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|------|------------------|----------------|--------------|-----------------|------------------|--------------|--|
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|------|------------------|----------------|--------------|-----------------|------------------|--------------|--|

Code: Section:

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 5. WEIGHTS AND MEASURES [12001 - 13800] (*Division 5 added by Stats. 1939, Ch. 43.*)

CHAPTER 6. Fair Packaging and Labeling Act [12601 - 12615.5] (*Chapter 6 repealed and added by Stats. 1969, Ch. 1309.*)

12601. This chapter is designed to protect purchasers of any commodity within its provisions against deception or misrepresentation. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.

It is hereby declared to be the policy of the Legislature to assist in attaining these goals.

(Repealed and added by Stats. 1969, Ch. 1309.)

12602. (a) It is unlawful for any person engaged in the packaging or labeling of any commodity for distribution or sale, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution of any packaged or labeled commodity, to distribute or to cause to be distributed any such commodity if the commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this chapter or the regulations adopted under the authority of this chapter or the provisions of, or the regulations adopted under, Chapter 14 (commencing with Section 13400) or Chapter 15 (commencing with Section 13700).

(b) The prohibition contained in subdivision (a) does not apply to persons engaged in business as wholesale or retail distributors of commodities, except to the extent that those persons (1) are engaged in the packaging or labeling of such commodities, (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled, or (3) have knowledge of the violation of any provision of this chapter or of Chapter 6.6 (commencing with Section 12665), Chapter 14 (commencing with Section 13400), or Chapter 15 (commencing with Section 13700).

(Amended by Stats. 2017, Ch. 573, Sec. 59. (SB 800) Effective January 1, 2018.)

12603. No person subject to the prohibition in Section 12602 shall distribute any packaged commodity unless it is in conformity with regulations that shall be established by the secretary that shall provide:

(a) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor.

(b) The net quantity of contents (in terms of weight or mass, measure, numerical count, or time) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch-pound system of measure, and except as provided in subdivisions (c) and (d), the SI (Système International d'Unités) metric system.

(c) On a random package labeled in terms of pounds and decimal fractions of the pound, the statement may be carried out to not more than three decimal places and is not required to, but may include a statement in terms of the SI metric system carried out to not more than three decimal places.

(d) The requirements of subdivision (b) concerning labeling using the metric system do not apply to nonconsumer packages, foods that are packaged at the retail store level, or to the sale or distribution of products whose labels have been printed prior to February 14, 1994.

(e) This section shall become operative on February 14, 1994.

(Amended by Stats. 2017, Ch. 573, Sec. 60. (SB 800) Effective January 1, 2018.)

12605. No person subject to the prohibition contained in Section 12602 shall distribute or cause to be distributed in commerce any packaged commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Section 12603(b), but nothing in this chapter shall prohibit supplemental statements, at other places on the

package, describing in nondeceptive terms the net quantity of contents: provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

In no case shall any declaration of quantity be qualified by the addition of the words "minimum," or "when packed," or words of similar import; nor shall any unit of weight, measure or count be qualified by any term (such as jumbo, giant, full, or the like) that tends to exaggerate the amount of the commodity in the package.

(Repealed and added by Stats. 1969, Ch. 1309.)

12606. (a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

(b) No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to substantially less than its capacity for reasons other than any one or more of the following:

(1) Protection of the contents of the package.

(2) The requirements of machines used for enclosing the contents of the package.

(3) Unavoidable product settling during shipping and handling.

(4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information, such as those based on the regulations adopted by the United States Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industrywide voluntary labeling program.

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

(6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.

(8) One or more of the following:

(A) The dimensions of the product or immediate product container are visible through the exterior packaging.

(B) The actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging, excluding the bottom, accompanied by a clear and conspicuous disclosure that the depiction is the "actual size" of the product or immediate product container. If there are multiple units of the same product in a package, only one "actual size" depiction is required per same size product or immediate product container.

(C) A line or a graphic that represents the product or product fill and a statement communicating that the line or graphic represents the product or product fill such as "Fill Line," both of which are clearly and conspicuously depicted on exterior packaging or the immediate product container if visible at point of sale. If the product is subject to settling, the line shall represent the minimum amount of product after settling.

(9) The presence of any headspace within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers before use.

(10) The exterior packaging contains a product 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 product that a delivery or dosing device is contained in the package.

(11) The exterior packaging or immediate product 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.

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

(13) The exterior packaging consists of single or multiunit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

(14) The exterior packaging is for a combination of one purchased product, 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 products and the quantity of each product are clearly and conspicuously disclosed on the exterior packaging.

(15) The exterior packaging or immediate product container encloses computer hardware or software designed to serve a particular computer function, if the particular computer function to be performed by the computer hardware or software is clearly and conspicuously disclosed on the exterior packaging.

(16) The mode of commerce does not allow the consumer to view or handle the physical container or product.

(c) Slack fill in a package shall not be used as grounds to allege a violation of this section based solely on its presence unless it is nonfunctional slack fill.

(d) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the superior court of the county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon conditions the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return. A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.

(Amended by Stats. 2018, Ch. 544, Sec. 1. (AB 2632) Effective January 1, 2019.)

12606.2. (a) This section applies to food containers subject to Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), and Section 100.100 of Title 21 of the Code of Federal Regulations. Section 12606 does not apply to food containers subject to this section.

(b) No food containers shall be made, formed, or filled as to be misleading.

