S T A T E O F N E W Y O R K

956

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the agriculture and markets law, in relation to item pricing

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The agriculture and markets law is amended by adding a new section 214-i to read as follows:

S 214-I. ITEM PRICING. 1. DECLARATION OF LEGISLATIVE FINDINGS AND INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT THERE IS TECHNOLOGY UTILIZING A LASER SCANNING DEVICE OFFERING NUMEROUS EFFICIENCIES AND ECONOMIES TO THE OPERATION OF THE RETAIL FOOD INDUSTRY, THE USE OF WHICH MAY MAKE IT ECONOMICALLY ADVANTAGEOUS FOR RETAIL STORES TO REMOVE PRICE MARKINGS ON INDIVIDUAL GROCERY ITEMS. THE LEGISLATURE FURTHER FINDS THAT PRICE MARKING CONSTITUTES AN INDISPENSABLE INGREDIENT TO A CONSUMER'S RIGHT TO ALL REASONABLE INFORMATION IN ORDER TO MAKE AN INFORMED PURCHASE CHOICE.

THEREFORE, THE LEGISLATURE DECLARES THAT REQUIRING ITEM PRICE MARKING IS NECESSARY TO PROTECT THE INTEREST OF THE CONSUMING PUBLIC, AND FURTHER DECLARES THAT IT IS IN THE PUBLIC INTEREST TO PROMOTE USEFUL TECHNOLOGY BY PERMITTING CONTINUED TESTING AND DEVELOPMENT OF THE UNIVERSAL PRODUCT CODE CHECKOUT SYSTEM WITHOUT THE REMOVAL OF ITEM PRICES.

IT IS THE INTENT OF THIS LEGISLATION TO ENSURE THAT CONSUMER GOODS OFFERED FOR SALE IN NEW YORK STATE ARE CLEARLY, ADEQUATELY, AND ACCURATELY PRICE MARKED AS PROVIDED IN THIS SECTION.

2. DEFINITIONS. THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS FOR THE PURPOSE OF THIS SECTION:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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A. "STOCK KEEPING UNIT" OR "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;

(II) NAPKINS, FACIAL TISSUES, TOILET TISSUES, PAPER TOWELING AND ANY DISPOSABLE WRAPPING OR CONTAINER FOR THE STORAGE, HANDLING, SERVING, OR DISPOSAL OF FOOD;

(III) DETERGENTS, SOAPS AND OTHER CLEANSING AGENTS; AND

(IV) NON-PRESCRIPTION DRUGS, FEMININE HYGIENE PRODUCTS AND HEALTH AND BEAUTY AIDS.

B. "STOCK KEEPING ITEM" OR "ITEM" SHALL MEAN EACH ITEM OF A STOCK KEEPING UNIT OFFERED FOR SALE.

C. "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, SPOUSE OR CHILD OF THE OWNER, AND IN ADDITION THERETO NOT MORE THAN TWO FULL-TIME EMPLOYEES; OR

(II) HAD ANNUAL GROSS SALES OF STOCK KEEPING UNITS IN THE 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 OF STOCK KEEPING ITEMS 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 COMMISSIONER DETERMINES, BY REGULATION, WOULD BE INAPPROPRIATE FOR ITEM PRICING.

D. "ITEM PRICE" SHALL MEAN THE TAG, STAMP OR MARK AFFIXED TO A STOCK KEEPING ITEM WHICH SETS FORTH, IN ARABIC NUMERALS, THE RETAIL PRICE THEREOF.

E. "ADVERTISED PRICE" SHALL MEAN THE PRICE OF A STOCK KEEPING UNIT WHICH A RETAIL STORE HAS CAUSED TO BE DISSEMINATED BY MEANS OF PROMOTIONAL METHODS SUCH AS AN IN-STORE SIGN, NEWSPAPER, CIRCULAR, TELEVISION OR RADIO ADVERTISING.

F. "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 THAT STOCK KEEPING UNIT.

G. "SALE PRICE" SHALL MEAN THE PRICE OF STOCK KEEPING ITEMS OFFERED ON SALE IN GOOD FAITH AT A PRICE BELOW THE PRICE FOR WHICH SUCH STOCK KEEPING ITEMS ARE USUALLY SOLD IN THE RETAIL STORE, FOR A STATED PERIOD OF TIME NOT TO EXCEED SEVEN DAYS.

