CHAPTER 41

Gasoline, Lubricating Oils and Other Petroleum Products

ARTICLE 1

Petroleum Products Generally

**SECTION 39‑41‑5.** Short title; purpose.

 This chapter is known as the “South Carolina Gasoline, Lubricating Oils, and Other Petroleum Products Act”. This chapter promotes and protects the public health, safety, and welfare by ensuring that petroleum products:

 (1) are labeled and posted in a manner consistent with the principal of truth‑in‑labeling;

 (2) meet or exceed minimum standards of quality as set out in the American Society of Testing and Materials Manual.

HISTORY: 1994 Act No. 469, Section 1, eff July 14, 1994.

**SECTION 39‑41‑10.** “Petroleum” and “petroleum product” defined.

 “Petroleum” or “petroleum product” as used in this article means gasoline, gasohol, kerosene, diesel fuels, jet fuels, fuel oil no. 1 through 4, or a similar product of petroleum or a product which may be acceptable for use as a petroleum product or oxygenated compound blends of the products but does not include compressed natural gas or propane when dispensed or sold as a motor vehicle fuel.

HISTORY: 1962 Code Section 66‑401; 1952 Code Section 66‑401; 1942 Code Section 6585; 1932 Code Section 6585; Civ. C. ‘22 Section 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 1; 1994 Act No. 469, Section 2, eff July 14, 1994.

Effect of Amendment

The 1994 amendment rewrote this section.

NOTES OF DECISIONS

In general 1

1. In general

Wholesalers and jobbers of petroleum products are subject to this chapter and the rules thereunder. Fleming v. Arkansas Fuel Oil Co. (S.C. 1957) 231 S.C. 42, 97 S.E.2d 76.

**SECTION 39‑41‑20.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑20 was entitled “Commissioner shall appoint analysts, chemists and inspectors; powers of inspectors; stop‑sale orders” and was derived from 1962 Code Section 66‑402; 1952 Code Section 66‑402; 1942 Code Section 6577; 1932 Code Section 6577; Civ. C. ‘22 Section 3487; 1913 (28) 204; 1915 (29) 145; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 2; 1994 Act No. 469, Section 3.

**SECTION 39‑41‑30.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑30 was entitled “Inspectors shall not be interested in products manufactured or sold” and was derived from 1962 Code Section 66‑403; 1952 Code Section 66‑403; 1942 Code Section 6584; 1932 Code Section 6584; Civ. C. ‘22 Section 3494; 1913 (28) 204.

**SECTION 39‑41‑40.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑40 was entitled “Department of Public Safety may assist in enforcement of laws relating to inspection of petroleum products” and was derived from 1962 Code Section 66‑404; 1952 Code Section 66‑404; 1942 Code Section 6585‑1; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1993 Act No. 181, Section 848.

**SECTION 39‑41‑50.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑50 was entitled “Manufacturers, wholesalers and jobbers shall file information as to petroleum products and distributors; fine for noncompliance” and was derived from 1962 Code Section 66‑405; 1952 Code Section 66‑405; 1942 Code Section 6575; 1932 Code Section 6575; Civ. C. ‘22 Section 3485; 1913 (28) 204; 1933 (38) 257; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 3; 1994 Act No. 469, Section 4.

**SECTION 39‑41‑60.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑60 was entitled “Notice of shipments of petroleum products” and was derived from 1962 Code Section 66‑406; 1952 Code Section 66‑406; 1942 Code Section 6578; 1932 Code Section 6578; Civ. C. ‘22 Section 3488; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 4.

**SECTION 39‑41‑70.** Inspection of petroleum products.

 All petroleum products sold or offered for sale in this State and to be used in this State for power, illuminating or heating purposes, shall be subject to inspection and testing to determine their safety and value for power, illuminating or heating purposes. The Department of Agriculture may at any time or place have collected samples of any petroleum product offered for sale and have them tested and analyzed. The inspection of petroleum products as authorized in this article shall be under the direction of the Commissioner of Agriculture, who may make all necessary regulations for the inspection of such petroleum products, employ all necessary chemists and enforce standards as to safety, purity, value for power and heating purposes or absence of objectionable substances and luminosity, when not in conflict with the provisions of this article, and which he may deem necessary to provide the people of the State with satisfactory petroleum products.

HISTORY: 1962 Code Section 66‑407; 1952 Code Section 66‑407; 1942 Code Section 6575; 1932 Code Section 6575; Civ. C. ‘22 Section 3485; 1913 (28) 204; 1933 (38) 257; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 5.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 22, Gasoline and Petroleum Products.

**SECTION 39‑41‑80.** Promulgation of rules and regulations as to standards and testing methods.

 The Commissioner of Agriculture is authorized to promulgate rules and regulations prescribing standards for petroleum products and methods for testing same.

HISTORY: 1962 Code Section 66‑408; 1952 Code Section 66‑408; 1942 Code Section 6576; 1932 Code Section 6576; Civ. C. ‘22 Section 3486; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1963 (53) 286.

