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Title 39 - Trade and Commerce

CHAPTER 5.

UNFAIR TRADE PRACTICES

ARTICLE 1.

GENERAL PROVISIONS

SECTION 39-5-10. Short title; definitions.

This article may be cited as the "South Carolina Unfair Trade Practices Act."

As used in this article,

(a) "Person" shall include natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.

(b) "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

(c) "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.

(d) "Examination" of documentary material shall include the inspection, study or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

SECTION 39-5-20. Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of interpretations of Federal act.

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

SECTION 39-5-30. Pyramid clubs and similar operations declared unfair trade practices.

Any contract or agreement between an individual and any pyramid club, or other group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members, is hereby declared to be an unfair trade practice pursuant to Section 39-5-20 (a) of the South Carolina Unfair Trade Practices Act of 1971.

SECTION 39-5-35. Requiring certain insurance coverage as unfair trade practice.

It shall be an unlawful trade practice under Section 39-5-20 for any person engaged in the business of lending money to make it a condition of obtaining a loan for the purchase of an automobile that the borrower carry full coverage comprehensive or fifty dollars collision coverage.

SECTION 39-5-36. Resale of tickets for more than one dollar above original price.

(A) A person or firm who knowingly purchases a quantity of tickets for admission to an event which exceeds the maximum quantity posted by or on behalf of the original ticket seller at the point of original sale or printed on the tickets and intends to resell the tickets in excess of one dollar above the price charged by the original ticket seller violates the South Carolina Unfair Trade Practices Act and is subject to its provisions, penalties, and damages.

(B) A person or firm who violates the provisions of Section 16-17-710(A) is subject to the provisions, penalties, and damages of the South Carolina Unfair Trade Practices Act.

(C) A person or firm is not liable pursuant to this section with respect to tickets for which the person or firm is the original ticket seller.

(D) For purposes of this section, the term "original ticket seller" means the issuer of the tickets or a person or firm who provides ticket distribution services or ticket sales service under a contract with the issuer.

SECTION 39-5-37. Use of assumed or fictitious name to misrepresent geographical origin, etc., of business as unfair trade practice.

It shall be an unlawful trade practice under Section 39-5-20 to use an assumed or fictitious name in the conduct of a business to intentionally misrepresent the geographic origin, ownership of manufacturing facilities, or location of such business.

SECTION 39-5-38. Deceptive or misleading advertisement of live musical performance.

(A) For purposes of this section:

(1) "performing person or group" means a vocal or instrumental performer seeking to use the name of another person or group that has previously produced or released, or both, a commercial recording; and

(2) "recording person or group" means a vocal or instrumental performer that has previously produced or released, or both, a commercial recording.

(B) It is an unlawful trade practice pursuant to Section 39-5-20 to advertise a live musical performance or production in South Carolina through the use of a false, deceptive, or misleading affiliation, connection, or association between the performing person or group with a recording person or group.

(C) The advertisement of a live musical performance does not violate subsection (B) if the:

(1) performing person or at least one member of the performing group was a member of the recording person or group;

(2) live musical performance or production is identified as a " salute" or "tribute" to, and is otherwise unaffiliated with, the recording person or group;

(3) advertising does not relate to a live musical performance taking place in South Carolina; or

(4) performance is expressly authorized in the advertising by the recording person or group.

SECTION 39-5-39. Attorney advertising in false, deceptive or misleading manner.

Notwithstanding another provision of law, it is an unlawful trade practice, pursuant to Section 39-5-20, for an attorney to advertise his services in this State in a false, deceptive, or misleading manner including, but not limited to, the use of a nickname that creates an unreasonable expectation of results.

SECTION 39-5-40. Article inapplicable to certain practices and transactions.

Nothing in this article shall apply to:

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

(b) Acts done by the publisher, owner, agent or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge 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) This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-55-320.

(d) Any challenged practices that are subject to, and comply with, statutes administered by the Federal Trade Commission and the rules, regulations and decisions interpreting such statutes.

For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption.

SECTION 39-5-42. Misrepresenting food or food products as product of South Carolina.

