

LOCAL LAW NO. 6-03
COUNTY OF CHAUTAUQUA

A LOCAL LAW REGARDING ITEM PRICING AND SCANNER ACCURACY IN THE
COUNTY OF CHAUTAUQUA

BE IT ENACTED, by the County Legislature of the County of Chautauqua, as follows:

Section 1. Purpose

Pursuant to Local Law 23-91 of the County of Chautauqua, as amended by Local Laws 2-92 and 12-95, item pricing was required in retail stores for a limited number of consumer items, including food, certain paper products, detergents, soaps, and various toiletries. Retail stores operating computer-assisted checkout systems were allowed to apply for and obtain a waiver of the item pricing requirement if such checkout systems were able to meet minimum pricing accuracy requirements, and if a clear and readable shelf label was provided for every required item.

As recommended by the 2003 Item Pricing Review Committee, the Chautauqua County Legislature hereby finds that the current item pricing requirements should be expanded to include most all items sold at retail. It is also the intent of this Legislature to continue to provide for a waiver of the item pricing requirement for certain stores that maintain a high degree of computer-assisted pricing accuracy, provide clear and legible shelf labels, and make available certain other services to permit consumers to record and verify individual item prices.

Section 2. Definitions.

For the purpose of this local law the following terms shall have the following meanings:

- a. "Advertised Price" shall mean the price of an SKI which a store has caused to be disseminated by means of promotional methods such as in-store sign, newspaper, circular, television, or radio advertising;
- b. "Computer-assisted checkout system" shall mean any electronic device, computer system, or machine which determines the selling price of an SKI by interpreting the item's UPC, or any other use of a price look up-function;
- c. "Director" shall mean the director of the Chautauqua County Bureau of Weights and Measures;
- d. "Inspector" shall mean an authorized representative of the Chautauqua County Bureau of Weights and Measures;
- e. "Item Pricing" shall mean the tag, stamp, or mark affixed by an authorized person to an SKI which sets forth, in Arabic numerals, the retail price thereof;
- f. "Price look-up function" shall mean the capacity of any checkout system to determine the retail price of an SKI by way of the manual entry into the system of a code number assigned to that particular SKI by the store or the checkout operator's consultation of a file maintained at the point of sale;

- g. "Sale price" shall mean the price of SKIs offered for sale in good faith at a price below the price for which such SKIs are usually sold in the store;
- h. "Shelf price" shall mean the sign or tag placed by an authorized person at each point of display of an SKU, which clearly sets forth the retail prices of the SKIs within that SKU;
- i. "Stock-keeping item" (SKI) shall mean each item within the SKU being offered or exposed for sale;
- j. "Stock-keeping unit" (SKU) shall mean each group of items offered for sale of the same brand name, quantity of content, retail price, and variety within;
- k. "Store" shall mean any establishment which offers SKUs for sale at retail. Each separate building within which such SKUs are offered for sale at retail shall constitute a separate store;
- l. "Store-coded item" shall mean the application of an UPC to any SKI by that particular store;
- m. "Universal Product Code" (UPC) shall mean the digit figure depicted through the use of bars and spaces that may be scanned into pricing systems; and
- n. "Waiver" shall mean a waiver from item pricing issued pursuant to Section 10 of this local law.

Section 3. Item Pricing Required.

Every person, store, firm, partnership, corporation, or association which sells, offers for sale, or exposes for sale at retail, SKUs, shall disclose to the consumer the item price of such SKUs, except as provided in Section 4 and Section 10 of this local law, by causing to be conspicuously, clearly, and plainly marked, stamped, typed, or affixed thereto the retail price in Arabic numerals; except, however, that the provisions of this article shall not apply to a store that:

- a. has as its only full-time employees the owner or franchisee thereof, or the parent, spouse, or child of the owner or franchisee, or in addition thereto not more than two (2) full time employees; or
- b. engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director determines, by regulation, would be in appropriate for item pricing; or
- c. holds a current waiver as provided in Section 10 of this local law.

