

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 498

AN ACT

To amend chapter 196, RSMo, by adding thereto one new section relating to food and merchandise containers.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Chapter 196, RSMo, is amended by adding thereto one new section, to be known as section 196.076, to read as follows:

196.076. 1. Notwithstanding any other provision of law to the contrary, a container for merchandise, as such term is defined in section 407.010, or food shall not be deemed to be made, formed, or filled as to be misleading, misbranded, or unfairly marketed if the container is filled to less than its capacity for one or more of the following reasons:

- (1) Protection of the contents of the package;
- (2) Reasonable industry standards regarding the processes used for enclosing the contents in the package;
- (3) Merchandise or food settling during shipping and handling;
- (4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the merchandise or food and is clearly communicated to consumers;

(5) Inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package is necessary to accommodate:

(a) Required food labeling exclusive of any vignette or other nonmandatory designs or label information; or

(b) Labeling information, such as those based on regulations adopted by the U.S. Food and Drug Administration or state or federal agencies under state or federal law, laws or regulations adopted by foreign governments, or under an industry-wide voluntary labeling program;

(6) The fact that the product consists of food packaged in a reusable container or merchandise in a decorative or representational container where the container is part of the presentation of the food or merchandise and has value that is both significant in proportion to the value of the product and independent of its function to hold the food or merchandise, such as a gift combined with a container that is intended for further use after the food or merchandise is consumed or durable commemorative or promotional packages;

(7) Inability to increase the level of fill or to further reduce the size of the package where some minimum package is necessary to discourage pilfering, facilitate handling, or accommodate tamper-resistant devices;

(8) One or more of the following:

(a) The dimensions of the merchandise or food or immediate merchandise or food container are visible through the exterior packaging;

(b) The actual size of the merchandise or food or immediate

merchandise or food container is clearly and conspicuously depicted on any side of the exterior packaging, excluding the bottom, accompanied by a clear and conspicuous disclosure in an easy-to-read point size and font that the depiction is the actual size of the merchandise or food or immediate merchandise or food container. If there are multiple units of the same merchandise or food in a package, only one actual size depiction is required per same size merchandise or food or immediate merchandise or food container;

(c) A line or a graphic that represents the merchandise or food or merchandise or food fill and a statement in an easy-to-read point size and font communicating that the line or graphic represents the merchandise or food or merchandise or food fill as a "fill line", both of which are clearly and conspicuously depicted on exterior packaging or the immediate merchandise or food container if visible at point of sale. If the merchandise or food is subject to settling, the line shall represent the minimum amount of the merchandise or food after settling; or

(d) The actual quantity of the product in the container is clearly, conspicuously, and accurately disclosed in accordance with the provisions of subdivision (4) of section 413.065;

(9) The mode of commerce does not allow the consumer to view or handle the physical container or merchandise or food;

(10) The presence of any headspace within an immediate merchandise or food container necessary to facilitate the mixing, adding, shaking, or dispersion of liquids or powders by consumers before use;

(11) The exterior packaging contains a merchandise delivery

or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the merchandise that a delivery or dosing device is contained in the package;

(12) The exterior packaging or immediate merchandise or food container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging;

(13) The exterior packaging of the merchandise is routinely displayed using tester units or demonstrations to consumers in retail stores, so that customers can see the actual, immediate container of the merchandise being sold, or a depiction of the actual size thereof before purchase;

(14) The exterior packaging consists of a single box or multiunit boxes for holiday or gift packages if the purchasers can adequately determine the quantity and sizes of the immediate merchandise container at the point of sale; or

(15) The exterior package is for a combination of purchased merchandise, together with a free sample or gift, wherein the exterior packaging is necessarily larger than it would otherwise be due to the inclusion of the sample or gift, if the presence of both the merchandise and gift and the quantity of each are clearly and conspicuously disclosed on the exterior packaging.

2. No action shall be brought alleging a violation of chapter 407 concerning the container of merchandise or food if

the container complies with the provisions of this section.