CHAPTER 3

Trusts, Monopolies and Restraints of Trade

ARTICLE 1

Combinations Lessening Competition

**SECTION 39‑3‑10.** Arrangements, contracts, agreements, trusts and combinations adversely affecting competition or price declared against public policy.

 All arrangements, contracts, agreements, trusts or combinations (a) between two or more persons as individuals, firms or corporations, made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State or in the manufacture or sale of articles of domestic growth or of domestic raw material, (b) between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or consumer of any such product or article and (c) between two or more persons as individuals, firms, corporations, syndicates or associations that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premium or prices in any branch of trade, business or commerce are declared to be against public policy, unlawful and void.

HISTORY: 1962 Code Section 66‑51; 1952 Code Section 66‑51; 1942 Code Section 6620; 1932 Code Section 6620; Civ. C. ‘22 Section 3530; Civ. C. ‘12 Section 2437; Civ. C. ‘02 Section 2845; 1897 (22) 434.

CROSS REFERENCES

Certain joint rates, local rates and rate agreements between two or more carriers approved by Public Service Commission not being violative of this section, see Section 58‑23‑1010.

Cooperative marketing associations not being deemed illegal combinations, see Section 33‑47‑50.

Crime of conspiracy generally, see Section 16‑17‑410.

Fair Trade Act, see Sections 39‑7‑10 to 39‑7‑50.

Regulation of corporations and partnerships, see Title 33.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 27 et seq.

RESEARCH REFERENCES

ALR Library

35 ALR 6th 245 , Right of Retail Buyer of Price‑Fixed Product to Sue Manufacturer on State Antitrust Claim.

Encyclopedias

S.C. Jur. Monopolies Section 2, Definitions.

S.C. Jur. Monopolies Section 4, Combinations that Lessen Competition.

S.C. Jur. Private Business Franchises and Business Opportunities Section 50, State Antitrust Laws.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 15:43, South Carolina.

LAW REVIEW AND JOURNAL COMMENTARIES

Reciprocity and Economic Concentration Aspects of the ITT Mergers—Should the Government Have Settled. 25 S.C. L. Rev. 657.

United States Supreme Court Annotations

Noncompete agreements, Brand‑name drug manufacturer’s reverse‑payment settlement with potential generic competitors was not immune from antitrust attack, see F.T.C. v. Actavis, Inc., 2013, 133 S.Ct. 2223, 186 L.Ed.2d 343, 106 U.S.P.Q.2d 1953, on remand 529 Fed.Appx. 985, 2013 WL 4779645. Antitrust and Trade Regulation 587(1)

NOTES OF DECISIONS

In general 1

1. In general

Because South Carolina adheres to policy of following federal precedents in matters relating to state trade regulation enforcement, analysis of claims under federal antitrust law is equally dispositive of state law claims. Drs. Steuer and Latham, P.A. v. National Medical Enterprises, Inc., 1987, 672 F.Supp. 1489, affirmed 846 F.2d 70.

An action for damages under Section 39‑3‑30 arising out of the alleged violation of the anti‑trust statute, Section 39‑3‑10, by copper building wire manufacturers could not be maintained as a class action under Section 15‑5‑50 since Section 39‑3‑30 provides a remedy at law which is personal to the injured party. General Supplies, Inc. v. Southwire Co. (S.C. 1981) 276 S.C. 55, 275 S.E.2d 579.

A corporation can act as such only through its agents and employees, and to hold that such agents, employees or servants in endeavoring to promote the corporation’s business could be charged with conspiring would be holding that a corporation could conspire with itself and open every corporation to similar charges when the officers, agents and servants discuss and formulate plans to further the corporate business and meet competition by reducing prices or other methods. State ex rel. Callison v. National Linen Service Corp. (S.C. 1954) 225 S.C. 232, 81 S.E.2d 342.

Where action was brought charging defendants with a scheme to put plaintiff out of business, demurrer to the complaint was properly sustained where persons charged were corporation and its employees. State ex rel. Callison v. National Linen Service Corp. (S.C. 1954) 225 S.C. 232, 81 S.E.2d 342.

The Public Service Commission has no authority to disapprove a transfer of a certificate of public convenience and necessity on the ground that such transfer would cause a violation of this section [Code 1962 Section 66‑51]. Beard‑Laney, Inc. v. Darby (S.C. 1948) 213 S.C. 380, 49 S.E.2d 564.