CROSS REFERENCES

Standards for testing petroleum products, see Section 39‑41‑240.

NOTES OF DECISIONS

In general 1

1. In general

Admissible expert testimony. Expert testimony that illuminating oil, which met the requirements of this section [Code 1962 Section 66‑408], was unsafe, is admissible. Williams v. Standard Oil Co. (S.C. 1924) 127 S.C. 430, 121 S.E. 363.

**SECTION 39‑41‑90.** Tests of safety and value of petroleum products complained of; sale forbidden of petroleum product found unsafe or of inferior quality.

 Whenever a complaint is made to the Department of Agriculture in regard to power, illuminating or heating qualities of any petroleum product sold in this State, the Commissioner shall cause a sample of such petroleum product complained of to be procured and have it thoroughly analyzed and tested as to safety or value for power or heating purposes or illuminating qualities. If such analysis or other tests shall show that the petroleum product is either unsafe or of inferior quality for power, heating or illuminating purposes, its sale shall be forbidden and reports of the result shall be sent to the person making the complaint and to the manufacturer of such petroleum product.

HISTORY: 1962 Code Section 66‑409; 1952 Code Section 66‑409; 1942 Code Section 6581; 1932 Code Section 6581; Civ. C. ‘22 Section 3491; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 22, Gasoline and Petroleum Products.

**SECTION 39‑41‑100.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑100 was entitled “Sellers to keep records of shipments; delivery manifests; alteration of shipping documents a misdemeanor; penalty” and was derived from 1962 Code Section 66‑410; 1952 Code Section 66‑410; 1942 Code Section 6585; 1932 Code Section 6585; Civ. C. ‘22 Section 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 7.

**SECTION 39‑41‑110.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑110 was entitled “Inspection of records” and was derived from 1962 Code Section 66‑411; 1952 Code Section 66‑411; 1942 Code Section 6585; 1932 Code Section 6585; Civ. C. ‘22 Section 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 8.

**SECTION 39‑41‑120.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑120 was entitled “Fee on petroleum products for funding inspection and other purposes; surety bond as prepayment pending reports and payment” and was derived from 1962 Code Section 66‑412; 1952 Code Section 66‑412; 1942 Code Section 6578; 1932 Code Section 6578; Civ. C. ‘22 Section 3488; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1959 (51) 144; 1981 Act No. 130, Section 9.

**SECTION 39‑41‑130.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑130 was entitled “Refund of inspection fees” and was derived from 1962 Code Section 66‑413; 1952 Code Section 66‑413; 1942 Code Section 6585; 1932 Code Section 6585; Civ. C. ‘22 Section 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1959 (51) 144; 1981 Act No. 130, Section 10.

**SECTION 39‑41‑140.** Repealed by 1995 Act No. 136, Section 4A, eff September 1, 1995.

Editor’s Note

Former Section 39‑41‑140 was entitled “Payment of fees; disposition” and was derived from 1962 Code Section 66‑414; 1952 Code Section 66‑414; 1942 Code Section 6579; 1932 Code Section 6579; Civ. C. ‘22 Section 3489; 1913 (28) 204; 1915 (29) 145; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, Section 11.

**SECTION 39‑41‑150.** Issuance of rules and regulations.

 The Commissioner of Agriculture may issue such rules and regulations as may be necessary for carrying out the provisions of this article and such rules and regulations shall have the effect of law.

HISTORY: 1962 Code Section 66‑415; 1952 Code Section 66‑415; 1942 Code Sections 6578, 6585; 1932 Code Sections 6578, 6585; Civ. C. ‘22 Sections 3488, 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119.

CROSS REFERENCES

Rules and regulations promulgated under authority of this section, see Rules and Regulations, Agriculture Commissioner R. 5‑1 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Fleming v. Arkansas Fuel Oil Co. (S.C. 1957) 231 S.C. 42, 97 S.E.2d 76.

**SECTION 39‑41‑160.** Penalties for fraudulent violations of article or regulations.

 A person who fraudulently commits the following violations is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred nor more than one thousand dollars or imprisoned not less than thirty nor more than sixty days for each offense:

 (1) brands or labels a package, a barrel, a pump, a tank, or other vessel;

 (2) uses a label a second time;

 (3) keeps a petroleum product used for illuminating, heating, or power purposes not marked and branded in accordance with the regulations of the Commissioner of Agriculture;

 (4) violates this article or a regulation adopted by the Commissioner of Agriculture for its enforcement.

HISTORY: 1962 Code Section 66‑416; 1952 Code Section 66‑416; 1942 Code Section 6582; 1932 Code Section 6582; Civ. C. ‘22 Section 3492; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1994 Act No. 469, Section 5, eff July 14, 1994.

Effect of Amendment

The 1994 amendment rewrote the section.

**SECTION 39‑41‑170.** Penalties for selling petroleum product without a label.

 If any person shall sell or offer for sale any petroleum product used for illuminating, heating or power purposes, before first having it labeled and tagged as required by the regulations adopted by the Commissioner of Agriculture, he shall be guilty of a misdemeanor and, on conviction, be fined not exceeding three hundred dollars and such oils and fluids shall be forfeited and sold and the proceeds thereof shall go to the common school fund of the State.