H. "COMPUTER-ASSISTED CHECKOUT SYSTEM" SHALL MEAN ANY ELECTRONIC DEVICE, COMPUTER SYSTEM OR MACHINE WHICH DETERMINES OR INDICATES THE SELLING PRICE OF A STOCK KEEPING ITEM BY INTERPRETING ITS UNIVERSAL PRODUCT CODE, OR AN IN-HOUSE PRODUCT CODE, OR BY USE OF ITS PRICE LOOK-UP FUNCTION.

I. "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

ENTRY INTO THE SYSTEM OF A CODE NUMBER OR OTHER INDICATOR ASSIGNED TO THAT ITEM'S STOCK KEEPING UNIT BY THE RETAIL STORE OR BY WAY OF THE CHECKOUT OPERATOR'S CONSULTATION OF A FILE MAINTAINED AT THE POINT OF SALE.

J. "INSPECTOR" SHALL MEAN AN AUTHORIZED GOVERNMENT OFFICIAL HAVING THE JURISDICTION TO ENFORCE THE PROVISIONS OF THIS SECTION.

3. ITEM PRICING REQUIRED. A. EVERY PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION WHICH SELLS, OFFERS FOR SALE OR EXPOSES FOR SALE A STOCK KEEPING UNIT IN A RETAIL STORE, SHALL DISCLOSE TO THE CONSUMER THE ITEM PRICE OF EACH STOCK KEEPING ITEM EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION BY CAUSING THE ITEM PRICE TO BE CONSPICUOUSLY, CLEARLY AND PLAINLY MARKED, STAMPED, TAGGED OR AFFIXED THERETO.

B. CERTAIN ITEMS EXEMPTED. STOCK KEEPING ITEMS OF THE FOLLOWING STOCK KEEPING UNITS NEED NOT BE ITEM PRICED AS PROVIDED IN THIS SUBDIVISION PROVIDED THAT A SHELF PRICE AND A PRICE LOOK-UP FUNCTION ARE MAINTAINED FOR SUCH STOCK KEEPING UNITS:

(I) MILK;

(II) EGGS;

(III) UNPACKAGED FRESH PRODUCE;

(IV) UNPACKAGED FOOD OFFERED FOR SALE IN BULK;

(V) FOOD SOLD FOR CONSUMPTION ON THE PREMISES;

(VI) STOCK KEEPING ITEMS WHICH ARE UNDER THREE CUBIC INCHES IN SIZE, AND WEIGH LESS THAN THREE OUNCES, AND ARE PRICED UNDER ONE DOLLAR;

(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) ITEMS SOLD THROUGH A VENDING MACHINE;

(X) ITEMS OFFERED AT A SALE PRICE, PROVIDED THAT THE SALE PRICE AND BEGINNING AND ENDING DATES OF THE SALES ARE CLEARLY INDICATED TO THE CONSUMER BY CONSPICUOUS SIGNS LOCATED AT OR NEAR THE DISPLAY OF SUCH ITEMS; AND

(XI) FROZEN FOOD PACKAGED IN PLASTIC OR POLYETHYLENE BAGS.

C. THE COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS AS HE OR SHE DEEMS NECESSARY, TO ENSURE THAT UNIT PRICES, AS REQUIRED UNDER SECTION TWO HUNDRED FOURTEEN-H OF THIS ARTICLE, ARE OF ADEQUATE SIZE, COLOR AND LOCATION TO ENHANCE VISIBILITY BY THE CONSUMER FOR THE UNITS INDICATED BY PARAGRAPH B OF THIS SUBDIVISION.

4. PRICE ACCURACY. 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.

5. ENFORCEMENT, INSPECTION PROCEDURES. A. GENERAL ENFORCEMENT AND INSPECTION PROCEDURES. FOR ANY INSPECTION UNDER THIS SECTION, THE STORE REPRESENTATIVE SHALL AFFORD THE INSPECTOR ACCESS TO THE TEST MODE OF THE CHECKOUT SYSTEM AND TO THE RETAIL PRICE INFORMATION CONTAINED IN A PRICE LOOK-UP FUNCTION.

B. PRICE DISCLOSURE. FOR THE PURPOSE OF DETERMINING A STORE'S COMPLIANCE WITH THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION, AN INSPECTION SHALL BE CONDUCTED OF A SAMPLE OF NO LESS THAN FIFTY STOCK KEEPING UNITS. HOWEVER, IN THE EVENT THE COMMISSIONER HAS RECEIVED A SPECIFIC WRITTEN COMPLAINT, NO SUCH MINIMUM SAMPLE SHALL BE REQUIRED IN THE INVESTIGATION OF SAME.

