



**LOCAL LAW \_\_\_ – 2020**

**COUNTY OF SCHENECTADY**

*Introduced by Legislator \_\_\_\_:*

**A LOCAL LAW AMENDING CHAPTER 45 (CONSUMER PROTECTION:  
ITEM PRICING LAW) AND CHAPTER 50 (CONSUMER PROTECTION:  
PRICING ACCURACY LAW) OF THE SCHENECTADY COUNTY  
CODIFIED LAWS TO CREATE CERTAIN WAIVERS FOR SMALL  
BUSINESSES**

**BE IT ENACTED** by the Legislature of the County of Schenectady, as follows:

Section 1. Chapter 45 of the Codified Local Laws is amended in order to create a fee schedule for waivers from item pricing, as follows:

**Chapter 45. CONSUMER PROTECTION: ITEM PRICING LAW**

[HISTORY: Adopted 12-8-1992 by Local Law 7-1992. Amendments noted where applicable.]

**Section 45.01. Title.**

This law shall be known as the "Schenectady County item pricing law."

**Section 45.02. Declaration of legislative findings and intent.**

This law recognizes that clear, accurate item pricing is a basic consumer right which is no longer protected under state law. It is the purpose of this law to ensure that consumer goods offered for sale in the County of Schenectady are clearly, accurately and adequately marked as to their selling price. This legislature does, at the same time, recognize the numerous efficiencies and economies available to the retail food industry by utilization of laser scanning devices as the sole method of pricing consumer goods. However, this legislature finds that item price marking is necessary to protect the interests of the consumer and is an indispensable element of any individual's right to make an informed purchase choice.

### **Section 45.03. 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:
  - 1. 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
  - 2. Napkins, facial tissues, toilet tissues, and any disposable wrapping or container for the storage, handling or serving of food; and
  - 3. Detergents, soaps or other cleansing agents, and cleaning implements; and
  - 4. Non-prescription drugs, feminine hygiene products and health and beauty aids.
- B. "Stock keeping item" shall mean each individual 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 clearly readable Arabic numerals, the selling 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 selling 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 the authorized government official and his or her agents or employees having jurisdiction to enforce the provisions of this local law. For the purpose of this local law, the inspector shall be the Schenectady County director of consumer affairs/weights and measures.
- 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:

1. 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 2 full-time employees; or
2. Had county-wide annual gross sales of stock keeping units in a previous calendar year of less than three million dollars (\$3,000,000); or (Amended 9-14-2000 by L.L. 8-2000)
3. Engages primarily in the sale of food for consumption on the premises or in a specialty trade which the director of consumer affairs/weights and measures determines, by regulation, would be inappropriate for item pricing.

I. "Retail Area" shall mean the area designated in a retail store to display and sell products, provide customer service, and check out. The retail area does not include the storage area, back rooms, stock areas, maintenance areas, or other locations which are not intended to be accessible to consumers.

#### **Section 45.04. Item pricing required.**

Except as expressly provided in this Chapter, Every 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 price of each stock keeping item by individually marking each such item with the item price.

#### **Section 45.05. Certain items exempted.**

The following stock keeping items need not be item priced as provided in section 45.04 of this law provided that a shelf price and a price look-up function are maintained for such stock keeping items:

- A. Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing 5 ounces or less;
- B. Stock keeping items which are under 3 cubic inches of size, and weigh less than 3 ounces, and are priced under one dollar (\$1);
- C. Items sold through a vending machine;
- D. Fresh milk, cream, half and half and other similarly packaged liquid dairy products and orange juice;
- E. Fresh eggs;
- F. Fresh produce; (Amended 9-14-2000 by L.L. 8-2000)
- G. Food offered for sale in bulk;
- H. Frozen foods;

- I. Stock keeping items offered for a period of 21 days or less at a sale price, provided that the sale price and the beginning and ending dates of the sale are clearly indicated to the consumer by conspicuous sign otherwise located at or near the display of such stock keeping items. On special promotions offered, the period may be extended provided the store has available for inspection written documentation of the promotion.
- J. Individual jars of strained and junior size baby food;
- K. Individual boxes of dry gelatin and pudding;
- L. Ice cream and frozen yogurt; and
- M. Stock keeping items within a multi-package that is properly item priced.
- N. Cigarettes, cigars, tobacco and tobacco products.