HISTORY: 1962 Code Section 66‑417; 1952 Code Section 66‑417; 1942 Code Section 6583; 1932 Code Section 6583; Civ. C. ‘22 Section 3493; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119.

**SECTION 39‑41‑180.** Penalties for altering or erasing labels.

 If any manufacturer or dealer of such gasoline, illuminating or heating fluids shall, with intent to deceive or defraud, alter or erase the label or tag to indicate a different flash test, specific gravity or quantity than is indicated by the label or stamp attached to the vessel, he shall, on conviction, be fined not exceeding fifty dollars for every such offense.

HISTORY: 1962 Code Section 66‑418; 1952 Code Section 66‑418; 1942 Code Section 6583; 1932 Code Section 6583; Civ. C. ‘22 Section 3493; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119.

**SECTION 39‑41‑185.** Labeling of petroleum product dispensers.

 (A) A motor fuel retail dealer may not transfer, sell, dispense, or offer petroleum products for sale in South Carolina unless every dispenser is posted clearly with the complete registered brand name for the petroleum products being dispensed including the amount of alcohol, ethanol, and methanol, if any, and the octane number. The dispenser labeling must be in the same size and type lettering for all parts of the brand name including that portion of the brand name disclosing alcohol content and amount.

 (B) The labeling must be conspicuous and legible to a customer when viewed from the driver’s position of a motor vehicle positioned in front of the dispenser.

 (C) Kerosene dispensers must be labeled as either 1‑K or 2‑K. 2‑K dispensers must display the following in lettering at least one inch in height: “Not suitable for use in nonflue‑connected heaters”.

HISTORY: 1994 Act No. 469, Section 1, eff July 14, 1994.

**SECTION 39‑41‑190.** General penalties for violation of article or rules and regulations.

 A person who fails to comply with this article for which no other penalty is provided specifically, fails to comply with regulations authorized by Section 39‑41‑150, or hinders or obstructs the Commissioner of Agriculture or his authorized representative in the enforcement of this article is guilty of a misdemeanor and, upon conviction in a court of competent jurisdiction, must be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not less than thirty nor more than sixty days.

HISTORY: 1962 Code Section 66‑419; 1952 Code Section 66‑419; 1942 Code Section 6585; 1932 Code Section 6585; Civ. C. ‘22 Section 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1994 Act No. 469, Section 6, eff July 14, 1994.

Effect of Amendment

The 1994 amendment substituted “must be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not less than thirty nor more than sixty days” for “shall be fined not less than twenty‑five dollars nor more than one hundred dollars or be imprisoned for not less than thirty days nor more than sixty days”, and made minor wording changes throughout the remainder of the section.

**SECTION 39‑41‑195.** Penalties for conveyance of motor fuel in violation of this chapter.

 (A) If a person or his agent or employee conveys, or offers to convey, motor fuel in violation of this chapter, the person is subject to an administrative fine or a stop‑sale order, or both, in the discretion of the Commissioner of Agriculture.

 (B) An administrative fine must not be assessed for an amount greater than one thousand dollars unless the violation:

 (1) threatens public health or safety;

 (2) is committed knowingly or intentionally; or

 (3) reflects a continuing and repetitive pattern of disregard for the requirements of this article.

 (C) An administrative fine fully assessed by the commissioner for an amount greater than one thousand dollars may be assessed for an amount not in excess of ten thousand dollars.

HISTORY: 1994 Act No. 469, Section 1, eff July 14, 1994.

**SECTION 39‑41‑200.** Applicability of article to retailers.

 The provisions of this article shall not apply to a retail dealer in petroleum products, unless such retail dealer shall sell or offer to sell petroleum products of a manufacturer, wholesaler or jobber who refuses to comply with the provisions of this article.

HISTORY: 1962 Code Section 66‑420; 1952 Code Section 66‑420; 1942 Code Section 6586; 1932 Code Section 6586; Civ. C. ‘22 Section 3496; 1913 (28) 204; 1981 Act No. 130, Section 12.

**SECTION 39‑41‑210.** Reports.

 The Commissioner of Agriculture shall include in his report to the General Assembly an account of the operations and expense under this article.

HISTORY: 1962 Code Section 66‑421; 1952 Code Section 66‑421; 1942 Code Section 6580; 1932 Code Section 6580; Civ. C. ‘22 Section 3490; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119.

**SECTION 39‑41‑220.** Inspection of alcohol sold as motor fuel or sold for purpose of producing motor fuel.

 Ethyl, methyl, and any other alcohol sold or offered for sale as motor fuel or to be blended with gasoline for the purpose of producing motor fuel are subject to inspection, sampling, and testing by the Department of Agriculture. Gasohol is defined as a blend of gasoline and at least ten percent ethyl alcohol. The department may limit the total oxygenates in the motor fuel blends consistent with industry practices and acceptable consumer motoring performance.