C. PRICE ACCURACY ENFORCEMENT. 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 ON ANY ONE OR MORE STOCK KEEPING ITEMS SOLD IN THE STORE, NOT TO EXCEED FIVE HUNDRED STOCK KEEPING ITEMS AT ANY ONE INSPECTION, WITH THE PROGRAMMED

COMPUTER PRICE. NO MINIMUM SAMPLE SHALL BE REQUIRED FOR AN INSPECTION FOR PRICE ACCURACY. THE STORE SHALL PROVIDE SUCH ACCESS TO THE COMPUTER AS IS NECESSARY FOR THE ENFORCING AGENT TO MAKE THE DETERMINATION.

6. WAIVER FROM ITEM PRICING BASED ON CHECKOUT ACCURACY. 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 SUBDIVISION THREE OF THIS SECTION MAY MAKE APPLICATION IN WRITING TO THE COUNTY SEALER OF WEIGHTS AND MEASURES FOR A WAIVER OF SAID ITEM PRICING REQUIREMENTS. 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 PARAGRAPH B OF THIS SUBDIVISION. THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL DETERMINE THE PROCESSING FEE AND MAY REVISE IT FROM TIME TO TIME, BUT IN NO CASE SHALL SAID FEE EXCEED ONE THOUSAND DOLLARS PER APPLICATION.

B. UPON RECEIPT OF AN APPLICATION AND FEE AS PROVIDED IN PARAGRAPH A OF THIS SUBDIVISION, THE COUNTY SEALER 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 SHALL CONSIST OF COMPARING THE SHELF, SALE OR ADVERTISED PRICE OF ANY STOCK-KEEPING UNIT (SKU) WITH THE COMPUTER-ASSISTED CHECKOUT SYSTEM PRICE. SUCH INSPECTION SHALL CONSIST OF AT LEAST ONE HUNDRED SKUS, BUT NO MORE THAN FIVE HUNDRED, SELECTED AT THE DISCRETION OF THE COUNTY SEALER OF WEIGHTS AND MEASURES. IN THE EVENT THAT ANY VIOLATIONS ARE DETECTED, PENALTIES SHALL BE ASSESSED AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION. IF, CONSIDERING BOTH INSPECTIONS TOGETHER, THE NUMBER OF SKUS FOUND IN VIOLATION DOES NOT EXCEED TWO PERCENT OF ALL SKUS INSPECTED, THE COUNTY SEALER OF WEIGHTS AND MEASURES 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 SUBDIVISION THREE OF THIS SECTION.

C. 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.

D. IN THE EVENT THAT TOTAL VIOLATIONS IN EXCESS OF TWO PERCENT ARE DISCOVERED IN THE INSPECTIONS PROVIDED FOR IN PARAGRAPHS B AND C OF THIS SUBDIVISION, THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL DENY A WAIVER TO THE APPLICANT. IF THE OWNER OF THE STORE STILL WISHES A WAIVER, SUCH STORE MUST PROMPTLY RE-APPLY FOR A WAIVER AND PAY THE REQUIRED FEE TO THE COUNTY SEALER OF WEIGHTS AND MEASURES WITHIN FIVE BUSINESS DAYS AFTER BEING NOTIFIED OF THE FAILURE. STORES THAT DO NOT RE-APPLY MUST PROMPTLY COME INTO COMPLIANCE WITH ALL THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION, AND, MAY NOT AGAIN RE-APPLY FOR A WAIVER UNTIL AT LEAST ONE YEAR AFTER DENIAL BY THE COUNTY SEALER OF WEIGHTS AND MEASURES.

E. IN THE EVENT THAT THE COUNTY SEALER OF WEIGHTS AND MEASURES IS UNABLE TO CONDUCT INSPECTIONS PURSUANT TO PARAGRAPH B OF THIS SUBDIVISION WITHIN NINETY DAYS OF RECEIPT OF A COMPLETE WAIVER APPLICATION AND PROPER PROCESSING FEE, THE COUNTY SEALER OF WEIGHTS AND MEASURES MAY GRANT A TEMPORARY WAIVER PENDING COMPLETION OF INSPECTIONS. THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL CAUSE SAID INSPECTIONS TO BE COMPLETED AS SOON AS PRACTICABLE. IF, UPON COMPLETION, THE INSPECTIONS DETECT A VIOLATION RATE IN EXCESS OF TWO PERCENT OR LESS, THE COUNTY SEALER OF WEIGHTS AND MEASURES 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 COMPLIANCE WITH SUBDIVISION THREE OF THIS SECTION SHALL BE REQUIRED AND THE PROVISIONS OF PARAGRAPH D OF THIS SUBDIVISION SHALL APPLY.