Contract giving sole right to sell goods in designated territory is not illegal. Walter A. Wood Mowing & Reaping Co. v. Greenwood Hardware Co. (S.C. 1906) 75 S.C. 378, 55 S.E. 973, 9 Am.Ann.Cas. 902.

Seller may recover for goods sold under agreement, void hereunder, if it is not necessary to his case to rely upon the illegal part of the contract. Separable contracts defined. Packard & Field v. Byrd (S.C. 1905) 73 S.C. 1, 51 S.E. 678.

As to complaint stating a cause of action under this section [Code 1962 Section 66‑51], see State v. Virginia‑Carolina Chemical Co. (S.C. 1905) 71 S.C. 544, 51 S.E. 455.

As to constitutionality of this section [Code 1962 Section 66‑51], see State v. Virginia‑Carolina Chemical Co. (S.C. 1905) 71 S.C. 544, 51 S.E. 455.

**SECTION 39‑3‑20.** Penalties for corporate violations of Section 39‑3‑10.

 Whenever complaint is made upon sufficient affidavit showing a prima facie case of violation of the provisions of Section 39‑3‑10 by any corporation, domestic or foreign, the Attorney General shall begin an action against such domestic corporation to forfeit its charter and for the purpose of such forfeiture he shall apply to any court of competent jurisdiction for an order restraining such offending corporation and, when in his discretion it is necessary, for the immediate appointment of a receiver for such offending corporation when such forfeiture affects a creditor of such offending company. If such violation shall be established the court shall adjudge the charter of such corporation to be forfeited and such corporation shall be dissolved and its charter shall cease and determine. In the case of such showing as to a foreign corporation an action shall be begun by the Attorney General in such court against such corporation to determine the truth of such charge and in case such charge shall be considered established the effect of the judgment of the court shall be to deny to such corporation the recognition of its corporate existence in any court of law or equity in this State. But nothing in this section shall be construed to affect any right of action then existing against such corporation.

HISTORY: 1962 Code Section 66‑52; 1952 Code Section 66‑52; 1942 Code Section 6621; 1932 Code Section 6621; Civ. C. ‘22 Section 3531; Civ. C. ‘12 Section 2438; Civ. C. ‘02 Section 2846; 1897 (22) 434; 1902 (23) 569.

LIBRARY REFERENCES

58 C.J.S., Monopolies Section 120.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 4, Combinations that Lessen Competition.

S.C. Jur. Monopolies Section 13, Combinations that Lessen Competition.

**SECTION 39‑3‑30.** Injured person may recover damages.

 Any person who may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in Section 39‑3‑10 may sue for and recover, in any court of competent jurisdiction in this State, from any person operating such trust or combination, the full consideration or sum paid by him for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

HISTORY: 1962 Code Section 66‑53; 1952 Code Section 66‑53; 1942 Code Section 6622; 1932 Code Section 6622; Civ. C. ‘22 Section 3532; Civ. C. ‘12 Section 2439; Civ. C. ‘02 Section 2847; 1897 (22) 434.

CROSS REFERENCES

Civil remedies and procedures generally, see Title 15.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 115 et seq.

RESEARCH REFERENCES

ALR Library

35 ALR 6th 245 , Right of Retail Buyer of Price‑Fixed Product to Sue Manufacturer on State Antitrust Claim.

Encyclopedias

S.C. Jur. Monopolies Section 4, Combinations that Lessen Competition.

S.C. Jur. Monopolies Section 13, Combinations that Lessen Competition.

NOTES OF DECISIONS

In general 1

1. In general

Section 39‑3‑40, which prohibits the prosecution of a witness compelled to testify in an action under the South Carolina antitrust statutes, grants transactional immunity from prosecution by the state, rather than use immunity, to a witness compelled to testify in a civil diversity action brought in federal district court under Section 39‑3‑30. Dickerson v. Coca‑Cola Bottling Co. Affiliated Ltd. (S.C. 1994) 312 S.C. 264, 440 S.E.2d 359. Criminal Law 42.6

S.C. Code Section 39‑3‑30 provides remedy at law which is personal to injured party and, as such, which may not be brought as class action. General Supplies, Inc. v. Southwire Co. (S.C. 1981) 276 S.C. 55, 275 S.E.2d 579.

An action for damages under Section 39‑3‑30 arising out of the alleged violation of the anti‑trust statute, Section 39‑3‑10, by copper building wire manufacturers could not be maintained as a class action under Section 15‑5‑50 since Section 39‑3‑30 provides a remedy at law which is personal to the injured party. General Supplies, Inc. v. Southwire Co. (S.C. 1981) 276 S.C. 55, 275 S.E.2d 579.

