LAID ON DESKS 7/7/14
RELAID ON DESKS 8/11/14
Government Services & Administration
Tabled in Government Services & Administration 9/4/14

Resolution No. 2014198

Re: LOCAL LAW NO. _____ OF 2014, A LOCAL LAW AMENDING LOCAL LAW NO. 9 OF 1991 (AS AMENDED BY LOCAL LAW NO. 3 OF 1998 AND LOCAL LAW NO. 2 OF 2011) REQUIRING ITEMIZED PRICING OF GOODS OFFERED FOR SALE AT RETAIL; THIS LOCAL LAW PROVIDES FOR ELIMINATION OF MANUAL TAGGING WHERE RETAILER PASSES AN ACCURACY INSPECTION AND FOR AN INCREASE IN PENALTIES

Legislators ROLISON and MICCIO offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No. _____ of 2014 which has been submitted this day for consideration by said legislature.

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8th day of September 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8th day of September 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. _____ OF 2014

RE: A LOCAL LAW AMENDING LOCAL LAW NO. 9 OF 1991 (AS AMENDED BY LOCAL LAW NO. 3 OF 1998 AND LOCAL LAW NO. 2 OF 2011) REQUIRING ITEMIZED PRICING OF GOODS OFFERED FOR SALE AT RETAIL; THIS LOCAL LAW PROVIDES FOR ELIMINATION OF MANUAL TAGGING WHERE RETAILER PASSES AN ACCURACY INSPECTION AND FOR AN INCREASE IN PENALTIES

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

Section 1. LEGISLATIVE INTENT.

The Legislature hereby finds and determines that Computer Assisted Checkout Systems (CACOS) are an accurate means of pricing consumer commodities and have become an indispensable technology for certain food establishment retailers. Employment of such technology obviates the requirement that is contained in existing laws in Dutchess County that individual items be price marked in Arabic numbers, so long as the accuracy of the CACOS system is established and the price of individual items is clearly marked on shelves and displays as provided herein. Other than New York City, Dutchess County is the last jurisdiction in the State to have a mandatory item pricing law without a scanner accuracy waiver provision. Some retailers will not operate in counties that mandate manual pricing which has the effect of limiting competition and economic expansion in Dutchess County. As such, the Legislature finds that other pricing systems should be permitted, subject to proper safeguards.

Section 2. DEFINITIONS.

1. The definitions employed in Local Law No. 9 of 1991 as amended by Local Law No. 3 of 1998 and Local Law No. 2 of 2011 shall apply herein.

2. Local Law No. 9 of 1991 as amended by Local Law No. 3 of 1998 and Local Law No. 2 of 2011 is hereby amended to the extent that all references to "retail food establishment" shall be changed to "retail space".

3. Section 4 of Local Law No. 9 of 1991 as amended by Local Law No. 3 of 1998 and Local Law No. 2 of 2011 shall be amended by deleting the existing text of the section and replacing it with a new section 4 as follows: "Section 4 – Employment of Computer Assisted Checkout Systems as satisfying the provisions of Dutchess County item pricing requirements."

A. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in Dutchess County may make an application, in writing, to the Dutchess County Commissioner of Health for a waiver of the item pricing requirement. Retail stores that are required by the law of their local jurisdiction to price mark each item are not qualified to apply for a waiver. A separate application shall be required for each qualified retail store. Each applicant shall be subject to a non-refundable waiver fee based upon the square footage of the retail area of each store as set according to the following schedule:

1. Store's Square Footage of Retail Area	Waiver Fee
1) 0 to 9,999 sq. ft.	$ 500
2) 10,000 to 29,999 sq. ft.	$ 1,000

3) 30,000 to 49,999 sq. ft.	$ 3,500
4) 50,000 to 89,999 sq. ft.	$ 5,000
5) 90,000 or more sq. ft.	$15,000

2. ***Waiver fees pursuant to this section may hereafter be revised and amended from time to time by resolution of the Dutchess County Legislature.***

B. Upon receipt of an application and fee as provided in subsection 1 above, the Commissioner of Health shall cause to be conducted a scanner count, location and accuracy inspection of the store for which the application has been submitted. At stores with a retail area in excess of 10,000 square feet, a minimum of 100 stock keeping items shall be checked at inspection. At stores with a retail area of 10,000 square feet or less, a minimum of fifty stock keeping units shall be checked. If the number of stock keeping units found to be in violation does not exceed two percent of those stock keeping units inspected, the Commissioner of Health shall grant to the applicant a one year revocable waiver for the item pricing requirement.

C. In the event that total violations in excess of two percent are discovered in the inspection process, the Commissioner of Health shall not grant a waiver to the applicant. Such a store may, within fifteen business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed two percent of those stock keeping units inspected, the Commissioner of Health shall grant to the applicant a one year revocable waiver for the item pricing requirement.

