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COMMITTEE REPORT

May 23, 2013

**H. 3987**

Introduced by Reps. Goldfinch, Herbkersman, Clemmons, Kennedy, Huggins, Hardee, McCoy, Stavrinakis, Sottile, Limehouse, Hardwick, H.A. Crawford, Riley, Murphy, Spires, Burns, Funderburk, Atwater, Barfield, Bingham, Cole, Finlay, Gagnon, George, Harrell, Owens, Pitts, Ryhal, Taylor, Vick, Wells, White and Knight

S. Printed 5/23/13--H.

Read the first time April 18, 2013.

**THE COMMITTEE ON AGRICULTURE, NATURAL**

**RESOURCES AND ENVIRONMENTAL AFFAIRS**

To whom was referred a Bill (H. 3987) to amend Section 39‑25‑20, as amended, Code of Laws of South Carolina, 1976, relating to definitions of terms contained in the South Carolina Food and Cosmetic Act, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

NELSON L. HARDWICK for Committee.

**A** **BILL**

TO AMEND SECTION 39‑25‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS OF TERMS CONTAINED IN THE SOUTH CAROLINA FOOD AND COSMETIC ACT, SO AS TO REVISE THE DEFINITIONS OF THE TERM “FOOD”, AND TO DEFINE THE TERMS “SEAFOOD” AND “LOCAL SEAFOOD”; AND TO AMEND SECTION 39‑25‑30, AS AMENDED, RELATING TO ACTS PROHIBITED UNDER THE SOUTH CAROLINA FOOD AND COSMETIC ACT, SO AS TO PROVIDE THAT A RETAIL OR WHOLESALE ESTABLISHMENT IS PROHIBITED FROM SELLING SEAFOOD WHILE KNOWINGLY AND WILFULLY MISREPRESENTING THE IDENTITY OF THE SEAFOOD TO ITS PATRONS.

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

SECTION 1. Section 39‑25‑20 of the 1976 Code, as last amended by Act 118 of 2012, is further amended to read:

“Section 39‑25‑20. For the purpose of this chapter ~~‑~~ :

(a) The ‘Commissioner’ means the Commissioner of Agriculture of South Carolina.

(b) The term ‘person’ includes individual, partnership, corporation and association.

(c) The term ‘food’ means (1) articles used for food or drink for man or other animals, including seafood, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(e) The term ‘consumer commodity,’ except as otherwise specifically provided by this subsection, means any food or cosmetic as those terms are defined by this chapter or by the Federal act. Such term does not include ‑

(1) Any tobacco or tobacco product;

(2) Any commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading ‘Bureau of Animal Industry’ of the Act of March 4, 1913 (37 Stat. 832‑833; 21 U.S.C. 151‑157) commonly known as the Virus‑Serum‑Toxin Act;

(3) Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(4) Any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551‑1610).

(f) The term ‘label’ means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be of the retail package of such article, or is easily legible through the outside container or wrapper.

(g) The term ‘immediate container’ does not include package liners.

(h) The term ‘principal display panel’ means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(i) The term ‘package’ means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include ~~‑~~ :

(1) Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

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

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term ‘advertisement’ means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food or cosmetics.

(m) The term ‘contaminated with filth’ applies to any food or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(n) The provisions of this chapter regarding food, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food or cosmetic establishment.

(o) The term ‘pesticide chemical’ means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the South Carolina Economic Poison Law or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.~~,~~ Sections 135‑135K) as now enacted or as hereafter amended and which is used in the production, storage or transportation of raw agricultural commodities.

(p) The term ‘raw agricultural commodity’ means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(q) The term ‘food additive’ means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include: (1) a pesticide chemical in or on a raw agricultural commodity; or (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal act; the Poultry Products Inspection Act (21 U.S.C. 451, et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(r)(1) The term ‘color additive’ means a material which ‑

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, or

(B) when added or applied to a food or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the Federal act.

(2) The term ‘color’ includes black, white and intermediate grays.

(3) Nothing in clause (1) of Section 39‑25‑20 (q) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(s) The term ‘Federal act’ means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(t) The term ‘honey’ means the raw food product produced by honeybees for human consumption. Honey and honey products are subject to all labeling requirements of this chapter. Honey sold wholesale to other retail outlets for resale must be processed and packaged in an inspected and registered food processing facility in accordance with the act regardless of the amount of overall honey produced by the beekeeper.

Beekeepers producing no more than four hundred gallons (4,800 pounds) of honey annually and who only sell directly to the end consumer are exempt from inspections and regulations requiring honey to be processed, extracted and packaged in an inspected food processing establishment, or from being required to obtain a registration verification certificate (RVC) from the Department of Agriculture. However, labels are required on all containers of honey that are sold in South Carolina. Beekeepers must file for the exemption on forms to be provided by the Department of Agriculture.

(u) The term ‘seafood’ means all marine finfish, crustaceans, mollusks, and other forms of aquatic life intended for human consumption.

(v) The term ‘local seafood’ means seafood caught or grown in South Carolina, Georgia, or North Carolina.”

SECTION 2. Section 39‑25‑30 of the 1976 Code, as last amended by Act 261 of 2012, is further amended to read:

“Section 39‑25‑30. The following acts within the State of South Carolina are prohibited:

(1) the manufacture, sale, or delivery, holding, or offering for sale of any food or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food or cosmetic;

(3) the receipt in commerce of any food or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of it for pay or otherwise;

(4) the distribution in commerce of a consumer commodity, as defined in this chapter, if the commodity is contained in package, or if there is affixed to that commodity a label, that does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter; provided, however, that this prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that persons engaged in packaging or labeling of the commodities or prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(5) the dissemination of any false advertisement regarding any food or cosmetic, including, but not limited to, the information contained on the menu of any establishment selling seafood;

(6) the refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by Section 39‑25‑190;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom he received in good faith the food or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of Section 39‑25‑60;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food or cosmetic if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to the provisions of this chapter or of the federal act;

(11) the using by any person to his own advantage, or revealing, other than to the commissioner or his authorized representative or to the courts when relevant in any judicial proceeding pursuant to this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection; ~~and~~

(12) operating without registering pursuant to Section 46‑3‑20~~.~~; and

(13) a retail or wholesale establishment that sells seafood knowingly and wilfully misrepresenting the identity of any seafood to its patrons. The identity of seafood is misrepresented if:

(a) the description of the seafood product is false or misleading in any way, which includes, but is not limited to, describing nonlocal seafood as local seafood;

(b) the seafood is served, sold, or distributed under the name of another food or food product; or

(c) the seafood is represented as seafood that does not conform to a definition of identity and standard of quality if the definition of identity and standard of quality has been established by custom and usage.”

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

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