HISTORY: 1980 Act No. 506, Section 14; 1980 Act No. 518, Section 7; 1987 Act No. 203 Section 1, eff June 30, 1987.

Effect of Amendment

The 1987 amendment expanded the section to include all types of alcohol, and gave department authority to limit total oxygenates in motor fuel blends.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 22, Gasoline and Petroleum Products.

**SECTION 39‑41‑230.** Regulations as to alcohol used in motor fuels; alcohol to be anhydrous.

 The Department of Agriculture shall promulgate regulations under the provision of Sections 1‑23‑10 et seq. to ensure the quality of methyl or ethyl alcohol used as motor fuels or in blends with other motor fuel. Alcohol blended with gasoline to produce gasohol shall be anhydrous.

HISTORY: 1980 Act No. 518, Section 7; 1980 Act No. 506, Section 14.

**SECTION 39‑41‑235.** Sale of not already preblended petroleum products; sale of not already preblended diesel fuel; blender of record status and registration; Renewable Identification Number system used; violation deemed unfair trade practice; wholesaler responsibilities; liability; notice.

 (A) Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State, every terminal operator as defined in Section 12‑28‑110(58), must offer for sale all grades of petroleum products that are not already preblended with ethanol and that are suitable for subsequent blending of the product with ethanol. Every supplier as defined in Section 12‑28‑110(53), permissive supplier as defined in Section 12‑28‑110(43), refiner as defined in Section 12‑28‑110(49), or any other person or entity who is involved in the bulk transfer of motor fuel as defined in Section 12‑28‑110(8) are responsible for ensuring that every terminal located in this State and every terminal operator are delivered the products set forth in this section.

 (B) Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State, every terminal operator as defined in Section 12‑28‑110(58), must offer for sale all grades of diesel fuel that are not already preblended to produce biodiesel or a biodiesel blend and that are suitable for subsequent blending to produce biodiesel or biodiesel blends. Every supplier as defined in Section 12‑28‑110(53), permissive supplier as defined in Section 12‑28‑110(43), refiner as defined in Section 12‑28‑110(49), or any other person or entity who is involved in the bulk transfer of motor fuel as defined in Section 12‑28‑110(8) are responsible for ensuring that every terminal located in this State and terminal operator in this State are delivered the products set forth in this section.

 (C) A terminal or terminal operator shall not offer for sale an unblended product that omits any additive found in a product preblended with ethanol. A terminal or terminal operator shall not offer for sale an unblended product that does not contain a comparable amount of any additive found in a product preblended with ethanol. Every supplier, permissive supplier, refiner, or any other person or entity who is involved in the bulk transfer of motor fuel are responsible for ensuring that the products set forth in this statute are delivered to every terminal and every terminal operator located in this State with which they have a contract.

 (D) No person or entity shall take an action to deny a distributor, as defined in Section 12‑28‑110(17), or retailer, as defined in Section 12‑28‑110(52) who is doing business in this State and who has registered with the Internal Revenue Service on Form 637 (M) from being the blender of record afforded them by the acceptance by the Internal Revenue Service of Form 637 (M).

 (E) A distributor or retailer and a refiner must utilize the Renewable Identification Number (RIN) system. Nothing in this section may be construed to imply a market value for the RINs.

 (F) A violation of this article is deemed an unfair trade practice, and each violation is a separate offense. A person or entity violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars for each violation. It shall not be a violation of this article when compliance is hindered by any catastrophic event outside the control of the person or entity such as a natural disaster, severe weather event, act of God, or acts of terrorism, fire, war, or riot.

 (G) Wholesalers purchasing gasoline, gasoline blending stock, or diesel are responsible for ensuring that their activities result in gasolines and diesels that meet the standards promulgated by the Commissioner of Agriculture. Refiners, suppliers, and permissive suppliers shall not be liable for fines, penalties, injuries, or damages arising out of the subsequent blending of gasoline, gasoline blending stock, or diesel pursuant to this section. An entity that does not blend the product at issue has no duty with respect to blending and shall not be liable for fines, penalties, injuries, or damages arising out of blending that does not meet those standards. A refiner, supplier, wholesaler, or retailer is not liable for damages caused by the use of incompatible motor fuel dispensed at a retail site if all of the following applies:

 (1) the incompatible fuel meets the standards promulgated by the Commissioner of Agriculture;

 (2) the incompatible fuel is selected by a person other than the retailer, including an employee or agent of the retailer; and

 (3) the incompatible fuel is dispensed from a motor fuel dispenser that correctly labels the type of fuel dispensed.

For the purposes of this subsection, a motor fuel is incompatible with a motor according to the manufacturer of the motor.

 (H) An entity that purchases an unblended product and subsequently blends that product with ethanol or biodiesel shall provide notice to the purchasing entity’s consumers, at the pump or another prominent location near the pump, identifying the entity that performed the blending.