D. Stores whose waivers are revoked pursuant to subsection H or stores which, upon renewal for waiver, fail the scanner accuracy inspection(s) twice must comply with item pricing as set forth in Section 3 of Local Law No. 9 of 1991 as amended by Local Law No. 3 of 1998 and Local Law No. 2 of 2011 within thirty days from the final date of failure. Such a store will be prohibited from applying for a new waiver for one year from the date of revocation or second inspection failure.

E. Waivers shall be valid for a period of one year from the date of issuance, at which time the wavier shall expire. Stores must reapply annually for renewal. The waiver fee and inspection shall be required for each annual renewal application, as required for an original waiver application.

F. In the event that the Commissioner of Health is unable to conduct an inspection within 60 days of receipt of a completed application with the appropriate fee, then the Commissioner of Health will issue a temporary waiver pending the completion of the inspection process. The Commissioner of Health shall cause an inspection to be completed as soon as practicable. If, upon completion of an inspection, there is a violation rate of less than two percent, then the Commissioner of Health shall issue a permanent waiver with an expiration date of one year from the date of the issuance of the temporary waiver. If, upon completion of an inspection, there is a violation rate in excess of two percent, the temporary waiver shall be immediately revoked. Nevertheless, the store may, within 15 business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed two percent of those stock keeping units inspected, the Commissioner of Health shall grant to the applicant a one year revocable waiver for the item pricing requirement from the date of the issuance of the temporary waiver. If the store does not request a second inspection or if the store fails the second inspection, then the store must comply with the item pricing requirements set for the in Local Law above.

G. As a condition of the waiver from item pricing, each store must agree to meet all of the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:

(1) The store shall make available price check scanners to enable consumers to confirm the price of stock keeping items. These price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering to identify the units to the consumers. Stores will submit their proposed sign and device locations to the Commissioner of Health for approval. In stores with multiple floors, there shall be at least one scanner conveniently located on each floor of the store. The number of conveniently located scanners shall also be dependent on the store's retail area:

Store's Retail Area	Scanner
Under 3,000 sq. ft.	1
Between 3,001 and 10,000 sq. ft.	2
Between 10,001 and 30,000 sq. ft.	3
Over 30,001 sq. ft.	Minimum of 3 and such additional scanners as the Commissioner may deem appropriate; and

(2) Stores must also have a shelf price for each stock keeping item which is visible to the consumer and which are located directly under the item on the shelf on which the item is displayed; or if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed at the point of procurement. Failure to display the shelf price for a stock keeping item shall constitute a violation. The Commissioner of Health may specify standard shape, typeface, placement and format of shelf prices and may set other requirements to ensure the readability of shelf prices and the ability of consumers to identify which shelf prices applies to each stock keeping item. This subdivision shall not be construed to diminish the requirements of section 214-h of the New York State Agriculture and Markets Law, section 197-b of the ***New York State Agriculture and Markets Law***, or the New York State Regulations at 1 NYCRR 345.1 et seq, but shall be in addition thereto.

(3) The store shall not charge any consumer a price for any stock keeping item (SKI) that exceeds the item, shelf, sale or advertised price of the SKI.

(4) The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.

(5) The store shall post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

H. The Commissioner of Health may revoke a waiver from item pricing for any of the following reasons:

(1) Failure to comply with any provisions of this Local Law;
(2) Deliberate overcharging of any consumer;
(3) Material misrepresentation in the application for a waiver.

Section 3. PENALTIES.

Section 5 (a) of Local Law No. 9 of 1991 is hereby amended as follows:

5 (a) a violation of any provision of this local law or of any rule or regulation promulgated hereunder shall be punishable upon proof thereof, by the payment of a civil penalty in the sum of not more than $100 for each violation per SKU with a maximum fine of ***$7,500*** per inspection.

5 (b) failure to display the selling price of any SKU consistent with this act shall be punishable upon proof thereof by payment of a civil penalty in the sum of $100 per violation per SKU with a maximum fine of ***$7,500*** per inspection.

Section 4. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section, or part of this law or application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the cause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section5. EFFECTIVE DATE.

This Local Law, if enacted, shall take effect on October 1, 2014.

Background
2014198

VIA EMAIL

STAND WITH CONSUMERS, NOT SUPERMARKETS.
SAY "NO" TO ITEM PRICING WAIVERS!

To: Dutchess County Legislators
From: Russ Haven, Legislative Counsel
Re: Resolution 2014198, Regarding Proposed Local Law to Amend Local Law No. 9 of 1991, Requiring Itemized Pricing of Goods Offered for Sale at Retail. . .
Date: September 3, 2014

NYPIRG opposes this proposal, which would effectively repeal Dutchess County's Item Pricing Law. NYPIRG has fought for consumer rights since 1973 and led the campaign to enact local item pricing laws when the statewide item pricing law lapsed in 1991.

