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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 6. WHOLESALE FOOD [111940 - 113360] (*Part 6 added by Stats. 1995, Ch. 415, Sec. 6.*)

CHAPTER 11. Miscellaneous Food Laws [113150 - 113360] (*Chapter 11 added by Stats. 1995, Ch. 415, Sec. 6.*)

ARTICLE 2. Beverage Containers [113200 - 113220] (*Article 2 added by Stats. 1995, Ch. 415, Sec. 6.*)

113200. As used in this article, unless the context requires otherwise:

- (a) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.
- (b) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton containing a beverage.
- (c) "Flip-top container" means a metal beverage container so designed and constructed that a part of the container is severable in opening the containers.
- (d) "In this state" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.
- (e) "Non-flip-top container" means a metal beverage container so designed and constructed that no part of the container is severable in opening the container.

(Amended by Stats. 1996, Ch. 1023, Sec. 316. Effective September 29, 1996.)

113205. On and after January 1, 1979, no person shall sell or offer for sale in this state any metal beverage container so designed and constructed that a part of the container is severable in opening the container. Nothing in this section shall prohibit the sale in California of the containers for shipment out of state.

Any person who violates the provisions of this section is guilty of an infraction.

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

113210. The Secretary of the Resources Agency may extend permission to a manufacturer to sell flip-top containers for one or more periods of time for a total period not to exceed one year after January 1, 1979. The subsequent resale of these flip-top containers by other persons at wholesale or retail, empty or filled with beverages at any time subsequent to January 1, 1979, shall not be a violation of Section 113205.

In order to be eligible for an extension of permission to sell flip-top containers after January 1, 1979, a manufacturer shall file a request for extension by July 1, 1978, with the Secretary of the Resources Agency and shall accompany the request with a report that will indicate:

- (a) The percentage of the total production of metal beverage containers made by the manufacturer in the calendar years of 1976 and 1977, and to May 31, 1978, that were non-flip-top containers manufactured for use within this state.
- (b) The percentage of production of metal beverage containers the manufacturer shifted from flip-top containers to non-flip-top containers in the calendar years 1976 and 1977, and to May 31, 1978, for use within this state.
- (c) The projected date when all production of metal beverage containers manufactured for use in this state will be non-flip-top containers.
- (d) A general statement of the procedures the manufacturer is employing to effect the changeover to production of only non-flip-top containers for use within this state, and specific economic information regarding the manufacturer's planned investment in conversion to new equipment and techniques to effect the changeover to production of only non-flip-top containers for use within this state.

The secretary shall make public disclosure of all reports received.

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

113215. The Secretary of the Resources Agency shall conduct hearings upon the requests for extension prior to making decisions, so that members of the public and manufacturers may be heard, and shall receive evidence and make findings of fact. The secretary shall cause public notification of the time and place of the hearings 30 days prior to each hearing.

In order to grant an extension of permission to sell flip-top containers after January 1, 1979, the Secretary of the Resources Agency must make a determination that the manufacturer requesting the extension has made good faith efforts to comply with the act, but is unable to meet the time requirement for conversion, and that the manufacturer will suffer severe economic hardship as a direct result of the requirements of conversion.

If an extension is granted, the Secretary of the Resources Agency may require reports as often as he or she deems necessary, indicating the progress of the manufacturer toward compliance.

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

113220. There shall be no administrative appeal of the secretary's decision regarding a request for an extension. Judicial review of the decision of the Secretary of the Resources Agency on any request for an extension may be made by the manufacturer. In addition, any member of the public, without damages, at his or her own expense, has standing to bring an action for the purpose of inquiring into the validity of a decision of the secretary on the grounds of the abuse of discretion where the findings are unsupported by the evidence. This section shall not be construed to prohibit the use of any other remedy available under any other provision of law.

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