F. AS A CONDITION OF THE WAIVER FROM ITEM PRICING PURSUANT TO THIS SUBDIVISION, EACH STORE THAT ACCEPTS A WAIVER MUST AGREE TO MEET THE FOLLOWING REQUIREMENTS, AND NO REGULAR OR TEMPORARY WAIVER SHALL BE GRANTED TO A STORE THAT HAS NOT AGREED TO THESE REQUIREMENTS IN WRITING:

(I) THE STORE SHALL DESIGNATE AND MAKE AVAILABLE PRICE CHECK SCANNERS TO ENABLE CONSUMERS TO CONFIRM THE PRICES OF STOCK-KEEPING ITEMS (SKIS). THESE PRICE CHECK SCANNERS SHALL BE IN LOCATIONS CONVENIENT TO CONSUMERS WITH SIGNS OF SUFFICIENT SIZED LETTERING IDENTIFYING THESE UNITS TO THE CONSUMERS. STORES WILL SUBMIT THEIR PROPOSALS FOR SIGNS, NUMBER OF DEVICES AND DEVICE LOCATIONS TO THE COUNTY SEALER OF WEIGHTS AND MEASURES FOR APPROVAL.

(II) THE STORE SHALL NOT CHARGE ANY CUSTOMER A PRICE FOR ANY SKI THAT EXCEEDS THE ITEM, SHELF, SALE OR ADVERTISED PRICE OF THAT SKI, WHICHEVER IS LEAST.

(III) THE STORE SHALL CAUSE TO BE POSTED IN A CONSPICUOUS LOCATION, ACCESSIBLE BY ALL CONSUMERS AND APPROVED BY THE COUNTY SEALER OF WEIGHTS AND MEASURES A SIGN EXPLAINING THE RIGHTS OF CONSUMERS CONSISTENT WITH SUBDIVISION EIGHT OF THIS SECTION. THE COUNTY SEALER OF WEIGHTS AND MEASURES WILL SPECIFY THE CONTENT AND SIZE OF THIS SIGN 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 PARTICIPATE IN THE SUPER-REFUND PROGRAM AND SHALL MAKE PAYMENT TO CONSUMERS WHO HAVE BEEN OVERCHARGED IN ACCORDANCE WITH SUBDIVISION EIGHT OF THIS SECTION. 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.

(V) THE STORE SHALL CORRECT ALL PRICING ERRORS IDENTIFIED BY CONSUMERS AT STORE LEVEL WITHIN ONE HOUR AND, IF APPLICABLE, AT THEIR FIRM, PARTNERSHIP, CORPORATION, OR ASSOCIATION WITHIN TWENTY-FOUR HOURS.

(VI) THE STORE SHALL CLEARLY DISPLAY SELLING PRICES AT THE POINT OF SKU DISPLAY, BY EITHER PLACING SIGNS OR SHELF TAGS AS CLOSE AS PRACTICAL TO THE LOCATION AT WHICH THE SKUS ARE DISPLAYED; AND/OR BY STAMPING, TAGGING, LABELING OR OTHERWISE MARKING EACH STOCK KEEPING ITEMS. FAILURE TO DISPLAY THE SELLING PRICE FOR A SKU, CONSISTENT WITH THIS SUBDIVISION, CONSTITUTES A SCANNER ERROR.

