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**H. 5112**

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Introduced in the House on March 29, 2012

Currently residing in the House Committee on **Agriculture, Natural Resources and Environmental Affairs**

Summary: Engine fuels

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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3/29/2012 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 88](file:///h:\hj%20archive\2012\03-29-12.docx))

**VERSIONS OF THIS BILL**

[3/29/2012](file:///p:\pprever\2011-12\5112_20120329.docx)

**A** **BILL**

TO AMEND CHAPTER 41, TITLE 39, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ENGINE FUELS, SO AS TO DEFINE TERMS, TO PROVIDE THAT THE COMMISSIONER OF AGRICULTURE SHALL ADMINISTER THIS CHAPTER AND TO DELINEATE HIS AUTHORITY, TO PROVIDE THAT A DEALER OF CERTAIN FUELS MUST REGISTER WITH THE COMMISSIONER, TO PROVIDE PENALTIES, AND TO SET FORTH AN APPEALS PROCESS.

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

SECTION 1. Chapter 41, Title 39 of the 1976 Code is amended to read:

“CHAPTER 41

~~Gasoline, Lubricating Oils and other~~ Engine Fuels, Petroleum Products, and Automotive Lubricants

~~Article 1~~

~~Petroleum Products Generally~~

~~Section 39‑41‑5.~~ ~~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.~~

~~Section 39‑41‑10.~~ ~~‘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. As used in this Chapter:~~

~~Section 39‑41‑70.~~ ~~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.~~

~~Section 39‑41‑80.~~ ~~The Commissioner of Agriculture is authorized to promulgate rules and regulations prescribing standards for petroleum products and methods for testing same.~~

~~Section 39‑41‑90.~~ ~~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.~~

~~Section 39‑41‑150.~~ ~~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.~~

~~Section 39‑41‑160.~~ ~~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.~~

~~Section 39‑41‑170. 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.~~

~~Section 39‑41‑180.~~ ~~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.~~

~~Section 39‑41‑185.~~ ~~(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’.~~

~~Section 39‑41‑190.~~ ~~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.~~

~~Section 39‑41‑195.~~ ~~(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.~~

~~Section 39‑41‑200.~~ ~~AThe 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.~~

~~Section 39‑41‑210.~~ ~~The Commissioner of Agriculture shall include in his report to the General Assembly an account of the operations and expense under this article.~~

~~Section 39‑41‑220.~~ ~~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.~~

~~Section 39‑41‑230.~~ ~~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.~~

~~Section 39‑41‑235.~~ ~~(A)~~ ~~Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State 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.~~

~~(B)~~ ~~Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State 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.~~

~~(C)~~ ~~A terminal shall not offer for sale an unblended product that omits any additive found in a product preblended with ethanol. A terminal 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.~~

~~(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.~~

~~(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.~~

~~(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.~~

~~Section 39‑41‑240.~~ ~~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.~~

~~Section 39‑41‑250.~~ ~~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.~~

~~Section 39‑41‑255.~~ ~~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.~~

~~Section 39‑41‑260.~~ ~~(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.~~

~~Section 39‑41‑270~~. ~~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.~~

~~Section 39‑41‑280.~~ ~~The Division of State Fire Marshal or his designee shall enforce the provisions of Section 39‑41‑260 of Act 582 of 1990.~~

~~Section 39‑41‑290.~~ ~~(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.~~

~~Section 39‑41‑295.~~ ~~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.~~

~~Article 3~~

~~Sale of Lubricating Oils~~

~~Section 39‑41‑310.~~ ~~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.~~

~~Section 39‑41‑320.~~ ~~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.~~

~~Section 39‑41‑330.~~ ~~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.~~

~~Section 39‑41‑340.~~ ~~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.’~~

~~Section 39‑41‑350.~~ ~~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.~~

~~Section 39‑41‑360.~~ ~~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.~~

~~Article 5~~

~~Deception in Sale of Liquid Fuels, Lubricating Oils and Greases~~

~~Section 39‑41‑510.~~ ~~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.~~

~~Section 39‑41‑520.~~ ~~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.~~

~~Section 39‑41‑530.~~ ~~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.~~

~~Section 39‑41‑540.~~ ~~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.~~

~~Section 39‑41‑550.~~ ~~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.~~

~~Section 39‑41‑560.~~ ~~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.~~

~~Section 39‑41‑570.~~ ~~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.~~

Section 39‑41‑10. As used in this chapter:

(1) ‘ASTM international’ means an international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge.