(A) For purposes of this section "food" or "food product" is an article that is produced, raised, caught, or harvested for human consumption.

(B) It is an unfair trade practice pursuant to Section 39-5-20 knowingly and wilfully to misrepresent food or a food product if the food or food product purports to be or is represented to be a product of South Carolina but is the product of another state, country, or territory.

(C) A provision in this section is not intended to conflict with the enforcement of criminal penalties or other provisions of law relating to the misrepresentation or adulteration of food or food products.

SECTION 39-5-50. Action for injunction against violation of article; additional orders or judgments to restore property acquired by illegal means.

(a) Whenever the Attorney General has reasonable cause to believe that any person is using, has used or is about to use any method, act or practice declared by Section 39-5-20 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary restraining order, temporary injunction or permanent injunction the use of such method, act or

practice. Unless the Attorney General determines in writing that the purposes of this article will be substantially impaired by delay in instituting legal proceedings, he shall, at least three days before instituting any legal proceedings as provided in this section, give notice to the person against whom proceedings are contemplated and give such person an opportunity to present reasons to the Attorney General why such proceedings should not be instituted. The action may be brought in the court of common pleas in the county in which such person resides, has his principal place of business or conducts or transacts business. The courts are authorized to issue orders and injunctions to restrain and prevent violations of this article, and such orders and injunctions shall be issued without bond. Whenever any permanent injunction is issued by such court in connection with any action which has become final, reasonable costs shall be awarded to the State.

(b) The court may make such additional orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of any practice declared to be unlawful in this article, including the revocation of a license or certificate authorizing that person to engage in business in this State, provided the order declaring the practice to have been unlawful has become final.

SECTION 39-5-60. Assurance of voluntary compliance with article.

In the administration of this article, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be in violation of this article from any person who has engaged in, is engaging in, or is about to engage in such method, act or practice. Such assurance may include a stipulation for the voluntary payment by such person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance shall be in writing and be filed with and subject to the approval of the court of common pleas having jurisdiction. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose; however, any violation of the terms of such assurance shall constitute prima facie evidence of a violation of the provisions of this article. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest.

SECTION 39-5-70. Investigative demand by Attorney General.

(a) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this article, or when he believes it to be in the public interests that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this article, he may execute in writing and cause to be served upon that person or any other person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination and copying, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(b) At any time before the return date specified in an investigative demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for a reasonable time or to modify or set aside the demand, stating good cause, may be filed in the court of common pleas where the person served with the demand resides or has his principal place of business or conducts or transacts business. This section shall not be applicable to any criminal proceedings, nor shall any information obtained under the authority of this section or Section 39-5-80 be admissible in evidence in any criminal prosecution.

SECTION 39-5-80. Additional powers of Attorney General in administration of article.

To accomplish the objectives and to carry out the duties prescribed by this article, the Attorney General, in addition to other powers conferred upon him by this article, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which rules and regulations shall have the force and effect of law; provided, however, that none of the powers conferred by this article shall be used for the purpose of compelling any person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided, further, that information obtained pursuant to the powers conferred by this article shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law-enforcement purposes in the public interest.

SECTION 39-5-90. Service of notice, demand or subpoena.

Service of any notice, demand or subpoena under this article shall be made personally within this State, but if such cannot be obtained, substituted service therefor may be made in the following manner:

(a) Personal service thereof without this State; or

(b) In the manner provided by the laws of this State as if a summons or other pleading which institutes a civil proceeding had been filed; or

(c) Such service as a court of common pleas may direct in lieu of personal service within this State.

SECTION 39-5-100. Person served with notice, investigative demand or subpoena shall comply; penalty for violation; enforcement.

A person upon whom a notice, investigative demand, or subpoena is served pursuant to the provisions of Section 39-5-90 shall comply with the terms thereof unless otherwise provided by the order of a court as provided for in Section 39-5-70. Any person who fails to appear, or with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this article, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to any such notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than five thousand dollars.

The Attorney General may file in the court of common pleas in which such person resides, has his principal place of business, or conducts or transacts business, and serve upon such person, in the same manner as provided for in Section 39-5-90, a petition for an order of such court for the enforcement of this section and Sections 39-5-70 and 39-5-80.