(c) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to substantially less than its capacity for reasons other than any one or more of the following:

(1) Protection of the contents of the package.

(2) The requirements of the machines used for enclosing the contents in the package.

(3) Unavoidable product 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 food and is clearly communicated to consumers.

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

(6) Inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required food labeling exclusive of any vignettes or other nonmandatory designs or label information, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) One or more of the following:

(A) The dimensions of the product or immediate product container are visible through the exterior packaging.

(B) The actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging, excluding the bottom, accompanied by a clear and conspicuous disclosure that the depiction is the "actual size" of the product or immediate product container. If there are multiple units of the same product in a package, only one "actual size" depiction is required per same size product or immediate product container.

(C) A line or a graphic that represents the product or product fill and a statement communicating that the line or graphic represents the product or product fill such as "Fill Line," both of which are clearly and conspicuously depicted on exterior packaging or the immediate product container if visible at point of sale. If the product is subject to settling, the line shall represent the minimum amount of product after settling.

(8) The mode of commerce does not allow the consumer to view or handle the physical container or product.

(d) Slack fill in a package shall not be used as grounds to allege a violation of this section based solely on its presence unless it is nonfunctional slack fill.

(e) This section shall be interpreted consistent with the comments by the United States Food and Drug Administration on the regulations contained in Section 100.100 of Title 21 of the Code of Federal Regulations, interpreting Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), as those comments are reported on pages 64123 to 64137, inclusive, of Volume 58 of the Federal Register.

(f) If the requirements of this section do not impose the same requirements as are imposed by Section 403(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any regulation promulgated pursuant thereto, then this section is not operative to the extent that it is not identical to the federal requirements, and for this purpose those federal requirements are incorporated into this section and shall apply as if they were set forth in this section.

(g) Any sealer may seize any container that is in violation of this section and the contents of the container. By order of the superior court of the county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any conditions that the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return. A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.

(Amended by Stats. 2018, Ch. 544, Sec. 2. (AB 2632) Effective January 1, 2019.)

12607. Whenever a packaged commodity is offered for sale, exposed for sale or sold without a statement of net quantity appearing thereon as required by this chapter, the sealer shall in writing order the commodity off sale and require that a correct statement of net quantity be placed on the commodity before the same may be released by the sealer.

(Amended by Stats. 1976, Ch. 239.)

12609. The secretary shall adopt necessary regulations to carry out the purpose of this division and for the testing of packages to verify the net quantity statements. In adopting these regulations, the secretary shall adopt by reference the packaging and labeling requirements recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 130, Uniform Packaging and Labeling Regulations, except insofar as those requirements are specifically modified, amended, or rejected by regulation by the secretary. The regulations shall include exemptions from full compliance with this chapter for good and sufficient reasons. Any exemptions affecting consumer commodities shall be in conformance with exemptions permitted by federal regulations. Any regulation, or amendment thereof, shall be adopted by the secretary in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2012, Ch. 661, Sec. 41. (SB 1576) Effective January 1, 2013.)

12610. The secretary may promulgate regulations similar to those promulgated by the United States Secretary of Health and Human Services or the Federal Trade Commission pursuant to the federal Fair Packaging and Labeling Act (Public Law 89-755; 80 Stat. 1296; 15 U.S.C. Secs. 1451-1461) effective to do the following:

(a) Establish and define standards for characterization of the size of a package enclosing any commodity, that may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this subdivision shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity.

(b) Require that the label on each package of a commodity (other than one that is a food within the meaning of Section 201(f) of the Federal Food, Drug, and Cosmetic Act) bear the common or usual name of the consumer commodity, if any.

(Amended by Stats. 2012, Ch. 661, Sec. 42. (SB 1576) Effective January 1, 2013.)

12611. It is unlawful to pack, ship, or sell any commodity in a container which does not conform to all the specifications of this chapter; or which is not conspicuously marked, branded, or otherwise labeled as required by this chapter; or on which any word, statement or other information required by this chapter is not prominently placed, in such terms and with such conspicuousness, as compared with other words, statements, designs or devices on the label or container, as to render it likely to be read and understood by ordinary persons under customary conditions of purchase and use.

(Repealed and added by Stats. 1969, Ch. 1309.)

12612. The sale of any commodity packaged in a container, wherein both the container and the contents thereof comply with any act of Congress or rules or regulations promulgated thereunder, appertaining to weight, measure or count, does not violate the provisions of this chapter; nor does the sale of malt beverages in containers complying with a rule, regulation or an approval of the United States Treasury Department, Internal Revenue Service or Bureau of Alcohol, Tobacco and Firearms, or of the State Department of Public Health and pertaining to weight, measure or count constitute a violation of the provisions of this chapter.

(Amended by Stats. 1973, Ch. 1033.)

12613. If any provision of this chapter is less stringent or requires information different from any requirement of Section 4 of the act of Congress entitled "Fair Packaging and Labeling Act" (P.L. 89-755; 80 Stat. 1296; 15 U.S.C. 1451-1461) or of any regulation promulgated pursuant to that act, the provision is inoperative to the extent that it is less stringent or requires information different from the federal requirement, in which event the federal requirement is a part of this chapter.

(Amended by Stats. 1981, Ch. 714, Sec. 35.)

12615.5. The violation of any provision of this chapter, except the provisions of Section 12604.5, is a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment.

(Added by Stats. 1977, Ch. 1185.)