



February 15, 2023

DMS Notice
QC – 23 – 01
Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Clarification on Enforcement of Business and Professions Code § 12024.2 (a) (2) When Applied to Non-CRV Containers; Rescinded DMS Notice QC-15-01

The Division of Measurement Standards (DMS) was asked whether Business and Professions Code § 12024.2 can be applied when California Redemption Value (CRV) is incorrectly charged on non-CRV eligible items. DMS forwarded the question to CDFA's Legal Counsel for interpretation. The following is a summarization of their response.

SHORT ANSWER

Yes. A violation of BPC § 12024.2(a)(2) appears to be a valid charge levied on vendors who incorrectly charge CRV on commodities not subject to CRV surcharges.

CONSIDERATIONS

California weights and measures officials have observed CRV being charged improperly for such items as milk, vegetable cooking oil, tomato soup, and individual Twinkies. Customers are unable to purchase the item without paying the misapplied surcharge.

BPC § 12024.13 is specific to overcharges of CRV (applying a rate that is greater than those established by regulation) on a beverage in an aluminum can or plastic bottle that is considered a CRV eligible item. It does not apply to CRV charged on a non-beverage commodity.

Business and Professions Code § 12024.2 (a) states "It is unlawful for any person, at the time of sale of a commodity, to do any of the following:



(1) Charge an amount greater than the price, or to compute an amount greater than a true extension of a price per unit, that is then advertised, posted, marked, displayed, or quoted for that commodity.

(2) Charge an amount greater than the lowest price posted on the commodity itself or on a shelf tag that corresponds to the commodity, notwithstanding any limitation of the time period for which the posted price is in effect.

To determine if this was possible, the following definitions were considered:

- “Person” includes person, firm, corporation or association” per BCP § 12011.
- “Sell” means, in any of its variant forms, barter, exchange, trade, rent, lease, keep for sale, offer for sale, or expose for sale, in any of their variant forms per BPC § 12009.
- A “Commodity” is defined by the Supreme Court of California as “something that is of use or is valuable; an article of trade or commerce.” People v. K-Mart Corp. (1989) 210 Cal. App. 3d Supp. 1 at 5.

CONCLUSION

Based on these definitions, vendors would be considered a “person” and they “sell” various commodities to consumers. Of the two subsections of BPC § 12024.2 listed above, BPC § 12024.2 (a) (2) applies because the business is charging an amount that is greater than the price “posted on the commodity itself or on a shelf tag that corresponds to the commodity.” Based on the assumption that CRV is not included in the posted price, then any CRV applied to that item when purchased is an amount that is “greater than the lowest price posted.”

Since this DMS Notice offers guidance that differs from the information disseminated in DMS Notice QC-15-01, that Notice is rescinded and should no longer be used.

If you have any questions regarding this notice, please contact DMS by email at dms@cdfa.ca.gov or phone at (916) 229-3000.

Sincerely,



Kristin Macey
Director

cc: Hyrum Eastman, County/State Liaison, CDFA