Section 4. Certain Items Exempted.

- a. The following SKIs need not be item priced as provided in Section 3 of this local law provided that a shelf price is posted at the point of display, consistent with Section 14 of this local law, and a price look-up function is maintained for such SKIs"
 - i. SKIs within a multi-item package that are properly price marked;
 - ii. Milk, cream, half and half, and other similarly packaged liquid dairy products and juices;
 - iii. Eggs;
 - iv. Unpackaged bulk or fresh produce;

- v. SKIs sold through a vending machine
 - vi. Food sold for consumption on the premises;
 - vii. Snack foods, such as cakes, gum, candies, chips, and nuts offered for sale in single packages and weighing five (5) ounces or less;
 - viii. Cigarettes, cigars, tobacco, and tobacco products;
 - ix. Frozen foods, gelatin, pudding, and yogurt;
 - x. Baby food;
 - xi. SKIs which weigh three (3) ounces or less and are price under one dollar (\$1.00);
 - xii. Greeting cards, magazines, books, periodicals;
 - xiii. Live plants;
 - xiv. Lumber, fencing, and bulk electrical wire; and
 - xv. Single cans of soda in coolers
- b. SKIs which must be purchased with the assistance of a sales person need not be item priced as provided in Section 3 of this local law, nor be shelf priced at the point of display. For the purposes of this section, merely accepting payment for the merchandise does not constitute assistance.

Section 6. Item Pricing Inspections.

- a. The failure to item price three (3) or more SKIs or a particular SKU shall constitute a single violation. The failure to item price additional SKIs within the same SKU shall not constitute an additional violation. Each day a violation is continued shall constitute a separate violation.
- b. Any store found in violation of Section 3 of this local law shall be subject to the following penalties: for violation(s) discovered upon the first inspection following any twelve (12) month period in which no violation has been found, the store shall pay a penalty of fifty dollars (\$50.00) for each of the first four (4) violations; one hundred dollars (\$100.000) for each of the next twelve (12) violations; and one hundred fifty dollars (\$150.00) for each subsequent violation, but in no case shall the total penalty exceed five thousand dollars (\$5000.00). For violations discovered upon a second or subsequent inspection within a twelve (12) month period, the above penalties shall be doubled, with a maximum total penalty of fifteen thousand dollars (\$15,000.00).

Section 7. Price Accuracy Required.

No store shall charge a retail price for any exempt or non-exempt SKI which exceeds the lowest of any item, shelf, sale, or advertised price of such SKIs.

Section 8. Pricing Accuracy Inspections.

- a. For any price accuracy inspection under this local law, the store representative shall afford the inspector access to the test mode of the computer-assisted checkout system in

use at the store or to a comparable function of said system and to the retail information contained in a price look up system.

- b. In a store with a laser scanning or other computer-assisted checkout system, the inspector shall be permitted to compare the item, shelf, sale, or advertised price of any SKIs offered in the store, not to exceed three hundred (300) SKIs selected from a cross section of all SKUs offered for sale at the location of any one inspection, with the programmed price. The store shall provide such access to the computer as necessary for the inspector to make the determination.

Section 9. Price Violations and Penalties

- a. For any violation of Section 7 of this local law there shall be a penalty not to exceed five hundred dollars (\$500.00). Each day on which a violation is continued shall constitute a separate violation.
- b. In the event that the programmed computer price exceeds the item, shelf sale, or advertised price of any SKI, the store will be subject to the following penalties: for violations of the provisions of Section 8 of this local law identified in the first inspection following any twelve (12) month period in which no such violations have been found, a penalty in the amount of fifty dollars (\$50.00) per violation shall be imposed for the first two (2) percent of the SKIs compared rounded to the nearest whole number; one hundred dollars (\$100.00) per violation for the next two (2) percent; two hundred dollars (\$200.00) per violation for the next two (2) percent; and three hundred dollars (\$300.00) per additional violation, but in no event shall the total penalty for all violations of Section 8 of this local law identified at such first inspection exceed two thousand dollars (\$2,000.00). For violations identified in a second or subsequent inspection in a twelve (12) month period following a previous violation of Section 8 of this local law, the penalties shall be doubled, with a maximum total penalty of fifteen thousand dollars (\$15,000.00).