**Section 45.06. Pricing accuracy.**

- A. No retail store shall charge a price for any exempt or non-exempt stock keeping item which exceeds the lower of any item price, shelf price, sale price 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 of a stock keeping unit, the store will be subject to a penalty as described in section 45.07, subdivision E.
- 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 stock keeping item sold in the store with the programmed computer price.

**Section 45.07. Enforcement.**

- A. Item pricing inspection procedures.

For the purpose of determining a store's compliance with the requirements of section 45.04, an inspection shall be conducted of a sample of no fewer than 50 stock keeping units. However, in the event the inspector has received a specific written complaint, no such minimum sample shall be required in the investigation of same.

- B. Laser scanner accuracy inspection procedures.

For any inspection under sections 45.06, 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. In the event the inspector has received a specific written complaint, the inspector may, in his or her discretion, conduct an inspection of only those items.

- 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 45.04 or 45.06. Any such order shall be in writing and direct that the device, system or stock keeping unit, as the case may be, shall be removed from use or sale pending correction.

D. Penalties for item pricing violations.

Subject to an 85% stock keeping unit compliance rate as hereinafter provided for, a penalty shall be imposed for a violation of section 45.04 if the enforcing inspector determines that less than 75% of the stock keeping items inspected in a stock keeping unit at an individual point of sale contain clearly readable and correct item prices. The retail store shall not be found to have failed an inspection nor shall a penalty be imposed for a violation of section 45.04 if the enforcing inspector determines that more than 85% of all stock keeping units inspected comply with the provisions of this local law. Any retail store found in violation of section 45.04 of this local law shall be subject to the following penalties; for the first failed inspection, the store shall pay a penalty of two hundred and fifty dollars (\$250); five hundred dollars (\$500) for the second failed inspection; seven hundred and fifty dollars (\$750) for the third failed inspection and one-thousand dollars (\$1,000) for the fourth and each subsequent failed inspection. No store shall be inspected more frequently than every 7 days. Any store deemed to be in compliance with the provisions of this local law for a period of at least 6 months after a failed inspection shall be subject to a two hundred and fifty dollar (\$250) penalty for the next violation of this local law and the additional penalties for subsequent violations as hereinbefore provided for.

E. Penalties for scanner accuracy violations.

In the event that the programmed computer prices exceed 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 the provisions of section 45.06 of this local law in any 12 month period, no penalty shall be imposed for the first 2 violations of the stock keeping items compared; fifty dollars (\$50) per violation shall be imposed for the next 2 violations; one hundred dollars (\$100) per violation for the next 3 violations; two hundred dollars (\$200) per violation for the next 3 violations; and fifty dollars (\$50) for each additional violation, but in no event shall the total penalty therefore exceed two thousand dollars (\$2,000). For a second or subsequent violation in any 12 month period, the above penalties shall be doubled. The sampling requirements of subdivision A of section 45.07 of this local law shall not apply to this subdivision.

**Section 45.08. Waiver from item pricing based upon pricing accuracy.**

- A. Every retail store which uses a computer-assisted checkout system and which —otherwise would be required to item price as provided herein may make application in writing to the enforcing agent for a waiver of said item pricing requirement. A —separate application shall be required for each store. (Amended 9-14-2000 by L.L. 8-2000)
- B. Every retail store subject to this local law may apply in writing to the county

enforcing agent for a waiver from the item pricing requirements as contained herein. All written requests for an item pricing waiver shall include an annual waiver fee ~~of three thousand dollars (\$3,000)~~ as set forth below payable to the county enforcing agent. Failure to pay the yearly inspection fee shall result in the retail store being immediately subject to the item pricing provisions as contained herein. (Amended 12-22-2004 by L.L. 8-2004 and by L.L. 10-2007.)

