

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 175
92ND GENERAL ASSEMBLY

Reported from the Committee on Tax Policy April 15, 2003, with recommendation that the House Committee Substitute for Senate Bill No. 175 Do Pass by Consent.

STEPHEN S. DAVIS, Chief Clerk

0392L.03C

AN ACT

To repeal sections 196.365, 196.367, 196.370, 196.375, 196.380, 196.385, 196.390, 196.395, 196.400, 196.405, 196.415, 196.420, 196.425, 196.430, 196.435, 196.436, 196.440, and 196.445, RSMo, and to enact in lieu thereof one new section relating to food recovery inspection and safety by the department of health and senior services.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 196.365, 196.367, 196.370, 196.375, 196.380, 196.385, 196.390, 196.395, 196.400, 196.405, 196.415, 196.420, 196.425, 196.430, 196.435, 196.436, 196.440, and 196.445, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 192.081, to read as follows:

192.081. 1. As used in this section, the following terms mean:

- (1) "Canned food", food that is commercially processed in hermetically sealed containers;**
- (2) "Donor", any restaurant, cafeteria, fast food restaurant, delicatessen, or other facility principally engaged in selling food for consumption on the premises;**
- (3) "Food", any raw, cooked, canned, perishable, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption;**
- (4) "Hermetically sealed container", a container that is designed and intended to be secure against the entry of microorganisms and thereby to maintain the commercial sterility of its content after processing;**

(5) "Perishable food", any food having a significant risk of spoilage, loss of value, or loss of palatability within ninety days of the date of packaging;

(6) "Prepared food", any food prepared, designed, or intended for human consumption including, without limitation, those foods prepared principally from agricultural, dairy, or horticultural produce or with meat, fish, or poultry.

2. Each potential donor, to the greatest extent possible and practicable, may make available to any bona fide charitable or nonprofit organization, to any representative or volunteer acting on behalf of such organization, to an uncompensated person acting in a philanthropic manner providing services similar to those of such an organization, or to a transporter of any surplus or excess canned or perishable food for use by such organization or person to feed homeless persons or other persons who are in need of food and are otherwise unable to provide food for themselves. In achieving this intent, the following provisions shall apply:

(1) Each donor may contact charitable or nonprofit organizations in the community in which the donor operates in order to provide for the collection by such organizations of any surplus or excess canned food or perishable food from the donor;

(2) Each charitable or nonprofit organization in this state which provides to the community in which it operates food for persons who are in need of food or are otherwise unable to provide food for themselves, or which collects and transports such food to such organizations, shall make every reasonable effort to contact any donors within the organization's area of operations for purposes of collecting any surplus or excess canned food or perishable food for use in providing such services.

3. A good faith donor of any canned or perishable food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization for free distribution shall not be subject to criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor.

4. A bona fide charitable or nonprofit organization, or any representative or volunteer acting on behalf of such organization or an uncompensated person acting in a philanthropic manner providing services similar to those of such an organization or transporter of any surplus or excess canned or perishable food for use by such organization which in good faith accepts, collects, transports, or distributes any canned or perishable food for free distribution and which reasonably inspects the food at the time of the donation and finds the food apparently fit for human consumption shall not be subject to criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional

misconduct of an agent of the charitable or nonprofit organization.

5. The department of health and senior services shall make available information detailing the need of food-recovery programs, the benefit of food-recovery programs, the manner in which such organizations may become involved in food-recovery programs and the food-recovery entities or food banks that exist in the state. This information must be updated annually.

[196.365. 1. It shall be unlawful to make, manufacture, or in any manner produce or distribute any soft drinks or beverages, excepting malt beverages, without first obtaining a license from the department of health and senior services, as in sections 196.365 to 196.445 required.

2. The term "soft drinks" as used in sections 196.365 to 196.445 shall be held to mean and include all beverages of every kind manufactured or sold in this state, which shall be understood to include those containing less than one-half of one percent of or no alcohol, including carbonated beverages, still drinks, seltzer water, artificial or natural mineral waters, and all other waters used and sold for beverage purposes.

