Extracts from the

BUSINESS AND PROFESSIONS CODE

of California

PERTAINING TO

WEIGHTS AND MEASURES
AND PETROLEUM PRODUCTS

JANUARY 2003

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
DIVISION OF MEASUREMENT STANDARDS

Gray Davis, Governor

BUSINESS AND PROFESSIONS CODE

DIVISION 5

Weights and Measures

[Added by Stats 1939 ch 43 § 1.]

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CHAPTER 1

General Provisions

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CHAPTER 13

Automatic Checkout Systems

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§ 13300. CUSTOMER DISPLAY AND INDICATOR REQUIREMENTS

(a) The operator of a business establishment that uses an automatic checkout system to sell goods or services to consumers shall ensure that the price of each good or service to be paid by the consumer is conspicuously displayed to the consumer at the time that the price is interpreted by the system. All price reductions, surcharges, taxes, and the total amount for each transaction also shall be displayed for the consumer at least once before the consumer is required to pay for the goods or services. The checkout system customer indicator shall be so positioned, and the prices and amounts displayed shall be of a size and form, as to be easily viewable from a typical and reasonable customer position at each checkout location.

(b) For the purposes of this section, "automatic checkout system" means a computer or any electronic system used to interpret the universal bar code or any other code that is on an item offered for sale to determine the price of the item being purchased regardless of whether the code entry is accomplished manually by a human or automatically by a machine.

(c) All automatic checkout systems used by a business establishment on and after January 1, 2007, shall comply with the requirement of subdivision (a).

Added Stats 1977 ch 763; Expired by own terms January 1, 1980. Added Stats 2002 ch 818.

§ 13301. WHO TO ENFORCE

Notwithstanding any other provision of this division, the Attorney General, the district attorney, or city attorney may enforce the provisions of this chapter in accordance with the provisions of Division 5 (commencing with Section 12001) or any other applicable provisions of law.

Added Stats 1977 ch 763; Expired by own terms January 1, 1980. Added Stats 2002 ch 818.

§ 13302. CIVIL PENALTY FOR VIOLATION OF THIS CHAPTER

(a) The sealer may levy a civil penalty against a person violating any provision of this chapter or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars ($1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing. The request shall be made within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the sealer's evidence and to present evidence on his or her own behalf.

If a hearing is not timely requested, the sealer may take the action proposed without a hearing.

(c) If the person upon whom the sealer levied a civil penalty requested and appeared at a hearing, the person may appeal the sealer' s decision to the secretary within 30 days of the date of receiving a copy of the sealer's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the sealer's decision. The appellant shall file a copy of the appeal with the sealer at the same time it is filed with the secretary.

(2) The appellant and the sealer may, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, present the record of the hearing including written evidence that was submitted at the hearing and a written argument to the secretary stating grounds for affirming, modifying, or reversing the sealer's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

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(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefore. The times may be altered by mutual agreement of the appellant, the sealer, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the sealer's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the sealer's decision, modify the sealer's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the sealer's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the sealer's notice of proposed action given pursuant to subdivision (b). A copy of the secretary's decision shall be delivered or mailed to the appellant and the sealer.

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the appeal and review procedures provided in this section, the sealer, or his or her representative, may file a certified copy of a final decision of the sealer that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary or his or her authorized representative rendered on an appeal from the sealer's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) If the civil penalty is levied by the State Sealer, the revenues derived therefrom shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation, shall be used by the State Sealer to carry out his or her responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this chapter.

Added Stats 1977 ch 763; Expired by own terms January 1, 1980. Added Stats 2002 ch 818.

§ 13303. UNINTENTI0NAL ERR0RS

Added Stats 1977 ch 763; Expired by own terms January 1, 1980.

§ 13304. EXCLUSIVE REMEDIES

Added Stats 1977 ch 763; Expired by own terms January 1, 1980.