SECTION 39-5-110. Civil penalties for willful violation or violations of injunction.

(a) If a court finds that any person is willfully using or has willfully used a method, act or practice declared unlawful by Section 39-5-20, the Attorney General, upon petition to the court, may recover on behalf of the State a civil penalty of not exceeding five thousand dollars per violation.

(b) Any person who violates the terms of an injunction issued under Section 39-5-50 shall forfeit and pay to the State a civil penalty of not more than fifteen thousand dollars per violation. For the purposes of this section, the court of common pleas issuing an injunction shall retain jurisdiction, and the cause shall be continued and in such cases the Attorney General acting in the name of the State may petition for recovery of civil penalties. Whenever the court determines that an injunction issued pursuant to Section 39-5-50 has been violated, the court shall award reasonable costs to the State.

(c) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20.

SECTION 39-5-120. Dissolution, suspension or forfeiture of franchise or charter of corporation violating injunction.

Upon petition by the Attorney General, the court of common pleas may, for good cause shown, order the dissolution or suspension or forfeiture of any franchise or charter of any corporation which violates the terms of any injunction issued under Section 39-5-50.

SECTION 39-5-130. Duty of solicitors and county and city attorneys.

It shall be the duty of the solicitors of each judicial circuit and all county and city attorneys to lend to the Attorney General such assistance as the Attorney General may request in the commencement and prosecution of actions pursuant to this article, or any solicitor or county or city attorney with prior approval of the Attorney General may institute and prosecute actions hereunder in the same manner as provided for the Attorney General; provided, however, that if an action is prosecuted by a solicitor or county or city attorney alone, he shall make a full report thereon to the Attorney General, including the final disposition of the matter.

SECTION 39-5-140. Actions for damages.

(a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

(b) Upon commencement of any action brought under subsection (a) of this section, the clerk of court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(c) Any permanent injunction, judgment or order of the court made under Section 39-5-50 shall be prima facie evidence in an action brought under Section 39-5-140 that the respondent used or employed a method, act or practice declared unlawful by Section 39-5-20.

(d) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20.

SECTION 39-5-145. Price gouging during emergency; definitions; penalty; evidence of knowledge or intent.

(A) As used in this section:

(1) "Abnormal disruption of the market" means a change in the market for a commodity in a part of South Carolina, whether actual or imminently threatened, resulting from stress of weather, forces of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, or other cause that constitutes the basis for an out-of-state declaration.

(2) "Commodity" means goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber essential for consumption or use as a direct result of a declared state of emergency.

(3) "Notice of an abnormal disruption of the market" means notice given by the South Carolina Attorney General of an abnormal disruption of the market.

(4) "Out-of-state declaration" means a declaration of a state of emergency, state of disaster, or similar declaration by the President of the United States.

(5)(a) "Unconscionable price" means an amount charged which:

(i) represents a gross disparity between the price of the commodity or rental or lease of a dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the thirty days immediately before a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of the dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility, or local, regional, national, or international market trends; or

(ii) grossly exceeds the average price at which the same or similar commodity, dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility was readily obtainable in the trade area during the thirty days immediately before a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of the dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility, or local, regional, national, or international market trends.

(b) It is prima facie evidence that a price is unconscionable if it meets the definition of item (i) or (ii).

(B)(1) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of this article for a person or his agent or employee to:

(a) rent or sell or offer to rent or sell a commodity at an unconscionable price within the area for which the state of emergency is declared; or

(b) impose unconscionable prices for the rental or lease of a dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility within the area for which the state of emergency is declared.

(2) This prohibition remains in effect until the declaration expires or is terminated.

(C)(1) Upon a declaration of a state of disaster by the President, in which the disaster area includes all or a portion of the State of South Carolina, it is unlawful and a violation of this article for a person or his agent or

employee in this State to:

(a) rent or sell or offer to rent or sell a commodity at an unconscionable price within the area for which the state of disaster is declared; or

(b) impose unconscionable prices for the rental or lease of a dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility within the area for which the state of disaster is declared.