3. Application for such license shall be made to the department of health and senior services on a blank prescribed by the department for that purpose. Such license shall expire on the thirtieth day of June next following the day of issuance thereof.]

[196.367. Effective July 1, 2005, any manufacturer or distributor shall be exempted from the provisions of sections 196.365 to 196.445 if the manufacturer satisfies all applicable Food and Drug Administration regulations.]

[196.370. Upon receipt of the application the department of health and senior services shall cause an examination and inspection to be made into the sanitary conditions of such place of manufacture and may also cause an analysis to be made of the products of such manufacturer. If the buildings and equipment so to be used found by the department of health and senior services to be in a sanitary condition and the analysis of said products or samples thereof show the same to be unadulterated and free from ingredients injurious to health, the department of health and senior services upon payment of a license fee as provided by sections 196.365 to 196.445, shall cause a license to be issued authorizing the applicant to manufacture any such soft drinks or beverages. Such license shall be renewed annually upon the same terms and conditions as required for the original license.]

[196.375. A license fee of one dollar shall be paid by each manufacturer or distributor of soft drinks or beverages required to be licensed under the provisions of sections 196.365 to 196.445; and in addition thereto an inspection fee shall be paid by wholesale manufacturers or distributors of soft drinks or beverages of three-tenths cent for each gallon of such beverage manufactured or sold in this state, but the fees for inspection shall not exceed four cents per month per case of twenty-four bottles or cans of such manufacturer's bottling or canning

capacity, as determined by the rated capacity of the machines therein for an eight-hour day as rated by the manufacturer of such machines. All fees received shall be paid into the state treasury.]

[196.380. All beverages, soft drinks, sirups, flavors or extracts as in sections 196.365 to 196.445 described, which are manufactured, prepared or bottled in this state and exported outside of this state for sale, shall be inspected as other beverages, soft drinks, sirups, flavors or extracts designated in said sections, but such inspection shall be free of cost to the manufacturer or bottler.]

[196.385. No such bottled soft drinks or beverages that are manufactured out of the state of Missouri shall be sold or offered for sale within the state unless the same is first inspected and analyzed and approved by the department of health and senior services which shall be upon a like application as provided in section 196.365 and a license fee of one dollar shall be paid therefor; and in addition thereto an inspection fee of three-tenths cent for each gallon of such beverages sold in this state by such manufacturer shall be paid by such manufacturer. Like samples for such inspection and analysis shall be furnished as herein provided for Missouri manufacturers. Such license shall be renewed annually upon the same terms and conditions as required for the original license.]

[196.390. Every railroad, express or transportation company shall, when requested, furnish to the department of health and senior services a duplicate bill of lading or receipt showing the name of the consignor and consignee, date, place received, destination and quantity of soft drinks or beverages, sirups, extracts or flavors received by them for shipment to any point within this state. Upon failure to comply with the provisions therein, said railroad, express or transportation company shall pay to the state of Missouri the sum of fifty dollars for each and every failure, to be recovered in any court of competent jurisdiction. The department of health and senior services is hereby authorized and empowered to sue in its name at the relation and to the use of the state and any sums thus collected shall be paid into the state treasury.]

[196.395. Every person, firm or corporation who shall receive for sale or offer for sale any such nonintoxicating beverages or soft drinks, fountain or other sirups, flavors or extracts other than those manufactured, prepared or bottled in this state, shall, upon receipt of same, and before offering same for sale, notify the department of health and senior services who shall be furnished with a sworn affidavit subscribed by an officer authorized to administer oaths, from the manufacturer or bottler or other reputable person having actual knowledge of the composition of such beverages, sirups or flavors, that no material which is not pure, clean or wholesome was used in the manufacture of same.]

