

**Division of Measurement Standards
Business and Professions Code
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Extracts from the

BUSINESS AND PROFESSIONS CODE

of California

PERTAINING TO

**WEIGHTS AND MEASURES
AND PETROLEUM PRODUCTS**

JANUARY 2007



**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
DIVISION OF MEASUREMENT STANDARDS**

BUSINESS AND PROFESSIONS CODE

DIVISION 5

Weights and Measures

[Added by Stats 1939 ch 43 § 1.]

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CHAPTER 1

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AUTOMATIC CHECKOUT SYSTEMS

CHAPTER 13

Automatic Checkout Systems

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§ 13300. CUSTOMER DISPLAY AND INDICATOR REQUIREMENTS

(a) The operator of a business establishment that uses a point-of-sale 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. In any instance in which the business advertises a price reduction or discount regarding an item offered for sale, the checkout system customer indicator shall display either the discounted price for that item, or alternatively, the regular price and a credit or reduction of the advertised savings. Any surcharges and the total value to be charged for the overall 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, "point-of-sale system" means any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of the item being purchased by a consumer.

(c) All point-of-sale 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. Amended Stats 2006 ch 566 § 1.

§ 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.

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§ 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.

AUTOMATIC CHECKOUT SYSTEMS

ARTICLE 2

Point-Of-Sale System Accuracy Verification

§ 13350. Initial Standard Inspection Procedure: Inspection Fees

§ 13351. "Random Sample"

§ 13352. "Point-Of-Sale System"

§ 13353. "Sale Items"

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§ 13350. INITIAL STANDARD INSPECTION PROCEDURE: INSPECTION FEES

(a) The board of supervisors of any county or city and county that has adopted or that adopts an ordinance for the purposes of determining the pricing accuracy of a retail establishment using a point-of-sale (POS) system, shall base the initial standard inspection of the POS system on the following criteria:

(1) The initial standard inspection shall be performed by collecting a random sample of items that shall include a maximum of 50 percent sale items from either:

- (i) One department of a retail store.
- (ii) Multiple areas of a retail store.
- (iii) The entire store.

(2) The initial standard inspection shall be performed by testing a minimum random sample of 25 items for a retail establishment with three or fewer POS checkout registers.

(3) The initial standard inspection shall be performed by testing a minimum random sample of 50 items for all other retail establishments.

(4) The sealer shall verify that the lowest advertised, posted, marked, displayed, or quoted price is the same as the price displayed or computed by the point-of-sale equipment or printed receipt. Only items computed at a higher price than the lowest advertised, posted, marked, displayed, or quoted price shall be considered not in compliance.

(5) The compliance rate percentage of a retail establishment shall be determined by dividing the number of items in compliance by the sample size multiplied by 100.

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- (b) Enforcement action may be taken for any item not in compliance.
- (c) The sealer may reinspect any retail facility that has a compliance rate of less than 98 percent.
- (d) The board of supervisors, by ordinance, may charge a point-of-sale system inspection fee or an annual registration fee, not to exceed the county's total cost of inspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.
- (e) The board of supervisors, by ordinance, may charge a reinspection fee for reinspections of a retail establishment that fails a standard inspection, not to exceed the county's total cost of reinspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.

Added Stats 2005 ch 529 § 6.

§ 13351. "RANDOM SAMPLE"

For purposes of this chapter, "random sample" of items means that the selection process shall be modeled after the National Institute of Standards and Technology Handbook 130, 2005 Edition (HB 130) - Examination Procedures for Price Verification, randomized sample collection; stratified sample collection.

Added Stats 2005 ch 529 § 6.

§ 13352. "POINT-OF-SALE SYSTEM"

For purposes of this chapter, "point-of-sale" system means any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of the item being purchased by a consumer.

Added Stats 2005 ch 529 § 6. Amended Stats 2006 ch 566 § 5

§ 13353. "SALE ITEMS"

For the purposes of this chapter, "sale items" include any item that is represented or advertised to be lower in price from that which the item is normally offered for sale. A "sale item" includes but is not limited to, an item that is represented as "promotional," "limited time offer," a "manager special," "discount taken at register," or displayed with any other advertisements that offers or suggests a reduced price.

Added Stats 2005 ch 529 § 6.