

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The agriculture and markets law is amended by adding a new
2 section 214-i to read as follows:
3 S 214-I. ITEM PRICING. 1. DECLARATION OF LEGISLATIVE FINDINGS AND
4 INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT THERE IS TECH-
5 NOLOGY UTILIZING A LASER SCANNING DEVICE OFFERING NUMEROUS EFFICIENCIES
6 AND ECONOMIES TO THE OPERATION OF THE RETAIL FOOD INDUSTRY, THE USE OF
7 WHICH MAY MAKE IT ECONOMICALLY ADVANTAGEOUS FOR RETAIL STORES TO REMOVE
8 PRICE MARKINGS ON INDIVIDUAL GROCERY ITEMS. THE LEGISLATURE FURTHER
9 FINDS THAT PRICE MARKING CONSTITUTES AN INDISPENSABLE INGREDIENT TO A
10 CONSUMER'S RIGHT TO ALL REASONABLE INFORMATION IN ORDER TO MAKE AN
11 INFORMED PURCHASE CHOICE.
12 THEREFORE, THE LEGISLATURE DECLARES THAT REQUIRING ITEM PRICE MARKING
13 IS NECESSARY TO PROTECT THE INTEREST OF THE CONSUMING PUBLIC, AND
14 FURTHER DECLARES THAT IT IS IN THE PUBLIC INTEREST TO PROMOTE USEFUL
15 TECHNOLOGY BY PERMITTING CONTINUED TESTING AND DEVELOPMENT OF THE
16 UNIVERSAL PRODUCT CODE CHECKOUT SYSTEM WITHOUT THE REMOVAL OF ITEM PRIC-
17 ES.
18 IT IS THE INTENT OF THIS LEGISLATION TO ENSURE THAT CONSUMER GOODS
19 OFFERED FOR SALE IN NEW YORK STATE ARE CLEARLY, ADEQUATELY, AND ACCU-
20 RATELY PRICE MARKED AS PROVIDED IN THIS SECTION.
21 2. DEFINITIONS. THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEAN-
22 INGS FOR THE PURPOSE OF THIS SECTION:

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

LBD01053-01-1

1 A. "STOCK KEEPING UNIT" OR "UNIT" SHALL MEAN EACH GROUP OF ITEMS
2 OFFERED FOR SALE OF THE SAME BRAND NAME, QUANTITY OF CONTENTS, RETAIL
3 PRICE, AND VARIETY WITHIN THE FOLLOWING CATEGORIES:

4 (I) FOOD, INCLUDING ALL MATERIAL, SOLID, LIQUID OR MIXED, WHETHER
5 SIMPLE OR COMPOUND, USED OR INTENDED FOR CONSUMPTION BY HUMAN BEINGS OR
6 DOMESTIC ANIMALS NORMALLY KEPT AS HOUSEHOLD PETS AND ALL SUBSTANCES OR
7 INGREDIENTS TO BE ADDED THERETO FOR ANY PURPOSE;

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

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

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

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

16 C. "RETAIL STORE" SHALL MEAN A STORE SELLING STOCK KEEPING UNITS AT
17 RETAIL. A STORE WHICH IS NOT OPEN TO THE GENERAL PUBLIC BUT IS RESERVED
18 FOR USE BY ITS MEMBERS SHALL COME WITHIN THE PROVISIONS OF THIS DEFINITION
19 UNLESS THE MEMBERS MUST PAY A DIRECT FEE TO THE STORE TO QUALIFY
20 FOR MEMBERSHIP AND THE STORE IS NOT REQUIRED TO COLLECT SALES TAX ON
21 TRANSACTIONS WITH MEMBERS. PURSUANT TO THIS SECTION, A RETAIL STORE
22 SHALL NOT INCLUDE ANY STORE WHICH:

23 (I) HAS AS ITS ONLY FULL-TIME EMPLOYEE THE OWNER THEREOF, OR THE
24 PARENT, SPOUSE OR CHILD OF THE OWNER, AND IN ADDITION THERETO NOT MORE
25 THAN TWO FULL-TIME EMPLOYEES; OR

