

September 7, 1998

Finance Committee: 8-31-98

RESOLUTION NO. 269-98

**ADOPTING PROPOSED LOCAL LAW 6 FOR THE YEAR 1998,
AMENDING ST. LAWRENCE COUNTY ITEM PRICING LAW BY INCLUDING A
WAIVER FOR COMPUTER ASSISTED PRICING ACCURACY**

By Mr. Greenwood, Chair, Finance Committee

WHEREAS, the St. Lawrence County Board of Legislators would like to include a provision for a waiver for computer assisted pricing accuracy in the Item Pricing Law, and

WHEREAS, the St. Lawrence County Board of Legislators held a public hearing on September 7, 1998,

NOW, THEREFORE, BE IT RESOLVED that the St. Lawrence County Board of Legislators hereby adopts Local Law 6 for the year 1998.

**PROPOSED LOCAL LAW 6 FOR THE YEAR 1998
ST. LAWRENCE COUNTY ITEM PRICING LAW
WITH WAIVER FOR COMPUTER ASSISTED PRICING ACCURACY**

Section One: **LEGISLATIVE INTENT**

This law recognizes that clear, accurate item pricing is a basic consumer right that is not protected under current state law. It is the intent of this legislation to ensure that consumer goods offered for sale in St. Lawrence County are clearly, accurately and adequately marked as to their selling prices. *Further, it is the intention of this legislature to provide for a waiver of the item pricing requirement for certain stores which maintain a very high degree of computer assisted pricing accuracy and which provide certain other services to permit consumers to record and verify individually priced items. It is also the intention of the legislature to require clear and legible shelf labels.*

Section Two: **DEFINITIONS**

A. "Stock keeping unit" shall mean each group of items offered for sale of the same brand name, quantity of contents, retail price, and variety within the following categories:

- i) 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
- ii) napkins, facial tissues, toilet tissues, and any disposable wrapping or container for the storage, handling or serving of food; and
- iii) detergents, soaps, other cleansing agents, and cleaning implements; and
- iv) non-prescription drugs, feminine hygiene products and health aids.

- B. "Stock keeping item" shall mean each item of a stock keeping unit offered for sale.
- C. "Universal product coding" shall mean any system of coding which entails electronic pricing.
- D. "Item price" shall mean the tag, stamp or mark affixed to a stock keeping item by an authorized person which sets forth, in Arabic numerals, the retail price.
- E. "Computer-assisted checkout system" shall mean any electronic device, computer system or machine which determines the selling price of a stock keeping item by interpreting its universal product code, or by use of its price look-up function.
- F. "Price look-up function" shall mean the capability of any checkout system to determine the retail price of a stock keeping item by way of the manual entry into the system of a code number assigned to that particular unit by the retail store or by way of the checkout operator's consultation of a file maintained at the point of sale.
- G. "Inspector" shall mean an authorized government official having jurisdiction to enforce the provisions of this section.
- H. "Retail store" shall mean a store selling stock keeping units at retail. A store which is not open to the general public but is reserved for use by its members shall come within the provisions of this definition unless the members must pay a direct fee to the store to qualify for membership and the store is not required to collect sales tax on transactions with members. Pursuant to this section, a retail store shall not include any store which:
- i) has as its only full-time employee the owner thereof, or the parent, or the spouse or child of the owner, or in addition thereto, not more than two full-time employees; or
 - ii) had annual gross sales in a previous calendar year of less than three million dollars, unless the retail store is 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 three million dollars or more; or
 - iii) engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director of the St. Lawrence County Department of Weights and Measures determines, by regulation, would be inappropriate for item pricing.
- I. *"Pricing accuracy inspection" shall mean an inspection of a retail store for purposes of determining that programmed computer prices are consistent with the retail price or item, shelf, sale or advertised price. A pricing accuracy inspection shall consist of not less than one-hundred nor more than two-hundred stock keeping units, representing a cross section of all stock keeping units offered for sale.*
- J. *"Shelf price" shall mean the tag or sign placed by an authorized person at each point of display of a stock keeping unit, which clearly sets forth the retail price of the stock keeping items within the unit.*

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K. *“Retail price” shall mean the lowest price of a stock keeping item as determined by item, shelf, sale or advertised price of such stock keeping item.*

L. *“Sale price” shall mean the price of stock keeping items offered for sale in good faith at a price below the price for which such stock keeping items are usually sold in the store.*

M. *“Waiver” shall mean a waiver from item pricing, issued by the Director of the St. Lawrence County Department of Weights and Measures pursuant to Section 7 of this local law.*

Section Three: ITEM PRICING REQUIRED

A. Every person, firm, partnership, corporation or association which sells, offers for sale or exposes for sale in a retail store a stock keeping unit that bears a Universal Product Code shall disclose to the consumer the item price of each stock keeping item.

