CHAPTER 23

Adulterated, Misbranded or New Drugs and Devices

**SECTION 39‑23‑10.** Short title.

 This chapter may be cited as the South Carolina Drug Act.

HISTORY: 1962 Code Section 32‑1510.101; 1972 (57) 3046.

**SECTION 39‑23‑20.** Definitions.

 For the purposes of this chapter:

 (a) The “Commissioner of Health and Environmental Control” means the Commissioner of Health and Environmental Control or his designated agent.

 (b)(1) The term “drug” means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in clause (A), (B) or (C); but does not include devices or their components, parts, or accessories.

 (2) The term “counterfeit drug” means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

 (c) The term device” means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

 (d) The term “official compendium” means the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Official National Formulary, or any supplement to any of them.

 (e) 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.

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

 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.

 (g) The term “new drug” means:

 (1) Any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a “new drug” if at any time prior to July 17, 1972 it was subject to the Federal Food and Drug Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or

 (2) Any drug except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

 (h) The term “color” includes black, white, and intermediate grays.

HISTORY: 1962 Code Section 32‑1510.102; 1972 (57) 3046.

**SECTION 39‑23‑30.** Drug or device deemed adulterated.

 A drug or device shall be deemed to be adulterated:

 (a)(1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health or (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of the Federal Food, Drug, and Cosmetic Act, as amended, as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if (A) it is a drug which bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of Section 706(a) of the Federal Food, Drug, and Cosmetic Act, as amended, (B) it is a color additive the intended use of which in or on drugs is for purposes of coloring only and is unsafe within the meaning of Section 706(a) of the Federal Food, Drug, and Cosmetic Act, as amended; or (5) if it is a new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act, as amended; or (6) if it is an animal feed bearing or containing a new animal drug, and such animal feed is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act, as amended.

 (b) If it purports or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, except that whenever tests or methods of assay have not been prescribed in such compendium, or those prescribed under authority of the Federal act, or such tests or methods of assay as are prescribed are, in the judgment of the Commissioner of Health and Environmental Control, insufficient for the making of such determination, the Commissioner shall bring such fact to the attention of the appropriate body charged with the revision of such compendium, and if such body fails within a reasonable time to prescribe tests or methods of assay, which, in the judgment of the Commissioner, are sufficient for purposes of this paragraph, then the Commissioner shall promulgate regulations prescribing appropriate tests or methods of assay in accordance with which such determination as to strength, quality, or purity shall be made. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

 (c) If it is not subject to the provisions of paragraph (b) of this section, and its strength differs from, or its purity or quality falls below that which it purports or is represented to possess.

 (d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality of strength or (2) substituted wholly or in part therefor.

HISTORY: 1962 Code Section 32‑1510.103; 1972 (57) 3046.

**SECTION 39‑23‑40.** Drug or device deemed misbranded.

 A drug or device shall be deemed to be misbranded:

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

 (b) If in a 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; provided, that reasonable variations shall be permitted under regulations issued by the Commissioner of Health and Environmental Control or issued under the Federal act. Provided, further, that in the case of any drug subject to Section 39‑23‑50(b)(1), the label shall contain the name and place of business of the manufacturer of the finished dosage form and, if different, the name and place of business of the packer or distributor. For the purpose of this paragraph, the finished dosage form of a drug is that form of the drug which is, or is intended to be, dispensed or administered to the ultimate user upon prescription or as otherwise dispensed by the pharmacist.

 (c) If any word, statement, or other information required by or under the authority of this chapter or the Federal Food, Drug, and Cosmetic Act 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 it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha‑eucaine, barbituric acid, beta‑eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be, and designated as, habit forming, by regulations issued by the Commissioner of Health and Environmental Control under this chapter, or by regulations issued pursuant to Section 502(d) of the Federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement “Warning ‑ May be habit forming.”

 (e)(1) If it is a drug, unless (A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), (i) the established name (as defined in subparagraph (2)) of the drug, if such there be, and (ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this paragraph, shall apply only to prescription drugs; and (B) for any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of clause (A)(ii) or clause (B) of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner of Health and Environmental Control or under the Federal act.