**SECTION 39‑3‑40.** Testimony may be compelled; immunity of witness.

 Any person may be compelled to testify in any action or prosecution under Sections 39‑3‑10 to 39‑3‑30. But such testimony shall not be used in any other action or prosecution against such witness and such witness shall forever be exempt from any prosecution for the act concerning which he testifies.

HISTORY: 1962 Code Section 66‑54; 1952 Code Section 66‑54; 1942 Code Section 6622; 1932 Code Section 6622; Civ. C. ‘22 Section 3532; Civ. C. ‘12 Section 2439; Civ. C. ‘02 Section 2847; 1897 (22) 434.

CROSS REFERENCES

Evidence and witnesses generally, see Title 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 2, Definitions.

S.C. Jur. Monopolies Section 11, Combinations that Lessen Competition.

United States Supreme Court Annotations

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self‑incrimination. 32 L Ed 2d 869.

NOTES OF DECISIONS

In general 1

1. In general

Section 39‑3‑40, which prohibits the prosecution of a witness compelled to testify in an action under the South Carolina antitrust statutes, grants transactional immunity from prosecution by the state, rather than use immunity, to a witness compelled to testify in a civil diversity action brought in federal district court under Section 39‑3‑30. Dickerson v. Coca‑Cola Bottling Co. Affiliated Ltd. (S.C. 1994) 312 S.C. 264, 440 S.E.2d 359. Criminal Law 42.6

ARTICLE 3

Monopolies, Conspiracies in Restraint of Trade, Boycotts and Sales at Less Than Cost

**SECTION 39‑3‑110.** “Monopoly” defined.

 A “monopoly” is any union, combination, consolidation or affiliation of capital, credit, property, assets, trade, custom, skill, acts or other valuable thing or possession, by or between persons, firms or corporations or associations of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this article is accomplished or sought to be accomplished or whereby any one or more of such purposes are promoted or attempted to be executed or carried out or the several results described herein are reasonably calculated to be produced. A “monopoly” as thus defined includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade or other valuable thing or possession, whether effected by the ordinary methods of partnership, by actual union under the legal form of a corporation, or by the purchase, acquisition or control of shares or certificates of stocks or bonds or other corporate property or franchises and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms, corporations or companies are especially declared to constitute monopolies within the meaning of this article, if so created or entered into for any one or more of the purposes named in this article.

HISTORY: 1962 Code Section 66‑61; 1952 Code Section 66‑61; 1942 Code Section 6625; 1932 Code Section 6625; Civ. C. ‘22 Section 3535; Civ. C. ‘12 Section 2442; 1902 (23) 1057.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 2, Definitions.

S.C. Jur. Monopolies Section 5, Monopolies.

LAW REVIEW AND JOURNAL COMMENTARIES

Monopolization Under Section 2 of the Sherman Act. 22 S.C. L. Rev. 344.

Reciprocity and Economic Concentration Aspects of the ITT Mergers—Should the Government Have Settled. 25 S.C. L. Rev. 657.

**SECTION 39‑3‑120.** Monopolies declared unlawful.

 A monopoly is declared to be unlawful and against public policy and all persons engaged therein shall be guilty of a conspiracy to defraud and shall be subject to the penalties prescribed in this article.

HISTORY: 1962 Code Section 66‑62; 1952 Code Section 66‑62; 1942 Code Section 6625; 1932 Code Section 6625; Civ. C. ‘22 Section 3535; Civ. C. ‘12 Section 2442; 1902 (23) 1057.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 27 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 5, Monopolies.

S.C. Jur. Private Business Franchises and Business Opportunities Section 50, State Antitrust Laws.

**SECTION 39‑3‑130.** Agreement in restraint of trade shall be conspiracy to defraud.

 Any corporation organized under the laws of this or any other State or country transacting or conducting any kind of business in this State or any partnership, individual or other person or association of persons whatsoever, who shall create, enter into or become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or other person or association of persons to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience or repair, any product of mining or other article or thing whatsoever or to maintain such price when so regulated or fixed or shall enter into or become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience or repair, product of mining or other article or thing whatsoever or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by any person shall be guilty of a conspiracy to defraud and be subject to the penalties provided by this article.

HISTORY: 1962 Code Section 66‑63; 1952 Code Section 66‑63; 1942 Code Section 6624; 1932 Code Section 6624; Civ. C. ‘22 Section 3534; Civ. C. ‘12 Section 2441; 1902 (23) 1057.

