

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.*
- 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 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*

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*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.*