 (2) As used in this paragraph (e), the term “established name,” with respect to a drug or ingredient thereof, means (A) the applicable official name designated pursuant to Section 508 of the Federal Food, Drug, and Cosmetic Act as amended, or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient; provided, further, that where clause (B) of this paragraph applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

 (f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Commissioner of Health and Environmental Control shall promulgate regulations exempting such drug or device from such requirement; provided, further, that articles exempted under regulations issued under Section 502(f) of the Federal act shall also be exempt.

 (g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the Commissioner of Health and Environmental Control or if consent is obtained under the Federal act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging, and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia; provided, further, that, in the event of inconsistency between the requirements of this paragraph and those of paragraph (e) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (e) shall prevail.

 (h) If it has been found by the Commissioner of Health and Environmental Control or under the Federal act to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Commissioner of Health and Environmental Control or under the Federal act shall by regulations require as necessary for the protection of the public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Health and Environmental Control shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

 (i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

 (j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

 (k) In the case of any prescription drug distributed or offered for sale in any state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of (1) the established name as defined in Section 39‑23‑40(e), printed prominently and in type at least half as large as that used for any trade or brand name thereof, (2) the formula showing quantitatively each ingredient of such drug to the extent required for labels under Section 39‑23‑40(e), and (3) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations which shall be issued under the Federal act.

HISTORY: 1962 Code Section 32‑1510.104; 1972 (57) 3046; 1978 Act No. 536.

**SECTION 39‑23‑50.** Exemptions from labeling or packaging requirements; certain drugs shall be dispensed only on prescription; removal of drugs from prescription requirements; labeling of prescription drugs.

 (a) The Commissioner of Health and Environmental Control is hereby directed to promulgate regulations exempting from any labeling or packaging requirement of this chapter drugs and devices which are, 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 drugs and devices are not adulterated or misbranded, under the provisions of this chapter upon removal from such processing, labeling, or repacking establishment.

 (b)(1) A drug intended for use by man which (A) is a habit‑forming drug to which Section 39‑23‑40(d) applies; or (B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or (C) is limited by an effective application under Section 39‑23‑70 to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

 (2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 39‑23‑40, except paragraphs (a), (i)(2) and (3), (k), and the packaging requirements of paragraphs (g) and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph (1) of this subsection.

 (3) The Commissioner of Health and Environmental Control may by regulation remove drugs subject to Section 39‑23‑40(d) and Section 39‑23‑70 from the requirements of paragraph (1) of this subsection when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the Federal act by regulations issued thereunder may also by regulations issued by the Commissioner of Health and Environmental Control, be removed from the requirements of paragraph (1) of this subsection.

 (4) A drug which is subject to paragraph (1) of this subsection shall be misbranded if at any time prior to dispensing its label fails to bear the statement “Caution: Federal law prohibits dispensing without prescription.” A drug to which paragraph (1) of this subsection does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

 (5) Nothing in this subsection shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications stated in Sections 44‑49‑10, 44‑49‑40, 44‑49‑50 and 44‑53‑110 to 44‑53‑580.

HISTORY: 1962 Code Section 32‑1510.105; 1972 (57) 3046.

**SECTION 39‑23‑55.** Labeling of prescription or nonprescription drug samples.

 (A) For purposes of this section, “sample” means a unit of a drug which is not intended by the manufacturer to be sold and which is intended to promote the sale of the drug.

 (B) The department may not require the labeling of a prescription or nonprescription drug sample for which a physician does not require a federal or state controlled substance license to dispense, when the physician dispenses it to a patient for no charge. If the sample is not in the manufacturer’s original package, the physician shall label it meeting all requirements of nonsample prescription medication. If adequate directions for usage are not provided on the manufacturer’s package, the physician shall give adequate written directions.

 (C) The labeling exemption established in this section does not apply when more than one hundred twenty dosage units or a thirty‑day supply of a drug in solid form or eight ounces of a drug in liquid form is dispensed.

HISTORY: 1990 Act No. 398, Section 1, eff April 3, 1990.

**SECTION 39‑23‑60.** Regulations concerning listing and certification of coal‑tar colors.

 In accordance with Federal standards, the Commissioner of Health and Environmental Control shall promulgate regulations providing for the listing of coal‑tar colors which are harmless and suitable for use in drugs for purposes of coloring only and for the certification of batches of such colors, with or without harmless dilutents.

HISTORY: 1962 Code Section 32‑1510.106; 1972 (57) 3046.