B. Certain items exempted. The following stock keeping items need not be item priced as provided in subdivision A of this section provided that a shelf price and a price look-up function are maintained for such stock keeping items;

- i) snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less, and cigarettes and tobacco, frozen foods, and publicly advertised items on sale for no longer than seven days.
- ii) stock keeping items which are under three cubic inches in size, and weigh less than three ounces, and are priced under one dollar.
- iii) items sold through a vending machine.
- iv) cardboard boxes of gelatin, pudding and pie filling (6 oz. maximum weight), glass jars of baby food (6 oz. maximum weight), white milk and eggs, canned cat food and tuna fish (6 oz. maximum weight).

Section Four: PRICING ACCURACY

A. No retail store shall charge a retail price for any exempt or non-exempt stock keeping item which exceeds the lower of any item, shelf, sale or advertised price of such stock keeping item. In the event that the programmed computer price exceeds the lowest price a store is permitted to charge for a stock keeping unit, the store will be subject to a penalty as described in Section Five (E).

B. In a store with a laser scanning or other computer assisted checkout system, the enforcing agent shall be permitted to compare the item, shelf, sale or advertised price of any one stock keeping item sold in the store with the programmed computer price.

Section Five: ENFORCEMENT

A. Item pricing inspection procedures. For the purposes of determining a store's compliance with the requirements of section three, when an inspection is made it shall be conducted of a sample of no less than fifty stock keeping units.

B. Laser scanner accuracy inspection procedures. For any inspection under section four, the store representative shall afford the inspector access to the test mode of the checkout system in use at that store or to a comparable function of said system and to the retail price information contained in a price look-up function.

C. Stop removal order. An inspector shall have the authority to issue a stop removal order with respect to any device, system, or stock keeping unit being used, handled or offered for sale in violation of section three or four. Any such order shall be in writing and direct that the device, system or stock keeping item, as the case may be, shall be removed from use or sale pending correction.

D. Penalties for item pricing violations. Any person who fails to mark any stock keeping item in violation of section three shall be subject to the penalties of not less than twenty dollars and not more than fifty dollars per violation. For additional violations during a subsequent inspection in a twelve month period, the above penalties shall be doubled. 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 contain clearly readable item prices.

E. Penalties for scanner accuracy violations. For a violation of the provisions of section four, a penalty in the amount of fifty dollars per violation shall be imposed for the first two percent of the stock keeping items compared rounded to the nearest whole number; one hundred dollars per violation for the next two percent; two hundred dollars per violation for the next two percent; and three hundred dollars for each additional violation. For additional violations during a subsequent inspection in a twelve month period, the above penalties shall be doubled.

F. Jurisdiction. The provisions of this section and the regulations promulgated hereunder shall be enforced by the Director of the St. Lawrence County Department of Weights and Measures.

G. This law is to replace and amend *Local Law No. 1 for the year 1997*.

H. This local law shall take effect sixty days from the date of its adoption by the St. Lawrence County Legislature.

Section Six: DEFERRING TO STATE LEGISLATION

If the New York State Legislature enacts an item pricing law it shall supersede this legislation in all respects and this legislation shall be null and void when the state legislation takes effect.

Section Seven: WAIVER OF THE ITEM PRICING REQUIREMENT FOR CERTAIN STORES WHICH MAINTAIN A VERY HIGH DEGREE OF COMPUTER ASSISTED PRICING ACCURACY

A. *In retail stores equipped with a "computer assisted checkout system", the St. Lawrence County Department of Weights and Measures shall have the authority to conduct pricing accuracy inspections. Retail stores, with "computer assisted checkout systems", who do not place price stickers on individual stock keeping units, shall be required to:*

1. *Display easy to read and properly located shelf tags or signs on every stockkeeping unit or group of stock keeping units of the same brand, size and price. A retail store*

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failing to comply with this section shall be subject to a penalty in the sum of not more than three hundred dollars for the first violation, nor more than six hundred dollars for the second and each subsequent violation.