[196.400. No person, persons, firm or corporation engaged in the manufacture or bottling within this state of any nonintoxicating beverage or soft drink, as that term is described in section 196.365, or of fountain sirups, flavors or extracts intended for use in the preparation or concoction of such beverages or soft drinks, shall use any substance materially or chemically in the manufacture,

bottling or preparation of such beverages which is not pure, clean and wholesome.]

[196.405. All manufacturers, wholesalers and dealers in bottling soft drinks, beverages, sirups, flavors or extracts shall keep an accurate account of their sales and make a report under oath at the end of each month to the department of health and senior services with a remittance to cover all sales for the month, unless such manufacturer or bottler pays the maximum inspection fee based on the bottling capacity of such manufacturer's or bottler's plant pursuant to section 196.375. The books of such manufacturers, bottlers, wholesalers or dealers shall at all times be open to examination and inspection by the department of health and senior services and its officers and agents.]

[196.415. No person, firm or corporation shall sell, offer for sale or give away within the state any beverages in bottles or other containers unless each of such bottles or containers shall have blown into it, etched or engraved, or otherwise labeled thereon, the name of the person, firm or corporation manufacturing or bottling such beverage or the name of the registered trademark of such beverages. The filling or refilling of any bottles or other containers with soft drinks, or beverages with intent to sell or vend such soft drinks or beverages which bears the label of any other person, firm or corporation, without the consent of such person, firm or corporation, shall be deemed a violation of sections 196.365 to 196.445.]

[196.420. All containers used in the packaging of soft drinks shall be clean and sanitary at the time of selling, in accordance with regulations established by the department of health and senior services, after public notice and hearing.]

[196.425. The department of health and senior services shall record on books kept for that purpose the names and places of business of all persons, firms and corporations engaged in the manufacture, preparation or bottling of all nonintoxicating beverages or soft drinks or sirups, flavors or extracts as described in section 196.365. The department shall keep a record of all nonintoxicating beverages or soft drinks manufactured, prepared or bottled and the amount produced by each manufacturer or bottler or sold by dealer, or in the case of manufacturers in this state, of the bottling capacity of such manufacturer's plant and shall keep a record of all inspections made. The department shall keep a record of all fees collected and all expenditures incurred and shall make a full and complete report of the same to the governor upon the first day of each year.]

[196.430. The expense of the department of health and senior services incurred in carrying out the provisions of sections 196.365 to 196.445, including salaries, traveling expenses of officials or employees and of supplies, shall be paid in the same manner as other expenses of the department of health and senior services pursuant to the laws relating thereto; and all fees shall be payable to and collected by the state director of revenue and shall be deposited by him in the state treasury to the credit of the general revenue fund of the state.]

[196.435. The department of health and senior services shall have power

to revoke any license issued under the provisions of sections 196.365 to 196.445 whenever said department shall determine that any provision of sections 196.365 to 196.445 or the rules and regulations of the department of health and senior services made in pursuance to the sections have been violated. Any person, firm or corporation whose license has been revoked, shall discontinue the manufacture and sale of soft drinks or beverages until the provisions of sections 196.365 to 196.445 have been complied with and a new license issued. The department of health and senior services may revoke such license temporarily until there is a compliance with the provisions of sections 196.365 to 196.445 or the rules and regulations of the department of health and senior services made in pursuance to said sections.]

[196.436. Any person aggrieved by an official action of the department of health and senior services affecting the licensed status of a person under the provisions of sections 196.365 to 196.445, including the refusal to grant, the grant, the revocation, the suspension, or the failure to renew a license, may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 161.272, RSMo, and it shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing, or exhaust any other procedure within the department of health and senior services or the department of social services.]

[196.440. The department of health and senior services may make suitable rules and regulations for the carrying out of the provisions of sections 196.365 to 196.445.]

[196.445. Any person who shall violate any of the provisions of sections 196.365 to 196.445 shall be deemed guilty of a misdemeanor and shall, upon conviction thereof be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for a period not exceeding ninety days, or by both such fine and imprisonment.]

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