter judgment for an amount not to exceed three times the profits and damages or reasonable attorneys' fees of the prevailing party, or both, in cases where the court finds the other party committed the wrongful acts with knowledge or in bad faith or otherwise according to the circumstances of the case.

 (B) The enumeration of a right or remedy in this article does not affect a registrant's right to prosecute under any penal law of this State.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1175.** Action for cancellation of registered mark or appeal from refusal to register; service of process in action against nonresident registrant.

 (A) An action to require cancellation of a mark registered pursuant to this article or an appeal from a refusal of the secretary to register a mark pursuant to this article must be brought in the circuit court. In an appeal the proceeding must be based solely upon the record before the secretary. In an action for cancellation the secretary may not be made a party to the proceeding but must be notified of the filing of the complaint by the clerk of the court in the county in which it is filed and must be given the right to intervene in the action.

 (B) In an action brought against a nonresident registrant, service may be effected upon the secretary as agent for service of the registrant in accordance with the procedures established for service upon nonresident corporations and business entities under the Rules of Civil Procedure.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1180.** Rights in marks not adversely affected by article.

 Nothing in this article may adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1185.** Application fees.

 The secretary shall charge a fee of fifteen dollars for an original application, a fee of five dollars for a renewal application, and a fee of three dollars for recording an assignment. The fees payable under this article are not refundable.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994.

**SECTION 39‑15‑1190.** Sale of goods or services with counterfeit mark; production or reproduction of counterfeit mark; penalties.

 (A) For purposes of this section:

 (1) "Counterfeit mark" means a mark that is:

 (a) identical to, or substantially indistinguishable from, a registered mark or unregistered mark;

 (b) used in connection with the sale or offering for sale of goods or services that are identical to, or substantially indistinguishable from, the goods or services with which the registered or unregistered mark is identified;

 (c) likely to cause confusion, mistake, or deception if used; and

 (d) not authorized by the owner of the registered or unregistered mark.

 (2) "Registered mark" means a mark that is registered on the principal register of the United States Patent and Trademark Office or with the South Carolina Secretary of State.

 (3) "Retail sales value" means the value computed by multiplying the number of items having a counterfeit mark used on them or in connection with them by the retail price at which a similar item having a mark used on it or in connection with it, the use of which is authorized by the owner, is offered for sale to the public.

 (4) "Unregistered mark" means a symbol, sign, emblem, insignia, trademark, trade name, or word protected by the federal Amateur Sports Act of 1978, Title 36 U.S.C. Section 380.

 (B)(1) It is unlawful for a person knowingly and wilfully to transport, transfer, distribute, sell, or otherwise dispose of, or to possess with intent to transfer, transport, distribute, sell, or otherwise dispose of, an item having a counterfeit mark on it or in connection with it.

 (a) A person who knowingly and wilfully violates this subsection with respect to goods or services having a retail sales value of less than fifty thousand dollars is guilty of the offense of distribution of counterfeit marks and, upon conviction, must be punished as follows:

 (i) if the goods or services have a retail sales value of two thousand dollars or less, the person is guilty of a misdemeanor and must be fined not more than one thousand dollars or imprisoned not more than one year, or both;

 (ii) if the goods or services have a retail sales value of more than two thousand dollars but less than ten thousand dollars, the person is guilty of a felony and must be fined not more than ten thousand dollars or imprisoned not more than three years, or both;

 (iii) if the goods or services have a retail sales value of ten thousand dollars or more, but less than fifty thousand dollars, the person is guilty of a felony and must be fined not more than twenty thousand dollars or imprisoned not more than five years, or both;

 (iv) for a second or subsequent conviction of the offenses described in subitem (a), without regard to the retail sales value of the goods or services, the person is guilty of a felony and must be fined not less than one thousand dollars or more than fifty thousand dollars or imprisoned not more than ten years, or both.

 (b) A person who knowingly and wilfully violates the provisions of this subsection with respect to goods or services having a retail sales value of fifty thousand dollars or more is guilty of the offense of trafficking in counterfeit marks. A person who knowingly and wilfully commits the offense of trafficking as described in this subitem is guilty of a felony and, upon conviction, must be punished as follows:

 (i) for a first offense, fined not less than ten thousand dollars or more than twenty‑five thousand dollars or imprisoned not more than five years, or both;

 (ii) for a second or subsequent offense, fined not less than twenty thousand dollars or more than fifty thousand dollars or imprisoned not more than ten years, or both.

 (2) The possession, custody, or control of more than twenty‑five items having a counterfeit mark used on them or in connection with them is prima facie evidence of a violation of this section.

 (C) A person who knowingly and wilfully uses any object, tool, machine, or other device to produce or reproduce a counterfeit mark or knowingly and wilfully has possession, custody, or control of any object, tool, machine, or device with intent to produce or reproduce a counterfeit mark is guilty of producing or reproducing counterfeit marks and, upon conviction, must be punished as provided in subsection (B).

