

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 465

Introduced by Senator Correa

February 21, 2013

An act to amend ~~Section~~ *Sections 12606 and 12606.2* of the Business and Professions Code, and to amend *Section 110375 of the Health and Safety Code*, relating to packaging and labeling.

LEGISLATIVE COUNSEL'S DIGEST

SB 465, as amended, Correa. ~~Fair Packaging and Labeling Act~~ *labeling*: containers: slack fill.

Existing

(1) *Existing* law establishes the Department of Food and Agriculture and sets forth its powers and duties, including, but not limited to, enforcement of the Fair Packaging and Labeling Act. The act prohibits specified persons from distributing any packaged commodity that is not in conformity with prescribed packaging and labeling requirements, except as provided. The act prohibits a container wherein commodities are packed to have a false bottom, false sidewalls, false lid or covering, or to be constructed or filled as to facilitate the perpetration of deception or fraud. The act prohibits a container from being made, formed, or filled as to be misleading. The act provides that a container that does not allow a consumer to fully view its contents violates this provision if it contains nonfunctional slack fill. The act provides that nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for other than specified reasons.

The act also prohibits a food container, subject to the Federal Food, Drug, and Cosmetic Act, from being made, formed, or filled as to be

misleading. The act provides that a container that does not allow a consumer to fully view its contents violates this provision if it contains nonfunctional slack fill. The act provides that nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for other than specified reasons. However, existing law provides that these state provisions regarding food containers are operative only to the extent they are identical to specified federal requirements.

The

Subject to the requirement that food containers conform to those federal requirements, the bill would specify that the presence of nonfunctional slack fill in a package is required for a violation of any of these container-related provisions. This bill would specify that nonfunctional slack fill is the empty space in a package that is filled to substantially less than its capacity for other than any one or more of the specified reasons. The bill also would declare that the changes to these provisions do not constitute a change in, but are declaratory of, existing law.

(2) Existing law also provides for the regulation by the State Department of Public Health of the packaging and labeling of foods, drugs, devices, and cosmetics, and provides requirements for containers containing these commodities that are similar to existing requirements for containers under the Fair Packaging and Labeling Act.

The bill would specify that the presence of nonfunctional slack fill in a package is required for a violation of these provisions. This bill would specify that nonfunctional slack fill is the empty space in a package that is filled to substantially less than its capacity for other than any one or more of the specified reasons referenced above. The bill also would declare that the changes to these provisions do not constitute a change in, but are declaratory of, existing law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12606 of the Business and Professions
- 2 Code is amended to read:
- 3 12606. (a) No container wherein commodities are packed shall
- 4 have a false bottom, false sidewalls, false lid or covering, or be
- 5 otherwise so constructed or filled, wholly or partially, as to
- 6 facilitate the perpetration of deception or fraud, except that the

1 presence of nonfunctional slack fill as specified in subdivision (c)
2 shall be required for any violation of this provision.

3 (b) No container shall be made, formed, or filled as to be
4 misleading, except that the presence of nonfunctional slack fill as
5 specified in subdivision (c) shall be required for any violation of
6 this provision.

7 (c) As used in this section, slack fill is the difference between
8 the actual capacity of a container and the volume of product
9 contained therein. Nonfunctional slack fill is the empty space in
10 a package that is filled to substantially less than its capacity for
11 reasons other than any one or more of the following:

12 (1) Protection of the contents of the package.

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

15 (3) Unavoidable product settling during shipping and handling.

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

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

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

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

1 (8) The dimensions of the product or immediate product
2 container are visible through the exterior packaging, or where the
3 actual size of the product or immediate product container is clearly
4 and conspicuously depicted on any side of the exterior packaging,
5 accompanied by a clear and conspicuous disclosure that the
6 representation is the “actual size” of the product or the immediate
7 product container.

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

11 (10) The exterior packaging contains a product delivery or
12 dosing device if the device is visible, or a clear and conspicuous
13 depiction of the device appears on the exterior packaging, or it is
14 readily apparent from the conspicuous exterior disclosures or the
15 nature and name of the product that a delivery or dosing device is
16 contained in the package.

17 (11) The exterior packaging or immediate product container is
18 a kit that consists of a system, or multiple components, designed
19 to produce a particular result that is not dependent upon the
20 quantity of the contents, if the purpose of the kit is clearly and
21 conspicuously disclosed on the exterior packaging.

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

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

31 (14) The exterior packaging is for a combination of one
32 purchased product, together with a free sample or gift, wherein
33 the exterior packaging is necessarily larger than it would otherwise
34 be due to the inclusion of the sample or gift, if the presence of both
35 products and the quantity of each product are clearly and
36 conspicuously disclosed on the exterior packaging.

37 (15) The exterior packaging or immediate product container
38 encloses computer hardware or software designed to serve a
39 particular computer function, if the particular computer function

1 to be performed by the computer hardware or software is clearly
2 and conspicuously disclosed on the exterior packaging.

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

15 *SEC. 2. Section 12606.2 of the Business and Professions Code*
16 *is amended to read:*

17 12606.2. (a) This section applies to food containers subject to
18 Section 403 (d) of the Federal Food, Drug, and Cosmetic Act (21
19 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code
20 of Federal Regulations. Section 12606 does not apply to food
21 containers subject to this section.