(VII) AT ANY TIME, THE COUNTY SEALER OF WEIGHTS AND MEASURES MAY DIRECT COMPLIANCE INSPECTIONS OF ANY STORE ACCEPTING A WAIVER. THESE INSPECTIONS SHALL CONSIST OF COMPARING THE ITEM, SHELF, SALE OR ADVERTISED PRICE OF ANY STOCK-KEEPING UNIT (SKU) WITH THE COMPUTER-ASSISTED CHECKOUT SYSTEM PRICE. SUCH INSPECTION SHALL CONSIST OF NOT LESS THAN ONE HUNDRED NOR MORE THAN FIVE HUNDRED SKUS SELECTED AT THE DISCRETION OF THE COUNTY SEALER OF WEIGHTS AND MEASURES. IN THE EVENT THAT ANY VIOLATIONS ARE DETECTED, PENALTIES SHALL BE ASSESSED AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION. IN THE EVENT THAT THE NUMBER OF SKUS FOUND IN VIOLATION EQUALS OR EXCEEDS TWO PERCENT OF ALL SKUS INSPECTED, THE COUNTY SEALER OF WEIGHTS AND MEASURES MAY REVOKE THE STORE'S WAIVER FROM THE ITEM-PRICING REQUIREMENT. A STORE MAY PROMPTLY REAPPLY FOR A WAIVER AND PAY THE REQUIRED FEE TO THE COUNTY SEALER OF WEIGHTS AND MEASURES WITHIN FIVE BUSINESS DAYS AFTER BEING NOTIFIED OF THE FAILURE. STORES THAT DO NOT REAPPLY MUST PROMPTLY COME INTO COMPLIANCE WITH ALL

THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION, AND MAY NOT AGAIN REAPPLY FOR A WAIVER UNTIL AT LEAST ONE YEAR AFTER REVOCATION.

7. PENALTIES. A. ITEM PRICING PENALTIES. (I) THE FAILURE TO ITEM PRICE THREE OR MORE STOCK KEEPING ITEMS OF A PARTICULAR STOCK KEEPING UNIT SHALL CONSTITUTE A SINGLE VIOLATION.

(II) ANY RETAIL STORE FOUND IN VIOLATION OF SUBDIVISION THREE OF THIS SECTION SHALL BE SUBJECT TO THE FOLLOWING PENALTIES: FOR VIOLATIONS DISCOVERED UPON THE FIRST INSPECTION IN ANY TWELVE MONTH PERIOD 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 EVENT SHALL THE TOTAL PENALTY THEREFOR EXCEED FIVE THOUSAND DOLLARS. FOR VIOLATIONS DISCOVERED UPON A SECOND OR SUBSEQUENT INSPECTION IN ANY TWELVE MONTH PERIOD, THE ABOVE PENALTIES SHALL BE DOUBLED, WITHOUT LIMITATION. EACH DAY A VIOLATION IS CONTINUED SHALL CONSTITUTE A SEPARATE VIOLATION.

B. PRICE ACCURACY PENALTIES. IN THE EVENT THAT THE PROGRAMMED COMPUTER PRICE EXCEEDS THE ITEM, SHELF, SALE OR ADVERTISED PRICE OF ANY STOCK KEEPING ITEM, THE STORE WILL BE SUBJECT TO THE FOLLOWING PENALTIES: FOR A VIOLATION OF SUBDIVISION FOUR OF THIS SECTION, A PENALTY IN THE AMOUNT OF FIFTY DOLLARS PER VIOLATION SHALL BE IMPOSED ON 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 FOR THE NEXT TWO PERCENT; AND THREE HUNDRED DOLLARS FOR EACH ADDITIONAL VIOLATION. FOR VIOLATIONS DISCOVERED UPON A SECOND OR SUBSEQUENT INSPECTION IN A TWELVE MONTH PERIOD THE ABOVE PENALTIES SHALL BE DOUBLED.

C. STOP-REMOVAL ORDER. AN INSPECTOR SHALL HAVE THE AUTHORITY TO ISSUE A STOP-REMOVAL ORDER WITH RESPECT TO ANY STOCK KEEPING ITEM, DEVICE OR SYSTEM BEING USED, HANDLED, SOLD, OFFERED FOR SALE OR EXPOSED FOR SALE IN VIOLATION OF THIS SECTION.

(I) ANY STOP-REMOVAL ORDER ISSUED WITH RESPECT TO ANY STOCK KEEPING ITEM SHALL BE IN WRITING, SHALL LIST THE VIOLATIONS AND SHALL DIRECT THAT ANY STOCK KEEPING ITEM IN VIOLATION SHALL NOT BE SOLD, OFFERED FOR SALE OR EXPOSED FOR SALE UNTIL THE VIOLATIONS ARE CORRECTED.