HISTORY: 2010 Act No. 147, Section 2, eff April 15, 2010, subsections (A) and (B) eff 60 days after approval by the Governor (Governor’s veto overridden April 15, 2010); 2012 Act No. 185, Section 1, eff June 7, 2012.

Editor’s Note

2010 Act No. 147, Section 5, provides:

“(A) Section 39‑41‑235 (A) and Section 39‑41‑235 (B) as contained in SECTION 2 of this act take effect sixty days after approval of the Governor [Governor’s veto overridden April 15, 2010].

“(B) Except as provided in subsection (A) of this SECTION, this act takes effect upon approval of the Governor [Governor’s veto overridden April 15, 2010].”

Effect of Amendment

The 2012 amendment rewrote subsections (A), (B), (C), (F), and (G).

**SECTION 39‑41‑240.** Standards for testing petroleum products.

 Quality and safety standards for testing of gasoline, gasohol, diesel fuel, kerosene, fuel oil and petroleum products shall be the specifications promulgated by the American Society for Testing and Materials unless other standards are promulgated by the Commissioner of Agriculture in accordance with Section 39‑41‑80.

HISTORY: 1981 Act No. 130, Section 13.

**SECTION 39‑41‑250.** Registration of gasoline, gasohol and alcohol‑gasoline mixtures by octane index; forms; use of index; octane standards.

 All gasoline, gasohol and alcohol‑gasoline mixtures for gasoline type engines that are sold, offered or exposed for sale or distribution in South Carolina shall be registered by each identifying brand name or grade designation and the corresponding minimum guaranteed Octane Index. Prescribed registration forms will be provided by the Department of Agriculture. The Octane Index, the average of the Research Octane Number and the Motor Octane Number, (R+M)/2, shall be the designated number for registration, delivery invoices, bills of lading, delivery tickets, posting on dispensing pumps and for advertising purposes, when so stated. The minimum Octane Index guarantee for premium grade gasoline, gasohol and alcohol‑gasoline mixtures shall be ninety‑one. The minimum Octane Index guarantee for regular grade gasoline, gasohol and alcohol‑gasoline mixtures shall be eighty‑seven. Gasoline, gasohol and alcohol‑gasoline mixtures having Octane Indices below eighty‑seven must be registered and labeled as sub‑standard or sub‑regular.

HISTORY: 1981 Act No. 130, Section 13.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 22, Gasoline and Petroleum Products.

**SECTION 39‑41‑255.** Retail outlets shall post self‑service pump gasoline prices.

 Every retail motor fuel outlet shall post in a conspicuous place the self‑service pump price for each type of gasoline it has available; provided, that such posted price must include either the cash or the credit price but need not include both such prices. The manner in which the prices are posted must not conflict with any state or local laws or ordinances that regulate the size, use, or placement of billboards or signs. The posting on the pump price mechanism of the price of the type of gasoline available at that pump shall satisfy the requirement of this section.

HISTORY: 1993 Act No. 161, Section 4, eff sixty days after approval (approved June 15, 1993); 1994 Act No. 497, Part II, Section 97, eff June 29, 1994.

Effect of Amendment

The 1994 amendment added the last sentence, which reads: “The posting on the pump price mechanism of the price of the type of gasoline available at that pump shall satisfy the requirement of this section.”

**SECTION 39‑41‑260.** Aboveground storage of flammable and combustible liquids.

 (A) The storage, handling, and use of flammable and combustible liquids shall comply with the applicable provisions of the National Fire Protection Association Pamphlet No. 30, 1987 Edition, and all referenced publications in this pamphlet and the National Fire Protection Association Pamphlet No. 30A, 1987 Edition, and all referenced publications in this pamphlet except for the aboveground storage of flammable and combustible liquids at service stations as provided by this section.

 (B) A maximum of thirty thousand gallons aggregate capacity of flammable or combustible liquids, or both, may be stored aboveground at service stations. No single storage tank shall exceed twelve thousand gallons liquid capacity. Service stations with an aboveground storage tank in excess of twelve thousand gallons liquid capacity on June 12, 1990 are exempt from this section.

 (C) All aboveground storage tanks located at service stations must be enclosed by an eight‑foot high industrial type chain link fence with barbed wire barricade with a minimum of two means of emergency access located at opposite ends of the enclosure. Each access must be at least thirty‑six inches wide and must be locked at all times except when entering or exiting. There must be a minimum working distance of at least five feet between the tank and the fence. The area inside the fence and diked area must at all times be clear of trash, combustible storage, and vegetation. Existing service stations on the effective date of this provision with aboveground storage tanks that are enclosed with a fence constructed as referenced above are allowed to continue operating with the existing working distance between the tanks and the fence.

