

CALIFORNIA

California Business and Professions Code Sections

For sales:

12024.2. (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.

12024.6. 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 consumer into a transaction different from that originally represented.

For recycling or other sales:

12512. 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.

California Civil Code Sections

Part 8 - Automatic Checkout System

7100. (a) Every retail grocery store or grocery department within a general retail merchandise store which uses a point-of-sale system shall cause to have a clearly readable price indicated on 85 percent of the total number of packaged consumer commodities offered for sale which are not exempt pursuant to subdivision (b). The management of any such retail grocery store or grocery department shall determine the number of consumer commodities normally offered for sale on a daily basis, shall determine the consumer commodities to be exempted pursuant to this subdivision, and shall maintain a list of those consumer commodities exempt pursuant to this subdivision. The list shall be made available to a designated representative of the appropriate local union, the members of which are responsible for item pricing, in those stores or departments that have collective bargaining agreements, seven days prior to an item or items being exempted pursuant to this subdivision. In addition, the list shall be available and posted in a prominent place in the store seven days prior to an item or items being exempted pursuant to this subdivision.

(b) The provisions of this section shall not apply to any of the following:

(1) Any consumer commodity which was not generally item-priced on January 1, 1977, as determined by the Department of Food and Agriculture pursuant to subdivision (c) of Section 12604.5 of the Business and Professions Code, as in effect July 8, 1977.

(2) Any unpackaged fresh food produce, or to consumer commodities which are under three cubic inches in size, weigh less than three ounces, and are priced under forty cents (\$0.40).

(3) Any consumer commodity offered as a sale item or as a special.

(4) Any business which has as its only regular employees the owner thereof, or the parent, spouse, or child of such owner, or, in addition thereto, not more than two other regular employees.

(5) Identical items within a multi-item package.

(6) Items sold through a vending machine.

(c) For the purposes of this section:

(1) "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.

(2) "Consumer commodity" includes:

(A) Food, including all material whether solid, liquid, or mixed, and whether simple or compound, which is used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients added to any such material for any purpose. This definition shall not apply to individual packages of cigarettes or individual cigars.

(B) Napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, and disposable plates and cups.

(C) Detergents, soaps, and other cleaning agents.

(D) Pharmaceuticals, including nonprescription drugs, bandages, female hygiene products, and toiletries.

(3) "Grocery department" means an area within a general retail merchandise store which is engaged primarily in the retail sale of packaged food, rather than food prepared for immediate consumption on or off the premises.

(4) "Grocery store" means a store engaged primarily in the retail sale of packaged food, rather than food prepared for consumption on the premises.

(5) "Sale item or special" means any consumer commodity offered in good faith for a period of 14 days or less, on sale at a price below the normal price that item is usually sold for in that store. The Department of Food and Agriculture shall determine the normal length of a sale held for consumer commodities generally item priced on January 1, 1977, in stores regulated pursuant to this chapter, and that period shall be used for the purposes of this subdivision. The department's determination as to the normal length of a sale shall be binding for the purposes of this section, but each such determination shall not exceed seven days.

7101. (a) The intentional violation of Section 7100 is punishable by a civil penalty of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

(b) Failure to have a clearly readable price indicated on 12 units of the same item required to be item-priced of the same commodity shall constitute a presumption of intent to violate Section 7100.

(c) Every additional 12 units of the same item required to be item-priced that fail to have a price indicated on them shall constitute a presumption of intent to violate Section 7100.

(d) Each day that a violation continues shall also constitute a separate violation after notification thereof to the manager or assistant manager of the retail grocery store or the grocery department of the general retail merchandise store and shall constitute a presumption of intent to violate Section 7100.

(e) Notwithstanding any other provision of law, any person may bring an action to enjoin a violation of Section 7100.

7102. Any person, firm, corporation, or association who violates Sections 7100 and 7101 shall be liable to any person injured for any losses and expenses thereby incurred, and for the sum of fifty dollars (\$50) in addition thereto. The remedy set forth herein is applicable only to actions brought in the name of, and on behalf of, a single plaintiff and shall not be applicable in multiple plaintiff or class actions.

7103. Improper pricing on the shelf or on the item due to unintentional error shall not constitute a violation of this division.

7104. The remedies set forth in Sections 7101 and 7102 are the exclusive remedies available to any person, state or local agency or law enforcement official.

7105. This part shall be known and may be cited as the Rosenthal-Roberti Item Pricing Act.

7106. It is the intention of the Legislature that this part shall occupy the field with regard to item pricing and shall preempt all local ordinances, rules, or regulations concerning item pricing.

California Business and Professions Code Sections

The "automated checkout systems" law is attached and only applies to the counties that have adopted an ordinance to charge fees at locations subject to inspection. Some of those counties include all retail establishments but others only include large retail outlets with automated systems.

13350. (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.

(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.

13351. 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.

13352. 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.

13353. 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.

13354. 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.

13355. For the purposes of this chapter, "initial standard inspection" means an inspection made at the customary time interval used by an enforcement agency.

13356. 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.

13357. This article 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.