

*Extracts from the*

**BUSINESS AND PROFESSIONS CODE**

*of California*

**PERTAINING TO**

**WEIGHTS AND MEASURES  
AND PETROLEUM PRODUCTS**

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

## GENERAL PROVISIONS

### **§ 12001. DEFINITIONS: APPLICATION**

The definitions in this chapter apply to this division only and do not affect the provisions of any other division.

*Added Stats 1939 ch 43 § 1.*

### **§ 12002. “DEPARTMENT”**

“Department” means the Department of Food and Agriculture.

*Added Stats 1939 ch 43 § 1; Amended Stats 1989 ch 246 § 1.*

### **§ 12003. “DIRECTOR”**

“Director” or “Secretary” means the Secretary of Food and Agriculture.

*Added Stats 1939 ch 43 § 1; Amended Stats 1989 ch 246 § 2; Amended Stats 1994 ch 592 § 1.*

### **§ 12004. “STATE SEALER”**

“State Sealer” means the chief of the division of the department charged with the enforcement of the provisions of this division.

*Added Stats 1939 ch 43 § 1.*

### **§ 12005. “NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY”**

Whenever any provision of this division makes reference to the National Bureau of Standards, that reference shall be construed to include the National Institute of Standards and Technology.

*Added Stats 1989 ch 1047 § 1.*

### **§ 12006. “COUNTY SEALER”**

“County sealer” means any sealer appointed by a county. A county may in its discretion refer to its sealer as the county director of weights and measures.

*Added Stats 1939 ch 43 § 1; Amended Stats 1963 ch 254 § 1.*

## WEIGHTS AND MEASURES

**§ 12007. [Added by Stats 1939 ch 43 § 1 and repealed by Stats 1939 ch 992 § 1.]**

**Note - Repealed section defined “City sealer”.**

**§ 12008. “SEALER”**

“Sealer”, when used without qualification, includes the State Sealer, county sealers and their deputies and inspectors.

*Added Stats 1939 ch 43 § 1; Amended Stats 1963 ch 1600 § 1, Stats 1967 ch 286 § 2.*

**§ 12009. “SELL”**

“Sell,” in any of its variant forms, includes barter, exchange, trade, rent, lease, keep for sale, offer for sale, or expose for sale, in any of their variant forms.

*Added Stats 1939 ch 43 § 1; Amended Stats 1995 ch 156 § 1.*

**§ 12009.5. “DISTRIBUTE”**

“Distribute”, in any of its variant forms, includes keep for distribution, offer for distribution, or expose for distribution, in any of their variant forms.

*Added Stats 1979 ch 527 § 1.*

**§ 12010. “USE”**

“Use”, in any of its variant forms, includes keep for use in any of its variant forms.

*Added Stats 1939 ch 43 § 1.*

**§ 12011. “PERSON”**

“Person” includes person, firm, corporation or association.

*Added Stats 1939 ch 43 § 1.*

*Prior Law: Stats 1913 ch 597 § 39 p 1096.*

## GENERAL PROVISIONS

### **§ 12011.5. “COPIES”, “STANDARDS”, “COPIES OF STANDARD WEIGHTS AND MEASURES”**

Wherever in this division the terms “copies” or “standards” or “copies of the standard weights and measures” are used, such terms shall refer to the original standards in the possession of the department or to true and accurate copies derived therefrom.

*Added Stats 1939 ch 992 § 2.*

### **§ 12011.6. “CONTAINER”**

“Container” means any receptacle or carton, whether lidded or unlidded, into which a commodity is packed or placed, or any wrappings with or into which any commodity is wrapped or put for sale.

*Added Stats 1949 ch 1384 § 1.*

### **§ 12011.7. “PALLET”**

“Pallet” means any portable platform upon which containers or material is placed to facilitate handling.

*Added Stats 1961 ch 344 § 1, effective May 13, 1961.*

### **§ 12012. EXERCISE OF DIRECTOR’S POWERS THROUGH STATE SEALER OR OTHERWISE**

The director may exercise any power conferred upon the department or upon the State Sealer by this division through the State Sealer or otherwise.

*Added Stats 1939 ch 43 § 1.*

### **§ 12012.1. ACTION BY DIRECTOR OR COUNTY SEALER TO ENJOIN VIOLATIONS OR THREATENED VIOLATIONS OF PROVISIONS OR REGULATIONS**

The director may bring an action to enjoin the violation, or the threatened violation, of any provision of this division, or of any regulation adopted pursuant thereto, in the superior court in the county in which such violation occurs or is about to occur. There may be joined in one proceeding any number of defendants alleged to be violating the same provisions or regulations, although their properties, interests, residence, or place of business, may be in several counties and the violations separate and distinct. Any

## WEIGHTS AND MEASURES

proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure. The county sealer of any county acting through the district attorney or county counsel of that county may bring an action to enjoin the violation in such county or the threatened violation in such county of any provision of this division or of any regulation adopted pursuant thereto in the same manner as may the director, and if the director joins as a party plaintiff, such actions shall not be limited to violations occurring within the county.

*Added Stats 1973 ch 977 § 1.*

### **§ 12013. SEALERS AS HAVING POWERS OF PUBLIC OFFICER TO ARREST: PROCEDURE TO BE FOLLOWED: LIABILITY: SERVICE OF PROCESSES AND NOTICES**

(a) Any sealer shall have the authority, as a public officer, to arrest, without a warrant, any person whenever such officer has reasonable cause to believe that the person to be arrested has, in his presence, violated any provision of this division, the violation of which is declared to be a public offense.

In any case in which an arrest is made pursuant to this authority for an offense declared to be a misdemeanor or an infraction, the arresting officer may, instead of taking the person arrested before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code, unless the arrested person demands to be taken before a magistrate. The provisions of such chapter shall thereafter apply with respect to any proceeding based upon the issuance of a citation pursuant to this authority.

This subdivision shall not be interpreted to prevent further restriction by the board of supervisors of a county of the authority of a county sealer or his deputies to make arrests.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his authority, for false arrest or false imprisonment arising out of any arrest which is lawful or which the arresting officer, at the time of such arrest, had reasonable cause to believe was lawful. No such officer shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(c) Any sealer may serve all processes and notices throughout the state; provided, that county sealers and their deputies are authorized to serve processes and notices only within the boundaries of the county which employs them.

*Added Stats 1968 ch 1222 § 29; Amended Stats 1979 ch 527 § 2.*

## GENERAL PROVISIONS

### **§ 12014. SEALING OR CONDEMNING BEFORE TESTING AS MISDEMEANOR: EXCEPTION FOR PLANNED PROGRAM OF PROBABILITY SAMPLING**

(a) Except as provided in subdivision (b), any sealer who seals any weight, measure, balance or weighing or measuring instrument or apparatus before first testing and making it conform with the standards of the state, or who condemns any weight, measure, balance or weighing or measuring instrument or apparatus without first testing it is guilty of a misdemeanor.

(b) A sealer may engage in a planned program of probability sampling of devices, using methods approved by the director. The sealing of a device by a sealer pursuant to such sampling and testing program is exempt from the provisions of subdivision (a).

*Added Stats 1939 ch 43 § 1; Amended Stats 1979 ch 527 § 3.*

### **§ 12015. SEALER TO CAUSE PROSECUTION OF VIOLATOR**

Any sealer having knowledge of a violation of any of the provisions of any law relating to weights and measures shall cause the violator to be prosecuted.

