

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 465**

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**Introduced by Senator Correa**

February 21, 2013

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An act to amend Section ~~12603~~ 12606 of the Business and Professions Code, relating to packaging and labeling.

LEGISLATIVE COUNSEL'S DIGEST

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

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 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.*

~~This bill would make nonsubstantive changes to the latter provision.~~

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

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

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

- 20    (1) Protection of the contents of the package.
- 21    (2) The requirements of machines used for enclosing the
- 22    contents of the package.
- 23    (3) Unavoidable product settling during shipping and handling.
- 24    (4) The need to utilize a larger than required package or
- 25    container to provide adequate space for the legible presentation of
- 26    mandatory and necessary labeling information, such as those based
- 27    on the regulations adopted by the Food and Drug Administration
- 28    or state or federal agencies under federal or state law, laws or
- 29    regulations adopted by foreign governments, or under an
- 30    industrywide voluntary labeling program.
- 31    (5) The fact that the product consists of a commodity that is
- 32    packaged in a decorative or representational container where the

1 container is part of the presentation of the product and has value  
2 that is both significant in proportion to the value of the product  
3 and independent of its function to hold the product, such as a gift  
4 combined with a container that is intended for further use after the  
5 product is consumed, or durable commemorative or promotional  
6 packages.

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

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

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

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

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

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

38 (12) The exterior packaging of the product is routinely displayed  
39 using tester units or demonstrations to consumers in retail stores,  
40 so that customers can see the actual, immediate container of the

1 product being sold, or a depiction of the actual size thereof prior  
2 to purchase.

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

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

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

18 (e)

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

31 *SEC. 2. The amendments to Section 12606 of the Business and*  
32 *Professions Code made by Section 1 of this act do not constitute*  
33 *a change in, but are declaratory of, existing law.*

34 ~~SECTION 1. Section 12603 of the Business and Professions~~  
35 ~~Code is amended to read:~~

36 ~~12603. A person subject to the prohibition in Section 12602~~  
37 ~~shall not distribute any packaged commodity unless it is in~~  
38 ~~conformity with regulations that shall be established by the director~~  
39 ~~that shall provide:~~

- 1     ~~(a) The commodity shall bear a label specifying the identity of~~  
2 ~~the commodity and the name and place of business of the~~  
3 ~~manufacturer, packer, or distributor.~~  
4     ~~(b) The net quantity of contents (in terms of weight or mass,~~  
5 ~~measure, numerical count, or time) shall be separately and~~  
6 ~~accurately stated in a uniform location upon the principal display~~  
7 ~~panel of that label, using the most appropriate units of both the~~  
8 ~~customary inch-pound system of measure, and except as provided~~  
9 ~~in subdivisions (c) and (d), the SI (Système International d'Unités)~~  
10 ~~metric system.~~  
11     ~~(c) On a random package labeled in terms of pounds and decimal~~  
12 ~~fractions of the pound, the statement may be carried out to not~~  
13 ~~more than three decimal places and is not required to, but may~~  
14 ~~include a statement in terms of the SI metric system carried out to~~  
15 ~~not more than three decimal places.~~  
16     ~~(d) The requirements of subdivision (b) concerning labeling~~  
17 ~~using the metric system do not apply to nonconsumer packages,~~  
18 ~~foods that are packaged at the retail store level, or to the sale or~~  
19 ~~distribution of products whose labels have been printed prior to~~  
20 ~~February 14, 1994.~~  
21     ~~(e) This section shall become operative on February 14, 1994.~~