(2) This prohibition remains in effect until the declaration expires or is terminated.

(D) When notice of an abnormal disruption of the market is given, it is unlawful and a violation of this article for a person or his agent or employee to:

(1) rent or sell or offer to rent or sell a commodity at an unconscionable price in any area of this State where there is an abnormal disruption in the market; or

(2) impose unconscionable prices for the rental or lease of a dwelling unit, including a motel or hotel unit, or other temporary lodging, or self-storage facility in any area of this State where there is an abnormal disruption in the market.

(E) When notice of an abnormal disruption of the market is given, the prohibitions in this section are in effect for fifteen days unless notice of an abnormal disruption in the market is earlier retracted or renewed. The Attorney General may renew a notice of abnormal disruption of the market for an unlimited number of successive fifteen-day periods.

(F) A trade association, corporation, or partnership may register as an agent for the purpose of being notified when the Attorney General gives, retracts, or renews notice of an abnormal disruption of the market. A trade association may designate up to three persons to be notified on behalf of the organization's members. The trade association, corporation, or partnership is responsible for maintaining current information for the designated agents. The Attorney General's Office shall notify the registered agents simultaneous to giving, retracting, or renewing notice of an abnormal disruption of the market.

(G) A price increase approved by an appropriate government agency is not a violation of this section.

(H) A price increase that reflects the usual and customary seasonal fluctuation in the price of the subject essential commodity or the rental or lease of a dwelling unit or self-storage facility is not a violation of this section.

(I) This section does not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of those products to the ultimate consumer within the area of the declared state of emergency or disaster.

(J) This section does not preempt the powers of local government, except that the evidentiary standards contained in this section are the sole evidentiary standards to be adopted by ordinance of a local government to restrict price gouging. In the event a local government declares a state of emergency or disaster or experiences an abnormal disruption of the market in which the area includes all or a portion of the area under the local government's jurisdiction, and restricts price gouging during that time, the governmental entity must notify the Governor's Office of the declaration. The Governor's Office must notify registered agents simultaneously at the time of the declaration and also at its expiration or termination.

(K) In addition to all other remedies provided in this article, a person who wilfully and knowingly violates this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one thousand dollars or imprisoned not more than thirty days, or both.

(L) A person who is charged with committing an action in violation of this section may present evidence relating to, but not limited to, his knowledge or intent when committing the action to rebut any presumption or evidence of violation of this section.

SECTION 39-5-147. Charitable solicitations during emergencies; penalty.

(A) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of this article for a person or his agent or employee to solicit the contribution or sale of goods or services for charitable purposes by any manner, means, practice, or device that is knowingly and wilfully misleading.

(B) Upon a declaration of a state of disaster by the President, in which the disaster areas include all or a portion of the State of South Carolina, it is unlawful and a violation of this article for a person or his agent or employee to solicit in this State the contribution or sale of goods or services for charitable purposes by any manner, means, practice, or device that is knowingly and wilfully misleading.

(C) These prohibitions remain in effect until the declaration of emergency or disaster expires or is terminated.

(D) In addition to all other remedies provided in this article, a person who wilfully violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days.

SECTION 39-5-149. Registration of agent by trade association, corporation, or partnership to receive notification of state of emergency.

A trade association, corporation, or partnership may register an agent for the purposes of being notified when the Governor declares and terminates a state of emergency. A trade association may designate up to three persons to be notified on behalf of the organization's members. The trade association, corporation, or partnership is responsible for maintaining current information for the designated agent or agents. The Governor's Office is responsible for notifying the registered agents simultaneous to the declaration and termination of the state of emergency.

SECTION 39-5-150. Limitation of actions.

No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.

SECTION 39-5-160. Article shall be cumulative.

The powers and remedies provided by this article shall be cumulative and supplementary to all powers and remedies otherwise provided by law.

SECTION 39-5-170. Vehicle glass repair business; unlawful practices.