CROSS REFERENCES

The crime of conspiracy generally, see Section 16‑17‑410.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 27 et seq.

RESEARCH REFERENCES

ALR Library

5 ALR, Federal 3rd Series 3 , Construction and Application of Mass Action Provision of Class Action Fairness Act, 28 U.S.C.A. S1332(D)(11).

Encyclopedias

S.C. Jur. Monopolies Section 6, Conspiracies in Restraint of Trade.

S.C. Jur. Private Business Franchises and Business Opportunities Section 50, State Antitrust Laws.

Forms

Am. Jur. Pl. & Pr. Forms Conspiracy Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Monopolization Under Section 2 of the Sherman Act. 22 S.C. L. Rev. 344.

United States Supreme Court Annotations

Oil and gas, field preemption did not apply to state‑law antitrust suits directed at natural gas pipelines’ retail sales, see Oneok, Inc. v. Learjet, Inc., 2015, 135 S.Ct. 1591, 191 L.Ed.2d 511. Antitrust and Trade Regulation 531; States 18.84

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

No civil conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment. McMillan v. Oconee Memorial Hosp., Inc. (S.C. 2006) 367 S.C. 559, 626 S.E.2d 884, rehearing denied. Conspiracy 2

A “civil conspiracy” is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. McMillan v. Oconee Memorial Hosp., Inc. (S.C. 2006) 367 S.C. 559, 626 S.E.2d 884, rehearing denied. Conspiracy 1.1

Evidence that private charitable hospital, acting alone, attempted to injure physician by awarding to a competing anesthesiology group a contract to be exclusive provider of staff and anesthesiology services at hospital, did not establish civil conspiracy. McMillan v. Oconee Memorial Hosp., Inc. (S.C. 2006) 367 S.C. 559, 626 S.E.2d 884, rehearing denied. Conspiracy 2

2. Constitutional issues

Natural Gas Act provision granting rate‑setting authority to Federal Energy Regulatory Commission (FERC), as limited to interstate transport of natural gas, sale in interstate commerce of natural gas for resale, and natural gas companies engaged in such transportation or sale, did not preempt retail buyers’ state‑law antitrust claims against natural gas traders; Act was drawn with meticulous regard for continued exercise of state power, such that where, as here, state law could be applied to nonjurisdictional and jurisdictional sales, finding of preemption would be warranted only if matter clearly fell within preempted field as defined by relevant precedents, such precedents emphasized importance of considering target at which state laws were aimed, and state antitrust laws at issue were targeted broadly at all businesses in subject marketplace, rather than at natural gas companies in particular. Oneok, Inc. v. Learjet, Inc., 2015, 135 S.Ct. 1591, 191 L.Ed.2d 511. Antitrust and Trade Regulation 531; States 18.84

**SECTION 39‑3‑140.** Agreement to limit competition by not dealing with or boycotting those not in agreement shall be conspiracy to defraud.

 If any two or more persons who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair or any product of mining or other article or thing whatsoever shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing or to limit competition in such trade by refusing to buy from or sell to any other person any such article or thing for the reason that such other person is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding or shall boycott or threaten any person for buying from or selling to any other person who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing such persons shall be guilty of a conspiracy to defraud and shall be subject to the penalties prescribed in this article.

HISTORY: 1962 Code Section 66‑64; 1952 Code Section 66‑64; 1942 Code Section 6628; 1932 Code Section 6636; Civ. C. ‘22 Section 3546; Civ. C. ‘12 Section 2453; 1902 (23) 1057.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 21, Threats to Compel.

S.C. Jur. Monopolies Section 7, Boycotts.

S.C. Jur. Private Business Franchises and Business Opportunities Section 50, State Antitrust Laws.

**SECTION 39‑3‑150.** Sale at less than cost for purpose of injuring competitors is conspiracy to form monopoly; exemptions for motor fuel sales to meet existing competition; records to support exemption.