(II) ANY STOP-REMOVAL ORDER ISSUED WITH RESPECT TO ANY DEVICE OR SYSTEM SHALL BE IN WRITING AND SHALL LIST THE VIOLATIONS. SUCH STOP-REMOVAL ORDER SHALL BE STAYED FOR UP TO TWO HOURS AFTER THE INSPECTOR PROVIDES THE WRITTEN STOP-REMOVAL ORDER TO THE RETAIL STORE PROVIDED THAT, UNTIL THE VIOLATIONS ARE CORRECTED, EITHER: THE STOCK KEEPING ITEMS WHICH ARE AFFECTED BY THE VIOLATIONS ARE NOT SOLD, OFFERED FOR SALE OR EXPOSED FOR SALE, OR SIGNS ARE POSTED CONSPICUOUSLY AT OR NEAR EACH CASH REGISTER WHICH CLEARLY DISCLOSE TO STORE EMPLOYEES AND CONSUMERS WHICH STOCK KEEPING ITEMS ARE AFFECTED BY THE VIOLATIONS AND THEIR CORRECT PRICES, AND THE RETAIL STORE ENSURES THAT CONSUMERS ARE CHARGED THE CORRECT PRICE.

D. VIOLATIONS OF THIS SECTION SHALL NOT BE SUBJECT TO THE PENALTIES SPECIFIED IN SECTION FORTY-ONE OF THIS CHAPTER.

8. CONSUMER RIGHTS WHEN OVERCHARGED BY A STORE. A. ANY CONSUMER WHO SUFFERS A LOSS BECAUSE THE PRICE CHARGED FOR A STOCK KEEPING ITEM (SKI) IS GREATER THAN THE ITEM, SHELF, SALE, OR ADVERTISED PRICE MAY SEEK A SUPER-REFUND. SUCH SUPER-REFUND SHALL ENTITLE THE CONSUMER TO RECEIVE THE OVERCHARGED STOCK KEEPING ITEM (SKI) FREE OF CHARGE, AND TO THE DIFFERENCE BETWEEN THE PRICE CHARGED AND THE LOWER OF THE ITEM, SALE, SHELF OR ADVERTISED PRICE, IN ADDITION TO AN AMOUNT EQUAL TO TEN TIMES THAT DIFFERENCE BUT NOT LESS THAN ONE DOLLAR NOR MORE THAN TEN DOLLARS.

WITHIN THE SAME TRANSACTION, EACH SUBSEQUENT OVERCHARGE FOR THE SAME STOCK KEEPING UNIT (SKU) ENTITLES A CONSUMER TO AN ADDITIONAL REFUND EQUAL TO THE DIFFERENCE BETWEEN THE PRICE CHARGED WITH THE LOWER OF THE ITEM, SALE, SHELF OR ADVERTISED PRICE, PLUS ONE DOLLAR.

B. TO COLLECT A SUPER-REFUND, A CONSUMER MUST NOTIFY THE STORE IN PERSON OR IN WRITING THAT THE PRICE CHARGED IS MORE THAN THE ITEM, SALE, SHELF, OR ADVERTISED PRICE. THE CONSUMER SHALL PROVIDE EVIDENCE OF THE OVERCHARGE. AS SOON AS PRACTICAL, AND IN ANY CASE, WITHIN ONE HOUR AFTER RECEIPT OF SUCH NOTIFICATION AND VERIFICATION OF THE OVERCHARGE, THE STORE SHALL COMPENSATE THE CONSUMER AS SPECIFIED IN PARAGRAPH A OF THIS SUBDIVISION.

C. IF THE STORE FAILS TO TENDER A SUPER-REFUND OR WITHIN THE TIME SET FORTH IN THIS LOCAL LAW, THE CONSUMER MAY REQUEST A REVIEW BY THE COUNTY SEALER OF WEIGHTS AND MEASURES. WITHIN TEN WORKING DAYS OF RECEIPT OF SUCH A REQUEST, THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL DETERMINE WHAT PAYMENT, IF ANY, IS DUE UNDER THIS SUBDIVISION. A STORE THAT FAILS TO COMPLY WITH THE COUNTY SEALER OF WEIGHTS AND MEASURES DETERMINATION OR ANY OTHER PROVISIONS OF THIS SUBDIVISION IS CONSIDERED IN VIOLATION AND SUBJECT TO PENALTIES UNDER SUBDIVISION SEVEN OF THIS SECTION.

D. A STORE MAY SET AN OVERCHARGE REFUND POLICY MORE GENEROUS THAN REQUIRED BY THIS SUBDIVISION, PROVIDED THAT POLICY IS APPROVED BY THE COUNTY SEALER OF WEIGHTS AND MEASURES AND A COPY OF THE COUNTY SEALER'S APPROVAL IS KEPT ON FILE IN THE STORE.