 (D) Personal property, including any item, object, tool, machine, or device of any kind, employed as an instrumentality in the commission of or in aiding or abetting in the commission of a violation of subsection (B) or (C), is considered contraband and is subject to seizure and forfeiture in the same manner as other property used in the commission of specified criminal offenses as provided by law.

 (E) For purposes of enforcing this section, investigators in the office of the Secretary of State have statewide jurisdiction. These investigators may conduct investigations independently or may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this section.

 (F) The Secretary of State may refer available evidence concerning violations of this section to the appropriate solicitor who may, with or without the reference, institute the appropriate criminal proceedings.

 (G) The Secretary of State also may refer available evidence concerning violations of this section to the Department of Revenue for purposes of determining the obligations of the violators of this section pursuant to state income and other taxation laws.

 (H) The provisions of this section do not apply to persons who own, rent, or manage premises occupied by retailers unless that person had actual knowledge or actively participated in a violation of this section.

HISTORY: 1994 Act No. 486, Section 1, eff 3 months after July 13, 1994; 2006 Act No. 348, Section 1, eff June 12, 2006.

Effect of Amendment

The 2006 amendment rewrote this section.

**SECTION 39‑15‑1195.** Seizure and forfeiture; storage and maintenance of seized property; reports to prosecuting agencies; return of seized items.

 (A) The following property is subject to seizure by and forfeiture to any law enforcement agency upon violation of Section 39‑15‑1190:

 (1) all items bearing the counterfeit mark;

 (2) all personal property that is employed or used in connection with a violation of Section 39‑15‑1190 including, but not limited to, any items, objects, tools, machines, equipment, or instrumentalities of any kind;

 (3) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels which are used unlawfully to conceal, contain, or transport or facilitate the unlawful concealment, possession, containment, manufacture, or transportation of counterfeit marks;

 (4) all books, records, computers, and data that are used or intended for use in the production, manufacture, sale, or delivery of items bearing a counterfeit mark or services identified by a counterfeit mark; and

 (5) all monies, negotiable instruments, balances in deposit or other accounts, securities, or other things of value furnished or intended to be furnished by any person used to engage in a violation or to further a violation of Section 39‑15‑1190.

 (B) Property subject to forfeiture pursuant to this section may be seized by the department having authority upon a warrant issued by a court having jurisdiction over the property. Seizure without process may be made if:

 (1) the seizure is incident to an arrest or a search pursuant to a search warrant or an inspection pursuant to an administrative inspection warrant;

 (2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this section;

 (3) the department has probable cause to believe that the property is directly or indirectly dangerous to an individual's health or safety; or

 (4) the department has probable cause to believe that the property was used or is intended to be used in violation of Section 39‑15‑1190.

 (C) If a seizure is made pursuant to subsection (B), proceedings pursuant to Section 44‑53‑530 regarding forfeiture and disposition must be instituted within a reasonable time.

 (D) Property taken or detained pursuant to this section is not subject to replevin but is considered to be in the custody of the department making the seizure, subject only to the orders of the court having jurisdiction over the forfeiture proceedings.

 (E) For the purposes of this section, when the seizure of property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

 (F) Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidentiary nature and provides for security in another manner.

 (G) When property, conveyances, monies, negotiable instruments, securities, or anything else of value is seized pursuant to the provisions of subsection (A), the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

 (1) The report must provide the following information with respect to the property seized:

 (a) description;

 (b) circumstances of seizure;

 (c) present custodian and where the property is being stored or its location;

 (d) name of owner;

 (e) name of lienholder, if any; and

 (f) seizing agency.

 (2) If the property is a conveyance, the report must include the:

 (a) make, model, serial number, and year of the conveyance;

 (b) person in whose name the conveyance is registered; and

 (c) name of any lienholders.

 (3) In addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public, upon request, a report providing the following information:

 (a) a description of the quantity and nature of the property and money seized;

 (b) the seizing agency;

 (c) the make, model, and year of a conveyance; and

 (d) the law enforcement agency responsible for the property or conveyance seized.

 (H)(1) An owner may apply to the court of common pleas for the return of an item seized pursuant to the provisions of this chapter. Notice of hearing or rule to show cause accompanied by a copy of the application must be directed to all persons and agencies entitled to notice as provided in Section 44‑53‑530. If the court denies the application, the hearing may proceed as a forfeiture hearing held pursuant to the provisions of Section 44‑53‑530.

 (2) The court may return a seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence that the owner was not a consenting party to, or privy to, or did not have knowledge of, the use of the property that made it subject to seizure and forfeiture.

 (3) The lien of an innocent person or other legal entity, recorded in public records, continues in force upon transfer of title of a forfeited item, and a transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that the lienholder was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

 (I) Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes.

HISTORY: 2006 Act No. 348, Section 2, eff June 12, 2006.