 (A) If any person engaged in the manufacture, sale, or distribution of any commodity in general use in this State shall, with the intent or purpose of driving out competition or for the purpose of financially injuring competitors, sell at less than cost of manufacture or at less than the cost of such commodity bought in the open markets plus the freight and other charges to point of destination or give away such product for the purpose of driving out competition or financially injuring any competitor engaged in the manufacture, sale, or distribution of such commodity in this State, such person shall be guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade and of unfair discrimination, which is prohibited and declared to be unlawful. Any person violating any of the provisions of this section and any officer, agent, or receiver of any firm, company, association, or corporation or any member thereof or any individual guilty of a violation of this section shall be liable for a penalty of not less than five hundred dollars nor more than five thousand dollars to be recovered at the suit of the State in the court of common pleas of any county. The Attorney General may allow one‑half of the penalties provided in this section to anyone who may conduct the suit and the Attorney General shall be authorized to proceed as provided in this article to enforce the provisions hereof. Each sale so proven under the provisions of this section shall be considered a separate offense.

 (B) Sales of motor fuel in general use in this State at wholesale or retail at a price to meet existing competition which is below the actual cost of acquiring the product, including transportation and taxes, are exempt from the provisions of this section, provided that any person claiming the exemption shall keep and maintain records substantiating his effort to meet this competition, including the identity and place of business of the competitors whose competition that person is meeting. The records must be made available to the Department of Consumer Affairs and the Attorney General on request made in connection with any investigation of a possible violation of this section by the department or the Attorney General.

HISTORY: 1962 Code Section 66‑65; 1952 Code Section 66‑65; 1942 Code Section 6626; 1932 Code Section 6634; Civ. C. ‘22 Section 3544; Civ. C. ‘12 Section 2451; 1902 (23) 1057; 1927 (35) 115; 1993 Act No. 161, Section 3, eff sixty days after approval (approved June 15, 1993).

Effect of Amendment

The 1993 amendment designated the existing material subsection (A) and added subsection (B).

CROSS REFERENCES

Commercial code provisions regarding sales, see Chapter 2 of Title 36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 2, Definitions.

S.C. Jur. Monopolies Section 8, Sales at Less Than Cost.

S.C. Jur. Monopolies Section 14, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

S.C. Jur. Private Business Franchises and Business Opportunities Section 50, State Antitrust Laws.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 5016.70, Predatory Pricing‑State Regulation.

LAW REVIEW AND JOURNAL COMMENTARIES

Monopolization Under Section 2 of the Sherman Act. 22 S.C. L. Rev. 344.

United States Supreme Court Annotations

Antitrust, duty to deal, predatory pricing, telephone company charges for providing digital subscriber line (DSL) service to Internet service providers, low retail charges, price squeezing, see Pacific Bell Telephone Co. v. Linkline Communications, Inc., 2009, 129 S.Ct. 1109, 555 U.S. 438, 172 L.Ed.2d 836.

**SECTION 39‑3‑160.** Forfeiture of corporate franchise.

 Any corporation created or organized by or under the laws of this State which shall violate any of the provisions of this article shall forfeit its corporate rights and franchises and its corporate existence shall, upon the proper proof being made thereof in any court of competent jurisdiction in the State, be by the court declared forfeited, void and of none effect and shall thereupon cease and determine. The clerk of such court shall certify the decree thereof to the Secretary of State.

HISTORY: 1962 Code Section 66‑66; 1952 Code Section 66‑66; 1942 Code Section 6629; 1932 Code Section 6637; Civ. C. ‘22 Section 3547; Civ. C. ‘12 Section 2454; 1902 (23) 1057.

CROSS REFERENCES

Dissolution of business corporations, see Sections 33‑14‑101 et seq.

LIBRARY REFERENCES

58 C.J.S., Monopolies Section 120.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 14, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

**SECTION 39‑3‑170.** Disqualification of foreign corporation.

 Any corporation created or organized by or under the law of any other state or country which shall violate any of the provisions of this article shall thereby forfeit its right and privilege thereafter to do any business in this State and upon proper proof being made thereof in any court of competent jurisdiction in this State its rights and privileges to do business in this State shall be declared forfeited. In all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State has been, while acting as such agent and in the name, behalf or interest of such foreign corporation, violating any provisions of this article shall be received as prima facie proof of the fact of the act of the corporation itself; and it shall be the duty of the clerk of such court to certify the decree thereof to the Secretary of State.

HISTORY: 1962 Code Section 66‑67; 1952 Code Section 66‑67; 1942 Code Section 6629; 1932 Code Section 6637; Civ. C. ‘22 Section 3547; Civ. C. ‘12 Section 2454; 1902 (23) 1057.

CROSS REFERENCES

Regulation of foreign business corporations, see Sections 33‑15‑101 et seq.

