**South Carolina General Assembly**

118th Session, 2009-2010

**S. 90**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Ford

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Introduced in the Senate on January 13, 2009

Currently residing in the Senate Committee on **Judiciary**

Summary: False advertising

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/10/2008 Senate Prefiled

12/10/2008 Senate Referred to Committee on **Judiciary**

1/13/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\01-13-09.docx)‑112

1/13/2009 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\01-13-09.docx)‑112

**VERSIONS OF THIS BILL**

[12/10/2008](file:///p:\pprever\2009-10\90_20081210.docx)

**A** **BILL**

TO AMEND SECTION 39‑1‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MAKING INTENTIONALLY UNTRUE STATEMENTS IN ADVERTISING, SO AS TO PROHIBIT IN ANY FORM ADVERTISING THAT IS KNOWN OR SHOULD BE KNOWN TO BE UNTRUE OR MISLEADING, INCLUDING TELEVISION, RADIO, AND INTERNET BROADCASTS; AND TO AMEND SECTION 39‑5‑40, AS AMENDED, RELATING TO APPLICABILITY OF THE UNFAIR TRADE PRACTICES ACT, SO AS TO MAKE THE PROVISIONS APPLICABLE TO A PERSON WHO KNEW OR SHOULD HAVE KNOWN THE ADVERTISING WAS UNTRUE OR MISLEADING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 39‑1‑20 of the 1976 Code is amended to read:

“Section 39‑1‑20. ~~Any~~ A person who ~~knowingly~~ with intent to sell or ~~in any wise~~ otherwise dispose of merchandise, securities, ~~service~~ services, or anything offered by ~~such person~~ him, directly or indirectly, to the public for sale or distribution or with intent to increase the consumption ~~thereof~~ of it, to induce the public ~~in any manner~~ to enter into ~~any~~ an obligation relating ~~thereto~~ to it, or to acquire title ~~thereto~~ to it or an interest ~~therein~~ in it makes, publishes, disseminates, circulates, broadcasts, or places before the public or causes, directly or indirectly, to be made, published, disseminated, circulated, broadcast, or placed before the public, in a newspaper, ~~or other publication or in the form of a~~ book, notice, handbill, poster, bill, circular, pamphlet, letter, or ~~in any~~ a broadcast over the Internet, television, or radio, or in ~~other~~ another way an advertisement ~~of any sort~~ regarding merchandise, securities, ~~service~~ services, or anything ~~so~~ offered to the public ~~which contains~~ containing any assertion, representation or statement ~~of fact which~~ that is known or should be known to be ~~intentionally~~ untrue ~~shall be~~ is guilty of a misdemeanor and upon conviction ~~shall~~ must be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment ~~at hard labor~~ for not less than thirty days nor more than six months, in the discretion of the court.”

SECTION 2. Section 39‑5‑40 of the 1976 Code, as last amended at the direction of the Code Commissioner, is further amended to read:

“Section 39‑5‑40. (A) ~~Nothing in this~~ This article ~~shall~~ does not apply to:

~~(a)~~(1) ~~Actions~~ actions or transactions permitted ~~under~~ by laws administered by any regulatory body or officer acting ~~under~~ pursuant to statutory authority of this State or the United States or actions or transactions permitted by ~~any~~ other ~~South Carolina State law.~~ laws of this State;

~~(b)~~(2) ~~Acts~~ acts ~~done~~ by the publisher, owner, agent, or employee of a newspaper, periodical, ~~or~~ radio or television station, or Internet provider in the publication, ~~or~~ dissemination, or broadcast of an advertisement~~, when~~ if the owner, agent, or employee did not ~~have knowledge~~ know and should not have known of the false, misleading, or deceptive character of the advertisement and did not have a direct financial interest in the sale or distribution of the advertised product or service~~.~~;

~~(c)~~(3) ~~This article does not supersede or apply to~~ unfair trade practices covered and regulated ~~under Title 38, Chapter 55, Sections 38‑55‑10 through 38‑55‑410.~~ pursuant to Chapter 55 of Title 38, Conduct of Insurance Business; or

~~(d)~~(4) ~~Any~~ a challenged ~~practices~~ practice that ~~are~~ is subject to, and ~~comply~~ complies with, statutes administered by the Federal Trade Commission and the rules, regulations, and decisions interpreting ~~such~~ those statutes.

(B) For the purpose of this section, the burden of proving exemption from the provisions of this article ~~shall be~~ is upon the person claiming the exemption.”

SECTION 3. This act takes effect upon approval by the Governor.

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