Section 10. Waiver From Item Pricing.

- a. Every person, store, firm, partnership, corporation, or association which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in Section 3 of this local law may make application in writing to the Director for a waiver of said item pricing requirement. A separate application shall be required for each store. Each applicant shall be subject to a non-refundable processing fee to cover the cost of conducting scanner accuracy inspections as provide in subsection b of this section. The Director shall determine the processing fee and may revise it from time to time to reflect said cost, but in no case shall said fee exceed one thousand seven hundred and fifty dollars (\$1,750.00) per application.
- b. Waiver applications and the required fee must be received at the Bureau of Weights and Measures, 1 North Erie Street, Courthouse, Mayville, New York 14757 before a temporary waiver can be granted. Waivers to item pricing are in effect for a period of twelve (12) months from date of receipt of processing fee and application. Waivers are to be renewed annually, with the processing fee and inspection required for each annual renewal application.

- c. Upon receipt of an application and fee as provided in subsection a of this section, the Director shall cause to be conducted two (2) scanner accuracy inspections of the store for which application has been submitted. These inspections shall be conducted on two(2) separate days, and in the manner prescribed in section eight (8) of this local law, excepting, however, that a minimum of one hundred (100) SKIs shall be checked at each inspection. In the event any violations are detected, penalties shall be assessed as provided in Section 9 of this local law. If, considering both inspections together, the number of SKIs found to be in violation does not exceed two (2) percent of all SKIs inspected, the Director shall grant to this applicant a one (1) year revocable waiver from item pricing requirements. Any store with a current waiver shall be exempt from the requirements of Section 3 of his local law.
- d. In the event that total violations in excess of two (2) percent are discovered in the inspections provided for in subsection c or d of this section, the Director shall not grant a waiver to the applicant. Such store must promptly reapply for a waiver and pay the required fee to the director within five (5) business days after being notified of the failure. Stores that do not reapply must be in compliance with all requirements of section three within sixty (60) days from date of failure.
- e. In the event that the Director is unable to conduct inspections pursuant to subsection c of this section within thirty (30) days of receipt of a complete waiver application and proper processing fee, or upon other good cause, the director shall grant a temporary waiver, pending completion of the inspections. The Director shall cause said inspections to be completed as soon as practicable.
- f. As a condition of the waiver from item pricing pursuant to this section, each store which accepts a waiver must agree to meet the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:
 - i. The store shall designate and make available a price check scanner to enable consumers to confirm the price of the SKI. The price check scanner shall be in a location convenient to consumers with a sign of sufficient sized lettering identifying this unit to the consumers. Retail stores containing five (5) or fewer price check scanners or other computer assisted checkout units may utilize all such units in the normal course of business provided that one (1) unit is immediately made available to consumers who request it for price confirmation.
 - ii. The store shall not charge any customer a price for any SKI which exceeds the item, shelf, sale, or advertised price of that SKI, whichever is least.
 - iii. The store shall cause to be posted in conspicuous location(s), accessible by all consumers and approved by the Director, signs explaining the right of consumers consistent with the waiver as set forth in section eleven (11) of this local law., The Director will specify the content, size, and numbers of these sign(s) by regulation. The store is also required to post the temporary or annual waiver in the area designated for handling price discrepancies.
 - iv. The store shall make payment to consumers who have been overcharged as provided in Section 11 of this local law. Each store is required to

designate at least one (1) individual who is authorized to issue these payments during all of the store's operating hours.