LIBRARY REFERENCES

20 C.J.S., Corporations Sections 1810, 1843.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 14, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

**SECTION 39‑3‑180.** Penalties for certain violations.

 Any person, partnership, firm, association, corporation or company or any officer, representative or agent thereof violating any of the provisions of this article other than Section 39‑3‑150 shall forfeit not less than two hundred dollars, nor more than five thousand dollars, for every such offense and each day such person shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney General or the solicitor of the judicial circuit within which the offense was committed. The moneys thus collected shall go into the State Treasury, and become a part of the general fund except as otherwise provided. The amount of the forfeit shall be fixed by the judge before whom the case is tried in each case, within the limits provided in this section and the collection of such penalty shall be enforced as the collection of fines against defendants upon conviction of a misdemeanor.

HISTORY: 1962 Code Section 66‑68; 1952 Code Section 66‑68; 1942 Code Section 6627; 1932 Code Section 6635; Civ. C. ‘22 Section 3545; Civ. C. ‘12 Section 2452; 1902 (23) 1057.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 113, 114.

RESEARCH REFERENCES

ALR Library

18 ALR, Federal 2nd Series 223 , Construction and Application of Class Action Fairness Act of 2005, Pub. L. 109‑2, 119 Stat. 4 (2005).

Encyclopedias

127 Am. Jur. Proof of Facts 3d 141, Proof Under Class Action Fairness Act.

S.C. Jur. Extortion, Blackmail, and Threats Section 21, Threats to Compel.

S.C. Jur. Monopolies Section 14, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

Notes of Decisions

Jurisdiction 1

1. Jurisdiction

State of South Carolina, in its role as parens patriae, pursued quasi‑sovereign interest in its cases seeking to protect its citizens against price‑fixing conspiracies and upholding integrity of South Carolina law on allegations of violation of State’s Antitrust Act and its Unfair Trade Practices Act (SCUTPA), and thus Class Action Fairness Act (CAFA) minimal diversity requirement was not satisfied, since State’s Attorney General had statutory authority to pursue such claims; although South Carolina sought restitution on behalf of certain of its citizens, such relief was incidental to State’s overriding interests and substance of proceedings, those citizens were not named plaintiffs, and State’s pursuit of other remedies inured to benefit of State’s treasury. AU Optronics Corp. v. South Carolina (C.A.4 (S.C.) 2012) 699 F.3d 385, certiorari denied 134 S.Ct. 999, 187 L.Ed.2d 850. Removal Of Cases 2

Federal district court did not have diversity subject matter jurisdiction over removed actions that had been brought by State of South Carolina against citizens of Taiwan, Korea, Texas, and California, alleging violations of State’s Antitrust Act and its Unfair Trade Practices Act (SCUTPA), since South Carolina was not citizen of any state for purposes of diversity jurisdiction. AU Optronics Corp. v. South Carolina (C.A.4 (S.C.) 2012) 699 F.3d 385, certiorari denied 134 S.Ct. 999, 187 L.Ed.2d 850. Removal Of Cases 29

**SECTION 39‑3‑190.** Enforcement of article by Attorney General and solicitors.

 The Attorney General and the solicitor of each circuit in which an offense is committed, respectively, shall enforce the provisions of this article. The solicitor shall institute and conduct all suits begun in the circuit courts and upon appeal the Attorney General shall prosecute the suits in the Supreme Court or the court of appeals.

HISTORY: 1962 Code Section 66‑69; 1952 Code Section 66‑69; 1942 Code Section 6630; 1932 Code Section 6638; Civ. C. ‘22 Section 3548; Civ. C. ‘12 Section 2455; 1902 (23) 1057; 1999 Act No. 55, Section 40, eff June 1, 1999.

Effect of Amendment

The 1999 amendment added “or the court of appeals”.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 14, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

**SECTION 39‑3‑200.** Provisions of article shall be cumulative.

 The provisions of this article and the pains and penalties provided for violations hereof shall be held and construed to be cumulative to all laws in force in this State and the provisions of this article shall not exempt from punishment or forfeiture any person who may have violated or offended against any law that may be or may be construed to be repealed by this article or in conflict herewith.

HISTORY: 1962 Code Section 66‑70; 1952 Code Section 66‑70; 1942 Code Section 6631; 1932 Code Section 6639; Civ. C. ‘22 Section 3549; Civ. C. ‘12 Section 2456; 1902 (23) 1057.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 2, Definitions.

