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South Carolina Code of Laws Unannotated

Title 39 - Trade and Commerce

CHAPTER 1

General Provisions

SECTION 39-1-10. Licensing of nonresidents to do business in State.

No nonresident of the State shall be licensed to do business in the State, except as a special agent or when the state in which the nonresident agent resides has a reciprocal license law, and then only when he reports his business for record as South Carolina business to some general or district agent of his company in the State or having territory within the State.

HISTORY: 1962 Code Section 66-1; 1952 Code Section 66-1; 1942 Code Section 9331; 1939 (41) 218.

SECTION 39-1-20. Making intentionally untrue statement in advertising.

Any person who knowingly with intent to sell or in any wise dispose of merchandise, securities, service or anything offered by such person, directly or indirectly, to the public for sale or distribution or with intent to increase the consumption thereof, to induce the public in any manner to enter into any obligation relating thereto or to acquire title thereto or an interest therein makes, publishes, disseminates, circulates or places before the public or causes, directly or indirectly, to be made, published, disseminated, circulated 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 other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public which contains any assertion, representation or statement of fact which is intentionally untrue shall be guilty of a misdemeanor and upon conviction shall 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.

HISTORY: 1962 Code Section 66-3; 1952 Code Section 66-3; 1942 Code Section 1379; 1932 Code Section 1379; 1924 (33) 1133.

SECTION 39-1-30. Signs shall be displayed by sellers of Japanese textiles.

Every person operating a wholesale or retail establishment in the State which sells Japanese textile goods, or garments made therefrom, shall display in a conspicuous place upon the doors of such establishment, in letters not less than four inches high, a sign reading as follows: "Japanese Textiles Sold Here." Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 66-8; 1956 (49) 1667.

SECTION 39-1-40. Photographic copies of business instruments or records.

Any person doing business in this State may photograph on film, or on paper which meets the minimum standards of quality approved for photographic records of the National Bureau of Standards, any instrument or record in writing used in or acquired in the conduct of his business. The original of any instrument or record so photographed may be disposed of or destroyed, but the photographs of such instruments or records shall be preserved or kept as may now be provided by law relating to the originals.

HISTORY: 1962 Code Section 66-9; 1957 (50) 179.

SECTION 39-1-50. Certain unsolicited merchandise received through mails deemed gift to recipient.

Any unsolicited merchandise, except stolen merchandise, received through the mails, shall be deemed an absolute gift and the addressee-recipient may retain and use such merchandise without any liability for payment. The provisions of this section shall not apply to ordered merchandise deemed unsatisfactory by the addressee-recipient for any reason or to merchandise received by him by mistake or misdelivery.

HISTORY: 1962 Code Section 66-10; 1970 (56) 2083.

SECTION 39-1-55. Gift certificates; expiration; notice of expiration and conditions relating to use.

(A) As used in this section, "gift certificate" means a certificate that is issued or sold by a person engaged in the business of offering goods or services for sale at retail and that entitles a recipient of the certificate to the delivery of goods or services from the person who issued or sold the certificate. This term includes a gift card used for the same purpose as a gift certificate.

(B) A person shall not issue or sell a gift certificate which provides that the certificate expires before the first anniversary of the date on which the certificate is issued or sold. However, a person may issue or sell a gift certificate which provides for an expiration date before the first anniversary of the date on which the certificate is issued or sold as long as the expiration date is on the front of the gift certificate in capitalized letters in at least ten-point font. A gift certificate that contains an expiration date which does not conform to this subsection expires on the first anniversary of the date on which the certificate is issued or sold.

(C) A condition relating to the use of a gift certificate must be stated clearly on the certificate, the envelope, or covering of the certificate, or the receipt given to the purchaser of the certificate, if the condition provides that the certificate decreases in value over a period of time or that a fee is charged against the balance of the certificate after a certain period of time.

A gift certificate that does not state clearly a condition described by this subsection may be redeemed at any time for the original value of the certificate, less any amount charged against the balance of the certificate by the consumer.

(D) This section applies only to a gift certificate issued or sold on or after the effective date of this section.

HISTORY: 2005 Act No. 2, Section 1, eff July 1, 2004.

SECTION 39-1-60. Municipalities may regulate auction sales of personality.