*Added Stats 1939 ch 43 § 1.*

### **§ 12015.3. CIVIL PENALTY FOR VIOLATION OF PROVISIONS OF DIVISION**

(a) The sealer may levy a civil penalty against a person violating any provision of this division 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.

## WEIGHTS AND MEASURES

(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.

(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 therefor. 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 practicable.

(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.

## GENERAL PROVISIONS

(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 division.

(f) This section does not apply to violations involving utility meters, or to violations involving the testing and inspection of utility meters, in mobilehome parks, recreational vehicle parks, or apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters.

(g) Upon the written request of the Attorney General of California, any district attorney, or any city prosecutor or city attorney described in subdivision (a) of Section 17206, the State Sealer or the county sealer within their respective jurisdictions, shall provide all reports and records regarding any actions that occurred within the four months prior to the date of the written request in which civil penalties were levied pursuant to this section or liability for costs incurred are determined pursuant to Section 12015.5.

(h) No investigative costs shall be imposed pursuant to Section 12015.5 for violations for which civil penalties are imposed pursuant to this section.

*Added Stats 1994 ch 592 § 2; Amended Stats 1997 ch 476 § 1; Amended Stats 2000, ch 512 § 1; Amended Stats 2005, ch 529 § 1.*



## WEIGHTS AND MEASURES

### **§ 12015.5. LIABILITY FOR INVESTIGATIVE COSTS**

Any person convicted of violating any of the provisions of this division, or, except as provided in Section 12015.3, any person who is determined to be civilly liable for violating any of the provisions of this division, shall be liable for reasonable costs incurred in investigating the action.

*Added Stats 1994 ch 592 § 3. Amended Stats 2005 ch 529 § 2.*

### **§ 12016. HINDERING OR OBSTRUCTING SEALER OR DEPUTY: MISDEMEANOR**

Any person who hinders or obstructs in any way any sealer, in the performance of his official duties, is guilty of a misdemeanor.

*Added Stats 1939 ch 43 § 1; Amended Stats 1965 ch 83 § 2.*

### **§ 12017. COMPLIANCE BY CORPORATE OFFICERS, DIRECTORS AND MANAGERS: MISDEMEANOR**

All officers, directors and managers of corporations, whose respective corporations use or sell any weights, measures, or weighing or measuring instruments which are subject to inspection shall comply with the provisions of this division on behalf of their respective corporations; and all officers, directors and managers of corporations, whose respective corporations sell any commodity which is subject to inspection shall comply with the provisions of this division on behalf of their respective corporations.

In case any corporation violates any of the provisions of this division, the corporation and the officers thereof directly concerned with the act or acts constituting such violation shall be severally guilty of a misdemeanor.

*Added Stats 1939 ch 43 § 1.*

### **§ 12018. NEGLIGENCE OR REFUSAL TO EXHIBIT WEIGHT, ETC., TO SEALER: MISDEMEANOR**

Any person neglecting or refusing to exhibit any weight, measure, weighing or measuring instrument, or appliances and accessories connected therewith in his possession or under his control, to any sealer for inspection and examination is guilty of a misdemeanor.

*Added Stats 1939 ch 43 § 1.*

## GENERAL PROVISIONS

### **§ 12019. FALSE WEIGHT OR MEASURE: DEFINITION**

A false weight or measure is one which does not conform to the standard established or recognized by this division.

*Added Stats 1939 ch 43 § 1.*

### **§ 12020. USE OF INCORRECT WEIGHT OR MEASURE OR INSTRUMENT: MISDEMEANOR**

It shall be unlawful for any person, by himself or through or for another, to use for commercial purposes any weight or measure or weighing, measuring or counting instrument, knowing it to be "incorrect" as this term is defined in subdivision (d) of Section 12500. Every person who violates this section is guilty of a misdemeanor.

*Added Stats 1939 ch 43 § 1; Amended Stats 1947 ch 465 § 1; Stats 1973 ch 977 § 2.*

### **§ 12021. MARKING OR STAMPING FALSE OR SHORT WEIGHT OR MEASURE ON CONTAINER: TAKING FALSE TARE: SALE: MISDEMEANOR**

Every person who knowingly marks or stamps false or short weight or measure, or knowingly takes false tare, on any container, or knowingly sells any container so marked, is guilty of a misdemeanor.

*Added Stats 1939 ch 43 §1; Amended Stats 1941 ch 306 § 1.*

### **§ 12022. ADDING SUBSTANCE TO INCREASE WEIGHT: PUNISHMENT**

Every person who, in putting up in any container, goods usually sold by weight, puts in or conceals therein any other substance including moisture, except such moisture as may be included or absorbed by the goods or commodity contained therein during preparation for market or processing in accordance with ordinary commercial practice, for the purpose of increasing the weight of such container with intent thereby to sell the goods therein or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars (\$25) for each offense. The amount of added moisture contained in poultry meat as defined in Section 380.20 of the Agricultural Code shall not exceed 4 percent by weight or any greater amount established by regulation of the director.

*Added Stats 1939 ch 43 § 1; Amended Stats 1941 ch 306 § 2; Stats 1959 ch 2009 § 2.*

## WEIGHTS AND MEASURES

### **§ 12022.5. FRESH MEATS OR ROASTS: ADVERTISING OR SELLING ON BASIS OF NET WEIGHT NOT INCLUDING ADDED FAT: EFFECT OF LABEL CONTAINING TERM “FAT ADDED”**

Fresh meat or roasts of any kind or cut shall be exposed, advertised, offered for sale or sold on the basis of net weight of the fresh meat or roast only, and any added fat of any kind whatsoever either wrapped within or injected with a larding needle or otherwise inserted in such fresh meat or roast shall be considered as tare weight only.

Notwithstanding the above provision, added fat shall not be considered tare weight if the meat package containing such added fat is clearly and prominently labeled in eight-point type or larger with the term “fat added.”

*Added Stats 1976 ch 1077.*

### **§ 12023. SELLING ACCORDING TO GROSS WEIGHT OR MEASURE: MISDEMEANOR**

Except as provided elsewhere in this code any person who by himself or his employee or agent, or as the employee or agent of another, sells any commodity according to gross weight or measure is guilty of a misdemeanor.

*Added Stats 1939 ch 43 § 1; Amended Stats 1967 ch 272 § 1.*

### **§ 12023.5. SALE OF JUTE CORDAGE, ETC., ON GROSS WEIGHT BASIS: WHEN PROVISIONS NOT APPLICABLE**

Notwithstanding any other provision of this code or any other law, jute cordage, hard fiber cordage, and hard fiber twine (whether covered or uncovered) may be marked and sold on a gross weight basis. The provisions of the foregoing sentence shall not apply to sales in retail stores for consumer use of any such product which has been removed from the wrapper or container in which it was received by the retailer.

*Added Stats 1955 ch 1076 § 1; Amended Stats 1965 ch 190 § 1.*

### **§ 12024. SELLING IN LESS QUANTITY THAN REPRESENTED: PENALTY**

Every person, who by himself or herself, or through or for another, sells any commodity in less quantity than he or she represents it to be is guilty of a misdemeanor, except as provided in Section 12024.3.