Item pricing laws provide fundamental protections to consumers when they go to their local supermarkets to purchase life essentials, including groceries, dairy products, dry goods, healthcare products and basic necessities, such as paper goods.

The proposed local law's "Legislative Intent" section points out the faulty logic in this proposal:

> The Legislature hereby finds and determines that Computer Assisted Checkout Systems (CACOS) are an accurate means of pricing consumer commodities and have become an indispensible technology for certain food establishment retailers. Employment of such technology obviates the requirement that is contained in existing laws in Dutchess County that individual items be price marked in Arabic numerals, so long as the accuracy of the CACOS system is established and the price of individual items is clearly marked on shelves and displays as provided herein. . . .

First, computer scanners are rarely 100% accurate. The proposal would allow up to 2% of errors to result in an item pricing waiver. If only the IRS was so forgiving. Moreover, 2% of the tens of thousands of items in large supermarkets means that consumers may be overcharged a huge amount of money. **And it's not about the technology, it's typically human error**—failure to input sale items, price changes and other data into computers. For the most part, when

107 Washington Avenue, 2nd Floor ♦ Albany, NY 12210-2270 ♦ 518-436-0876 ♦ Fax 518-432-6178
REGIONAL OFFICES: CAPITAL DISTRICT, HUDSON VALLEY, LONG ISLAND, NEW YORK CITY, SOUTHERN TIER, WESTERN AND CENTRAL NEW YORK

NEW YORK PUBLIC INTEREST RESEARCH GROUP FUND, INC. ♦ WWW.NYPIRG.ORG

Recycled paper

a sharp-eyed consumer spots an overcharge and complains, the supermarket corrects the problem prospectively—but all the shoppers who came before and were overcharged are not compensated. The store ends up ahead. The risks of local officials catching the error and fining the supermarket are minimal. The risks of repercussions from mistakes are small for supermarkets.[1]

Second, even if computer scanners were 100% accurate, they don't replace the benefits to consumers of individually marked items. Item pricing allows consumers to easily compare items that are similar but found in different parts of the store—dry pasta versus refrigerated soft pasta, for example. It also allows consumers on tight budgets—and who isn't these days?—to tote up what's in their carts so they don't go over budget. Individually marked items also let you compare the prices to the items that you're replacing on your home shelves—from the same store or a competitor.

Third, providing scanners for shoppers to check prices is inconvenient and in any event doesn't act as a check on the register scanners. The requirement that there be no more than three scanners as a default requirement in a huge supermarkets makes it inconvenient to compare shelf price to the scanned price. **Moreover, since these aisle scanners are hooked up to the same computer as the register scanners, they just reinforce that the price at the register is the right one, even if it's inaccurate. That's not independent verification of price—it just reinforces to the consumer that a potentially wrong price is accurate. If you look at a broken clock a second time, it's still wrong.**

Scanners save supermarkets a good deal of money by speeding checkout, managing inventory and helping with profiling and marketing to customers. These are reasons that supermarkets use scanners. **Scanners and item pricing are completely compatible; there's no reason to ditch item pricing because scanner systems are in place.** Moreover, prices don't increase due to item pricing. The law creates a level playing field within the county and *supermarket chains advertise regionally* and thus consumers with consumer protections are asked to pay the same price as those in counties without similar safeguards.

NYPIRG urges that you reject this misguided proposal.

[1] An aggressive regime of repeated, random, unannounced, undercover inspections is critically important to catch scanner accuracy problems. *See* http://sacramento.cbslocal.com/2012/11/05/call-kurtis-safeway-violating-court-order-surrounding-pricing-errors/. However, as discussed below, even if scanners were perfectly accurate in registering only the lowest advertised price, consumers would still benefit from and need item pricing protections.

RESOLUTION NO. 350—1991

re: Local Law No. 9 of 1991, Requiring the Pricing of Goods Offered for ale at Retail in Dutchess County and Repealing Local Law No. 9 of 1976, ocal Law No. 4 of 1980 and Local Law No. 3 of 1981

Legislators Gamache, Hammond, Horton, Noel, Quinn and Tedone offer the llowing and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt Local Law o. of 1991 which has been submitted this day for consideration by said egislature.

Revised 10/1/91 lw

LOCAL LAW NO. 9—1991

A Local Law Requiring the Pricing of Goods Offered for Sale at Retail in utchess County and Repealing Local Law No. 9 of 1976, Local Law No. 4 of 980 and Local Law No. 3 of 1981

BE IT ENACTED by the County Legislature of the County of Dutchess as llows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the consumers in Dutchess ounty are entitled to clear information, setting forth the prices of consumer ommodities which they purchase from retail supermarkets. A clear, easily-nforceable item-pricing statute will promote the Dutchess County consumer's ight to all reasonable information in order that these consumers are able to make nformed choices about their purchases.