All incorporated cities and towns in this State may regulate by proper form of ordinance the holding and conducting of all auction sales of personal property within the respective corporate limits of such cities or towns and provide appropriate penalties for the violation of all such ordinances. But this section shall not apply to auction sales made in conformity with the orders or decrees of courts of competent jurisdiction or sales made by railroad or express companies.

HISTORY: 1962 Code Section 56-202; 1952 Code Section 56-202; 1942 Code Section 7115; 1932 Code Section 7115; 1927 (35) 357.

SECTION 39-1-70. Regulations of Commissioner of Agriculture as to labeling of imitation food; registration.

The Commissioner of Agriculture shall promulgate and issue such rules and regulations as deemed necessary to advise and protect the health of the public in the sale and use of imitation foods by prescribing proper labeling requirements for such imitation food offered for sale in this State. The rules and regulations shall include a requirement that all persons transporting any imitation foods and beverages for human consumption into the State shall register each product to be transported with the Commissioner of Agriculture and shall furnish such description of the product as the Commissioner may prescribe.

HISTORY: 1962 Code Section 32-1581; 1964 (53) 2206.

SECTION 39-1-80. Industrial hygiene and safety professionals; certification requirements; penalties for misrepresentation.

(A) As used in this section:

(1) "American Board of Industrial Hygiene" means a nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(2) "Board of Certified Safety Professionals" means a nonprofit corporation established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) "Certified Industrial Hygienist" means a person who has received the designation "Certified Industrial Hygienist" by the American Board of Industrial Hygiene and whose certification has not lapsed or been revoked.

(4) "Certified safety professional" means a person who has been certified by the Board of Certified Safety Professionals and whose certification has not lapsed.

(5) "Industrial hygiene" means the science and art devoted to the anticipation, recognition, evaluation, and control of those environmental factors and stresses arising in or from the workplace that may cause sickness, impaired health and well-being, or significant discomfort among workers and that may also impact the general community.

(6) "Safety profession" means the science and discipline concerned with the preservation of human and material resources through the systematic application of principles drawn from such disciplines as engineering, education, chemistry, the physical and biological sciences, ergonomics, psychology, physiology, enforcement, and management for anticipating, identifying and evaluating potentially hazardous systems, conditions, and practices; developing, implementing, administering, and advising others on hazard design, methods, procedures, and programs.

(B)(1) A person may not wilfully practice or offer to practice as a certified industrial hygienist, or use in any advertisement or on a business card or letterhead, or make any other verbal or written communication that the person is a certified industrial hygienist or acquiesce in such a representation, unless that person is certified as an industrial hygienist by the American Board of Industrial Hygiene.

(2) A person may not wilfully practice or offer to practice as a certified safety professional, or use in any advertisement or on a business card or letterhead or make any other verbal or written communication that the person is a certified safety professional or acquiesce in such a representation, unless that person is certified as a safety professional by the Board of Certified Safety Professionals.

(3) A person who violates subsection(B)(1) or (2) is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than five thousand dollars or imprisoned for not less than thirty days or more than six months, or both. Each violation constitutes a separate offense, and each day's violation constitutes a separate offense.

(4) A person may file a suit in equity with an administrative law judge as provided under Article 5 of Chapter 23 of Title 1, alleging the facts and paying for a temporary restraining order or a permanent injunction against one whose conduct appears to violate subsection (B)(1) or (2), commanding him to obey the law and to desist from any further misrepresentation. This injunctive relief is in addition to any other remedy or criminal prosecution for violation of subsection (B)(1) or (2). It is not necessary to establish the absence of an adequate remedy at law.

(C) An entity of state or local government may not by rule, regulation, or otherwise prohibit or restrict the practice of industrial hygiene or safety by individuals practicing within the scope of "industrial hygiene" or "safety profession" so long as the individual does not use the title, initials, or represent himself to the public as a "certified industrial hygienist" or a "certified safety professional".

(D) The State is not liable for the misrepresentation of credentials of an employee while engaged in the duties of a governmental employee, unless wilful on behalf of the employee.

HISTORY: 2004 Act No. 235, Section 2, eff May 19, 2004.

Editor's Note

2004 Act No. 235, Section 1, provides as follows:

"This act may be cited as the 'Certified Industrial Hygiene and Certified Safety Profession Title Protection Act'".

