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HEALTH AND SAFETY CODE - HSC

DIVISION 104. ENVIRONMENTAL HEALTH [106500 - 119406] (Division 104 added by Stats. 1995, Ch. 415, Sec. 6.)

PART 5. SHERMAN FOOD, DRUG, AND COSMETIC LAWS [109875 - 111929.4] (Part 5 added by Stats. 1995, Ch. 415, Sec. 6.)

CHAPTER 4. Packaging, Labeling, and Advertising [110290 - 110423.101] (Chapter 4 added by Stats. 1995, Ch. 415, Sec. 6.)

ARTICLE 2. Fair Packaging and Labeling [110340 - 110385] (Article 2 added by Stats. 1995, Ch. 415, Sec. 6.)

110340. All labels of foods, drugs, devices, or cosmetics shall conform with the requirements of the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C., Sec. 1451) and the regulations adopted pursuant thereto. Foods, drugs, devices, and cosmetics exempted from the requirements of Section 4 of the Fair Packaging and Labeling Act, however, are also exempt from this article.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110345. The label of any package of a food, drug, device, or cosmetic that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity, in terms of weight, measure, or numerical count, of each serving.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110350. It is unlawful for any person to distribute, or cause to be distributed, in commerce any packaged food, drug, device, or cosmetic if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Section 110340.

This section, however, does not prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents. 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.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110355. Whenever the department determines that regulations containing prohibitions or requirements, other than those prescribed by Section 110340, are necessary to prevent the deception of consumers or to facilitate value comparisons as to any food, drug, device, or cosmetic, the department shall adopt regulations with respect to that commodity.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110360. The department may establish and define standards for the characterization of the size of a package that encloses any food, drug, device, or cosmetic, that may be used to supplement the label statement of net quantity of contents of packages containing the commodity. This section, however, does not authorize any limitation on the size, shape, weight, dimension, or number of packages that may be used to enclose any food, drug, device, or cosmetic.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110365. The department may regulate the placement upon any package that contains any food, drug, device, or cosmetic or upon any label affixed to the article, of any printed matter stating or representing by implication that the article is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to any purchaser of the article by reason of the size of that package or the quantity of its contents.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110370. The department may require that the label on each package of a food, drug, device, or cosmetic bear the common or usual name of the article, if any, and in case the article consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance by weight. This section, however, does not require that any trade secret be divulged.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110371. (a) A professional cosmetic manufactured on or after July 1, 2020, for sale in this state shall have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301, et seq.), and the federal Fair Packaging and Labeling Act (15 U.S.C. Sec. 1451, et seq.).

(b) The following definitions shall apply to this section:

(1) "Ingredient" has the same meaning as in Section 111791.5.

(2) "Professional" means a person that has been granted a license by the State Board of Barbering and Cosmetology to practice in the field of cosmetology, nail care, barbering, or esthetics.

(3) "Professional cosmetic" means a cosmetic product as it is defined in Section 109900 that is intended or marketed to be used only by a professional on account of a specific ingredient, increased concentration of an ingredient, or other quality that requires safe handling, or is otherwise used by a professional.

(Added by Stats. 2018, Ch. 393, Sec. 2. (AB 2775) Effective January 1, 2019.)

110375. (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 of the container 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 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 any condition as 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 if the owner furnishes proper facilities for the return.

(Amended by Stats. 2018, Ch. 544, Sec. 3. (AB 2632) Effective January 1, 2019.)

110380. All regulations and their amendments pertaining to foods, drugs, devices, and cosmetics that are in effect on the effective date of this part, or that are adopted on or after that date, pursuant to the Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C. Sec. 1451 et seq.) shall be the regulations of this state. The department may, when necessary, prescribe any packaging and labeling regulation for foods, drugs, devices, and cosmetics whether or not the regulation is in accordance with regulations adopted under the Fair Packaging and Labeling Act. No regulations shall be adopted that are contrary to the labeling requirements for the net quantity of contents required pursuant to Section 4 of the Federal Fair Packaging and Labeling Act and the regulations adopted pursuant to that section.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

110385. It is unlawful for any person to distribute in commerce any food, drug, device, or cosmetic, if its packaging or labeling does not conform to the provisions of this article or to regulations adopted pursuant to this article. This section does not apply to persons engaged in business as wholesale or retail distributors of foods, drugs, devices, or cosmetics, except to the extent that they are engaged in the packaging or labeling of the commodities or they prescribe or specify the manner in which the commodities are packaged or labeled. This section shall not be construed to repeal, invalidate, or supersede any other section of this part.

(Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)