*Added Stats 1939 ch 43 § 1; Amended Stats 1982 ch 1380 § 1.*

## GENERAL PROVISIONS

### **§ 12024.1. MISREPRESENTING CHARGE FOR SERVICE RENDERED: MISDEMEANOR**

Every person, by himself, or through or for another, who willfully misrepresents a charge for service rendered on the basis of weight, time, measure, or count is guilty of a misdemeanor.

*Added Stats 1969 ch 731 § 1.*

### **§ 12024.2. UNLAWFUL COMPUTATION OF VALUE: MISDEMEANOR: INFRACTION UNDER DESIGNATED CIRCUMSTANCES**

(a) 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.

(b) A violation of this section is a misdemeanor, punishable by a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000), by imprisonment in the county jail for a period not exceeding one year, or by both, if the violation is willful or grossly negligent, or when the overcharge is more than one dollar (\$1).

(c) A violation of this section is an infraction, punishable by a fine of not more than one hundred dollars (\$100), when the overcharge is one dollar (\$1) or less.

(d) As used in subdivisions (b) and (c), "overcharge" means the amount by which the charge for a commodity exceeds a price that is advertised, posted, marked, displayed, or quoted to that consumer for that commodity at the time of sale.

(e) Except as provided in subdivision (f), for purposes of this section, when more than one price for the same commodity is advertised, posted, marked, displayed, or quoted, the person offering the commodity for sale shall charge the lowest of those prices.

(f) Pricing may be subject to a condition of sale, such as membership in a retailer-sponsored club, the purchase of a minimum quantity, or the purchase of multiples of the same item, provided that the condition is conspicuously posted in the same location as the price.

*Amended Stats 1977 ch 778; Amended Stats 1982 ch 1380 § 2; Amended Stats 1983 ch 1245 § 1; Amended Stats 1988 ch 922 § 1; Amended Stats 2004 ch 752, § 2.*

## WEIGHTS AND MEASURES

### **§ 12024.3. SELLING PREPACKAGED COMMODITIES IN LESS QUANTITY THAN REPRESENTED: MISDEMEANOR: INFRACTION**

(a) For commodities prepackaged and sold or offered for sale on the same premises, a violation of Section 12024 is a misdemeanor punishable by a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), by imprisonment in the county jail for a period not exceeding one year, or by both, if any of the following occurs:

(1) The violation is willful.

(2) The total monetary value of the shortage, calculated on the basis of the average error of an individual lot, exceeds two dollars (\$2), as determined pursuant to regulations adopted pursuant to Section 12211.

(3) The total monetary value of shortages, calculated on the basis of the average error of each individual lot, as determined from a sample of packages selected pursuant to regulations adopted pursuant to Section 12211, within all lots found to be in violation of Section 12024 at a single location, exceeds ten dollars (\$10).

(b) For commodities prepackaged and sold or offered for sale on the same premises, a violation of Section 12024 is an infraction, punishable by a fine of not more than one hundred dollars (\$100), if the violation is of less monetary value than that specified in subdivision (a) and it is not willful.

*Added Stats 1982 ch 1380 § 3; Amended Stats 1983 ch 1245 § 2.*

### **§ 12024.5. SALE OF FOWL, MEAT OR FISH OTHER THAN BY WEIGHT: READY-TO-EAT ITEMS**

It is unlawful for any person to sell or advertise for sale any dressed poultry or any other fowl or rabbit in dressed form, either cooked or uncooked, or smoked, fresh, frozen, cooked, dried, or pickled meats or fish other than by weight determined at the time of sale on a scale properly sealed in accordance with this division. Any commodity specified in this section, however, need not be weighed at the time of sale if at that time it is packed in a package or container upon which appears the net weight of the commodity therein. Except as provided below, any person, including, but not limited to, a manufacturer, processor, packer, wholesaler, or jobber that packs any commodity specified in this section in any package which is intended for retail sale, shall mark the net weight of the commodity therein upon the package. Packages of these products intended for retail sale need not be marked by the packer with the net weight of the commodity if they are to be marked with the net weight of the commodity by the retailer who purchases or receives the packages from the packer. This section does not apply to any of the following ready-to-eat food items:

## GENERAL PROVISIONS

- (a) Items sold for consumption on the premises.
- (b) Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit, for consumption elsewhere than on the premises where sold.
- (c) Ready-to-eat meat, poultry, or seafood cooked or heated on the premises but not packaged in advance of sale.
- (d) Sandwiches when offered or exposed for sale on the premises where packed or produced and not intended for resale.

*Added Stats 1939 ch 1028 § 1; Amended Stats 1941 ch 861 § 1; Stats 1949 ch 1384 § 2; Stats 1955 ch 394 § 1; Stats 1957 ch 566 § 1; Stats 1965 ch 713 § 1; Stats 1967 ch 176 § 1; Stats 1969 ch 411 § 1; Amended Stats 1986 ch 1516 § 1.*

### **§ 12024.55. DOOR-TO-DOOR SALESPERSONS: PRICE STATEMENT ON PACKAGES**

Packages of meat, fish or poultry offered for sale by door-to-door salespersons shall display the price per pound for each type and cut in the package. The price per pound shall be separately and accurately stated and shall be preceded by the words "price per pound" on each principal display panel of the package, as the term "principal display panel" is defined by regulations of the director adopted pursuant to Section 12610. All numbers and letters of the price per pound shall be of uniform size, at least one-quarter inch (6.35 millimeters) in height, and shall be generally parallel to the net quantity statement. There shall in addition be an area surrounding the statement of price at least equal in width to the height of the letters and numbers in the statement of price which shall be free of any printed material.

*Added Stats 1979 ch 527 § 4; Repealed Stats 1982 ch 532 § 1; Added Stats 1982 ch 532 § 2.*

### **§ 12024.6. PROHIBITION OF ADVERTISING INTENDED TO ENTICE CUSTOMER INTO TRANSACTION OTHER THAN REPRESENTED**

No person, firm, corporation, or association shall advertise, solicit, or represent by any means, a product for sale or purchase if it is intended to entice a customer into a transaction different from that originally represented.

*Added Stats 1975 ch 907 § 1.*

## WEIGHTS AND MEASURES

### **§ 12024.7. STATEMENT OF WEIGHT AND TYPE OF CUTS OF MEAT SOLD: ITEMIZED STATEMENT SHOWING QUANTITY OF FRUITS, VEGETABLES AND OTHER FOOD PRODUCTS DELIVERED IN CONNECTION WITH MEAT SALE**

Any person who sells meat directly to the consumer on the basis of primal cuts or carcass weight shall supply the buyer with an accurate statement of weight at time of sale of the carcass or primal cut purchased, and shall supply a complete and accurate statement which shall contain the weight of the meat delivered to the buyer and the number and type of cuts. When any fruits, vegetables, or other food products are sold as part of a combination sale with meat sold directly to the consumer on the basis of primal cuts or carcass weight, the seller shall supply an itemized statement showing the net quantity of any fruits, vegetables, and other food products delivered to the buyer. This section shall also apply to any person who custom cuts any meat animal carcass or part of such carcass for the owner, except the carcass of any game mammal taken as authorized by the Fish and Game Code.

*Added Stats 1967 ch 1449 § 1.*

### **§ 12024.8. INAPPLICABILITY OF PROVISIONS TO FISH NOT USED FOR HUMAN CONSUMPTION**

The provisions of Section 12024.5 shall not apply to fish not used for human consumption.