(2) ‘Automotive lubricants’ means any material interposed between two surfaces that reduces the friction or wear between them.

(3) ‘Engine fuel’ means any liquid or gaseous matter used for the generation of power in an internal combustion engine.

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

(5) ‘Dealer’ means any person, store, or entity selling or dispensing gasoline or petroleum products to the general public.

(6) ‘Department’ means the South Carolina Department of Agriculture.

(7) ‘Engine fuel designed for special use’ means engine fuel designated by the commissioner as requiring registration. These fuels have no ASTM international or other national consensus standards applying to their quality or usability. Common special fuels are racing fuels and those intended for agricultural and other off‑road applications.

(8) ‘Nonengine fuel’ means any liquid or gaseous matter used for the generation of heat, power, or similar uses.

(9) ‘Person’ means an individual, corporation, company, society, association, partnership, or governmental entity.

(10) ‘Petroleum Products’ means products obtained from distilling and processing of petroleum (crude oil), unfinished oils, recycled oils, natural gas liquids, refinery blend stocks, and other miscellaneous hydrocarbon compounds.

(11) ‘Sold’ means kept, offered, or exposed for sale.

Section 39‑41‑20. (A) Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State 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.

(B) Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State 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.

(C) A terminal shall not offer for sale an unblended product that omits any additive found in a product preblended with ethanol. A terminal 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.

(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.

(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.

(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.

Section 39‑41‑30. (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.

Section 39‑41‑40. The provisions of Section 39‑41‑30 apply to all service stations constructed on or after June 12, 1990. Also, all existing service stations on the effective date must comply with the revised provisions of Section 39‑41‑30 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 39‑41‑30(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 39‑41‑30(B). An imminent hazard to life shall be addressed immediately as referenced in Section 23‑9‑150. For the purposes of this section and of Section 39‑41‑30, the term ‘service station’ does not include any utility storage tank facilities which service utility operations, including vehicles, locomotives, or equipment.

Section 39‑41‑50. The Division of State Fire Marshal or his designee shall enforce the provisions of Section 39‑41‑30.

Section 39‑41‑60. (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.

Section 39‑41‑70. Notwithstanding Section 39‑41‑30, 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.

Section 39‑41‑80. The provisions of this chapter shall be administered by the commissioner. For the purpose of administering and giving effect to the provisions of this chapter, the specification and test method standards set forth in the most recent version available of ASTM International standards as of July 1, 2012, are adopted except as amended or modified as required by the commissioner. When no ASTM standard exists, other generally recognized national consensus standards may be used. The commissioner is empowered to write rules and regulations on the advertising, posting of prices, labeling, standards for, and identify of fuels, non‑engine fuels, and automotive lubricants and is authorized to establish a testing laboratory.

Section 39‑41‑90. The commissioner, or his designated agent, shall have the authority to:

(1) enforce and administer all the provisions of this chapter by inspections, analyses, promulgation of regulations and other appropriate actions;

(2) access all places, during normal business hours, where engine fuels, non‑engine fuels, and automotive lubricants are kept, transferred, offered, exposed for sale, or sold for the purpose of examination, inspection, taking of samples, and review of fuel storage, receipts, transfers, sales records or delivery records for determining compliance with this chapter. If access is refused by the owner, agent or other persons leasing the same, the commissioner may obtain an administrative search warrant from a court of competent jurisdiction;

(3) collect, or cause to be collected, samples of engine fuels, non‑engine fuel, and automotive lubricants marketed in this State, and cause the samples to be tested or analyzed for compliance with the provisions of this chapter;

(4) define engine fuels for special use and refuse, revoke, suspend, or issue a stop‑order if found not to be in compliance and remand stop‑order if the engine fuel for special use is brought into full compliance with this chapter;

(5) issue a stop‑sale order for any engine fuel, non‑engine fuel, and automotive lubricant found not to be in compliance and remand a stop‑sale order if the engine fuel, petroleum product, or automotive lubricant is brought into full compliance with this chapter;

(6) refuse, revoke, or suspend the registration of an engine fuel, petroleum product, or automotive lubricant;

(7) delegate to appropriate personnel any of these responsibilities for the proper administration of this chapter; and

(8) waive specific state requirements adopted under this chapter and establish alternative requirements for fuels as determined to be necessary in the event of an emergency, natural disaster, or other exigent circumstances for a specified period of time.