22 (b) No food containers shall be made, formed, or filled as to be
23 misleading, *except that the presence of nonfunctional slack fill as*
24 *specified in subdivision (c) shall be required for any violation of*
25 *this provision.*

26 ~~(c) A container that does not allow the consumer to fully view~~
27 ~~its contents shall be considered to be filled as to be misleading if~~
28 ~~it contains nonfunctional slack fill. Slack—As used in this section,~~
29 *slack fill is the difference between the actual capacity of a container*
30 *and the volume of product contained therein. Nonfunctional slack*
31 *fill is the empty space in a package that is filled to substantially*
32 *less than its capacity for reasons other than any one or more of the*
33 *following:*

- 34 (1) Protection of the contents of the package.
35 (2) The requirements of the machines used for enclosing the
36 contents in the package.
37 (3) Unavoidable product settling during shipping and handling.
38 (4) The need for the package to perform a specific function,
39 such as where packaging plays a role in the preparation or

1 consumption of a food, if that function is inherent to the nature of
2 the food and is clearly communicated to consumers.

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

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

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

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

32 (f) Any sealer may seize any container that is in violation of
33 this section and the contents of the container. By order of the
34 superior court of the county within which a violation of this section
35 occurs, the containers seized shall be condemned and destroyed
36 or released upon any conditions that the court may impose to ensure
37 against their use in violation of this chapter. The contents of any
38 condemned container shall be returned to the owner thereof if the
39 owner furnishes proper facilities for the return. A proceeding under
40 this section is a limited civil case if the value of the property in

1 controversy is less than or equal to the maximum amount in
2 controversy for a limited civil case under Section 85 of the Code
3 of Civil Procedure.

4 *SEC. 3. Section 110375 of the Health and Safety Code is*
5 *amended to read:*

6 110375. (a) No container wherein commodities are packed
7 shall have a false bottom, false sidewalls, false lid or covering, or
8 be otherwise so constructed or filled, wholly or partially, as to
9 facilitate the perpetration of deception or fraud, *except that the*
10 *presence of nonfunctional slack fill as specified in subdivision (c)*
11 *shall be required for any violation of this provision.*

12 (b) No container shall be made, formed, or filled as to be
13 misleading, *except that the presence of nonfunctional slack fill as*
14 *specified in subdivision (c) shall be required for any violation of*
15 *this provision.* ~~A container that does not allow the consumer to~~
16 ~~fully view its contents shall be considered to be filled as to be~~
17 ~~misleading if it contains nonfunctional slack fill. Slack~~

18 (c) *As used in this section, slack fill is the difference between*
19 *the actual capacity of a container and the volume of product*
20 *contained therein. Nonfunctional slack fill is the empty space in*
21 *a package that is filled to substantially less than its capacity for*
22 *reasons other than any one or more of the following:*

- 23 (1) Protection of the contents of the package.
24 (2) The requirements of machines used for enclosing the
25 contents of the package.
26 (3) Unavoidable product settling during shipping and handling.
27 (4) The need to utilize a larger than required package or
28 container to provide adequate space for the legible presentation of
29 mandatory and necessary labeling information, such as those based
30 on the regulations adopted by the Food and Drug Administration
31 or state or federal agencies under federal or state law, laws or
32 regulations adopted by foreign governments, or under an
33 industrywide voluntary labeling program.
34 (5) The fact that the product consists of a commodity that is
35 packaged in a decorative or representational container where the
36 container is part of the presentation of the product and has value
37 that is both significant in proportion to the value of the product
38 and independent of its function to hold the product, such as a gift
39 combined with a container that is intended for further use after the

1 product is consumed, or durable commemorative or promotional
2 packages.

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

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

13 (8) The dimensions of the product or immediate product
14 container are visible through the exterior packaging, or where the
15 actual size of the product or immediate product container is clearly
16 and conspicuously depicted on *any side of* the exterior packaging,
17 accompanied by a clear and conspicuous disclosure that the
18 representation is the “actual size” of the product or the immediate
19 product container.

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

23 (10) The exterior packaging contains a product delivery or
24 dosing device if the device is visible, or a clear and conspicuous
25 depiction of the device appears on the exterior packaging, or it is
26 readily apparent from the conspicuous exterior disclosures or the
27 nature and name of the product that a delivery or dosing device is
28 contained in the package.

29 (11) The exterior packaging or immediate product container is
30 a kit that consists of a system, or multiple components, designed
31 to produce a particular result that is not dependent upon the
32 quantity of the contents, if the purpose of the kit is clearly and
33 conspicuously disclosed on the exterior packaging.

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

39 (13) The exterior packaging consists of single or multiunit
40 presentation boxes of holiday or gift packages if the purchaser can

1 adequately determine the quantity and sizes of the immediate
2 product container at the point of sale.

3 (14) The exterior packaging is for a combination of one
4 purchased product, together with a free sample or gift, wherein
5 the exterior packaging is necessarily larger than it would otherwise
6 be due to the inclusion of the sample or gift, if the presence of both
7 products and the quantity of each product are clearly and
8 conspicuously disclosed on the exterior packaging.

9 (e)

10 (d) Any sealer may seize a container that facilitates the
11 perpetration of deception or fraud and the contents of the container.
12 By order of the superior court of the county within which a
13 violation of this section occurs, the containers seized shall be
14 condemned and destroyed or released upon any condition as the
15 court may impose to ensure against their use in violation of this
16 chapter. The contents of any condemned container shall be returned
17 to the owner if the owner furnishes proper facilities for the return.

18 ~~SEC. 2.~~

19 *SEC. 4.* The amendments to Section 12606 of the Business and
20 Professions Code made by Section 1 of this act, *the amendments*
21 *to Section 12606.2 of the Business and Professions Code made by*
22 *Section 2 of this act, and the amendments to Section 110375 of the*
23 *Health and Safety Code made by Section 3 of this act* do not
24 constitute a change in, but are declaratory of, existing law.