- v. The store shall correct all pricing errors identified by consumers at store level within three (3) hours and, if applicable, at their firm, partnership, corporation, or association within twenty-four (24) hours.

Section 11. Consumers' Right to "Super Fund".

Any consumer who suffers a loss because of the price charged for a SI, by a store which has been granted a waiver from item pricing pursuant to Section 10 of this local law, is greater than the least of the item, shelf, sale, or advertised price may seek a super refund by notifying the store in person or in writing, within thirty (30) days of purchase, that the price charged is more than the item, sale, shelf, or advertised price. The notice shall include evidence of the loss suffered by the consumer. As soon as practical, and in no case more than two (2) days after receipt of such notification and verification of the overcharge, the store shall tender to the consumer an amount equal to the difference between the price charged and the least of the item, sale, shelf, or advertised price, plus an amount equal to ten (10) times that difference, but no less than one dollar (\$1.00) nor more than ten dollars (\$10.00). If the loss is suffered by one consumer within one (1) transaction on two (2) or more identical SKIs, the amount to be tendered by the store will be the difference on each item plus the amount equal to ten times the difference but no less than one dollar (\$1.00) nor more than ten dollars (\$10.00) on the single item so that the super refund only applies to the first of two (2) or more identical items purchased at the same time; the consumer shall also pay only the proper price for all such items. If the store does not tender this amount within the time set for in this local law, the consumer may request a hearing before the Director. Within sixty (60) days of receipt of such a request for a hearing, the Director shall cause a hearing to be held, and shall rule as to what payment, if any, is due under this section.

- a. Every store which has been granted a waiver from item pricing pursuant to Section 10 of this local law shall maintain records of the number, dates, times, and amounts of claims made by consumers pursuant to this section, and the disposition of each claim, and shall provide copies of such records to the Director upon request. The Director will specify by regulation forms for use by consumers in presenting claims for such payment.
- b. Every store which has been granted a waiver from item pricing pursuant to Section (10) of this local law shall make a good faith effort to resolve all legitimate complains of overcharges by tendering payment consistent with the provisions of subsection a of this section. Failure to tender this payment and use of the specified form in Section 11 (1) may be grounds for the Director to revoke that store location's waiver from item pricing.

Section 12. Revocation of Waiver.

- a. The Director may revoke a waiver from item pricing for any of the following reasons:

- i. Failure to comply with any provision of Section 10, 11, or 13 of this local law;
 - ii. Deliberate overcharging of any consumers; and
 - iii. Material misrepresentation in the application for a waiver.
- b. A store which has had its waiver revoked pursuant to this section may not reapply for a new waiver for a period of twelve (12) months following the date of revocation. This store location must be in compliance with section three (3) of this local law within sixty (60) days from the date of the revocation notification.

Section 13. Readable Shelf Labels Required.

- a. Any store which has been granted a waiver from item pricing pursuant to Section ten (10) of this local law shall provide a clear and readable shelf label for every SKU. Each SKIs retail price shall be printed on a shelf label in characters no less than three-quarters (3/4) of an inch in height. Shelf labels on bottom shelves shall be tilted upwards at an angle of between thirty (30) and sixty (60) degrees from the floor.
 - i. SKIs that are individually item priced are exempt from the requirements of Section 13 (a); and
 - ii. In cases where the width of the facings of a particular SKI is smaller than the width of the store's standard shelf label, the store may decrease the size requirement specified in Section 13 (a). In these situations the lettering cannot be reduced below three eights (3/8) of an inch.
- b. The Director may, by regulation, specify the standard shape, typeface, placement, and format of shelf labels, and may set other requirements to ensure the readability of shelf labels and the ability of consumers to identify which shelf label applies to each SKU.
- c. No provision of this section shall be constructed to diminish the requirements of Section 214-h of the Agricultural and Markets Law, as it may be further amended to re-designated. If any provision of this Section of this local law conflicts with said Section 214-h of the Agricultural and Markets Law shall control, provided, however, that if this local law establishes a higher standard or additional requirements beyond those set forth in said Section 214-h, the provisions of this local law shall apply unless deemed to be preempted as may be provided by law.