It is an unfair trade practice and unlawful for a person who is acting on behalf of or engaged in a vehicle glass repair business to offer or make a payment or transfer money or other consideration to:

(1) a third person for the third person's referral of an insurance claimant to the vehicle glass repair business for the repair or replacement of vehicle safety glass;

(2) an insurance claimant in connection with the repair or replacement of vehicle safety glass; or

(3) waive, rebate, give, or pay all or part of an insurance claimant's casualty or property insurance deductible as consideration for selecting the vehicle glass repair business.

ARTICLE 3.

MERCHANDISING UNFAIR TRADE PRACTICES

SECTION 39-5-310. Definitions.

For the purpose of this article:

(1) A "wholesale" sale shall be one made to any person for the purpose of resale at retail; and

(2) A "retail sale" shall be a sale for the purpose of consumption or use.

SECTION 39-5-320. Sale by wholesaler at retail for as low a price as at wholesale shall be unfair trade practice.

It is declared an unfair trade practice and unlawful for any person who is in both the wholesale and retail business of selling merchandise to sell merchandise of like grade and quality at retail at a price as low as such person sells the same merchandise at wholesale in the same town or locality.

SECTION 39-5-325. Unfair trade practice for retailer of motor fuel to sell below cost with intent or effect of impairing competition; exemptions; records to support claimed exemption.

(A) Except as otherwise permitted to meet competition as provided by this chapter, it is declared an unfair trade practice and unlawful for any person who is in the retail business of selling motor fuel to sell motor fuel of like grade and quality at retail at a price which is below the cost of acquiring the product plus taxes and transportation where the intent or effect is to destroy or substantially lessen competition or to injure a competitor.

(B) The provisions of subsection (A) shall not apply in the following situations where:

(1) motor fuel is advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such motor fuel, and the advertising, offer to sell, or sale shall state the reason therefor and the quantity of such motor fuel advertised, offered for sale, or to be sold;

(2) motor fuel is sold upon the final liquidation of a business;

(3) motor fuel is advertised, offered for sale, or sold by any fiduciary or other officer under the order or direction of any court;

(4) motor fuel is sold for promotional purposes including, but not limited to, grand opening, anniversary, or promotional sales. However, the total number of days for promotional sales shall not exceed fourteen days within each calendar year; or

(5) an isolated or inadvertent incident occurs that does not exceed two days.

(C) Any person who is in the retail business of selling motor fuel claiming any exemption from subsection (A) under the exceptions provided in subsection (B) must keep and maintain records substantiating this claim. These records must be made available to the Department of Consumer Affairs and the Attorney General's Office on request made in connection with any investigation of a possible violation of this section by the department or the Attorney General.

SECTION 39-5-330. Sale by wholesaler at retail at lower price than at wholesale shall be unfair trade practice.

It is declared an unfair trade practice and unlawful for any person who is in both the wholesale and retail business of selling merchandise to sell merchandise of like grade and quality at retail at a lower price than such person sells the same merchandise at wholesale in the same town or locality.

SECTION 39-5-340. Liability of wholesaler for sale at wholesale prices by retail establishment controlled by wholesaler.

When a wholesaler owns a controlling interest or stock in a retail establishment or corporation and creates, organizes or maintains such retail outlet for the purpose of violating this article by making retail sales therefrom at a price that would be in violation of this article if made at retail directly by the wholesaler, such wholesaler shall be liable also for any violation of this article by any such retailer.

SECTION 39-5-350. Exemptions.

(A) No part of this article shall be construed to apply to sales at wholesale to hotels, restaurants, colleges, bona fide licensed contractors, farmers buying for their plantations, including labor on their own farms, boardinghouses, religious institutions, or county, city, federal, or state institutions or departments or to cooperative purchases for redistribution among farmers. Retail sales of merchandise of like grade and quality at a price to meet existing competition at any time in any town or locality are also exempt from the provisions of this article. But if such competition is created by any person in violation of this article or when any two or more persons contend that they are meeting the competition of the other and all would be making retail sales in violation of this article, except for the above provisions allowing existing competition to be met, any retailer affected thereby may enjoin all in such category from continuing such practices in any court of competent jurisdiction in this State.

(B) Any person selling motor fuel at wholesale or retail at a price below the actual cost of acquiring the product, including transportation and taxes, claiming exemption from this article on the basis that such sales of motor fuel by that person are at a price to meet existing competition under subsection (A) of this section shall keep and maintain records substantiating each effort to meet the 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 article by the department or the Attorney General.

