

SENATE BILL NO. 746

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3685S.01I

AN ACT

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

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
2 section, to be known as section 196.076, to read as follows:

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

7 **(1) Protection of the contents of the package;**

8 **(2) Reasonable industry standards regarding the processes used
9 for enclosing the contents in the package;**

10 **(3) Merchandise or food settling during shipping and handling;**

11 **(4) The need for the package to perform a specific function, such
12 as where packaging plays a role in the preparation or consumption of
13 a food, if that function is inherent to the nature of the merchandise or
14 food and is clearly communicated to consumers;**

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

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

20 **(b) Labeling information, such as those based on regulations
21 adopted by the U.S. Food and Drug Administration or state or federal
22 agencies under state or federal law, laws or regulations adopted by**

23 foreign governments, or under an industry-wide voluntary labeling
24 program;

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

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

37 (8) One or more of the following:

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

41 (b) The actual size of the merchandise or food or immediate
42 merchandise or food container is clearly and conspicuously depicted on
43 any side of the exterior packaging, excluding the bottom, accompanied
44 by a clear and conspicuous disclosure in an easy-to-read point size and
45 font that the depiction is the actual size of the merchandise or food or
46 immediate merchandise or food container. If there are multiple units
47 of the same merchandise or food in a package, only one actual size
48 depiction is required per same size merchandise or food or immediate
49 merchandise or food container;

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

58 (d) The actual quantity of the product in the container is clearly,
59 conspicuously, and accurately disclosed in accordance with the

60 provisions of subdivision (4) of section 413.065;

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

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

67 (11) The exterior packaging contains a merchandise delivery or
68 dosing device if the device is visible, or a clear and conspicuous
69 depiction of the device appears on the exterior packaging, or it is
70 readily apparent from the conspicuous exterior disclosures or the
71 nature and name of the merchandise that a delivery or dosing device
72 is contained in the package;

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

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

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

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

93 2. No action shall be brought alleging a violation of chapter 407
94 concerning the container of merchandise or food if the container
95 complies with the provisions of this section.