Section 39‑41‑100. (A) Every dealer in gasoline, engine fuel, and petroleum products, before selling or exposing or offering for sale any gasoline, engine fuel, or petroleum products, must register and make known to the commissioner, on a form provided by the department, the products to be sold, giving the grade and brand name that will be used for labeling on the dispenser, as well as the location where the product will be sold. All products registered must meet the standards as set forth in regulations promulgated under this chapter. Furthermore, every dealer must maintain invoices or bills of lading from the manufacturer, supplier, or distributor related to the purchase of all gasoline, engine fuel, and petroleum products. The department shall have the authority to review and inspect the invoices and bills of lading for traceback purposes.

(B) Every dealer shall keep the certificate or certificates of registration issued by the commissioner posted in a prominent and accessible area in his place of business where the gasoline, engine fuel, and petroleum products are sold. The form of such certificate shall be designated by the commissioner.

Section 39‑41‑110. All engine fuels designated for special use must be registered with the commissioner. The registration shall include:

(1) the name, brand, or trademark under which the fuel will be sold;

(2) the name and address of person registering the engine fuel;

(3) the special use for which the engine fuel is designed; and

(4) a certification, declaration, or affidavit stating the fuel specification.

Section 39‑41‑120. It shall be unlawful to:

(1) represent engine fuels, non‑engine fuels, or automotive lubricants in any manner that may deceive or tend to deceive the purchaser as to the nature, brand, price, quantity, or quality of the product;

(2) fail to register with the department before selling or dispensing gasoline or petroleum products to the general public;

(3) submit incorrect, misleading, or false information regarding the registration of an engine fuel designed for special use;

(4) hinder or obstruct the commissioner in the performance of the commissioner’s duties;

(5) represent an engine fuel, non‑engine fuel, or automotive lubricant that is contrary to the provisions of this chapter; or

(6) represent automotive lubricants with a Society of Automotive Engineers viscosity grade or American Petroleum Institute service classification other than those specified by the intended purchaser.

Section 39‑41‑130. (A) Any person, servant, or agent who violates a provision of this chapter may be assessed by the department a civil penalty of:

(1) not more than one thousand dollars for a first violation;

(2) not more than two thousand five hundred dollars for a second violation within a year from the date of the first violation; and

(3) not more than five thousand dollars for a third violation within two years from the date of the first violation.

(B) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten days of receipt of the notice of the penalty. The commissioner, or his designee, is authorized to conduct the hearing after giving the appropriate notice to the respondent in accordance with the terms of Chapter 23, Title 1. The decision of the commissioner is subject to appropriate judicial review.

(C) If the respondent has exhausted his administrative appeals and the civil penalty has been upheld, the respondent must pay the civil penalty within fifteen days after the effective date of the final decision. If the respondent fails to pay the penalty, a civil action may be brought by the commissioner in any court of competent jurisdiction to recover the penalty. Any civil penalty collected pursuant to this chapter must be transmitted to the department.

Section 39‑41‑140. Any person who intentionally violates any provision of this chapter or regulations promulgated thereto shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty‑five dollars and not more than five hundred dollars, or imprisonment for not more than thirty days, or both.

Section 39‑41‑150. The commissioner may apply to any court of competent jurisdiction for a restraining order or a temporary or permanent injunction restraining any person from violating any provision of this chapter.

Section 39‑41‑160. All laws and parts of laws contrary to or inconsistent with the provisions of this chapter are repealed except as to offense committed, liabilities incurred, and claims made thereunder prior to July 1, 2012.”

SECTION 2. This act takes effect July 1, 2012.

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