SECTION 39-5-360. Penalties.

Each sale in violation of the terms of this article shall be declared a separate offense and the penalty for each violation thereof shall be a fine of not more than one hundred dollars or imprisonment for not more than thirty days in the discretion of the court.

ARTICLE 5.

BIDDING AND NEGOTIATION OF CONTRACTS FOR EXHIBITION OF MOTION PICTURES

SECTION 39-5-510. Definitions.

When used in this article:

(a) "Theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge.

(b) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental or licensing.

(c) "Exhibitor" means any person engaged in the business of operating one or more theaters.

(d) "Exhibit" or "exhibition" means showing a motion picture to the public for a charge.

(e) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a motion picture.

(f) "Bid" means a written or oral offer or proposal by an exhibitor to a distributor in response to an invitation to bid or otherwise stating the terms under which the exhibitor will agree to exhibit a motion picture.

(g) "License agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor.

(h) "Trade screening" means the showing of a motion picture by a distributor at a location within the State or in the Film Exchange Center in the State of North Carolina which is open to any exhibitor interested in exhibiting the motion picture.

(i) "Blind bidding" means the bidding for, negotiating for or offering or agreeing to terms for the licensing or exhibition of a motion picture if the motion picture has not been trade screened within the State or in the Film Exchange Center in the State of North Carolina before any such event has occurred.

(j) "Run" means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of a picture in the designated area; a "second run" is the second exhibition and "subsequent runs" are subsequent exhibitions after the second run.

SECTION 39-5-520. Blind bidding prohibited; notice of trade screenings required.

(a) Blind bidding is prohibited in this State. No bids shall be returnable; no negotiations for the exhibition or licensing of a motion picture shall take place and no license agreement or any of its terms shall be agreed to for the exhibition of any motion picture in this State before the motion picture has been trade screened in the State or in the Film Exchange Center in the State of North Carolina.

(b) A distributor shall include in each invitation to bid for a motion picture for exhibition in the State, if the motion picture has not already been trade screened, the date, time and place of trade screening of the motion picture.

(c) A distributor shall provide reasonable and uniform notice to exhibitors in the State of all trade screenings of motion pictures he is distributing for exhibition within this State. The notice may be by mail or by publication having general circulation among exhibitors in the State.

SECTION 39-5-530. Contents of invitation to bid; nature and examination of bids; rebids.

If bids are solicited from exhibitors for the licensing of a motion picture in the State:

(a) The invitation to bid shall specify (1) the number and length of runs for which the bid is being solicited, whether it is a first, second or subsequent run and the geographic area for each run; (2) the names of all exhibitors who are being individually solicited; (3) the date and hour the invitation to bid expires and (4) the location, including the address, where the bids will be opened at the distributor's place of business in the film exchange center.

(b) All bids shall be submitted in writing and shall be opened at the same time and in the presence of exhibitors or their agents.

(c) After being opened, bids shall be subject to examination by exhibitors or their agents. Within seven days, exclusive of Saturday and Sunday, after a bid is accepted, the distributor shall notify in writing each exhibitor who submitted a bid of the terms of the accepted bid and the name of the winning bidder.

(d) Once bids are solicited, the distributor shall license the picture only by bidding and must solicit rebids if he does not accept any of the submitted bids.

SECTION 39-5-540. Waiver of blind bidding prohibited.

If the first run exhibitors within any county in this State desire to waive the provisions of this article for the purpose of blind bidding on a movie to be shown within that county, the exhibitors may waive the provisions and blind bid if all exhibitors within that county who exhibit first run movies agree in writing to such waiver; and the distributors shall have the right to request waivers from any and all first run exhibitors.

SECTION 39-5-550. Applicability of article.

The provisions of this article shall apply to all motion picture licensing contracts executed within or without this State for the exhibition of motion pictures in South Carolina.

SECTION 39-5-560. Penalty for violation of article.

Any person violating the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than ten thousand dollars or be imprisoned for not more than six months.