

Local Law 7 (1997)

Erie County's Scanner Accuracy Law

COUNTY OF ERIE
LOCAL LAW NO. 7 - 1997
LOCAL LAW INTRO. NO. 9 - 1997
(PRINT #1)

A LOCAL LAW in relation to item pricing and scanner accuracy in retail establishments in Erie County.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS FOLLOWS:

Section One. Legislative findings and intent. The Erie County legislature finds that there is a technology which utilizes computer-assisted pricing systems which offer the user numerous efficiencies and economies in the operation of the retail industries, the use of which may make it economically advantageous for retail stores to remove price markings on individual commodities. This legislature further finds that the absence of individual price markings may make it difficult for consumers to make a fully informed purchase choice or to detect overcharges when they occur at the registers. It is the intention of this legislature to require that all retail stores place individual item prices on products which they sell and to require accuracy at the checkout registers. 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 individual item prices. It is also the intention of this legislature to require clear and legible shelf labels. Finally it is the intention of this legislature to ensure that consumers in Erie County know what they are paying and are not charged more than that amount at the registers.

Section Two. Definitions. For the purpose of this local law the following terms shall have the following meanings:

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

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

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

- a. has as its only full-time employees the owner or franchisee thereof, or the parent, spouse, or child of the owner or franchisee, or in addition thereto not more than two full-time employees; or
- b. engages primarily in the sale of food for consumption on the premises; or
- c. holds a current waiver as provided in section ten of this local law.

Section Four. Certain items exempted.

- a. The following SKIs need not be item priced as provided in section three of this local law provided that a shelf price is posted at the point of display, consistent with section thirteen of this local law, and a price look-up function is maintained for such SKIs:
 - i. SKIs within a multi-item package that are properly price marked;
 - ii. Milk, cream, half-and-half, and other similarly packaged liquid dairy products and juices;
 - iii. Eggs;
 - iv. Unpackaged bulk or fresh produce;
 - v. SKIs sold through a vending machine;
 - vi. Food sold for consumption on the premises;
 - vii. Snack foods, such as cakes, gum, candies, chips, and nuts offered for sale in single packages and weighing five ounces or less;
 - viii. Cigarettes, cigars, tobacco, and tobacco products;
 - ix. Frozen foods, gelatin, pudding and yogurt;

- x. Baby food;
 - xi. SKIs which weigh three ounces or less and are priced under one dollar;
 - xii. Greeting cards, magazines, books, and periodicals;
 - xiii. Live plants; and
 - xiv. Lumber, fencing, and bulk electrical wire.
- b. SKIs which must be purchased with the assistance of a sales person need not be item priced as provided in section three of this local law, nor be shelf priced at the point of display. For purposes of this section, merely accepting payment for the merchandise does not constitute assistance.

Section Five. Item pricing inspections. For the purpose of determining a store's compliance with section three of this local law, an inspection shall be conducted of a sample of no fewer than fifty and no more than three hundred SKUs. The sample shall be selected by the inspector from a cross section of all SKUs offered for sale at the store inspected, exclusive of exempt SKUs.

Section Six. Item pricing violations and penalties.

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

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

Section Eight. Price accuracy inspections.

- a. For any price accuracy inspection under this local law, the store representative shall afford the inspector access to the test mode of the computer-assisted checkout system in use at the store or to a comparable function of said system and to the retail price information contained in a price look-up system.
- b. In a store with a laser scanning or other computer-assisted checkout system, the inspector shall be permitted to compare the item, shelf, sale, or advertised price of any SKIs offered in the store, not to exceed five hundred SKIs selected from a cross section of all SKUs offered for sale at the location at any one inspection, with the programmed computer price. The store

shall provide such access to the computer as necessary for the inspector to make the determination.

Section Nine. Price violations and penalties.

- a. e. For any violation of section seven of this local law, there shall be a penalty of five hundred dollars. Each day on which a violation is continued shall constitute a separate violation.
- b. f. In the event that the programmed computer price exceeds the item, shelf, sale, or advertised price of any SKI, the store will be subject to the following penalties:

For violations of the provisions of section eight of this local law identified in the first inspection following any twelve month period in which no such violations have been found, a penalty in the amount of fifty dollars per violation shall be imposed for the first two percent of the SKIs 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 per additional violation, but in no event shall the total penalty for all violations of section eight of this local law identified at such first inspection exceed two thousand dollars. For violations identified in a second of subsequent inspection in a twelve month period following a previous violation of section eight of this local law, the penalties shall be doubled, with a maximum total penalty of fifteen thousand dollars.

Section Ten. Waiver from item pricing.

- a. Every person, store, firm, partnership, corporation, or association which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in section three of this local law may make application in writing to the director for a waiver of said item pricing requirement. A separate application shall be required for each store. Each application shall be subject to a non-refundable processing fee to cover the cost of conducting scanner accuracy inspections as provided in subsection b of this section. The director shall determine the processing fee and may revise it from time to time to reflect said costs, but in no case shall said fee exceed one thousand seven hundred fifty dollars per application.
- b. Waiver applications and the required fee must be received at the bureau of weights and measures on or before May 1, 1998 and on or before each May 1 thereafter. Stores which fail to comply will be subject to all the provisions contained within section three. New stores or establishments which did not previously hold waivers may apply after the May 1 deadline and the application fee and the length of waiver will be appropriately adjusted.
- c. Upon receipt of an application and fee as provided in subsection a of this section, the director 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 the manner prescribed in section eight of this local law, excepting, however, that a minimum of one hundred SKIs shall be checked at each inspection. In the event that any violations are detected, penalties shall be assessed as provided in section nine of this local law. If, considering both inspections together, the number of SKIs found to be in violation does not exceed two percent of all SKIs inspected, the director shall grant to the applicant a

one year revocable waiver from the item pricing requirement. Any store with a current waiver shall be exempt from the requirements of section three of this local law.