The Legislature also finds and declares that there is technology utilizing a laser canning device offering numerous efficiencies and economies to the operation of he retail food industry. The Legislature further finds that price marking onstitutes an indispensable ingredient to a consumer's right to all reasonable nformation in order to make an informed purchase choice.

purpose of this Legislation is to require item pricing to protect the interest f the onsumer public, and to promote useful technology by permitting continued esting and development of the Universal Product Code Check-Out System without he removal of item prices.

Section 2. Definitions.

(1) "Retail food establishment" shall mean a store within a general retail merchandise store selling primarily food at retail for off-premises consumption, provided that such store had annual gross sales in the previous calendar year of at least two million dollars, unless such store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which, as a group had annual gross sales in the previous calendar year of at least two million dollars.

(2) "Consumer commodity" shall mean the following:

(a) food, including all material solid, liquid or mixed, whether simple or compounded, used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients added thereto for any purposes, and

(b) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates and cups, and

(c) detergents, soaps and other cleansing agents, and

(d) non-prescription drugs, female hygiene products and toiletries.

(3) "Computer-Assisted Check-out System" shall mean any electronic device, computer system or machine which determines the selling price of a consumer commodity by interpreting its universal product code, or by use of its prices look-up function.

(4) "Inspector" shall mean an employee of the Dutchess County Department of Consumer Affairs.

Section 3. Item Pricing Required

(a) Every retail food establishment in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label or otherwise, marked in arabic numerals on each item.

(b) The provisions of the Section 3 (a) hereof shall not apply to the following consumer commodities however packaged or contained, provided the selling price is conspicuously, plainly and clearly stated in arabic numerals by a sign contiguous to the point of display of the commodity:

(1) Milk

(2) Eggs

(3) Loose fresh produce

(4) Consumer commodities which are offered for sale in single packages and weighing three ounces or less, and are priced under one dollar.

(5) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.

(6) Food sold for consumption on premises.

(7) Identical items within a multi-item package that is properly price marked.

(8) Products sold through a vending machine.

(9) Cigarettes, cigars, tobacco and tobacco products.

(10) Food offered for sale in bulk.

Section 4. Accuracy of Computer Assisted Check-Out Systems.

(a) In a retail food establishment with a computer assisted check-out system, the programmed computer prices for any consumer commodity shall not exceed the item price and/or advertised price, whichever is lower.

(b) In a retail food establishment with a computer assisted check-out system, the inspector shall be permitted to compare the advertised price and/or item price consumer commodity sold in the retail food establishment, with the programmed computer price. The retail food establishment shall provide such access to the computer as is necessary for the inspector to make the determination.

(c) (1) **Inspection Procedures**

For any inspection under this Section, the establishment representative shall afford the inspector access to the test mode of the computer assisted check-out system in use at that establishment or to a comparable function of said system and to the retail price information contained in a price look-up function.

(2) **Stop Removal Order**

An Inspector shall have the authority to issue a stop removal order with respect to any consumer commodity being used, handled, or offered for sale in violation of this local law. Any such order shall be in writing and direct that the consumer commodity be removed from sale pending correction.

Section 5. Penalties, Injunctive Relief, Settlements.

(a) A violation of any provision of this local law or of any rule or regulation promulgated hereunder shall be punishable, upon proof thereof, by the payment of a civil penalty in the sum of not more than one hundred dollars for each such violation, with a maximum fine of two thousand dollars per inspection.

(b) Whenever any person has engaged in any acts or practices which constitute repeated or persistent violations of any provision of this local law or any rule or regulation promulgated hereunder, the County Attorney, upon the request of the Department of Consumer Affairs, may commence an action in the name of the County for a restraining order, temporary or permanent injunction or equitable relief.

(c) On finding a violation of the provisions of this local law or the rules and regulations promulgated hereunder, the Dutchess County Department of Consumer Affairs shall expeditiously cause the same to be corrected or where there is evidence of intent to defraud refer evidence of such violation to the district attorney of the County for prosecution or in the absence of intent to defraud refer to the attorney for the municipality for commencement of a civil action, in the name of the municipality, to recover a civil penalty in the amounts prescribed. A cause of action for recovery of such penalty may be released, settled or compromised by the municipality director before the matter is referred to the municipal attorney or, thereafter, by such attorney.

Section 6. Consumer Affairs.

The responsibility of the administration and enforcement of this law shall be with the Dutchess County Department of Consumer Affairs. He shall be vested with the power to promulgate rules and regulations consistent with the law.

Section 7. Separability.

If any part of or provisions of this law or the application thereof to any person, entity or circumstances be adjudged invalid by a Court of competent jurisdiction, such judgment shall be confined in its operation to the part of or such provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this law or the application thereof to other persons, entities or circumstances.

Section 8. Jurisdiction.

This local law shall be effective throughout the County of Dutchess.