9. JURISDICTION. A. THE PROVISIONS OF THIS SECTION AND THE REGULATIONS PROMULGATED HEREUNDER MAY BE ENFORCED BY THE DEPARTMENT OR BY THE MUNICIPAL DIRECTOR OF A CONSUMER AFFAIRS OFFICE AND/OR A MUNICIPAL DIRECTOR OF WEIGHTS AND MEASURES. NOTWITHSTANDING THE PROVISIONS OF SECTION FORTY-FIVE OF THIS CHAPTER, ALL MONEYS COLLECTED HEREUNDER BY A MUNICIPALITY SHALL BE RETAINED BY THE MUNICIPALITY. IN THE EVENT THAT A MUNICIPALITY ELECTS TO ENFORCE THIS SECTION, IT SHALL GIVE NOTICE OF SUCH INTENTION TO THE COMMISSIONER WHO, UPON RECEIPT THEREOF, WILL DIRECT THAT THE DEPARTMENT'S INSPECTIONS FOR COMPLIANCE WITH THIS SECTION BE DISCONTINUED IN SUCH MUNICIPALITY UNLESS AND UNTIL SUCH MUNICIPALITY GIVES FURTHER NOTICE THAT IT NO LONGER INTENDS TO ENGAGE IN ENFORCEMENT OF THIS SECTION. THE PROCEDURES SET FORTH IN PARAGRAPHS B AND C OF THIS SUBDIVISION SHALL BE APPLICABLE TO MUNICIPAL ENFORCEMENT OF THIS SECTION.

B. EACH MUNICIPAL DIRECTOR OF A CONSUMER AFFAIRS OFFICE AND/OR A MUNICIPAL DIRECTOR OF WEIGHTS AND MEASURES PERSONALLY, OR THROUGH HIS OR HER AUTHORIZED AGENTS, SHALL, UPON FINDING A VIOLATION OF THE PROVISIONS OF THIS SECTION OR OF THE RULES AND REGULATIONS PROMULGATED PURSUANT TO THIS SECTION, EXPEDITIOUSLY CAUSE THE SAME TO BE CORRECTED OR SHALL REFER THE MATTER 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 BY THIS SECTION AND BY SECTIONS THIRTY-NINE AND FORTY OF THIS CHAPTER. A CAUSE OF ACTION FOR RECOVERY OF SUCH PENALTY MAY BE RELEASED, SETTLED OR COMPROMISED BY THE MUNICIPAL DIRECTOR BEFORE THE MATTER IS REFERRED TO THE MUNICIPAL ATTORNEY OR THEREAFTER BY SUCH ATTORNEY.

C. THE MUNICIPAL DIRECTOR MAY HOLD A HEARING TO DETERMINE WHETHER A VIOLATION OF THE PROVISIONS OF THIS SECTION HAS OCCURRED. AT LEAST TWO WEEKS WRITTEN NOTICE OF A HEARING SHALL BE SERVED EITHER PERSONALLY ON THE INDIVIDUAL IN CHARGE OF THE PLACE OF BUSINESS WHERE THE ALLEGED VIOLATION OCCURRED OR BY CERTIFIED OR REGISTERED MAIL ADDRESSED TO SUCH PLACE OF BUSINESS. SUCH NOTICE SHALL CONTAIN A CONCISE STATEMENT OF THE

FACTS CONSTITUTING THE ALLEGED VIOLATION AND SHALL SET FORTH THE DATE, TIME AND PLACE THAT THE HEARING WILL BE HELD. UPON A FINDING OF A VIOLATION OF THE PROVISIONS OF THIS SECTION, THE MUNICIPAL DIRECTOR SHALL BE AUTHORIZED TO RECOVER ANY CIVIL PENALTY PROVIDED FOR IN PARAGRAPH B OF THIS SUBDIVISION.

10. LOCAL OPTION. NOTHING HEREIN SHALL BE CONSTRUED TO RESTRICT THE POWER OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL LAWS, ORDINANCES, OR REGULATIONS WHICH EXCEED THE MINIMUM APPLICABLE STANDARDS IN THIS SECTION.

11. RULES AND REGULATIONS. THE COMMISSIONER MAY PROMULGATE SUCH RULES AND REGULATIONS AS HE OR SHE MAY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THE PURPOSES OF THIS SECTION.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.