26 (II) HAD ANNUAL GROSS SALES OF STOCK KEEPING UNITS IN THE PREVIOUS
27 CALENDAR YEAR OF LESS THAN THREE MILLION DOLLARS, UNLESS THE RETAIL
28 STORE IS PART OF A NETWORK OF SUBSIDIARIES, AFFILIATES OR OTHER MEMBER
29 STORES, UNDER DIRECT OR INDIRECT COMMON CONTROL, WHICH AS A GROUP, HAD
30 ANNUAL GROSS SALES OF STOCK KEEPING ITEMS IN THE PREVIOUS CALENDAR YEAR
31 OF THREE MILLION DOLLARS OR MORE; OR

32 (III) ENGAGES PRIMARILY IN THE SALE OF FOOD FOR CONSUMPTION ON THE
33 PREMISES OR IN A SPECIALTY TRADE WHICH THE COMMISSIONER DETERMINES, BY
34 REGULATION, WOULD BE INAPPROPRIATE FOR ITEM PRICING.

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

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

42 F. "SHELF PRICE" SHALL MEAN THE TAG OR SIGN PLACED BY AN AUTHORIZED
43 PERSON AT EACH POINT OF DISPLAY OF A STOCK KEEPING UNIT, WHICH CLEARLY
44 SETS FORTH THE RETAIL PRICE OF THE STOCK KEEPING ITEMS WITHIN THAT STOCK
45 KEEPING UNIT.

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

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

55 I. "PRICE LOOK-UP FUNCTION" SHALL MEAN THE CAPABILITY OF ANY CHECKOUT
56 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

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

4 6. WAIVER FROM ITEM PRICING BASED ON CHECKOUT ACCURACY. A. EVERY
5 PERSON, STORE, FIRM, PARTNERSHIP, CORPORATION, OR ASSOCIATION WHICH USES
6 A COMPUTER-ASSISTED CHECKOUT SYSTEM AND WHICH WOULD OTHERWISE BE
7 REQUIRED TO ITEM PRICE AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION
8 MAY MAKE APPLICATION IN WRITING TO THE COUNTY SEALER OF WEIGHTS AND
9 MEASURES FOR A WAIVER OF SAID ITEM PRICING REQUIREMENTS. A SEPARATE
10 APPLICATION SHALL BE REQUIRED FOR EACH STORE. EACH APPLICATION SHALL BE
11 SUBJECT TO A NON-REFUNDABLE PROCESSING FEE TO COVER THE COST OF CONDUCT-
12 ING SCANNER ACCURACY INSPECTIONS AS PROVIDED IN PARAGRAPH B OF THIS
13 SUBDIVISION. THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL DETERMINE
14 THE PROCESSING FEE AND MAY REVISE IT FROM TIME TO TIME, BUT IN NO CASE
15 SHALL SAID FEE EXCEED ONE THOUSAND DOLLARS PER APPLICATION.

16 B. UPON RECEIPT OF AN APPLICATION AND FEE AS PROVIDED IN PARAGRAPH A
17 OF THIS SUBDIVISION, THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL
18 CAUSE TO BE CONDUCTED TWO SCANNER ACCURACY INSPECTIONS OF THE STORE FOR
19 WHICH THE APPLICATION HAS BEEN SUBMITTED. THESE INSPECTIONS SHALL BE
20 CONDUCTED ON TWO SEPARATE DAYS AND SHALL CONSIST OF COMPARING THE SHELF,
21 SALE OR ADVERTISED PRICE OF ANY STOCK-KEEPING UNIT (SKU) WITH THE COMPU-
22 TER-ASSISTED CHECKOUT SYSTEM PRICE. SUCH INSPECTION SHALL CONSIST OF AT
23 LEAST ONE HUNDRED SKUS, BUT NO MORE THAN FIVE HUNDRED, SELECTED AT THE
24 DISCRETION OF THE COUNTY SEALER OF WEIGHTS AND MEASURES. IN THE EVENT
25 THAT ANY VIOLATIONS ARE DETECTED, PENALTIES SHALL BE ASSESSED AS
26 PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION. IF, CONSIDERING BOTH
27 INSPECTIONS TOGETHER, THE NUMBER OF SKUS FOUND IN VIOLATION DOES NOT
28 EXCEED TWO PERCENT OF ALL SKUS INSPECTED, THE COUNTY SEALER OF WEIGHTS
29 AND MEASURES SHALL GRANT TO THE APPLICANT A ONE-YEAR REVOCABLE WAIVER
30 FROM THE ITEM-PRICING REQUIREMENT. ANY STORE WITH A CURRENT WAIVER SHALL
31 BE EXEMPT FROM THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION.