Section 9. Local Law No. 9 of 1976, Local Law No. 4 of 1980 and Local Law No. 3 of 1981 be and the same are hereby repealed upon the adoption of this local law.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that adoption of this law is not an action within the meaning of the State Environmental Quality Review Act and the regulations adopted thereto, because the adoption of this law can have no effect on the environment. See 6 NYCRR Section 617.2(b)(2). The Legislature further finds and determines that even if the adoption of the law is a Type II action, it constitutes a legislative decision in connection with routing or continuing agency administration and management, not including new programs or major reordering of priority. See 6 NYCRR Section 617.13(d)(15) and (21). As a Type II action, the Legislature has no further responsibilities under SEQRA 6 NYCRR Section 617.5(a)(1)

Section 11. Effective Date.

This law shall take effect upon filing with the Secretary of State.

The foregoing resolution (#350) was laid on the desks at this meeting.

It was considered at a regular meeting of the Legislature on October 15, 1995.

Roll call vote on the foregoing local law at that time resulted as follows:

Ayes: 34

Nays: 0

Absent: 1—Lavoie.

Resolution adopted.

The County Executive held a public hearing on the foregoing local law on November 1, 1991 and signed it on the same day.

The effective date of this local law is November 1, 1991.

On motion by Legislator Smith, duly seconded by Legislator Philips, and carried, the Rules were suspended to allow the public to address non-agenda items.

On motion by Legislator Phillips, duly seconded by Legislator Smith, and carried, the Regular Order of Business was resumed.

There being no further business, upon motion of Legislator Smith, duly seconded by Legislator Bleakley and carried, the meeting adjourned at 6:10 PM subject to the call of the Chair.

Lay on Desks
4-20-98
Charter & LL

RESOLUTION NO. 980193

RE: LOCAL LAW NO. 3 OF 1998, A LOCAL LAW AMENDING LOCAL LAW NO. 9 OF 1991 REQUIRING ITEMIZED PRICING OF GOODS OFFERED FOR SALE AT RETAIL

Legislator SEARS offers the following and moves its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt Local Law No. 3 of 1998, which has been submitted this day for consideration by said Legislature.

APPROVED
WILLIAM R. STEINHAUS
COUNTY EXECUTIVE
Date 5/27, 1998

A:RES. Local Law No. 1 3/27/98 js

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11 day of May, 1998, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11 day of May, 1998.

PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

LOCAL LAW NO. 3 OF 1998

RE: A LOCAL LAW AMENDING LOCAL LAW NO. 9 OF 1991 REQUIRING ITEMIZED PRICING OF GOODS OFFERED FOR SALE AT RETAIL

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

SECTION 1. LEGISLATIVE INTENT.

The intent of this local law shall be to amend Section 3 of Local Law No. 9 of 1991 as follows:

SECTION 3. ITEM PRICING REQUIRED.

(A) Every retail food establishment in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label, or otherwise marked in Arabic numerals on each item.

(A) (1) The provisions of Section 3 (A) hereof shall not apply to the following consumer commodities however packaged or contained, provided the selling price is conspicuously, plainly and clearly stated in Arabic numerals by a sign contiguous to the point of display of the commodity:

(1) Milk

(2) Eggs

(3) Loose fresh produce

(4) Consumer commodities which are offered for sale in single packages and weighing three ounces or less, and are priced under one dollar.

(5) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.

(6) Food sold for consumption on premises.

(7) Identical items within a multi-item package that is properly marked.

(8) Products sold through a vending machine.

(9) Cigarettes, cigars, tobacco, and tobacco products.

(10) Food offered for sale in bulk.

(B) Every retail food establishment in Dutchess County which accepts manufacturers' coupons is required to post clearly and concisely the establishment's policy with respect to the doubling and/or tripling of coupons in areas easily visible to customers at all entrances to the establishment.

SECTION 2. EFFECTIVE DATE.

This local law shall take effect immediately upon full compliance with all the requisite statutes and laws applicable to its adoption and promulgation.

Government Services
Laid on Desks 11/4/10
Revised and Re-Laid by Mail 11/22/10

RESOLUTION NO. 2010347

RE: LOCAL LAW NO. 2 OF 2011, A LOCAL LAW AMENDING THE DUTCHESS COUNTY CHARTER BY DELETING SECTION 30.11 (DIRECTOR OF WEIGHTS AND MEASURES III) AND TRANSFERRING ALL POWERS AND DUTIES SET FORTH THEREIN TO THE DEPARTMENT OF HEALTH

Legislators ROLISON, COOPER, and BORCHERT offer the following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No. 2 of 2011 which has been submitted this day for consideration by said Legislature.

CA-210-10
CAB/ca/G-1524
10/28/10 (revised 11/10/10)

Fiscal Impact: None

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date 12/20, 2010

STATE OF NEW YORK
ss:
COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 7th day of December, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 7th day of December 2010.

PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

LOCAL LAW NO. 2 of 2011

RE: A LOCAL LAW AMENDING THE DUTCHESS COUNTY CHARTER BY DELETING SECTION 30.11 (DIRECTOR OF WEIGHTS AND MEASURES III) AND TRANSFERRING ALL POWERS AND DUTIES SET FORTH THEREIN TO THE DEPARTMENT OF HEALTH

BE IT ENACTED by the County Legislature of the County of Dutchess, State of New York as follows:

SECTION 1. LEGISLATIVE INTENT. In order to accomplish the unification of services set forth herein and to assure that those services are provided to the residents of Dutchess County in an efficient and cost effective manner, the Legislature hereby deletes Section 30.11 from the Dutchess County Charter and transfers the responsibilities previously set forth therein and described in Section 2 below to the Department of Health.

SECTION 2. Article VII (Department of Health) of the Dutchess County Charter is amended to add Section 7.06 which shall read as follows:

Section 7.06. Director of Weights and Measures III. Within the Department of Health, there shall be a Director of Weights and Measures III who shall have the powers and duties of a county director of weights and measures as described in Article 16 of the New York State Agriculture and Markets Law. The Director shall also perform such other and related duties as required by the Commissioner of Health provided such additional powers and duties deal primarily with services designed to aid and protect the consumer and are not inconsistent with the provisions of Article 16 of the New York State Agricultural and Markets Law.

SECTION 3. Local Law No. 2 of 1983 is hereby repealed.

SECTION 4. Any and all references to the "Dutchess County Department of Consumer Affairs" or "Director of Consumer Affairs and Weights and Measures" made in all Dutchess County local laws previously adopted affecting the Dutchess County Department of Consumer Affairs and the Director of Consumer Affairs and Weights and Measures including, but not limited to Local Law No. 2 of 1986, Local Law No. 8 of 1987, Local Law No. 9 of 1991, Local Law No. 10 of 1991, Local Law No. 5 of 1994, Local Law No. 6 of 1994, Local Law No. 5 of 1997, Local Law No. 3 of 1998 and Local Law No. 6 of 2004 shall now and henceforth refer to the Dutchess County Department of Health and the Dutchess County Commissioner of Health, respectively.

SECTION 5. EFFECTIVE DATE. This local law shall take effect immediately upon full compliance with all the requisite statutes and laws applicable to its adoption and promulgation.

McKinney's Consolidated Laws of New York Annotated
Agriculture and Markets Law (Refs & Annos)
Chapter 69. Of the Consolidated Laws
Article 17. Adulteration, Packing, and Branding of Food and Food Products (Refs & Annos)

McKinney's Agriculture and Markets Law § 214-h

§ 214-h. Unit pricing

Effective: February 13, 2013
Currentness

1. Consumer information required. Each person who sells, offers or exposes for sale in a retail store a consumer commodity shall disclose to the consumer the unit price and the total price of the commodity as provided in this section.

2. Definitions. a. "Consumer commodities" shall mean the following, however packaged or contained:

(1) food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose; and

(2) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates; and

(3) detergents, soaps and other cleansing agents; and

(4) non-prescription drugs, female hygiene products and toiletries.

b. "Retail store" shall mean a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises, or which is not primarily engaged in a specialty trade which the commissioner determines, by regulation, would be inappropriate for unit pricing. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members must pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to article twenty-eight of the tax law.

c. "Unit price" of a consumer commodity shall mean the price per measure.

d. "Price per measure" shall mean:

(1) price per pound for commodities whose net quantity is expressed in units of weight, except for such commodities whose net weight is less than one ounce which shall be expressed as price per ounce and commodities in powdered form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability

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as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce; provided that the same unit of measure is used for the same commodity in all sizes;

(2) price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts or gallons or a combination thereof, except for such commodities in concentrated liquid or ready to feed form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce for commodities in concentrated liquid form and price per fluid ounce for commodities in ready to feed form; provided that the same unit of measure is used for the same commodity in all sizes sold in the retail establishment;

(3) price per one hundred for commodities whose net quantity is expressed by count, except as otherwise provided by regulation;

(4) price per foot for commodities whose net quantity is stated in units of length, except for such commodities whose net quantity exceeds one hundred feet, which shall be expressed as price per one hundred feet, and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes;

(5) price per square foot or square yard, as appropriate, for commodities whose net quantity is expressed in units of area and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes; or

(6) such other price per measure, including metric equivalents of the customary measures, as the commissioner shall by regulation permit. The commissioner shall establish such metric equivalents whenever he determines that any commodity subject to the provisions of this section is being sold, offered or exposed for sale by metric measure.