**SECTION 39‑23‑70.** Procedure for introduction of new drug into intrastate commerce.

 (a) No person shall introduce or deliver for introduction into intrastate commerce any new drug unless an application filed pursuant to subsection (b) is effective with respect to such drug, or an application with respect thereto has been approved and such approval has not been withdrawn under Section 505 of the Federal act.

 (b) Any person may file with the Commissioner of Health and Environmental Control an application with respect to any drug subject to the provisions of subsection (a). Such persons shall submit to the Commissioner of Health and Environmental Control as a part of the application (1) full reports of investigations which have been made to show whether or not such drug is safe for use; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the Commissioner of Health and Environmental Control may require; and (6) specimens of the labeling proposed to be used for such drug.

 (c) An application provided for in subsection (b) shall become effective on the one hundred eightieth day after the filing thereof, except that if the Commissioner of Health and Environmental Control finds, after due notice to the applicant and giving him an opportunity for a hearing, (1), that the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof; or (2) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drugs are inadequate to preserve its identity, strength, quality, and purity; or (3) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

 (d) If the Commissioner of Health and Environmental Control finds, after due notice to the applicant and giving him an opportunity for a hearing, that (1) the investigations, reports of which are required to be submitted to the Commissioner pursuant to subsection (b), do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; or (4) upon the basis of the information submitted to him as part of the application or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

 (e) The effectiveness of an application with respect to any drug shall, after due notice and opportunity for hearing to the applicant, by order of the Commissioner of Health and Environmental Control be suspended if the Commissioner finds (1) that clinical experience, tests by new methods, or tests by methods not deemed reasonably applicable when such application became effective show that such drug is unsafe for use under conditions of use upon the basis of which the application became effective, or (2) that the application contains any untrue statement of a material fact. The order shall state the findings upon which it is based.

 (f) An order refusing to permit an application with respect to any drug to become effective shall be revoked whenever the Commissioner of Health and Environmental Control finds that the facts so require.

 (g) Orders of the Commissioner of Health and Environmental Control issued under this section shall be served (1) in person by an officer or employee of the Department of Health and Environmental Control designated by the Commissioner or (2) by mailing the order by registered mail addressed to the applicant or respondent at his last known address in the records of the Commissioner.

 (h) An appeal may be taken by the applicant from an order of the Commissioner of Health and Environmental Control refusing to permit the application to become effective, or suspending the effectiveness of the application. Such appeal shall be taken by filing in the circuit court within any circuit wherein such applicant resides or has his principal place of business, within sixty days after the entry of such order, a written petition praying that the order of the Commissioner be set aside. A copy of such petition shall be forthwith served upon the Commissioner or upon any officer designated by him for that purpose, and thereupon the Commissioner shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm or set aside such order. No objection to the order of the Commissioner shall be considered by the court unless such objection shall have been argued before the Commissioner or unless there were reasonable grounds for failure so to do. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive. If any person shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commissioner, the court may order such additional evidence to be taken before the Commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Commissioner may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified findings which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the setting aside of the original order. The judgment and decree of the court affirming or setting aside any such order of the Commissioner shall be final, subject to review as provided by statute. The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of the Commissioner’s orders.

 (i) The Commissioner of Health and Environmental Control shall promulgate regulations for exempting from the operation of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs.

HISTORY: 1962 Code Section 32‑1510.107; 1972 (57) 3046.

**SECTION 39‑23‑80.** Prohibited acts.

 (A) It is unlawful to do or cause the following acts:

 (1) introduction or delivery for introduction into commerce within the State of a drug or device that is adulterated or misbranded;

 (2) adulteration or misbranding of a drug or device in intrastate commerce;

 (3) receipt in intrastate commerce of a drug or device that is adulterated or misbranded, and the delivery or proffered delivery of a drug or device for pay or otherwise;

 (4) manufacture of a drug or device within the State which is adulterated or misbranded;

 (5) 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 under the provisions of this chapter or the federal act;

 (6) 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 drug or device, if the act is done while the article is held for sale (whether or not the first sale) after shipment in intrastate commerce and results in the article being adulterated or misbranded;

 (7) using, on the label of a drug or in an advertisement relating to the drug, any representation or suggestion that an application with respect to the drug is effective under Section 39‑23‑70, or that the drug complies with the provisions of that section.