S.C. Jur. Monopolies Section 14, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

ARTICLE 5

Investigations and Discovery in Aid of Antitrust Laws or Other Violations by Corporations

**SECTION 39‑3‑310.** Investigations by Attorney General; attendance of witnesses.

 Whenever complaint has been made to the Attorney General or he has reason to believe that the provisions of Articles 1 or 3 of this chapter relating to and regulating trusts and combinations or unlawful and unfair discrimination to destroy a competitor’s business have been violated, the Attorney General, in addition to the authority otherwise conferred upon him by law, may investigate such alleged violation of law and in making such investigation he may summon and require the attendance of witnesses at such time and place as he may designate in the same manner as witnesses are required to appear and testify in the trial of cases in courts of this State.

HISTORY: 1962 Code Section 66‑111; 1952 Code Section 66‑111; 1942 Code Section 3118; 1932 Code Section 3118; 1930 (36) 1396.

CROSS REFERENCES

Out‑of‑state witnesses, see Sections 19‑9‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 12, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

LAW REVIEW AND JOURNAL COMMENTARIES

Reciprocity and Economic Concentration Aspects of the ITT Mergers—Should the Government Have Settled. 25 S.C. L. Rev. 657.

**SECTION 39‑3‑320.** Application for discovery.

 Whenever the Attorney General has determined to commence an action or proceeding under any law relating to the prohibition or prevention of trusts, combinations or monopolies or against any corporation, foreign or domestic, for any violation of any law, he may present to any justice of the Supreme Court or any circuit judge, either before or after beginning such action or proceeding, an application in writing for an order directing the persons mentioned in the application to appear before a justice of the Supreme Court, a circuit judge or a referee designated in such order and answer such questions as may be put to them or to any of them and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement, trust, monopoly or combination or corporate acts in violation of law. The application must show upon information and belief, or otherwise, that the testimony of such person is material and necessary.

HISTORY: 1962 Code Section 66‑112; 1952 Code Section 66‑112; 1942 Code Section 6632; 1932 Code Section 6640; Civ. C. ‘22 Section 3550; Civ. C. ‘12 Section 2457; 1902 (23) 1061.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 114, 121.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 12, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

**SECTION 39‑3‑330.** Issuance of order of discovery; form and service of order.

 The justice of the Supreme Court or the circuit judge to whom such application for the order is made shall grant such application, with such preliminary injunction or stay as may appear to such justice or circuit judge to be proper and expedient. The order shall specify the time when, and place where, the witnesses are required to appear and such examination shall be held either in the city of Columbia or in the judicial district in which the witness resides or in which the principal office, within this State, of the corporation affected is located. The order must be signed by the justice or judge making it and service of a copy thereof, with an endorsement by the Attorney General, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place and before the justice, circuit judge or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession or under his control, relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid by showing him the original order and delivering to and leaving with him, at the same time, a copy thereof endorsed as above provided and by paying or tendering to him the fee allowed to witnesses subpoenaed to attend trials of civil actions in a court of record in this State.

HISTORY: 1962 Code Section 66‑113; 1952 Code Section 66‑113; 1942 Code Sections 6632, 6633; 1932 Code Sections 6640, 6641; Civ. C. ‘22 Sections 3550, 3551; Civ. C. ‘12 Sections 2457, 2458; 1902 (23) 1061.

LIBRARY REFERENCES

58 C.J.S., Monopolies Sections 114,121.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 12, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

**SECTION 39‑3‑340.** Conduct of examination.

 The justice, judge or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, except when the testimony is taken and subscribed by a sworn stenographer, and all such testimony must be filed in the office of the clerk of the county in which such order for examination is filed.

HISTORY: 1962 Code Section 66‑114; 1952 Code Section 66‑114; 1942 Code Section 6632; 1932 Code Section 6640; Civ. C. ‘22 Section 3550; Civ. C. ‘12 Section 2457; 1902 (23) 1061.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 12, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

**SECTION 39‑3‑350.** Testimony may be compelled; immunity of witness.

 No person shall be excused from answering any questions that may be put to him or from producing any books, papers or documents on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before such justice, judge or referee appointed in the order for his examination or in obedience to the subpoena of the court or referee acting under such order, or either of them.

HISTORY: 1962 Code Section 66‑115; 1952 Code Section 66‑115; 1942 Code Section 6634; 1932 Code Section 6642; Civ. C. ‘22 Section 3552; Civ. C. ‘12 Section 2459; 1902 (23) 1061.

