

FIRST REGULAR SESSION

SENATE BILL NO. 169

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

0166S.01H

ADRIANE D. CROUSE, Secretary

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
2 one new section, to be known as section 196.076, to read as
3 follows:

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

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

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

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

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

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

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

42 (8) One or more of the following:

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

46 (b) The actual size of the merchandise or food or
47 immediate merchandise or food container is clearly and
48 conspicuously depicted on any side of the exterior
49 packaging, excluding the bottom, accompanied by a clear and

50 conspicuous disclosure in an easy-to-read point size and
51 font that the depiction is the actual size of the
52 merchandise or food or immediate merchandise or food
53 container. If there are multiple units of the same
54 merchandise or food in a package, only one actual size
55 depiction is required per same size merchandise or food or
56 immediate merchandise or food container;

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

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

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

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

78 (11) The exterior packaging contains a merchandise
79 delivery or dosing device if the device is visible, or a
80 clear and conspicuous depiction of the device appears on the
81 exterior packaging, or it is readily apparent from the

82 conspicuous exterior disclosures or the nature and name of
83 the merchandise that a delivery or dosing device is
84 contained in the package;

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

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

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

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

108 2. No action shall be brought alleging a violation of
109 chapter 407 concerning the container of merchandise or food
110 if the container complies with the provisions of this
111 section.

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