*Added Stats 1968 ch 141 § 1, effective May 16, 1968.*

### **§ 12024.9. STATEMENT OF WEIGHTS SUPPLIED TO CONSUMER UPON DIRECT SALE OF MEAT ON BASIS OF PRIMAL CUTS OR CARCASS WEIGHT**

(a) All terms contained in this section which are defined by the United States Department of Agriculture shall have the same meaning as defined by such department.

(b) "Retail cuts" as used in this section shall mean a cut of meat from a primal cut for direct sale to the consumer.

(c) "Freezer meat" as used in this section means any uncooked meat which is sold directly to the consumer on the basis of primal cuts, carcass weight or any specified portion of a carcass, other than retail cuts.

(d) "Variety pack" as used in this section means freezer meat cut or packaged, or both, into retail cuts or other frozen food products, or both, sold for a stipulated total price.

(e) "Consumer" as used in this section means any purchaser of freezer meat or variety pack meat.

## GENERAL PROVISIONS

(f) Whenever any retail cuts of meat are sold in a variety pack the retailer shall furnish, at the time of sale, an itemization of the total net weight of each of the various retail cuts sold and the total net weight of the entire meat purchase, and a separate itemization shall be furnished for frozen food products other than meat indicating price and weight of each product.

(g) Whenever freezer meat is sold directly to the consumer, the consumer shall be supplied at the time of sale with the weight of the carcass or primal cuts before cutting and a complete and accurate inventory which shall contain the net weight of meat delivered. The consumer shall also be supplied with complete cutting instructions for each cut of meat process and an exact inventory of each such cut. The consumer shall also be furnished with the total weight of ground meat from carcass or primal cuts.

(h) A half of beef shall consist of a forequarter and a hindquarter from the same animal. When beef is sold as a half of beef, the consumer shall be furnished an invoice listing the weight of each such quarter. Not more than 8 percent tolerance differential shall be allowed.

(i) Whenever the consumer buys freezer meats or variety packs, the entire order shall be delivered to the consumer or held and maintained in storage and available for such consumer.

*Added Stats 1975 ch 454 § 1.*

### **§ 12024.10. RETENTION OF DOCUMENT STATING WEIGHT AND CUT OF MEAT SOLD**

A true and legible copy of each document issued pursuant to Section 12024.7 or 12024.9 shall be retained by the person, company, or corporation issuing the document for a period of one year and shall be made available for inspection by a sealer upon request. This section shall not apply to primal cuts of meat which are smaller than one quarter of a carcass.

*Added Stats 1981 ch 758 § 1.*

### **§ 12024.11. REGULATION OF THE SALE OR ADVERTISEMENT OF WOOD FUEL**

The director shall adopt necessary rules and regulations pertaining to the sale or advertisement of wood for fuel purposes in order to standardize quantities of measurement and to protect against deceptive marketing practices.

*Added Stats 1982 ch 758 § 1.*



## WEIGHTS AND MEASURES

### **§ 12024.12. MAINTAINING RECORDS FOR KOSHER MEAT PURCHASES**

*Added Stats 1985 ch 452 § 1; Amended Stats 1986 ch 1193 § 1; Amended Stats 1988 ch 990 § 1; Amended Stats 1992 ch 63 § 1; Expired by own terms January 1, 1994.*

### **§ 12025. REFUSAL TO EXHIBIT COMMODITY BEING SOLD AT GIVEN WEIGHT OR QUANTITY: MISDEMEANOR**

Any person, who by himself, or his employee or agent, or as proprietor or manager, refuses to exhibit any commodity being sold at a given weight or quantity, or ordinarily so sold, to a sealer for the purpose of allowing the same to be proved as to the quantity thereof is guilty of a misdemeanor.

*Added Stats 1939 ch 43 § 1.*

### **§ 12025.5. IDENTIFICATION OF COMMODITY OR CONTAINER ORDERED OFF SALE UNDER §§ 12211 OR 12607**

Whenever any commodity or any container is ordered off sale under the provisions of Section 12211 or Section 12607 of this division, the sealer shall cause the commodity or container affected by such off-sale order to be identified by a tag or other suitable device with the words "off sale". It shall be unlawful to remove or obliterate any such tag or device placed upon such commodity or container or in any way dispose of or commingle such commodity or container or prepare, pack, place, deliver for shipment, deliver for sale, sell, or cause to be loaded, shipped, or transported, any such commodity or container before it has been released by the sealer.

*Added Stats 1959 ch 1792 § 1; Amended Stats 1967 ch 272 § 2; Stats 1969 ch 1309 § 1.*

## GENERAL PROVISIONS

### **§ 12026. VIOLATION OF PROVISIONS: MISDEMEANOR**

(a) Except as otherwise specifically provided, any person violating any of the provisions of this division is guilty of a misdemeanor.

(b) It is unlawful for any person to violate any of the rules, regulations, tolerances, specifications, or standards adopted under the provisions of this division.

*Added Stats 1939 ch 43 § 1; Amended Stats 1989 ch 818 § 1.*

### **§ 12026.5. REMEDIES AND PENALTIES PROVIDED AS NONEXCLUSIVE**

Except as otherwise specifically provided, the remedies or penalties provided by this division are cumulative to each other and to the remedies or penalties available under all other laws of this state.

*Added Stats 1979 ch 527 § 5.*

### **§ 12027. RULES AND REGULATIONS AUTHORIZED**

The director may make such rules and regulations as are reasonably necessary for the purpose of carrying out the provisions of this division.

*Added Stats 1939 ch 43 § 1; Amended Stats 1957 ch 1749 § 28.*

### **§ 12028. ADOPTION OF REGULATIONS**

*Added Stats 1994 ch 592 § 4; Amended Stats 2004 ch 676 § 8. Repealed Stats 2005 ch 529 § 3.*

## WEIGHTS AND MEASURES

### **§ 12029. LEGISLATIVE ANALYST STUDY OF CIVIL PENALTIES**

The Legislative Analyst shall conduct a study of the civil penalties imposed pursuant to Section 12015.3 and report its findings to the Legislature and the Governor by January 1, 2000. The report shall include all of the following:

- (a) An analysis of whether civil penalties are effective as an alternative enforcement mechanism for violations of weights and measures laws and regulations.
- (b) A review of how the department and the counties use the revenue brought in from the civil penalties.
- (c) A recommendation on whether civil penalties are a feasible alternative to criminal prosecution and criminal penalties.

*Added Stats 1997 ch 476 § 2.*

## ADMINISTRATION

### **§ 12107.1. ESTABLISHMENT OF COMMODITY STANDARDS, WEIGHTS, MEASURES, AND COUNTS: PROCEDURE: UNLAWFUL SALES**

The director, by regulation, may establish a standard or standards or net weight or net measure, or net count of any commodity, except any manufactured commodity consisting of four or more staple ingredients. Such standards, whenever applicable, shall be based upon published, official federal or state specifications and requirements or, in the absence of any such published official specifications, upon established and accepted common usage. Any such regulation shall be adopted, amended, or repealed in conformity with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

Whenever a standard or net weight or net measure or net count has been established for any commodity, it is unlawful to sell such commodity, by, at, or for a quantity greater or less than the standard.