LIBRARY REFERENCES

98 C.J.S., Witnesses Section 439.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 12, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

United States Supreme Court Annotations

Applicability of “state action” doctrine granting immunity from federal antitrust laws for activities of, or directed by, state or local governments—Supreme Court cases. 119 L Ed 2d 641.

**SECTION 39‑3‑360.** Powers of referee.

 A referee appointed as provided in this article shall have all the powers and be subject to all the duties of a referee appointed under Chapter 31 of Title 15, so far as practicable, and may punish for contempt a witness duly served as prescribed in Section 39‑3‑330 for nonattendance or refusal to be sworn or testify or to produce books, papers and documents according to the direction of the endorsements aforesaid in the same manner and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

HISTORY: 1962 Code Section 66‑116; 1952 Code Section 66‑116; 1942 Code Section 6635; 1932 Code Section 6643; Civ. C. ‘22 Section 3553; Civ. C. ‘12 Section 2460; 1902 (23) 1061.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 12, Monopolies, Conspiracies in Restraint of Trade, Boycotts, and Sales at Less Than Cost.

ARTICLE 7

Phonograph Records

**SECTION 39‑3‑510.** Repeal of common‑law rights in phonograph records to restrict use or collect royalties on commercial use after sale.

 When any phonograph record or electrical transcription, upon which musical performances are embodied, is sold in commerce for use within this State, all asserted common‑law rights further to restrict or collect royalties on the commercial use made of any such recorded performances by any person are abrogated and expressly repealed. When such article or chattel has been sold in commerce any asserted intangible rights shall be deemed to have passed to the purchaser upon the purchase of the chattel itself and the right to further restrict the use made of phonograph records or electrical transcriptions, whose sole value is in their use, is forbidden and abrogated. Nothing in this section shall be deemed to deny the rights granted any person by the United States copyright laws. The sole intendment of this section is to abolish any common‑law rights attaching to phonograph records and electrical transcriptions, whose sole value is in their use, and to forbid further restrictions or the collection of subsequent fees and royalties on phonograph records and electrical transcriptions by performers who were paid for the initial performance at the recording thereof.

HISTORY: 1962 Code Section 66‑101; 1952 Code Section 66‑101; 1942 Code Section 6641; 1939 (41) 53.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Monopolies Section 17, Phonograph Records.

LAW REVIEW AND JOURNAL COMMENTARIES

Unfair Competition. 25 S.C. L. Rev. 430.

NOTES OF DECISIONS

In general 1

1. In general

When enacting this statute it is unlikely that the legislature had heard of record piracy, and it was not one of the purposes in enacting this statute to make legitimate such unfair competitive practice. Columbia Broadcasting System, Inc. v. Custom Recording Co. (S.C. 1972) 258 S.C. 465, 189 S.E.2d 305, 174 U.S.P.Q. 309, certiorari denied 93 S.Ct. 437, 409 U.S. 1007, 34 L.Ed.2d 300, 175 U.S.P.Q. 641.

When an article is unprotected by a patent or a copyright, State law may not forbid others to copy that article. To do so would interfere with the Federal policy, found in the US Const, Art 1, Section 8, cl 8, and in the implementing Federal statutes, of allowing free access to copy whatever the Federal patent and copyright laws leave in the public domain. Columbia Broadcasting System, Inc. v. Custom Recording Co. (S.C. 1972) 258 S.C. 465, 189 S.E.2d 305, 174 U.S.P.Q. 309, certiorari denied 93 S.Ct. 437, 409 U.S. 1007, 34 L.Ed.2d 300, 175 U.S.P.Q. 641.

“Use,” as employed in this section [Code 1962 Section 66‑101] means the use for which a recording is intended, i.e., the playing of the recording. Columbia Broadcasting System, Inc. v. Custom Recording Co. (S.C. 1972) 258 S.C. 465, 189 S.E.2d 305, 174 U.S.P.Q. 309, certiorari denied 93 S.Ct. 437, 409 U.S. 1007, 34 L.Ed.2d 300, 175 U.S.P.Q. 641.

Under this section [Code 1962 Section 66‑101], any record sold in commerce for use in this State may be played privately, publicly, and commercially without restriction. But the performance contained on the record cannot be rerecorded onto another record and the rerecording sold in competition with the original producer. Columbia Broadcasting System, Inc. v. Custom Recording Co. (S.C. 1972) 258 S.C. 465, 189 S.E.2d 305, 174 U.S.P.Q. 309, certiorari denied 93 S.Ct. 437, 409 U.S. 1007, 34 L.Ed.2d 300, 175 U.S.P.Q. 641.