 (D) All aboveground storage tanks located at service stations with thirty thousand gallons aggregate storage capacity must be located a minimum of fifty feet from the nearest occupied building on the property, a minimum of fifty feet from a dispenser, a minimum of fifty feet from the nearest side of a public way, and a minimum of one hundred feet from a property line which is or can be built upon including the opposite side of a public way. All aboveground storage tanks located at service stations with twelve thousand gallons aggregate storage capacity must be located a minimum of thirty‑seven feet from the nearest occupied building on the property, a minimum of thirty‑seven feet from a dispenser, a minimum of thirty‑seven feet from the nearest side of a public way, and a minimum of forty feet from a property line which is or can be built upon including the opposite side of a public way. Service stations with twelve thousand gallons aggregate storage capacity shall not have a storage tank in excess of four thousand gallons liquid capacity.

 (E) All service stations that have aboveground storage tanks that contain flammable or combustible liquids, or both, shall have a minimum of three hundred thousand dollars of public liability insurance.

 (F) Scaled plans for the renovation or construction of a service station that utilizes aboveground storage of flammable or combustible liquids, or both, must be submitted to the State Fire Marshal or his designee by registered receipt mail for approval before beginning construction. The State Fire Marshal or his designee shall approve or deny the plans within sixty calendar days or they are automatically considered approved. The plans must contain the following information:

 (1) site plan;

 (2) spill containment plan;

 (3) piping layout with valves and fitting details;

 (4) normal and emergency ventilation design;

 (5) tank capacity and design standard;

 (6) electrical plan;

 (7) tank and piping support details;

 (8) on site fire protection equipment; and

 (9) tank location with respect to other tanks and dike.

 (G) All feeder lines from aboveground tanks to dispensers located at service stations must be located underground and covered with a minimum of three feet of earth cover or eighteen inches of well tamped earth cover plus six inches of reinforced concrete or eight inches of asphaltic concrete.

 (H) Piping must be equipped with a fifty‑two valve that cuts off the flow of liquid when the dispensing pump is not operating, as well as a quick shut‑off device at the tank that will shut off the flow of product.

 (I) All horizontal tanks located at service stations must be installed on steel supports welded to the tank not to exceed six inches in height or placed on concrete support cradles, and all vertical tanks must be installed on gravel with a minimum of six inches reinforced concrete footing. Footing is to be larger than the diameter of the tank.

 (J) Two single portable tanks of six hundred sixty gallon capacity or less of Class II or Class III combustible liquid are allowed at service stations and are exempt from the requirements of this section.

 (K) All aboveground tanks located at service stations must be clearly labeled with appropriate placards as to the contents of volume and kept free of scale and painted.

 (L) A means must be provided to enable determination of liquid level in aboveground tanks located at service stations without requiring a person to climb atop the tank. Provisions must be made to either automatically shut off fuel delivery into the aboveground tank when the liquid level in the tank reaches ninety‑five percent of capacity or to sound an audible alarm. This provision shall not apply to horizontal tanks of four thousand gallons or less and vertical tanks of two thousand gallons or less which must be filled with a hand held hose.

 (M) Regardless of whether a suction or submersible pump system is used, a listed emergency shut‑off valve must be installed in accordance with Section 4‑3.6 of the National Fire Protection Association Pamphlet No. 30A, 1987 Edition, at each dispenser connected to an aboveground storage tank located at a service station.

 (N) Fill connections located at service stations for tank vehicle unloading operations must be located at least twenty‑five feet from aboveground tanks, dispensers, building, and property lines. A check valve, gate valve, and quick connector or a dry break valve must be installed in the piping at a point where connection and disconnection is made for remote tank vehicle unloading. The devices must be protected from tampering and physical damage. Means must be provided to prevent or contain spillage during fuel delivery operations. This provision shall not apply to horizontal tanks of four thousand gallons or less, and vertical tanks of two thousand gallons or less. Fill connections at existing service stations on the effective date of this provision are exempt from the distance requirement referenced above.

 (O) Unattended service station installations in accordance with Section 8‑5 of the National Fire Protection Association Pamphlet No. 30A, 1987 Edition, are permitted only when the dispensing device is a card lock or key lock type dispenser.

 (P) Aboveground storage of flammable or combustible liquids at service stations is prohibited in municipalities with a population of twenty‑five thousand persons or greater as determined by the most recent official United States Census, except as otherwise provided in subsection (J) of this section.

HISTORY: 1989 Act No. 76, Section 4, eff May 10, 1989; 1990 Act No. 582, Section 1, eff June 12, 1990.

Effect of Amendment

The 1990 amendment rewrote this section.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 22, Gasoline and Petroleum Products.

**SECTION 39‑41‑270.** Application of aboveground storage provisions.

 The provisions of Section 39‑41‑260 of the 1976 Code, as amended by Section 1 of Act No. 582 of 1990, apply to all service stations constructed on or after the effective date of this act (June 12, 1990). Also, all existing service stations on the effective date of this act must comply with the revised provisions of Section 39‑41‑260 within two years of the effective date of this act, except that existing service stations with aboveground storage tanks are not required to comply with the provisions of Section 39‑41‑260(D) and existing service stations with an aboveground storage tank in excess of twelve thousand gallons liquid capacity on the effective date of this act are exempt from the provisions of Section 39‑41‑260(B). An imminent hazard to life shall be addressed immediately as referenced in Section 23‑9‑150 of the 1976 Code. For the purposes of this section and of Section 39‑41‑260, the term “service station” does not include any utility storage tank facilities which service utility operations, including vehicles, locomotives, or equipment.