2. *Achieve and maintain a pricing accuracy level of ninety-eight percent from an inspection of not less than one hundred nor more than two hundred stock keeping units, which shall represent a cross section of all stock keeping units offered for sale to ascertain that the retail price is the same as the computer assisted checkout price.*
3. *Designate and make available a price check scanner to enable consumers to confirm the price of a stock keeping unit. This price check scanner shall be in a location convenient to customers, with a sign of sufficient sized lettering, identifying this unit to the consumers. Such waiver shall not be granted unless the location and size of the sign are approved. The store may utilize this scanner to meet unanticipated customer checkout needs. A retail store failing to comply with this section may be assessed a penalty not to exceed three hundred dollars per violation.*
4. *Notify the St. Lawrence County Department of Weights and Measures of the installation of scanning equipment. A retail store failing to comply with this section may be assessed a penalty not to exceed three hundred dollars per establishment.*
5. *A notice must be posted for the consumer in a conspicuous location, of the granting of a waiver from item pricing within this store by the Director of the St. Lawrence County Department of Weights and Measures, and which shall state consumer rights under this local law. Such sign, content, size and location is to be approved by the Director of the St. Lawrence County Department of Weights and Measures.*

B. The St. Lawrence County Department of Weights and Measures shall also have the authority to respond to consumer complaints of overcharges. In the event the programmed computer price exceeds the retail price, a penalty in the amount of one hundred dollars will be assessed. Inspections done in response to a consumer complaint shall not be considered as pricing accuracy inspections or result in greater penalties.

C. In the event the programmed computer price exceeds the retail price, the retail store will correct the pricing before the inspector leaves the store.

D. The following penalties are established for pricing accuracy inspection violations, based on a sample of not less than one hundred nor more than two hundred stock keeping units. A violation exists when the programmed computer price exceeds the retail price.

1. *Ninety-eight (98%) or better pricing accuracy, pricing corrected.*
2. *Ninety-seven (97%) pricing accuracy, a penalty of five hundred dollars (\$500.00)*
3. *Ninety-six (96%) pricing accuracy, a penalty of seven hundred fifty dollars (\$750.00)*
4. *Ninety-five (95%) pricing accuracy, a penalty of one thousand dollars (\$1,000.00).*
5. *Below ninety-five (95%) pricing accuracy, a penalty of fifteen hundred dollars (\$1,500.00)*

E. If a retail store fails to achieve a pricing accuracy level of ninety-five percent (95%) on two consecutive pricing accuracy inspections, on a sample of not less than one hundred nor more than two hundred stock keeping units, a penalty in the amount of two thousand dollars (\$2,000.00)

will be assessed.

F. OBTAINING THE WAIVER FROM ITEM PRICING:

- 1. Every retail store which uses a computer assisted checkout system and which would otherwise be required to item price as provided in Section Three of this local law, may make application in writing to the St. Lawrence County Department of Weights and Measures for a waiver of said item pricing requirement. A separate application shall be required for each store. Each application shall be subject to a non-refundable processing fee to cover the cost of conducting scanner accuracy inspections as provided in Section Seven (F)(2). The St. Lawrence County Department of Weights and Measures shall determine the processing fee and revise it from time to time to reflect the costs, but in no case shall said fee exceed seven hundred fifty dollars (\$750.00).*
- 2. Upon receipt of an application and fee, the St. Lawrence County Department of Weights and Measures shall cause to be conducted two scanner accuracy inspections of the store for which the application has been submitted. These inspections shall be conducted on two separate days, and in a manner prescribed by this section excepting, however, that a minimum of one hundred store stock keeping items (SKI's) shall be checked at each inspection. In the event that any violations are detected, a penalty shall be assessed and provided as in this local law. If, considering both inspections together, the number of SKI's found to be in violation does not exceed two percent (2%) of all SKI's inspected, the St. Lawrence County Department of Weights and Measures shall grant to the applicant a one year revocable waiver from the item pricing requirement.*
- 3. A waiver from item pricing shall be valid for a period of one year from the date of issuance. Stores may reapply annually for renewal of a waiver. The processing fee and two inspections shall be required for each annual renewal application, as is required for an original waiver application.*
- 4. In the event that total violations in excess of two percent (2%) are discovered in the inspections provided for, the St. Lawrence County Department of Weights and Measures shall not grant a waiver to the applicant. Such a store must promptly reapply for a waiver, and pay the required fee to the St. Lawrence County Department of Weights and Measures within five (5) business days after being notified of the failure. Stores which do not reapply must be in compliance with all the requirements of the item pricing law.*
- 5. In the event that the St. Lawrence County Department of Weights and Measures is unable to conduct inspections pursuant to this section within thirty (30) days of receipt of a complete waiver application and proper processing fee, the St. Lawrence County Department of Weights and Measures shall grant a temporary waiver, pending completion of the inspections. The St. Lawrence County Department of Weights and Measures shall cause said inspections to be completed as soon as practicable. If upon completion, the inspections detect a violation rate of two percent (2%) or less, the St. Lawrence County Department of Weights and Measures shall issue a regular waiver, with an expiration date of one year from the commencement date of the temporary waiver. If the inspections detect a violation rate in excess of two percent (2%), the temporary waiver shall be immediately revoked and the provisions of this section shall*