32 C. A WAIVER FROM ITEM PRICING SHALL BE VALID FOR A PERIOD OF ONE YEAR
33 FROM THE DATE OF ISSUANCE. STORES MAY REAPPLY ANNUALLY FOR RENEWAL OF A
34 WAIVER. A PROCESSING FEE AND TWO INSPECTIONS SHALL BE REQUIRED FOR EACH
35 ANNUAL RENEWAL APPLICATION, AS REQUIRED FOR AN ORIGINAL WAIVER APPLICA-
36 TION.

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

48 E. IN THE EVENT THAT THE COUNTY SEALER OF WEIGHTS AND MEASURES IS
49 UNABLE TO CONDUCT INSPECTIONS PURSUANT TO PARAGRAPH B OF THIS SUBDIVI-
50 SION WITHIN NINETY DAYS OF RECEIPT OF A COMPLETE WAIVER APPLICATION AND
51 PROPER PROCESSING FEE, THE COUNTY SEALER OF WEIGHTS AND MEASURES MAY
52 GRANT A TEMPORARY WAIVER PENDING COMPLETION OF INSPECTIONS. THE COUNTY
53 SEALER OF WEIGHTS AND MEASURES SHALL CAUSE SAID INSPECTIONS TO BE
54 COMPLETED AS SOON AS PRACTICABLE. IF, UPON COMPLETION, THE INSPECTIONS
55 DETECT A VIOLATION RATE IN EXCESS OF TWO PERCENT OR LESS, THE COUNTY
56 SEALER OF WEIGHTS AND MEASURES SHALL ISSUE A REGULAR WAIVER WITH AN

1 EXPIRATION DATE ONE YEAR FROM THE COMMENCEMENT DATE OF THE TEMPORARY
2 WAIVER. IF THE INSPECTIONS DETECT A VIOLATION RATE IN EXCESS OF TWO
3 PERCENT, THE TEMPORARY WAIVER SHALL BE IMMEDIATELY REVOKED AND COMPLI-
4 ANCE WITH SUBDIVISION THREE OF THIS SECTION SHALL BE REQUIRED AND THE
5 PROVISIONS OF PARAGRAPH D OF THIS SUBDIVISION SHALL APPLY.

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

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

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

20 (III) THE STORE SHALL CAUSE TO BE POSTED IN A CONSPICUOUS LOCATION,
21 ACCESSIBLE BY ALL CONSUMERS AND APPROVED BY THE COUNTY SEALER OF WEIGHTS
22 AND MEASURES A SIGN EXPLAINING THE RIGHTS OF CONSUMERS CONSISTENT WITH
23 SUBDIVISION EIGHT OF THIS SECTION. THE COUNTY SEALER OF WEIGHTS AND
24 MEASURES WILL SPECIFY THE CONTENT AND SIZE OF THIS SIGN BY REGULATION.
25 THE STORE IS ALSO REQUIRED TO POST THE TEMPORARY OR ANNUAL WAIVER IN THE
26 AREA DESIGNATED FOR HANDLING PRICE DISCREPANCIES.

27 (IV) THE STORE SHALL PARTICIPATE IN THE SUPER-REFUND PROGRAM AND SHALL
28 MAKE PAYMENT TO CONSUMERS WHO HAVE BEEN OVERCHARGED IN ACCORDANCE WITH
29 SUBDIVISION EIGHT OF THIS SECTION. EACH STORE IS REQUIRED TO DESIGNATE
30 AT LEAST ONE INDIVIDUAL WHO IS AUTHORIZED TO ISSUE THESE PAYMENTS DURING
31 ALL OF THE STORE'S OPERATING HOURS.

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

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

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

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

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

6 (II) ANY RETAIL STORE FOUND IN VIOLATION OF SUBDIVISION THREE OF THIS
7 SECTION SHALL BE SUBJECT TO THE FOLLOWING PENALTIES: FOR VIOLATIONS
8 DISCOVERED UPON THE FIRST INSPECTION IN ANY TWELVE MONTH PERIOD THE
9 STORE SHALL PAY A PENALTY OF FIFTY DOLLARS FOR EACH OF THE FIRST FOUR
10 VIOLATIONS; ONE HUNDRED DOLLARS FOR EACH OF THE NEXT TWELVE VIOLATIONS;
11 AND ONE HUNDRED FIFTY DOLLARS FOR EACH SUBSEQUENT VIOLATION, BUT IN NO
12 EVENT SHALL THE TOTAL PENALTY THEREFOR EXCEED FIVE THOUSAND DOLLARS. FOR
13 VIOLATIONS DISCOVERED UPON A SECOND OR SUBSEQUENT INSPECTION IN ANY
14 TWELVE MONTH PERIOD, THE ABOVE PENALTIES SHALL BE DOUBLED, WITHOUT LIMITATION.
15 EACH DAY A VIOLATION IS CONTINUED SHALL CONSTITUTE A SEPARATE
16 VIOLATION.