HISTORY: 1990 Act No. 582, Section 2, eff June 12, 1990; 1994 Act No. 388, Section 1, eff May 10, 1994.

Effect of Amendment

The 1994 amendment added “of the 1976 Code” in two locations; in the first sentence deleted “shall” preceding “apply to all service stations”, and added “the effective date of this act” preceding “(June 12, 1990)”; in the second sentence added “on the effective date of this act” and changed “effective date of this section” to “effective date of this act” in two locations; and added the last sentence, defining “service station”.

**SECTION 39‑41‑280.** Enforcement of aboveground storage provisions.

 The Division of State Fire Marshal or his designee shall enforce the provisions of Section 39‑41‑260 of Act 582 of 1990.

HISTORY: 1990 Act No. 582, Section 3, eff June 12, 1990.

**SECTION 39‑41‑290.** Dispensing gasoline to disabled persons at self service gas stations.

 (A) An owner or operator shall conduct the operations of a motor vehicle fuel service station so that the holder of a placard or disabled person’s license plate provided for in Section 56‑3‑1960 shall have, upon request, gasoline or other motor vehicle fuel dispensed by an employee of the station at the self‑service pump and be allowed to purchase the gasoline or other fuel at the price otherwise charged for gasoline or other fuel purchased on a self‑service basis if the holder of the placard or license plate is driving the motor vehicle into which the gasoline is to be dispensed.

 (B) This section applies to an owner or operator of a station which sells gasoline or other fuel at one price when an employee of the station dispenses the gasoline or other fuel into a motor vehicle and at a lower price when the customer dispenses the gasoline or other fuel on a self‑service basis.

 (C) This section does not apply to any motor vehicle fuel station, convenience store, or other facility that offers gasoline or other fuel for sale to the public solely by means of remotely controlled pumps operated by a cashier and does not offer refueling service or to any such facility during those business hours when the facility does not offer refueling service to the public as a continuing business practice.

 (D) An owner or operator who violates this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one hundred dollars or imprisoned for a period not to exceed thirty days.

HISTORY: 1991 Act No. 79, Section 1, eff 90 days after approval (approved May 27, 1991).

**SECTION 39‑41‑295.** Motor fuel dispensing at unattended service stations; automatic shutoff; fire extinguishers.

 Notwithstanding Section 39‑41‑260, or any other provision of law, motor fuel, as defined in Section 12‑28‑110(39), may be dispensed at an unattended service station if the dispensing device has an automatic shut‑off valve that is activated when the sale of the motor fuel reaches thirty gallons. In addition, the dispensing device shall be equipped with emergency controls pursuant to Chapter 22, Section 2204.3.3 of the International Fire Code. The service station shall be equipped with a 2A‑20B‑C fire extinguisher within seventy‑five feet of the pump as required in Chapter 22, Section 2205.5 of the International Fire Code.

HISTORY: 2006 Act No. 370, Section 1, eff June 9, 2006.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 22, Gasoline and Petroleum Products.

ARTICLE 3

Sale of Lubricating Oils

**SECTION 39‑41‑310.** Unauthorized substitution of type of lubricating oil from that ordered for motor vehicles.

 It shall be unlawful for any person to fill with a spurious or substitute article an order for lubricating oil for internal combustion engines of automobiles, autotrucks or tractors, if such oil ordered is designated by a trademark or distinctive trade name unless and until it is explained to the person giving the order that the article offered is not the article that he ordered and the purchaser shall thereupon elect to take the substitute article that is being offered to him.

HISTORY: 1962 Code Section 66‑441; 1952 Code Section 66‑441; 1942 Code Section 1322; 1932 Code Section 1322; 1928 (35) 1219.

CROSS REFERENCES

Deception in sale of liquid fuels, lubricating oils, greases, etc., see Sections 39‑41‑510 et seq.

LIBRARY REFERENCES

87 C.J.S., Trade‑Marks, Trade‑Names, and Unfair Competition Section 135.

**SECTION 39‑41‑320.** Display of false trademark or trade name of lubricating oil.

 It shall be unlawful for any person to display on any can, drum or other container in which lubricating oil for internal combustion engines of automobiles, autotrucks or tractors is kept for sale, or from which it is poured or drawn for sale, a trademark or trade name which is not the distinctive designation of the oil actually contained therein.

HISTORY: 1962 Code Section 66‑442; 1952 Code Section 66‑442; 1942 Code Section 1322; 1932 Code Section 1322; 1928 (35) 1219.

**SECTION 39‑41‑330.** Sale of oil specially designated from container not containing trademark or trade name.

 It shall be unlawful for any person to fill any order from a consumer for a lubricating oil for internal combustion engines of automobiles, autotrucks or tractors that is designated by a trademark or distinctive trade name unless, at the time of sale, the oil is poured, drawn or taken for delivery from a can, drum or other container or bottle rack marked in such a manner as to be legible and clearly visible to the purchaser with the trademark or distinctive trade name by which the oil is designated.