 (B)(1) A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years, or fined not more than five thousand dollars, or both for a first offense.

 (2) A person convicted under this section for a second offense is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

 (3) A violation with intent to defraud or mislead is a felony and, upon conviction, the person must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

HISTORY: 1962 Code Section 32‑1510.108; 1972 (57) 3046; 1993 Act No. 184, Section 68, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section, designating existing text as (A), and adding (B), so as to change portions from misdemeanors to felonies and the maximum term of imprisonment to conform to the new crime classification system.

**SECTION 39‑23‑90.** Repealed by 1993 Act No. 184, Section 264, eff January 1, 1994.

Editor’s Note

Former Section 39‑23‑90 was derived from 1962 Code Section 32‑1510.109; 1972 (57) 3046.

Former Section 39‑23‑90 specified the penalties for violations of Section 39‑23‑80. For penalty provisions, see Section 39‑23‑80.

**SECTION 39‑23‑100.** Procedure for condemnation of adulterated or misbranded drug or device.

 (a) Any drug or device that is adulterated or misbranded when introduced into or while in intrastate commerce or while held for sale (whether or not the first sale) after shipment in intrastate commerce, or which may not, under the provisions of Section 39‑23‑50, be introduced into intrastate commerce, shall be liable to be proceeded against while in intrastate commerce or at any time thereafter, on libel of information and condemned in any circuit court of the State within the jurisdiction of which the article is found; provided, however, that no libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) when such misbranding has been the basis of a prior judgment in favor of the State, in a criminal injunction, or libel for condemnation proceeding under this chapter, or (2) when the Commissioner of Health and Environmental Control has probable cause to believe from facts found, without hearings, by him or any officer or employee of the Department of Health and Environmental Control that the misbranding is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, reasonably made, be removed for trial to any circuit agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the circuit in which the seizure has been made, and such court (after giving the Attorney General or other attorney for the Department of Health and Environmental Control reasonable notice and opportunity to be heard), shall by order, unless good cause to the contrary is shown, specify a circuit of reasonable proximity to the claimant’s principal place of business to which the case shall be removed for trial.

 (b) The article shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant reasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any circuit selected by the claimant where one of such proceedings is pending; or (2) a circuit agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction, and such court (after giving the Attorney General or other attorney for the Department of Health and Environmental Control reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a circuit of reasonable proximity to the claimant’s principal place of business, in which all pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

 (c) The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized.

 (d) Any drug or device condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the State of South Carolina; but such article shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold; provided, that after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any state or territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter under the supervision of an officer or employee duly designated by the Commissioner of Health and Environmental Control, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. Any article condemned by reason of its being an article which may not, under Section 39‑23‑70, be introduced into intrastate commerce, shall be disposed of by destruction.

 (e) When a decree of condemnation is entered against the article, court costs of fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

 (f) In the case of removal for trial of any case as provided by subsection (a) or (b):

 (1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

 (2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

HISTORY: 1962 Code Section 32‑1510.110; 1972 (57) 3046.

**SECTION 39‑23‑110.** Notice of contemplated criminal proceedings.

 Before any violation of this chapter is reported by the Commissioner of Health and Environmental Control to the Attorney General for 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, either orally or in writing, with regard to such contemplated proceeding.

HISTORY: 1962 Code Section 32‑1510.111; 1972 (57) 3046.

**SECTION 39‑23‑120.** Minor violations of chapter.

 Nothing in this chapter shall be construed as requiring the Commissioner of Health and Environmental Control to report for prosecution, or for the institution of libel or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

HISTORY: 1962 Code Section 32‑1510.112; 1972 (57) 3046.

**SECTION 39‑23‑130.** Embargo of adulterated or misbranded drug or device.

 The Commissioner of Health and Environmental Control may, upon service of written notice, embargo any drug, device, or other substance for a period not to exceed fifteen days if such drug, device, or substance is suspected of being adulterated or misbranded, the purpose of such embargo being to prevent the removal of such drug, device, or substance from the jurisdiction of the Commissioner of Health and Environmental Control until an investigation of such suspected adulteration or misbranding may be conducted.

HISTORY: 1962 Code Section 32‑1510.113; 1972 (57) 3046.