apply.

G. SUPER REFUND

Any person who suffers a loss because the price charged for a stock keeping item, by a store which has been granted a waiver from item pricing pursuant to Section Seven of this local law, is greater than the least price of the item, shelf, sale or advertised price, may seek special payment by notifying the store in person or in writing 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 any case, within one hour 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 times that difference, but not less than one dollar nor more than ten dollars. If the loss is suffered by one consumer within one transaction on two or more identical stock keeping items, the amount to be tendered by the store shall be the difference on each item, plus an amount equal to ten times the difference on a single item, but not less than one dollar nor more than ten dollars.

* * *

Mr. Greenwood moved to adopt Resolution No. 269-98, seconded by Ms. Baxter.

Mr. MacKinnon said he does not see the relationship between item pricing and the waiver for scanning accuracy. Item pricing is to make sure that items are priced and he does know what that has to do with the cash register being right. He cannot support this change.

Mr. FitzRandolph said he shares Mr. MacKinnon's concern. These are two separate issues: one is item pricing and the other is accuracy at the cash register. He suggests if we are concerned about item pricing we either have it or not. We are making waters muddy by adding this to the law. He was hoping people would come to the public hearing tonight to help him understand this and speak to this issue. He thought someone would come to talk about that.

Mr. Moore said everyone who has contacted him wants the law to stay the same, and he will vote against the change.

Mr. Wilson said he shares the concerns of the others and he would really like to not have any law at all. He is going to support this resolution because it seems to bring together a compromise with changes in technology and a desire for knowledge of pricing.

Mr. MacKinnon told the Chair a gentleman raised his hand to speak, and he asked the Chair to recognize him after the legislators voice their positions.

Mr. Nichols said the change simply ensures the highest quality for people in the county for services they receive and it reduces the regulation on some of the businesses. The stores have to have 98% accuracy in order to apply. He will support this to ensure that we have the highest quality of service for the citizens of St. Lawrence County.

Chair Gray recognized citizen Peter Desare from Ogdensburg. He said a while ago he read an article in the Watertown Times that said over 6,000 people from St. Lawrence County go to the Aldi store in Watertown. He said this county cannot afford to be losing that kind of money.

Mr. FitzRandolph asked the legislators who support this and who were on the committee to explain to him why the stores should have to item price if they can achieve 98% pricing accuracy

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by hand. It seems we are saying if you do it by computer we will give you a waiver, but if you do it some other way you have to item price.

Ms. Baxter said she was on the committee. After listening to various stores there were those who were for keeping item pricing and those who wanted scanning. Personally, she is in favor of keeping item pricing. She is the shopper in her family and in the stores there are signs that say something is on sale but the item has a price that is not right. There are ways they are getting around item pricing by having a sign in front of the product but not the same price on the item.

Ms. Carey said she did not vote for item pricing in the first place, and she is going to support this.

Ms. Baxter asked the Chair to recognize citizen Tina Washburn. Ms. Washburn said she is from Ogdensburg and she is on a fixed income. She cannot see why St. Lawrence County cannot get a store like Aldi. She has a family and going to Aldi is the only way they can shop. They would like to leave their money in St. Lawrence County. She feels a lot of elderly people could benefit from this store.

Mr. Greenwood said this goes back to his point that the consumer will ultimately decide. If they want item pricing, they will go to a store that has it. He thinks the Board should let the consumer make the choice. He would consider doing away with item pricing altogether.

Mr. Wilson asked the Chair to recognize citizen Heather Washburn. Ms. Washburn said she agrees with her mother. They have to drive one whole hour to get their groceries, and bringing Aldi here would really help.

Resolution No. 269-98 was adopted by a roll call vote with ten (10) yes votes and five (5) no votes (FitzRandolph, Gray, MacKinnon, Moore, and Teele).