*Added Stats 1965 ch 948 § 2.*

### **§ 12107.5. TARES FOR CONTAINERS AND PALLETS: RETENTION OF RECORD OF DEDUCTIONS: MISDEMEANOR FOR UNLAWFUL DEDUCTION**

*Amended Stats 1976 ch 562; Repealed Stats 1984 ch 646.*

### **§ 12107.6. ESTABLISHMENT AND USE OF TARE WEIGHTS FOR TRUCKS OR TRACTORS: FEES: ENFORCEMENT**

*Repealed Stats 1976 ch 562.*

### **§ 12108. ARRANGEMENT FOR SERVICES OF SEALER EMPLOYED IN COUNTY: COMPENSATION AND EXPENSES**

The director may arrange for the services of a sealer employed in a county on a collaborative basis and allow reasonable compensation and expenses for the purpose of performing services not already within his duties and which are subject to administration or enforcement by the department under the provisions of this code or of the Agricultural Code.

*Added Stats 1951 ch 1010 § 1.*

## WEIGHTS AND MEASURES

Such fee shall be based upon a uniform schedule of fees, which shall be prescribed by the director for use by the counties. The director shall prepare the schedule of fees to be comparable with the rates charged by the industry's registered repairmen. All fees collected shall be credited to the General Fund of the county in which collected and used only for the administration and enforcement of laws pertaining to weights and measures.

*Added Stats 1980 ch 583 § 1.*

### **§ 12211. WEIGHING AND MEASURING PACKAGES, ETC.: RULES AND REGULATIONS OF DIRECTOR: PROCEDURE FOR ADOPTION AND PROMULGATION: EFFECT OF FEDERAL STANDARDS: PACKAGES CONTAINING LESS THAN AMOUNT REPRESENTED: SEIZURE AS EVIDENCE**

Each sealer shall, from time to time, weigh or measure packages, containers, or amounts of commodities sold, or in the process of delivery, in order to determine whether they contain the quantity or amount represented and whether they are being sold in accordance with law.

The secretary shall adopt necessary regulations governing the procedures to be followed by sealers in connection with the weighing or measuring of amounts of commodities in individual packages, containers, or lots of packages or containers, including the procedures for sampling a lot, and for determining whether any package, container, or a lot of packages or containers complies with this section.

In adopting those regulations, the secretary shall adopt by reference the package checking procedures recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods," and any subsequent amendments thereto, except insofar as those requirements are specifically modified, amended, or rejected by a regulation adopted by the secretary.

Any lot, package, or container of any commodity that conforms to this section shall be deemed to be in conformity with this division relating to stated net weights or measures.

Whenever a lot, package, or container of any commodity is found to contain, through the procedures authorized in this section, a less amount than that represented, the sealer shall order, in writing, that lot, package, or container of commodity off sale and require that an accurate statement of quantity be placed on each package or container before it may be released for sale by the sealer in writing. The sealer may seize as evidence any package or container that is found to contain a less amount than that represented.

*Added Stats 1939 ch 43 § 1; Amended Stats 1949 ch 1384 § 3; Stats 1957 ch 1658 § 1; Stats 1963 ch 353 § 1; Stats 1973 ch 1033 § 1; Amended Stats 1995 ch 156 § 2.*

## ADMINISTRATION

### **§ 12212. REGULATIONS GOVERNING INSPECTION FREQUENCY OF COMMERCIALY USED WEIGHTS, MEASURES, AND WEIGHING AND MEASURING APPARATUS: INSPECTIONS: CONTRACT TO PERFORM TESTS: SCHEDULE OF FEES: DISPOSITION OF FEES COLLECTED**

The director shall adopt necessary regulations governing the inspection frequency of all commercially used weights, measures and weighing and measuring apparatus in the state.

The sealer of each county shall perform such inspections as may be required by the director. Nothing in this section shall be construed to prohibit the sealer from inspecting a device more frequently than required if he deems such test necessary.

Any such regulation shall be adopted by the director in conformity with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

In counties where the director finds that the sealer, because of lack of equipment, is unable or fails to perform such tests as required herein, the director may enter into a contract with the board of supervisors of each of such counties to perform such tests. Such contracts shall provide that the county shall pay the cost of such services based upon a uniform schedule of fees developed by the director. Such fee schedule shall be based on the approximate cost of performing such services. Such contracts shall also provide that the director shall periodically render a bill to each county so served for the cost of services rendered, and the auditor of the county so billed shall pay such charge in the same manner in which other claims against the county are paid.

All fees collected under the provisions of this section shall be credited to the General Fund.

*Added Stats 1939 ch 43 § 1; Amended Stats 1939 ch 992 § 12; Stats 1959 ch 122 § 1; Stats 1961 ch 1679 § 1; Stats 1965 ch 966 § 1.*

### **§ 12213. ENTRY OF PREMISES OR STOPPING VENDOR, ETC., AND REQUIRING MOVEMENT TO TESTING PLACE**

Each sealer may, in the general performance of his duty, without formal warrant, enter or go into or upon, any stand, place, building or premises or stop any vendor, peddler, junk dealer, driver of a coal, ice, delivery, or other wagon or vehicle, containing commodities for sale or delivery and, if necessary, require him to proceed with the commodity to some place which the sealer may specify for the purpose of making the proper tests.

*Added Stats 1939 ch 43 § 1.*

## WEIGHTS AND MEASURES

### **§ 12512. PURCHASE OF LESS THAN TRUE QUANTITY AS MISDEMEANOR**

When the sale of any commodity is based upon a quantity representation either furnished by the purchaser or obtained through the use of equipment supplied by him, the purchaser shall in no case buy the commodity according to any quantity which is less than the true quantity. Violation of this section is a misdemeanor.

*Added Stats 1939 ch 43 § 1; Amended Stats 1967 ch 271 § 2.*

### **§ 12513. SEALING AND TESTING BY ANY DEPARTMENT EMPLOYEE EFFECTIVE AS IF BY SEALER**

Any sealing or testing of any weight, measure, weighing or measuring instrument by any employee of the department authorized for the purpose shall have the same force and effect as a sealing or testing by a sealer or his deputy.

*Added Stats 1939 ch 43 § 1.*

### **§ 12514. PERSONAL INTEREST OF SEALERS IN SALE OF INSTRUMENTS: ACCEPTANCE OF FEE, ETC.: PROHIBITIONS**

No sealer shall sell or be interested directly or indirectly in the sale of any weighing or measuring instrument, nor shall he accept a fee, compensation, or gratuity of any kind for adjusting or repairing any weighing or measuring instrument.

*Added Stats 1939 ch 43 § 1; Amended Stats 1957 ch 1615 § 1.*

### **§ 12515. REPAIR, SALE OR INSTALLATION OF INSTRUMENT: FAILURE TO NOTIFY COUNTY SEALER AS MISDEMEANOR: WHEN NOTIFICATION NOT REQUIRED**

(a) Any person having made repairs or adjustments to any weighing instrument or to any measuring instrument, or any person having sold, rented, leased, loaned, or installed any such instrument, who within 24 hours after the instrument has been sold, rented, leased, loaned, installed, repaired or adjusted, fails to notify the sealer of the county in which the instrument has been sold, rented, leased, loaned, installed, repaired or adjusted, that the sale, rent, lease, loan, installation, repair, or adjustment has been made, is guilty of a misdemeanor.

## DEVICES

(b) This section does not require notification to the sealer for an adjustment to a weighing or measuring instrument only for the purpose of maintaining it in a zero or balance condition.