3. Exemptions. a. The provisions of this section shall not apply to the following consumer commodities:

(1) food sold for consumption on the premises;

(2) prepackaged food containing separate and identifiable kinds of food segregated by physical division within the package; and any other foods for which the commissioner determines, by rules and regulation, that unit pricing would not be meaningful;

(3) any food which is primarily or exclusively a gourmet or specialty food, provided that the commissioner determines by regulation that unit pricing would be impractical for such food, and provided further that such food is segregated and displayed as a gourmet or specialty food;

(4) any commodity whose net quantity as offered for sale is one pound, one ounce, one pint or quart, one hundred count, one foot, one hundred feet, one square foot, one square yard or equivalent metric units established by the commissioner, provided that it has the retail price marked plainly thereon;

(5) milk, and other similar low fat products such as two percent milk, one percent milk and skim milk, cream, melloream and vegetable oil blend whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, one half liter, one liter; frozen desserts such as ice cream, light ice cream, low-fat ice cream, fat-free ice cream, sherbet, sorbet,

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frozen yogurt, and any other product similar in appearance, odor and taste to such products whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, and multiples of quarts and gallons; and butter, vegetable spread, oleo margarine and margarine whose net quantity is one fourth pound, one half pound, one pound or multiples of one pound, one hundred twenty-five grams, two hundred fifty grams, five hundred grams or multiples of five hundred grams, flour whose net quantity as offered for sale is in five or ten pound bags;

(6) fresh food produce.

b. The provisions of this section shall not apply to convenience stores which include small stores which typically sell motor fuel, tobacco products, fast food and beverages and do not offer sufficient quantity of consumer commodities to make unit pricing useful to consumers or to any retail store having had annual gross sales of consumer commodities in the previous calendar year of less than two and one-half million dollars, unless the store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, with five or more stores located in New York, which, as a group, had annual gross sales the previous calendar year of two and one-half million dollars or more of consumer commodities.

4. Means of disclosure. A consumer commodity sold, or offered for sale or exposed for sale, subject to this section, shall have the unit price and total price disclosed to the consumer in one of the following ways:

a. if the item is conspicuously visible to the consumer, by the attachment of a stamp, tag or label directly under the item on the shelf on which the item is displayed, or, in the case of refrigerated items not displayed on shelves, in a manner to be prescribed by regulation; or

b. if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement, or by affixing the unit price and total price on the commodity itself.

5. The commissioner may promulgate regulations to effectuate this section.

6. Nothing in this section shall be construed to conflict with or limit section one hundred ninety of this chapter.

7. Violations and penalties. a. A violation of this section shall be subject to the applicable penalties of this chapter except for the penalties specified in section forty-one thereof.

For purposes of this section, each group of identical consumer commodities for which on any single day the total selling price or price per measure is not displayed in accordance with this section or the regulations promulgated thereunder shall be considered a violation of this section. Improper unit pricing caused by nonintentional technical errors, however, shall not constitute a violation.

b. Each group of units not unit priced or improperly unit priced shall constitute a violation. Each individual unit, however, not unit priced or improperly unit priced shall not constitute a violation unless displayed alone.

c. Each day a violation is continued shall constitute a separate violation.

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d. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office or a municipal director of weights and measures.

8. Preemption. Except as provided in paragraph b of subdivision three of this section, any local law, ordinance, rule or regulation relating to labeling, displaying or other disclosure of the price per measure of any commodity must be consistent with the provisions of this section and the rules and regulations adopted hereunder.

Credits

(Added L.1977, c. 874, § 3. Amended L.1979, c. 679, § 1; L.1981, c. 201, § 1; L.1993, c. 323, §§ 1, 2; L.1995, c. 273, §§ 1, 2; L.1997, c. 306, § 2, eff. July 29, 1997; L.2012, c. 427, § 1, eff. Feb. 13, 2013.)

Notes of Decisions (3)

McKinney's Agriculture and Markets Law § 214-h, NY AGRI & MKTS § 214-h
Current through L.2014, chapters 1 to 327.

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McKinney's Consolidated Laws of New York Annotated
Agriculture and Markets Law (Refs & Annos)
Chapter 69. Of the Consolidated Laws
Article 16. Weights and Measures (Refs & Annos)

McKinney's Agriculture and Markets Law § 197-b

§ 197-b. Retail pricing accuracy

Effective: September 13, 2006
Currentness

1. Definitions. a. "Retail store" shall mean a store that sells stock-keeping units directly to consumers and charges or is liable for the collection of sales tax. For the purposes of this section the term " retail store" shall include those stores that use universal product code (UPC) scanners or price-look-up (PLU) codes in checkout systems or use manual pricing of items.

b. "Pricing accuracy inspection" shall mean an inspection of a retail store for the purpose of ensuring that customers are charged the correct price for the items they purchase.

c. "Price charged" means the price a customer is charged for an item. For prices determined by an automated checkout device, the price charged means the price on the receipt issued to the consumer after the final total has been determined, whether the item is scanned or actually purchased, the device is computing or recording while in training mode, or by using a hand-held device connected to a store's database.

d. "Stock-keeping unit" means each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties.

e. "Retail price" means the lowest advertised, written, posted, or marked price of a stock-keeping unit.

f. "Overcharge" means a price charged that is higher than the retail price.

g. "Undercharge" means a price charged that is lower than the retail price.

h. "Large overcharge" means an error of twenty-five cents on any individual item up to two dollars and fifty cents and ten percent thereafter.