SECTION 39-1-90. Breach of security of business data; notification; definitions; penalties; exception as to certain banks and financial institutions; notice to Consumer Protection Division.

(A) A person conducting business in this State, and owning or licensing computerized data or other data that includes personal identifying information, shall disclose a breach of the security of the system following discovery or notification of the breach in the security of the data to a resident of this State whose personal identifying information that was not rendered unusable through encryption, redaction, or other methods was, or is reasonably believed to have been, acquired by an unauthorized person when the illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the resident. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (C), or with measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(B) A person conducting business in this State and maintaining computerized data or other data that includes personal identifying information that the person does not own shall notify the owner or licensee of the information of a breach of the security of the data immediately following discovery, if the personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person.

(C) The notification required by this section may be delayed if a law enforcement agency determines that the notification impedes a criminal investigation. The notification required by this section must be made after the law enforcement agency determines that it no longer compromises the investigation.

(D) For purposes of this section:

(1) "Breach of the security of the system" means unauthorized access to and acquisition of computerized data that was not rendered unusable through encryption, redaction, or other methods that compromises the security, confidentiality, or integrity of personal identifying information maintained by the person, when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to a resident. Good faith acquisition of personal identifying information by an employee or agent of the person for the purposes of its business is not a breach of the security of the system if the personal identifying information is not used or subject to further unauthorized disclosure.

(2) "Person" has the same meaning as in Section 37-20-110(10).

(3) "Personal identifying information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of this State, when the data elements are neither encrypted nor redacted:

(a) social security number;

(b) driver's license number or state identification card number issued instead of a driver's license;

(c) financial account number, or credit card or debit card number in combination with any required security code, access code, or password that would permit access to a resident's financial account; or

(d) other numbers or information which may be used to access a person's financial accounts or numbers or information issued by a governmental or regulatory entity that uniquely will identify an individual.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local governmental records lawfully made available to the general public.

(E) The notice required by this section may be provided by:

(1) written notice;

(2) electronic notice, if the person's primary method of communication with the individual is by electronic means or is consistent with the provisions regarding electronic records and signatures in Section 7001 of Title 15 USC and Chapter 6, Title 11 of the 1976 Code;

(3) telephonic notice; or

(4) substitute notice, if the person demonstrates that the cost of providing notice exceeds two hundred fifty thousand dollars or that the affected class of subject persons to be notified exceeds five hundred thousand or the person has insufficient contact information. Substitute notice consists of:

(a) e-mail notice when the person has an e-mail address for the subject persons;

(b) conspicuous posting of the notice on the web site page of the person, if the person maintains one; or

(c) notification to major statewide media.

(F) Notwithstanding subsection (E), a person that maintains its own notification procedures as part of an information security policy for the treatment of personal identifying information and is otherwise consistent with the timing requirements of this section is considered to be in compliance with the notification requirements of this section if the person notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(G) A resident of this State who is injured by a violation of this section, in addition to and cumulative of all other rights and remedies available at law, may:

(1) institute a civil action to recover damages in case of a wilful and knowing violation;

(2) institute a civil action that must be limited to actual damages resulting from a violation in case of a negligent violation of this section;

(3) seek an injunction to enforce compliance; and

(4) recover attorney's fees and court costs, if successful.

(H) A person who knowingly and wilfully violates this section is subject to an administrative fine in the amount of one thousand dollars for each resident whose information was accessible by reason of the breach, the amount to be decided by the Department of Consumer Affairs.

(I) This section does not apply to a bank or financial institution that is subject to and in compliance with the privacy and security provision of the Gramm-Leach-Bliley Act.

(J) A financial institution that is subject to and in compliance with the federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, as amended, is considered to be in compliance with this section.

(K) If a business provides notice to more than one thousand persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Department of Consumer Affairs and all consumer reporting agencies that compile and maintain files on a nationwide basis, as defined in 15 USC Section 1681a(p), of the timing, distribution, and content of the notice.

HISTORY: 2008 Act No. 190, Section 7.A, eff July 1, 2009; 2013 Act No. 15, Section 3, eff April 23, 2013.

Effect of Amendment

The 2013 amendment rewrote subsection (D)(3), the definition of "Personal identifying information".