HISTORY: 1962 Code Section 66‑443; 1952 Code Section 66‑443; 1942 Code Section 1322; 1932 Code Section 1322; 1928 (35) 1219.

**SECTION 39‑41‑340.** Sale of oil without trademark or trade name and which is not labeled as unbranded.

 It shall be unlawful for any person to fill an order from a consumer for lubricating oil for internal combustion engines of automobiles, autotrucks or tractors with oil that is not designated by a trademark or distinctive trade name unless, at the time of sale, the oil is poured, drawn or taken for delivery from a can, drum or other container or bottle rack marked in such manner as to be legible and clearly visible to the purchaser with the words “Unbranded Lubricating Oil.”

HISTORY: 1962 Code Section 66‑444; 1952 Code Section 66‑444; 1942 Code Section 1322; 1932 Code Section 1322; 1928 (35) 1219.

**SECTION 39‑41‑350.** Display of name of oil unless oil is for sale.

 It shall be unlawful for any person to display any sign, label or other designating mark which describes any lubricating oil for internal combustion engines of automobiles, autotrucks or tractors not actually on sale in bona fide quantities at the place of business where such sign, label or other designated mark is displayed.

HISTORY: 1962 Code Section 66‑445; 1952 Code Section 66‑445; 1942 Code Section 1322; 1932 Code Section 1322; 1928 (35) 1219.

**SECTION 39‑41‑360.** Penalties.

 Any person violating any of the provisions of this article shall, for each offense, be guilty of a misdemeanor and punishable, for the first offense, by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for not less than ten days nor more than thirty days, and for any subsequent offense, by a fine of not less than one hundred dollars nor more than three hundred dollars or by imprisonment for not less than thirty days nor more than ninety days.

HISTORY: 1962 Code Section 66‑447; 1952 Code Section 66‑447; 1942 Code Section 1322; 1932 Code Section 1322; 1928 (35) 1219.

ARTICLE 5

Deception in Sale of Liquid Fuels, Lubricating Oils and Greases

**SECTION 39‑41‑510.** Deception in storage or sale.

 No person shall store or sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of such products as to the nature, quality or quantity of the products so sold, exposed or offered for sale.

HISTORY: 1962 Code Section 66‑461; 1952 Code Section 66‑461; 1942 Code Section 1322; 1933 (38) 443.

**SECTION 39‑41‑520.** Use of distributing devices of one manufacturer for products of another.

 No person shall keep, expose, offer for sale or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon such tank, container, pump or other distributing device in which such products are sold, offered for sale or distributed.

HISTORY: 1962 Code Section 66‑462; 1952 Code Section 66‑462; 1942 Code Section 1323; 1933 (38) 443.

**SECTION 39‑41‑530.** Imitation of recognized buildings or equipment of another.

 No person shall disguise or camouflage his buildings or equipment by imitating the design, symbol or trade name of equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed.

HISTORY: 1962 Code Section 66‑463; 1952 Code Section 66‑463; 1942 Code Section 1323; 1933 (38) 443.

**SECTION 39‑41‑540.** Sale under false trademark or trade name.

 No person shall expose or offer for sale or sell under any trademark, trade name, name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark, name or other distinguishing mark.

HISTORY: 1962 Code Section 66‑464; 1952 Code Section 66‑464; 1942 Code Section 1323; 1933 (38) 443.

CROSS REFERENCES

Labels and trademarks generally, see Chapter 15 of this Title.

LAW REVIEW AND JOURNAL COMMENTARIES

Trademark doctrines for global electronic commerce, 49 S.C. L. Rev. 695 (Summer 1998).

**SECTION 39‑41‑550.** Mixing, blending or compounding products.

 No person shall mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of a manufacturer or distributor with the products of any other manufacturer or distributor or adulterate them and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trademark, name or other distinguishing mark of either of such manufacturers or distributors or as the adulterated products of either such manufacturer or distributor. But nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name or symbol to any such product or material.

HISTORY: 1962 Code Section 66‑465; 1952 Code Section 66‑465; 1942 Code Section 1323; 1933 (38) 443.

**SECTION 39‑41‑560.** Aiding or assisting in violations of article.

 No person shall aid or assist any other person in violating any of the provisions of this article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored therein, as indicated by the name of the manufacturer or distributor or the trademark, trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith or shall by any other means aid or assist another in the violation of any of the provisions of this article.

HISTORY: 1962 Code Section 66‑466; 1952 Code Section 66‑466; 1942 Code Section 1323; 1933 (38) 443.

**SECTION 39‑41‑570.** Penalties.

 Every person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars and by imprisonment not to exceed twelve months or by either or both in the discretion of the trial judge.

HISTORY: 1962 Code Section 66‑467; 1952 Code Section 66‑467; 1942 Code Section 1323; 1933 (38) 443.