

LOCAL LAW NO. 12-95
CHAUTAUQUA COUNTY

AMENDING LOCAL LAW 23-91 OF THE COUNTY OF CHAUTAUQUA REGARDING
ITEM PRICING

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

Section 1. Local Law 23-91 of the County of Chautauqua, as amended by Local Law 2-92, is hereby further amended as provided herein.

Section 2. Paragraph D of Section Five of Local Law 23-91 is amended to read as follows:

D. Penalties for item pricing violations. Any [person who] retail store which fails to mark any stock keeping item in violation of section three shall be subject to the penalty of fifty dollars per violation per stock keeping unit, but in no event shall the total penalty for initial violations from a single inspection exceed five thousand dollars. For additional violations during [a] subsequent inspections [in] within a twelve month period from the date of a prior violation of section three, [the above penalties shall be doubled] a penalty shall be imposed of one hundred dollars per violation per stock keeping unit, but in no event shall the total penalty from a subsequent violation exceed ten thousand dollars. No penalties shall be imposed for a violation of section three if more than ninety-five percent of all the stock keeping items inspected in each stock keeping unit [at an individual point of sale] at such retail store contained clearly readable item prices.

Section 3. Paragraph E of Section Five of Local Law 23-91 is amended by substitution to read as follows:

E. Penalties for pricing accuracy violations. For a violation by a retail store of the provisions of section four, a penalty in the amount of fifty dollars per stock keeping unit in violation shall be imposed, but in no event shall the total penalty for initial violations from a single inspection exceed five thousand dollars. For additional violations at a retail store during subsequent inspections within a twelve month period from the date of a prior violation of section four, a penalty in the amount of one hundred dollars per stock keeping unit in violation shall be imposed, but in no event shall the total penalty from a subsequent inspection exceed ten thousand dollars.

Section 4. Local Law 23-91 is amended to add a new Section Five-A as follows:

Section 5-A WAIVER OF ITEM PRICING

A. Application. Any retail store which uses a computer-assisted checkout system may make application in writing to the Director of Weights and Measures (“Director”) for a waiver of the item pricing requirement. A separate application shall be required for each retail store. Each

application shall be subject to a non-refundable processing fee in the amount of One Thousand and No/100 Dollars (\$1,000.00).

B. Inspection. Upon receipt of an application and fee, the Director shall within sixty days conduct two scanner accuracy inspections of the retail store. The inspections shall be held on separate days and a minimum of three hundred stock keeping units shall be checked each time.

C. Waiver. If, considering both inspections together, the number of stock keeping units found to be in violation does not exceed two percent of all stock keeping units inspected, the Director shall grant a one year waiver of the requirements of item pricing; the pricing accuracy requirements shall remain in full force and effect. In the event that violations in excess of two percent are discovered, the applicant shall be immediately subject to the requirement of section three, and may not reapply for a waiver for a period of six months.

D. Temporary Waiver. In the event that the Director is unable to conduct inspections within thirty days of receipt of a complete waiver application and proper fee, or upon other good cause, the Director shall grant a temporary waiver pending completion of the inspections.

E. Renewal. Retail stores may reapply annually for renewal of a waiver. The processing fee and two inspections shall be required for each annual renewal application.

F. Waiver Requirements. Each retail store which accepts a waiver shall:

1. Make available to customers grease pencils, crayons, markers, or other marking devices suitable for writing prices onto individual stock keeping items.
2. Make available to consumers a price check scanner or other computer –assisted checkout unit for confirming the price of a stock keeping item, 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 unit is immediately made available to consumers who require it for price confirmation.
3. Post conspicuously signs stating that the retail store has been granted a waiver from item pricing, the waiver expiration date, and consumers' rights under such waiver.
4. Provide a "super-refund" to consumers who have been overcharged, as follows:
 - i. Any consumer who suffers a loss because the price charged for a stock keeping item is greater than the lower of the item, shelf, sale, or advertised price may request a super-refund by notifying the retail store in person or in writing of the loss.
 - ii. Within two days, the retail store shall pay to the consumer ten times the difference between the price charged and the lower of the item, sale, shelf, or advertised price, but not less than one dollar nor more than ten dollars. If the loss involves two or more identical stock keeping items in one transaction, the "super-refund"

paid by the retail store shall be ten times the difference on a single item but no less than one dollar nor more than ten dollars so that the super-refund shall apply only to the first of two or more identical items purchased at the same time; the consumer shall also pay only the proper price for all such items.

- iii. If the retail store does not pay the super-refund, the consumer may request a hearing before the Director. Within sixty days of receipt of such a request for a hearing, the Director shall hold a hearing, and shall rule as to what payment, if any, is due.

5. Provide a clear and readable shelf label for every stock keeping unit. Shelf price labels on bottom of shelves shall be tilted upward at an angle of between thirty and sixty degrees from the floor. The Director may, by rules and regulations, specify standard shape, size, typeface, placement, and format of shelf labels, and other requirements to ensure the readability of shelf labels and the identification of each stock keeping unit. No provision of this section shall be construed to diminish the requirement of section 214 (h) of the Agriculture and Markets Law.

G. Waiver Revocation. The Director may revoke a waiver of item pricing for failure to comply with any waiver requirement, deliberate overcharging of any consumer, or a material misrepresentation in a waiver application. A retail store which has had its waiver revoked may not reapply for a new waiver for a period of twelve months.

Section 5. If any clause, sentence, paragraph, or section of Local Law 23-91, as amended, shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair, or invalidate the remainder thereof.

Section 6. This Local Law shall become effective upon filing with the Secretary of State.

Approved by Legislature: 5/24/95

Public Hearing by County Executive: 6/2/95

Adopted as Local Law 12-95