



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Weights & Measures Violations

March 2013

One of the most important areas of consumer protection involves the enforcement of our weights and measures laws. These laws regulate how a businessperson charges consumers for goods when the charge is based on a unit of measure or weight.

The law addresses a variety of situations including standards of measurement, measuring and weighing devices, fair packaging and labeling, packages of multiple units, weighmasters, scanners, and rules governing specific products. Anyone who violates these laws is guilty of a crime. Violations of the weights and measures laws are prosecuted by the City Attorney's Consumer & Environmental Protection Unit.

STANDARDS OF MEASUREMENT:

There are two systems for measuring goods: the metric and the inch/pound system. Anyone selling packaged consumer goods

must indicate the net quantity of the contents in both inch-pound and the metric system. This rule does not apply to foods that are packaged at the retail store level. Products that are sold by weight or volume but are not in packages, like gasoline, can be sold by the gallon or pound.

The law requires the businessperson to charge for the product, not for the packaging. Thus, a retailer must subtract the tare weight (weight of the packaging) from the price the consumer is charged. It is also illegal to add substances to a package and charge for the weight of those substances.

MEASUREMENT AND WEIGHING DEVICES:

The state also regulates the use of weighing and measuring devices. Anyone who uses for commercial purposes an incorrect weighing or measuring device or a device that has not been sealed (tested) by the County Sealer is guilty of a misdemeanor.

The State of California Dept. of Measurement Standards sets the

standards that measuring and weighing devices must meet, in accordance with national standards. Each county in California has a sealer for weights and measures whose responsibility it is to ensure that measuring and weighing devices meet state standards.

Before a retailer can begin using a weighing or measuring device for commercial purposes, the retailer must have the device inspected by the county sealer. If the device passes the inspection, the sealer will affix a sticker to the device indicating it has passed the inspection. An example of a type of measuring device that must bear a sticker indicating it has been inspected, is the gasoline pump.

FAIR PACKAGING AND LABELING:

Every packaged product offered for sale to the public must have a label that meets California law. The label must state:

- The identity of the product
- The name and place of business of the manufacturer, packer or distributor

- The net quantity of contents on the principal display panel

It is unlawful to add qualifying words to the statement of the net quantity, like “**about** 16 ounces.”

The package of a product must also be constructed in a way that does not facilitate the perpetration of deception or fraud. This includes:

- Using a false bottom, false sidewalls, or a false lid or covering
- Using non-functional slackfill to make a product look larger than it is. Nonfunctional slackfill is the empty space in a package that is filled to less than its capacity when that space is not otherwise necessary. If the packaging allows the consumer to see the contents of the package, then this provision does not apply.

MULTI-PACKS:

California law requires that some commodities be labeled with the number of the items in the package. This law applies to the following products when they are packaged in counts greater than 10:

- All canned, bottled and packaged foods, packaged produce and bakery goods;
- Paper, plastic, wood, and metal products;
- 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.

WEIGHMASTERS:

California also regulates weighmasters. A weighmaster is a person who, for hire, weighs, measures, or counts any commodity and issues a statement of the weight, measure or counts, which is used as the basis for either the purchase or sale of that commodity or charge for services.

For example, retailers who sell gravel or concrete to the public by weight must employ weighmasters to ensure they provide the correct quantity to the consumer.

There are exceptions to this requirement. For example, retailers who weigh, measure, or count products they are selling to a consumer in the consumer’s presence are not required to be weighmasters.

Weighmasters must have a license issued by the state and must completely fill out the certificates they issue and they are prohibited from falsely or incorrecting weighing, measuring or counting the product.

It is a misdemeanor for a weighmaster to incorrectly state the weight of a product on a certificate. This can happen when a weighmaster weighs a truckload of concrete and fails to subtract the total weight of the truck from the total weight of the truck and product

SCANNER VIOLATIONS:

Retailers who use scanners must register with the county weights and measures dept. and are subject to inspection to ensure pricing accuracy. Scanners are also known as “point of sale systems” and are defined as any computer or electronic system used to look up codes, like UPC codes to determine the price charged to the consumer.

The County of San Diego has a scanner enforcement system in place and regularly inspects establishments that use scanners. The County of San Diego Dept. of Weights and Measures also responds to complaints from members of the public about overcharges by retailers using scanners. Inspectors who find violations of the law present the retailer with a Notice of Violation and have the choice to seek an administrative fine or submit the case to a prosecutor. The San Diego City Attorney’s Consumer and Environmental Protection Unit handles cases submitted by the County Dept. of Weights and Measures where the overcharge occurred in the City of San Diego.

RULES GOVERNING SPECIFIC PRODUCTS:

In addition to the laws above which apply to all retailers, there are specific laws that regulate the sale of petroleum and hydrogen fuels, automotive products, and rental vehicles.

Anyone selling petroleum products is prohibited from requiring a consumer to purchase or pay for another product in order to purchase the petroleum product. A person selling petroleum products is prohibited from misrepresenting the brand, grade, quality or price of the product. If the seller of the petroleum product sells a grade of motor fuel for more than one price, the seller cannot advertise the lower price unless he/she also advertises all the higher prices in equal size print.

California has standards regulating the specifications that petroleum and hydrogen products must meet. For example, the octane level of gasoline is regulated by law.

A gasoline dispensing machine must indicate the actual total price

per gallon including fuel taxes and sales taxes. If a cash discount is offered, there must be a sign indicating that the price on the dispenser is for credit and a discount will be taken from that figure. State and local inspectors inspect gasoline stations to ensure that these laws are not violated and inspect when they receive consumer complaints.

Automotive products include engine coolant or antifreeze, brake fluid and automatic transmission fluid. California law sets standards for these products that must be met by manufacturers and sellers. Retailers and manufacturers are prohibited from mislabeling these products and from adulterating them by selling product that does not meet state specifications.

Rental car companies are permitted to use a rental vehicle's fuel gauge installed by the vehicle's manufacturer to calculate an optional charge for fueling when the customer was offered the option of retuning the vehicle with the same amount of fuel as when he/she rented it

HOW TO REPORT VIOLATIONS OF THESE LAWS:

To report a violation or suspected violation of the laws discussed in this newsletter, when those violations occurred in San Diego County, contact the San Diego County Dept. of Weights and Measures at telephone number (858) 694-2778 or visit their website at www.co.san-diego.ca.us.

The inspectors will follow up on your complaint and will submit appropriate cases to the San Diego City Attorney's Office for prosecution.

To report other instances of false advertising, contact the City Attorney's Consumer hotline at the number below.

**San Diego
City Attorney's Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

This newsletter was written by Assistant City Attorney Tricia Pummill. Source: Business & Professions Code §§12000 *et. seq.*



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