- d. 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. A processing fee and two inspections shall be required for each annual renewal application, as required for an original waiver application.
- e. In the event that total violations in excess of two percent are discovered in the inspections provided for in subsections *c* or *d* of this section, the director shall not grant a waiver to the applicant. Such a store must promptly reapply for a waiver and pay the required fee to the director within five business days after being notified of the failure. Stores which do not reapply must be in compliance with all the requirements of section three within sixty days from the date of failure.
- f. In the event that the director is unable to conduct inspections pursuant to subsection *c* or *d* of this section within thirty days of receipt of a complete waiver application and proper processing fee, the director shall grant a temporary waiver, pending completion of the inspections. The director shall cause said inspections to be completed as soon as practicable. If, upon completion, the inspections detect a violation rate of two percent or less, the director shall issue a regular waiver with an expiration date one year from the commencement date of the temporary waiver. If the inspections detect a violation rate in excess of two percent, the temporary waiver shall be immediately revoked and the provisions of subsection *e* of this section shall apply.
- g. As a condition of the waiver from item pricing pursuant to this section, each store which accepts a waiver must agree to meet the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:
 - i. The store shall designate and make available a price check scanner to enable consumers to confirm the price of a SKI. This price check scanner shall be in a location convenient to consumers with a sign of sufficient sized lettering identifying this unit to the consumers. Stores will submit their proposed sign and device location to the director for approval;
 - ii. The store shall not charge any customer a price for any SKI which exceeds the item, shelf, sale, or advertised price of that SKI, whichever is least;
 - iii. The store shall cause to be posted in conspicuous location(s), accessible by all consumers and approved by the director, sign(s) explaining the rights of consumers consistent with the waiver as set forth in section eleven of this local law. The director will specify the content, size and numbers of this sign(s) by regulation. The store is also required to post the temporary or annual waiver in the area designated for handling price discrepancies;
 - iv. The store shall make payment to consumers who have been overcharged as provided in section eleven of this local law. Each store is required to designate at least one individual who is authorized to issue these payments during all of the store's operating hours; and
 - v. The store shall correct all pricing errors identified by consumers at store level within three hours and, if applicable, at their firm, partnership, corporation, or association within twenty-four hours.

Section Eleven. Consumer's right to special payment if overcharged by a store granted a waiver from item pricing. Any person who suffers a loss because the price charged for a SKI, by a store which has been granted a waiver from item pricing pursuant to section ten of this local law, is greater than the least 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 SKIs, 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. If the store does not tender this amount within the time set forth in this local law, the consumer may request a hearing before the director. Within ten working days of receipt of such a request for a hearing, the director shall cause a hearing to be held, and shall rule as to what payment, if any, is due under this section.

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

Section Twelve. Revocation of waiver.

- a. The director may revoke a waiver from item pricing for any of the following reasons:
 - i. Failure to comply with any provision of sections ten, eleven or thirteen of this local law;
 - ii. Deliberate overcharging of any consumer; and
 - iii. Material misrepresentation in the application for a waiver.
- b. A store which has had its waiver revoked pursuant to this section may not reapply for a new waiver for a period of twelve months following the date of revocation. This store location must be in compliance with section three of this local law within sixty days from the date of the revocation notification.

Section Thirteen. Readable shelf labels required.

- a. Any store which has been granted a waiver from item pricing pursuant to section ten of this local law shall provide a clear and readable shelf label for every SKU.

Each SKI's retail price shall be printed on a shelf label in characters no less than three-quarters of an inch in height. Shelf price labels on bottom shelves shall be tilted upward at an angle of between thirty and sixty degrees from the floor.

- i. SKIs that are individually item priced are exempt from the requirements of section 13(a); and
 - ii. In cases where the width of the facings of a particular SKI is smaller than the width of the store's standard shelf label, the store may decrease the size requirement specified in section 13(a). In these situations the lettering cannot be reduced below three-eighths of an inch.
- b. The director may, by regulation, specify standard shape, typeface, placement, and format of shelf labels, and may set other requirements to ensure the readability of shelf labels and the ability of consumers to identify which shelf label applies to each SKU.
 - c. No provision of this section shall be construed to diminish the requirements of section 214-h of the agriculture and markets law. If any provision of this section of this local law conflicts with section 214-h of the agriculture and markets law, the agriculture and markets law shall control.

Section Fourteen. Penalties for failure to provide proper shelf labeling. In the event that shelf labels do not conform with the provisions of section thirteen of this local law, the store will be subject to the following penalties: for violations of the provisions of section thirteen of this local law identified in the first inspection following any twelve month period within which no such violations have been found, a penalty in the amount of ten dollars per violation shall be imposed, but in no event shall the total penalty for all violations identified at such first inspection exceed five hundred dollars. For violations identified in a second or subsequent inspection in a twelve month period following a previous violation of section thirteen of this local law, the penalties shall be doubled, up to a maximum of two thousand dollars per inspection. Each SKU for which proper shelf labeling is not provided shall constitute a separate violation. Every day a violation is continued shall constitute a separate violation.

Section Fifteen. Enforcement by director.

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

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

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

Section Eighteen. Construction, repeal of prior legislation. local law number eight of 1993 is hereby repealed. This local law shall be deemed to supersede any and all prior enactments of the County of Erie with respect to the subject matter contained herein. Wherever any prior local law of the County of Erie is found to be inconsistent or in conflict with the provisions contained herein, such prior local law shall be deemed hereby amended. This local law shall be construed liberally so as to provide maximum protection to the consumers of Erie County.

Section Nineteen. Effective date. This local law shall be effective January 1, 1998, except for section three, which shall be effective March 1, 1998.

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