2. Pricing requirements. A retail store shall:

a. Display the retail price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price.

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b. Assure that the price charged after the final total has been determined is equivalent to the retail price.

c. If a UPC scanner system is used to determine the price charged, provide the appropriate inspection official access to the checkout system in use at such retail store to verify the price charged for items included in a pricing accuracy inspection. Access shall be provided to the system either in normal operating mode, in training mode, or through a hand-held or other device tied to the store's database.

d. Post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

3. Test procedures and accuracy requirements. a. The commissioner shall, by regulation, adopt test procedures utilizing randomized sampling techniques. Such procedures shall be consistent with the examination procedure for price verification developed by the national conference on weights and measures and published in the national institute of standards and technology handbook one hundred thirty. For purposes of this section, pricing accuracy inspections shall, to the extent possible, be conducted at a time and in a manner that does not interrupt the normal flow of retail business at the retail store.

b. A retail store at least three hundred square feet in size shall be deemed in compliance if ninety-eight percent of the items in the sample selected are accurately priced. For purposes of this section retail stores that are less than three thousand square feet and employ a manual pricing system shall be deemed in compliance if, effective June first, two thousand seven through May thirty-first, two thousand eight, at least ninety-six percent of the items in the sample selected are accurately priced and beginning on June first, two thousand eight at least ninety-eight percent of the items in the sample selected are accurately priced.

c. In addition to establishing a standard frequency of inspection consistent with the provisions of paragraph a of this subdivision, the commissioner or a weights and measures official may conduct inspections of individual items in response to consumer complaints or as a follow-up on items ordered to be corrected in a previous inspection.

4. Enforcement procedures. a. The commissioner or a weights and measures official shall advise the operator of the retail store of any pricing error encountered in an inspection. If the correction cannot be made immediately, then, the commissioner or a weights and measures official shall issue a stop removal order for items subject to overcharges and such stock-keeping units shall be removed from sale until correction is made.

b. Upon finding a violation of this section, the commissioner or the municipal director of weights and measures may impose civil penalties as prescribed in section thirty-nine of this chapter. Such penalty shall not exceed three hundred dollars per violation for violations assessed during an initial inspection in a calendar year and shall not exceed six hundred dollars per violation for violations assessed in a second or subsequent inspection during a calendar year. In determining the amount of any civil penalty imposed, the magnitude of the errors, corrective action taken by the retail store, history of such prior conduct, or other relevant information shall be considered. Penalties may only be imposed for:

(1) Overcharges found in a sample selected using the procedures adopted pursuant to subdivision three of this section, when overcharges number more than two percent of the sample. Each such overcharge may be considered a separate violation provided, however, that any overcharge for a single stock-keeping unit that includes more than one item in such unit shall count as a single violation and not as separate violations for each item in the stock-keeping unit.

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(2) A large overcharge found on an individual item.

(3) An overcharge verified in response to a consumer complaint.

(4) Overcharges found on follow-up inspections of items ordered corrected.

(5) Failure to disclose the retail price of a stock-keeping unit pursuant to paragraph a of subdivision two of this section.

(6) Failure to conspicuously post a refund policy pursuant to paragraph d of subdivision two of this section.

5. Local pricing laws. Nothing in this section shall be construed to prohibit a political subdivision of the state from continuing to implement and enforce any local pricing law or regulation in effect prior to the effective date of this section. Where a political subdivision has a local pricing law in effect prior to the effective date of this section, the provisions of this section shall have no force and effect until such time as the political subdivision repeals its local pricing law. Any political subdivision of the state not having any local pricing law or regulation in effect prior to the effective date of this section shall adopt and implement the pricing accuracy provisions set forth in this section or by regulations adopted pursuant to this section.

Credits
(Added L.2006, c. 665, § 2, eff. Sept. 13, 2006.)

McKinney's Agriculture and Markets Law § 197-b, NY AGRI & MKTS § 197-b
Current through L.2014, chapters 1 to 327.

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Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 1. Department of Agriculture and Markets
Chapter VI. Food Control
Subchapter H. Unit Pricing
Part 345. Unit Pricing (Refs & Annos)

1 NYCRR 345.1

Section 345.1. Purpose

(a) The purpose of this Part is to effectuate the provisions of Agriculture and Markets Law, section 214-h, which relates to providing consumers with information needed to effectively compare retail product prices by instituting unit pricing of certain consumer commodities.

Credits
Sec. filed Nov. 22, 1974; amd filed April 3, 1995 eff. May 19, 1995.

Current with amendments included in the New York State Register, Volume XXXVI, Issue 33, dated August 20, 2014.

1 NYCRR 345.1, 1 NY ADC 345.1

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