*Added Stats 1945 ch 1163 § 3; Amended Stats 1965 ch 72 § 2; Amended Stats 1989 ch 742 § 2.*

### **§ 12516. LOCATION OF SCALE WHEN AUCTIONING LIVESTOCK: ISSUANCE OF STATE CERTIFICATE OF WEIGHTS AND MEASURES**

It shall be unlawful for any person to locate or position any scale used in connection with the auctioning of livestock so that its indications are not readily and clearly readable to the buyer and seller, unless a State certificate of weights and measures, made at the time of weighing, attesting to the weight of the livestock, is issued upon request to the buyer and seller.

*Added Stats 1951 ch 1284 § 1; Amended Stats 1955 ch 117 § 1.*

### **§ 12517. STATEMENT REQUIRED FOR COIN-OPERATED WEIGHER**

Every owner of a coin-operated person weigher shall place on such weigher, in a prominent position, in letters at least three-sixteenths inches in height and in bold type, the following statement: "This scale may not have been checked for accuracy".

*Added Stats 1967 ch 1286 § 2.*



## FAIR PACKAGING AND LABELING

### CHAPTER 6

#### Fair Packaging and Labeling Act [Added by Stats 1969 ch 1309 § 3]

Former Chapter 6, relating to containers, consisting of §§ 12601-12615, was added by Stats 1939 ch 43 § 1, amended by Stats 1939 ch 992 § 24, Stats 1941 ch 256 §§ 1-3, Stats 1947 ch 1072 §§ 1-7, Stats 1953 ch 1718 § 1, Stats 1957 ch 1658 § 2, Stats 1959 ch 111 § 4, ch 123 §§ 1, 2, ch 515 § 1, Stats 1963 ch 584 § 1, ch 903 § 1, ch 980 § 1, Stats 1965 ch 32 §§ 1, 2, ch 953 § 1, Stats 1967 ch 437 §§ 1, 2, Stats 1968 ch 61 § 1; and repealed by Stats 1969 ch 1309 § 2.

- § 12601. Legislative policy
- § 12602. Unlawful to distribute commodity contained in nonconforming package or label: Exception for wholesale or retail distributors not engaged in packaging or labeling
- § 12603. Regulations to be established by director: Required provisions of regulations
- § 12604. [Repealed]
- § 12604.5. [Repealed]
- § 12605. Prohibition of distribution of packaged commodity containing qualifying words in separate statement of net quantity of contents: Supplemental statements: Prohibited qualifications
- § 12606. False bottom, etc., prohibited: Containers not to be nonfunctionally slack filled: Seizure of container: Condemnation of container: Return of contents of condemned container
- § 12606.2. Misleading food containers, prohibited
- § 12607. Offer for sale, etc., of commodity without statement of net quantity: Order of commodity off sale: Correct statement of net quantity required for release
- § 12608. [Repealed]
- § 12609. Director to establish rules and regulations: Exemptions
- § 12610. Director may promulgate regulations similar to those promulgated by Secretary of Health, Education, and Welfare or Federal Trade Commission: Contents of regulations
- § 12611. Unlawful acts: Selling, etc., commodity in nonconforming container or with nonconforming label: Required information not prominently displayed
- § 12612. Sale of commodity packaged in compliance with Act of Congress or rules or regulations promulgated thereunder not violation: Sale of malt beverages complying with rule, etc., of United States Treasury Department, etc., not violation

## WEIGHTS AND MEASURES

- § 12613. **Provision of chapter less stringent, etc., than requirement of “Fair Packaging and Labeling Act” or regulations promulgated pursuant thereto inoperative**
- § 12614. [Repealed]
- § 12615. [Repealed]
- § 12615.5. **Violation as misdemeanor: Exception**

### § 12601. LEGISLATIVE POLICY

This chapter is designed to protect purchasers of any commodity within its provisions against deception or misrepresentation. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.

It is hereby declared to be the policy of the Legislature to assist in attaining these goals.

*Added Stats 1969 ch 1309 § 3.*

### § 12602. UNLAWFUL TO DISTRIBUTE COMMODITY CONTAINED IN NON-CONFORMING PACKAGE OR LABEL: EXCEPTION FOR WHOLESALE OR RETAIL DISTRIBUTORS NOT ENGAGED IN PACKAGING OR LABELING

(a) It is unlawful for any person engaged in the packaging or labeling of any commodity for distribution or sale, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution of any packaged or labeled commodity, to distribute or to cause to be distributed any such commodity if the commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this chapter or the regulations adopted under the authority of this chapter or the provisions of, or the regulations adopted under, Chapter 6.6 (commencing with Section 12665), Chapter 14 (commencing with Section 13400), or Chapter 15 (commencing with Section 13700).

(b) The prohibition contained in subdivision (a) shall not apply to persons engaged in business as wholesale or retail distributors of commodities, except to the extent that those persons (1) are engaged in the packaging or labeling of such commodities, (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled, or (3) have knowledge of the violation of any provision of this chapter or of Chapter 6.6 (commencing with Section 12665), Chapter 14 (commencing with Section 13400), or Chapter 15 (commencing with Section 13700).

*Amended Stats 1977 ch 383; Amended Stats 1981 ch 97 § 12; Amended Stats 1986 ch 201 § 1*

## FAIR PACKAGING AND LABELING

### **§ 12603. REGULATIONS TO BE ESTABLISHED BY DIRECTOR: REQUIRED PROVISIONS OF REGULATIONS**

No person subject to the prohibition in Section 12602 shall distribute any packaged commodity unless it is in conformity with regulations that shall be established by the director that shall provide:

(a) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor.

(b) The net quantity of contents (in terms of weight or mass, measure, numerical count, or time) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch-pound system of measure, and except as provided in subdivisions (c) and (d), the SI (Système International d'Unités) metric system.

(c) On a random package labeled in terms of pounds and decimal fractions of the pound, the statement may be carried out to not more than three decimal places and is not required to, but may include a statement in terms of the SI metric system carried out to not more than three decimal places.

(d) The requirements of subdivision (b) concerning labeling using the metric system do not apply to nonconsumer packages, foods that are packaged at the retail store level, or to the sale or distribution of products whose labels have been printed prior to February 14, 1994.

(e) This section shall become operative on February 14, 1994.

*Added Stats 1969 ch 1309 § 3; Amended Stats 1988 ch 341 § 1; Amended Stats 1993, ch 621 § 3.*

### **§ 12604. SEPARATE LABEL STATEMENT OF NET QUANTITY OF CONTENTS TO BE IN CONFORMITY WITH REGULATIONS: REQUIRED PROVISIONS OF REGULATIONS (INOPERATIVE ON FEBRUARY 14, 1994 AND IS REPEALED ON JANUARY 1, 1995)**

*Added Stats 1969 ch 1309 § 3; Amended Stats 1988 ch 341 § 2; Amended Stats 1993 ch 621 § 4. (INOPERATIVE ON FEBRUARY 14, 1994 AND IS REPEALED ON JANUARY 1, 1995)*

## WEIGHTS AND MEASURES

### **§ 12604.5. STORES USING AUTOMATIC CHECKOUT SYSTEM REQUIRED TO HAVE READABLE PRICE ON EACH PACKAGE: EXCEPTIONS**

*Repealed Stats 1977 ch 763.*

### **§ 12605. PROHIBITION OF DISTRIBUTION OF PACKAGED COMMODITY CONTAINING QUALIFYING WORDS IN SEPARATE STATEMENT OF NET QUANTITY OF CONTENTS: SUPPLEMENTAL STATEMENTS: PROHIBITED QUALIFICATIONS**

No person subject to the prohibition contained in Section 12602 shall distribute or cause to be distributed in commerce any packaged commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Section 12603(b), but nothing in this chapter shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

In no case shall any declaration of quantity be qualified by the addition of the words "minimum", or "when packed", or words of similar import; nor shall any unit of weight, measure or count be qualified by any term (such as jumbo, giant, full, or the like) that tends to exaggerate the amount of the commodity in the package.