Section 14. Penalties for Failure to Provide Proper Self Labeling.

In the event that shelf labels do not conform with the provisions of Section 13 of this local law, the store will be subject to the following penalties: for violations of the provisions of Section 13 of this local law identified in the first inspection following any twelve (12) month period within which no such violations have been found, a penalty in the amount of ten dollars (\$10.00) per violation shall be imposed, but in no event shall the total penalty for all violations exceed five hundred (\$500.00). For violation identified in a second or subsequent inspection in a

twelve (12) month period following a pervious violation of Section 13 of this local law, the penalties shall be doubled, up to a maximum of two thousand dollars (\$2,000.00). Each SKU for which proper shelf labeling is not provided shall constitute a separate violation. Every day a violation is continued shall constitute a separate violation.

Section 15. Enforcement by the Director.

- a. The Director shall have the authority to promulgate such regulations as necessary to carry out the purposes of this local law. This local law and regulations promulgated by the Director under this local law shall be enforced by the Director.
- b. The Director shall, within available appropriations, cause retail stores to be inspected to ensure compliance with this local law.
- c. Upon finding a violation of the provisions of this local law, or of the rules and regulations promulgated hereunder, the Director shall cause the same to be corrected and, if requested, cause a hearing to be held to determine whether a violation of this local law has occurred. At least ten (10) days written notice of a hearing shall be served either personally upon the person in charge of the store where the alleged violation has occurred, or by certified or registered mail addressed to such store. Such notice shall contain a concise statement of the facts constituting the alleged violation and shall set forth the date, time, and place that a hearing shall be held. Upon a finding of a violation of the provisions of this local law, the Director shall be authorized to recover any civil penalty provided for in this local law.

Section 16. Appeals.

Any decision of the Director under this local law, including assessment of penalties, denial of an application for a waiver, or revocation of a waiver, may be appealed in writing to the Chautauqua County Clerk. Within thirty (30) days of receipt of such an appeal the County Clerk shall cause a hearing to be held to review the contested decision of the Director. At least ten (10) days written notice of a hearing shall be served either personally upon the person in charge of the store filing the appeal or by certified or registered mail addressed to such store. Such notice shall set forth the date, time, and place where a hearing shall be held. Within thirty days following such a hearing, the County Clerk shall issue a final written ruling regarding the appeal.

Section 17. Severability.

If any clause, sentence, paragraph or section of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or section thereof directly involved in the proceeding or action in which such adjudication has been rendered; except, however, that if Section 11 of this local law is adjudged to be invalid then the entirety of Section 10 shall also be invalid, and all waiver granted under Section 10 shall be null and void.

Section 18. Repeal of Prior Legislation; Construction; Review

Local Laws 23-91, 2-92, and 12-95 of the County of Chautauqua are hereby repealed. This local law shall be construed liberally so as to provide maximum protection to the consumers of Chautauqua County. At any time during the fifth year this local law is in effect and every five (5) years thereafter, review of this local law shall be conducted by the County Legislature. The Chairman of the Legislature shall name an ad hoc Item Proving Review Committee which shall include representatives of consumer interest and of the food industry, and at least two (2) members of the Legislature. Such review shall consider the effectiveness of this local law and the need for changes to its provisions. A report of the findings of the ad hoc Item Pricing Review Committee shall be made to the full Legislature within ninety (90) days of the appointment of the committee. The results of the review shall be acted upon as is appropriate under the rules of the Legislature. Nothing in this section, however, shall restrict the Legislature from amending or repealing this local law at any time.

Section 19 Effective Date.

This local law shall take effect July 1, 2003, or upon filing with the Secretary of State whichever is later.

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