17 B. PRICE ACCURACY PENALTIES. IN THE EVENT THAT THE PROGRAMMED COMPUTER
18 PRICE EXCEEDS THE ITEM, SHELF, SALE OR ADVERTISED PRICE OF ANY STOCK
19 KEEPING ITEM, THE STORE WILL BE SUBJECT TO THE FOLLOWING PENALTIES: FOR
20 A VIOLATION OF SUBDIVISION FOUR OF THIS SECTION, A PENALTY IN THE AMOUNT
21 OF FIFTY DOLLARS PER VIOLATION SHALL BE IMPOSED ON THE FIRST TWO PERCENT
22 OF THE STOCK KEEPING ITEMS COMPARED ROUNDED TO THE NEAREST WHOLE NUMBER;
23 ONE HUNDRED DOLLARS PER VIOLATION FOR THE NEXT TWO PERCENT; TWO HUNDRED
24 DOLLARS FOR THE NEXT TWO PERCENT; AND THREE HUNDRED DOLLARS FOR EACH
25 ADDITIONAL VIOLATION. FOR VIOLATIONS DISCOVERED UPON A SECOND OR SUBSEQUENT
26 INSPECTION IN A TWELVE MONTH PERIOD THE ABOVE PENALTIES SHALL BE
27 DOUBLED.

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

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

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

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

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

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

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

12 C. IF THE STORE FAILS TO TENDER A SUPER-REFUND OR WITHIN THE TIME SET
13 FORTH IN THIS LOCAL LAW, THE CONSUMER MAY REQUEST A REVIEW BY THE COUNTY
14 SEALER OF WEIGHTS AND MEASURES. WITHIN TEN WORKING DAYS OF RECEIPT OF
15 SUCH A REQUEST, THE COUNTY SEALER OF WEIGHTS AND MEASURES SHALL DETER-
16 MINE WHAT PAYMENT, IF ANY, IS DUE UNDER THIS SUBDIVISION. A STORE THAT
17 FAILS TO COMPLY WITH THE COUNTY SEALER OF WEIGHTS AND MEASURES DETERMI-
18 NATION OR ANY OTHER PROVISIONS OF THIS SUBDIVISION IS CONSIDERED IN
19 VIOLATION AND SUBJECT TO PENALTIES UNDER SUBDIVISION SEVEN OF THIS
20 SECTION.

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

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

39 B. EACH MUNICIPAL DIRECTOR OF A CONSUMER AFFAIRS OFFICE AND/OR A
40 MUNICIPAL DIRECTOR OF WEIGHTS AND MEASURES PERSONALLY, OR THROUGH HIS OR
41 HER AUTHORIZED AGENTS, SHALL, UPON FINDING A VIOLATION OF THE PROVISIONS
42 OF THIS SECTION OR OF THE RULES AND REGULATIONS PROMULGATED PURSUANT TO
43 THIS SECTION, EXPEDITIOUSLY CAUSE THE SAME TO BE CORRECTED OR SHALL
44 REFER THE MATTER TO THE ATTORNEY FOR THE MUNICIPALITY, FOR COMMENCEMENT
45 OF A CIVIL ACTION IN THE NAME OF THE MUNICIPALITY TO RECOVER A CIVIL
46 PENALTY IN THE AMOUNTS PRESCRIBED BY THIS SECTION AND BY SECTIONS THIR-
47 TY-NINE AND FORTY OF THIS CHAPTER. A CAUSE OF ACTION FOR RECOVERY OF
48 SUCH PENALTY MAY BE RELEASED, SETTLED OR COMPROMISED BY THE MUNICIPAL
49 DIRECTOR BEFORE THE MATTER IS REFERRED TO THE MUNICIPAL ATTORNEY OR
50 THEREAFTER BY SUCH ATTORNEY.

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

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

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

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

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