*Added Stats 1969 ch 1309 § 3.*

### **§ 12606. FALSE BOTTOM, ETC., PROHIBITED: CONTAINERS NOT TO BE NONFUNCTIONALLY SLACK FILLED: SEIZURE OF CONTAINER: CONDEMNATION OF CONTAINER: RETURN OF CONTENTS OF CONDEMNED CONTAINER**

(a) No container wherein commodities are packed shall have a false bottom, false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

(b) No container shall be made, formed, or filled as to be misleading. A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

- (1) Protection of the contents of the package.
- (2) The requirements of machines used for enclosing the contents of the package.

## FAIR PACKAGING AND LABELING

- (3) Unavoidable product settling during shipping and handling.
- (4) The need to utilize a larger than required package or container to provide adequate space for the legible presentation of mandatory and necessary labeling information, such as those based on the regulations adopted by the Food and Drug Administration or state or federal agencies under federal or state law, laws or regulations adopted by foreign governments, or under an industry wide voluntary labeling program.
- (5) The fact that the product consists of a commodity that is packaged in a decorative or representational container where the container is part of the presentation of the product and has value that is both significant in proportion to the value of the product and independent of its function to hold the product, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.
- (6) An inability to increase the level or fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.
- (7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.
- (8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on the exterior packaging, accompanied by a clear and conspicuous disclosure that the representation is the “actual size” of the product or the immediate product container.
- (9) The presence of any head space within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.
- (10) The exterior packaging contains a product delivery or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.
- (11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior packaging.

## WEIGHTS AND MEASURES

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

(13) The exterior packaging consists of single or multi-unit presentation boxes of holiday or gift packages if the purchaser can adequately determine the quantity and sizes of the immediate product container at the point of sale.

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

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

(c) Any sealer may seize a container that facilitates the perpetration of deception or fraud and the contents of the container. By order of the municipal or superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon such conditions as the court may impose to insure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return.

*Repealed and Added Stats 1997 ch 711 §§ 1 and 2.*

### **§ 12606.2. MISLEADING FOOD CONTAINERS, PROHIBITED**

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

(b) No food containers shall be made, formed, or filled as to be misleading.

(c) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack fill is the empty space in a package that is filled to less than its capacity for reasons other than the following:

## FAIR PACKAGING AND LABELING

- (1) Protection of the contents of the package.
- (2) The requirements of the machines used for enclosing the contents in the package.
- (3) Unavoidable product settling during shipping and handling.
- (4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly communicated to consumers.
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value that is both significant in proportion to the value of the product and independent of its function to hold the food, such as a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed or durable commemorative or promotional packages.
- (6) Inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required food labeling exclusive of any vignettes or other nonmandatory designs or label information, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

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

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

(e) Any sealer may seize any container that is in violation of this section and the contents of the container. By order of the municipal or superior court of the city or county within which a violation of this section occurs, the containers seized shall be condemned and destroyed or released upon any conditions that the court may impose to ensure against their use in violation of this chapter. The contents of any condemned container shall be returned to the owner thereof if the owner furnishes proper facilities for the return.

*Added Stats 1995 ch 849 § 1.*

## WEIGHTS AND MEASURES

### **§ 12607. OFFER FOR SALE, ETC., OF COMMODITY WITHOUT STATEMENT OF NET QUANTITY: ORDER OF COMMODITY OFF SALE: CORRECT STATEMENT OF NET QUANTITY REQUIRED FOR RELEASE**

Whenever a packaged commodity is offered for sale, exposed for sale or sold without a statement of net quantity appearing thereon as required by this chapter, the sealer shall in writing order the commodity off sale and require that a correct statement of net quantity be placed on the commodity before the same may be released by the sealer.

*Amended Stats 1976 ch 239.*

### **§ 12608. TERMS OF STATEMENTS OF QUANTITY: TESTING OF FLUID PRODUCTS (INOPERATIVE ON FEBRUARY 14, 1994 AND IS REPEALED AS OF JANUARY 1, 1995)**

*Added Stats 1969 ch 1309 § 3; Amended Stats 1988 ch 341 § 3; Amended Stats 1993 ch 621 § 5. (INOPERATIVE ON FEBRUARY 14, 1994 AND IS REPEALED AS OF JANUARY 1, 1995)*

### **§ 12609. DIRECTOR TO ESTABLISH RULES AND REGULATIONS: EXEMPTIONS**

The director shall adopt necessary regulations to carry out the purpose of this division and for the testing of packages to verify the net quantity statements. In adopting these regulations, the director shall adopt by reference the packaging and labeling requirements recommended by the National Conference on Weights and Measures and published in the current edition of the National Institute of Standards and Technology Handbook 130, Uniform Packaging and Labeling Regulation, except insofar as those requirements are specifically modified, amended, or rejected by regulation by the director. The regulations shall include exemptions from full compliance with this chapter for good and sufficient reasons. Any exemptions affecting consumer commodities shall be in conformance with exemptions permitted by federal regulations. Any regulation, or amendment thereof, shall be adopted by the director in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

This section shall become operative on February 14, 1994.

*Added Stats 1969 ch 1309 § 3; Amended Stats 1993 ch 621 § 7.*



## FAIR PACKAGING AND LABELING

### **§ 12610. DIRECTOR MAY PROMULGATE REGULATIONS SIMILAR TO THOSE PROMULGATED BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE OR FEDERAL TRADE COMMISSION: CONTENTS OF REGULATIONS**

The director may promulgate regulations similar to those promulgated by the Secretary of Health, Education, and Welfare or the Federal Trade Commission pursuant to the Fair Packaging and Labeling Act (P.L. 89-755; 80 Stats 1296; 15 U.S.C. 1451-1461) effective to--

1. Establish and define standards for characterization of the size of a package enclosing any commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;
2. Require that the label on each package of a commodity (other than one which is a food within the meaning of Section 201(f) of the Federal Food, Drug, and Cosmetic Act) bear the common or usual name of such consumer commodity, if any.

*Added Stats 1969 ch 1309 § 3.*

### **§ 12611. UNLAWFUL ACTS: SELLING, ETC., COMMODITY IN NONCONFORMING CONTAINER OR WITH NONCONFORMING LABEL: REQUIRED INFORMATION NOT PROMINENTLY DISPLAYED**

It is unlawful to pack, ship, or sell any commodity in a container which does not conform to all the specifications of this chapter, or which is not conspicuously marked, branded, or otherwise labeled as required by this chapter; or on which any word, statement or other information required by this chapter is not prominently placed, in such terms and with such conspicuousness, as compared with other words, statements, designs or devices on the label or container, as to render it likely to be read and understood by ordinary persons under customary conditions of purchase and use.

*Added Stats 1969 ch 1309 § 3.*

### **§ 12612. SALE OF COMMODITY PACKAGED IN COMPLIANCE WITH ACT OF CONGRESS OR RULES OR REGULATIONS PROMULGATED THEREUNDER NOT VIOLATION: SALE OF MALT BEVERAGES COMPLYING WITH RULE, ETC., OF UNITED STATES TREASURY DEPARTMENT, ETC., NOT VIOLATION**

The sale of any commodity packaged in a container, wherein both the container and the contents thereof comply with any Act of Congress or rules or regulations promulgated thereunder, pertaining to weight, measure or count, does not violate the provisions of this

## WEIGHTS AND MEASURES

chapter; nor does the sale of malt beverages in containers complying with a rule, regulation or an approval of the United States Treasury Department, Internal Revenue Service or Bureau of Alcohol, Tobacco and Firearms, or of the State Department of Public Health and pertaining to weight, measure or count, constitute a violation of the provisions of this chapter.

*Added Stats 1969 ch 1309 § 3; Amended Stats 1973 ch 1033 § 2.*

### **§ 12613. PROVISION OF CHAPTER LESS STRINGENT, ETC., THAN REQUIREMENT OF “FAIR PACKAGING AND LABELING ACT” OR REGULATIONS PROMULGATED PURSUANT THERETO INOPERATIVE**

If any provision of this chapter is less stringent or requires information different from any requirement of Section 4 of the Act of Congress entitled “Fair Packaging and Labeling Act” (P.L. 89-755; 80 Stat. 1296; 15 U.S.C. 1451-1461) or of any regulation promulgated pursuant to that act, the provision is inoperative to the extent that it is less stringent or requires information different from the federal requirement, in which event the federal requirement is a part of this chapter.

*Added Stats 1969 ch 1309 § 3; Amended Stats 1981 ch 714 § 35.*

### **§ 12614. “CONSUMER COMMODITY”: “PACKAGE”: “PACKAGED COMMODITY”: “CONSUMER PACKAGE”: “NONCONSUMER PACKAGE”: “RANDOM PACKAGE”: “LABEL”**

*Amended Stats 1976 ch 239 § 3; Repealed Stats 1993 ch 621 § 8.*

### **§ 12615. [Repealed by Stats 1977 ch 763 § 1.]**

See § 13301.

### **§ 12615.5. VIOLATION AS MISDEMEANOR: EXCEPTION**

The violation of any provision of this chapter, except the provisions of Section 12604.5, is a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment.

*Added Stats 1977 ch 1185 § 1.*

## UNIT PRICING

### CHAPTER 6.5

#### Unit Pricing

[Added by Stats 1977 ch 380 § 1.]

- § 12655. Legislative intent to encourage unit pricing for canned, bottled, and packaged commodities
- § 12656. Adoption of standardized format

#### **§ 12655. LEGISLATIVE INTENT TO ENCOURAGE UNIT PRICING FOR CANNED, BOTTLED, AND PACKAGED COMMODITIES**

It is the intent of the Legislature to encourage the unit pricing of all canned, bottled, and packaged foods, packaged produce, and bakery goods; paper, plastic, wood, and metal products packaged in counts greater than 10; rolled paper, plastic, and metal products; canned, bottled, and packaged domestic, laundry and household cleansing, finishing, waxing, and polishing products; drug and first aid products canned, packaged, or bottled in counts greater than 10; and frozen fruits and vegetables, offered by merchants in their places of business for sale at retail to the public. The Legislature finds that unit pricing, the price per ounce, per pound, per gallon, or the metric equivalent thereof, or per 100 square feet, or per 100 count, for which those items are offered for sale at retail, effectively informs the consumer of the comparative prices and values of commodities, and is thus useful for the formulation of intelligent consumer choices. Reconstituted fluid ounce is the preferred unit of measure for unit pricing of powdered and concentrated infant formula.

*Added Stats 1977 ch 380; Amended Stats 1994 ch 1157 § 1.*

#### **§ 12656. ADOPTION OF STANDARDIZED FORMAT**

The department, in cooperation with the retail food industry, shall adopt a standardized format for unit pricing that shall be available to a retailer upon request. The format shall include, but not be limited to, an identification of the item, including the brand name, the total price of the item, the volume, weight, or number of units of which the item is composed, and the price per unit. For infant formula, unit price information may be expressed based on the reconstituted volume.

*Added Stats 1977 ch 380; Amended Stats 1994 ch 1157 § 2.*

# AUTOMATIC CHECKOUT SYSTEMS

## CHAPTER 13

### Automatic Checkout Systems

#### ARTICLE 1

#### Point-of-Sale Displays

<b>§ 13300.</b>	<b>Customer Display and Indicator Requirements</b>
<b>§ 13301.</b>	<b>Who to Enforce</b>
<b>§ 13302.</b>	<b>Civil Penalty for Violation of this Chapter</b>
<b>§ 13303.</b>	<b>Expired</b>
<b>§ 13304.</b>	<b>Expired</b>

#### **§ 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.*

## WEIGHTS AND MEASURES

### § 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

(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.*

## WEIGHTS AND MEASURES

### **§ 13303. UNINTENTIONAL ERRORS**

*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.*

# 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"**

**§ 13354. "Area"**

**§ 13355. "Initial Standard Inspection"**

**§ 13356. "Special Inspections"**

**§ 13357. Repeal Date**

#### **§ 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 10 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 25 items for a retail establishment with 4 to 9 POS checkout registers.

(4) The initial standard inspection shall be performed by testing a minimum random sample of 50 items for retail establishments with 10 or more POS checkout registers.

(5) 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.

(6) The minimum random sample size shall not apply to inspections of any establishment at which fewer items than the number specified as the minimum sample size are marked or displayed with a posted or advertised item price.



## WEIGHTS AND MEASURES

(7) The maximum percentage of sale item restriction in paragraph (1) shall not apply to inspections of any establishment at which a marketing or promotional practice does not enable the sampling of the minimum required percentage of nonsale items, such as "Everything In Store 50 percent Off" or the like.

(8) 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.

(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 the prior 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; Amended Stats 2008 ch 434*

### **§ 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

## AUTOMATIC CHECKOUT SYSTEMS

"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.*

### **§ 13354. "AREA"**

For purposes of this chapter, "area" means an "entire store," a "department," "grouping of shelves or displays." or other "section" of a store as defined by the sealer from which samples are selected for verification. "Nonpublic" areas of a store, such as the area in a pharmacy in which controlled drugs are kept or product storage rooms, shall not be included.

*Added Stats 2005 ch 529 § 6.*

### **§ 13355. "INITIAL STANDARD INSPECTION"**

For the purposes of this chapter, "initial standard inspection" means an inspection made at the customary time interval used by an enforcement agency.

*Added Stats 2005 ch 529 § 6.*

### **§ 13356. "SPECIAL INSPECTIONS"**

All other inspections of the point-of-sale system are considered "special inspections," including, but not limited to, inspections pertaining to investigations, consumer complaints, complaints from competing businesses or a reinspection of a retail establishment at which one or more price accuracy violations have occurred within the previous six months.

*Added Stats 2005 ch 529 § 6; Amended Stats 2008 ch 434*

### **§ 13357. REPEAL DATE**

This chapter shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2014, deletes or extends that date.

*Added Stats 2005 ch 529 § 6; Amended Stats 2008 ch 434*

## WEIGHTS AND MEASURES