<u>Retail Area</u>	<u>Waiver Fee</u>
<u>Less than 5,000 sq.ft.</u>	<u>\$750.00</u>
<u>5,000 sq. ft. or more</u>	<u>3,000.00</u>

- C. Upon receipt of an application and fee as provided in subdivisions A and B of this section, the enforcing agent shall annually or semi-annually conduct, in accordance with NIST Guidelines, ~~cause to be conducted 2~~ scanner accuracy inspections of the store for which the application has been submitted. These inspections shall ~~be conducted on 2 separate days and shall~~ consist of comparing the shelf, sale or advertised price of any stock keeping unit with the computer-assisted checkout system price in accordance with NIST Guidelines. In the event that any violations are detected, penalties shall be assessed as provided in chapter 50, section 50.05 of the Schenectady County codified local laws. If, considering both inspections together, the number of stock keeping units found to be in violation does not exceed 2% of all stock keeping units inspected, the enforcing agent shall grant to the applicant a revocable waiver from item pricing requirement. Any store with a current waiver shall not be subject to the item pricing provisions of chapter 45 of the Schenectady County codified local laws. (Amended 9-14-2000 by L.L. 8-2000)
- D. An annual waiver from item pricing shall be valid until such time as a store falls below 98% accuracy on 2 consecutive pricing accuracy inspections. Failure to meet the scanning accuracy requirement shall subject the retail store to the item pricing provision of this local law within 10 days from the last inspection. (Amended 9-14-2000 by L.L. 8-2000)
- E. In the event the total violations in excess of 2% are discovered in the inspections provided for in subdivisions C or D herein, the enforcing agent shall not grant a waiver to the applicant. Such a store must promptly reapply for a waiver and pay the required fee to the enforcing agent within 5 business days after being notified of the failure. (Amended 9-14-2000 by L.L. 8-2000)
- F. In the event that the enforcing agent is unable to conduct inspections pursuant to the subdivision C of this section within 30 days of receipt of a completed written waiver application, the enforcing agent shall grant a temporary waiver pending completion of the inspections. If, upon completion, the item pricing inspections detect a violation rate of 2% or less, the enforcing agent shall issue an annual waiver. If the inspections detect a violation rate in excess of 2%, the temporary waiver shall be immediately revoked and the item pricing provisions of chapter 45 of the Schenectady County codified local laws shall apply. Stores subject to the item pricing provisions of this local law which qualify

for a waiver shall be subject to the provisions of chapter 50 of the Schenectady County codified local laws. (Amended 9-14-2000 by L.L. 8-2000)

**Section 45.09. Jurisdiction.**

The provisions of this local law and any regulations promulgated hereunder shall be enforced by the director of consumer affairs/weights and measures for the County of Schenectady. The director of consumer affairs/weights and measures shall refer cases of unpaid penalties to the Schenectady County attorney for appropriate legal action.

**Section 45.10. Pre-emption.**

This local law shall be pre-empted by a New York law relating to item pricing of consumer commodities.

Section 2. Chapter 50 of the Codified Local Laws is amended in order to create a small business exemption, as follows:

**Chapter 50. CONSUMER PROTECTION: PRICING ACCURACY**

[HISTORY: Adopted 8-8-2000 by Local Law 9-2000.]

**Section 50.01. Title.**

This law shall be known as the "Schenectady County pricing accuracy law."

**Section 50.02. Legislative intent.**

The Schenectady County legislature finds that whereas supermarkets were the first retailers to utilize computer-assisted pricing systems, that the use of such computer-assisted pricing systems is now commonplace throughout other retail formats. This legislature further recognizes that New York State does not monitor the pricing accuracy in these formats to ensure that consumers are not overcharged at the point-of-sale. The Schenectady County legislature further recognizes that substantial computer technology in the field of pricing systems has developed over the past decade, which assists the customer in making an informed purchase choice. It is the purpose of this law to monitor the accuracy of such sales to provide consumers protection from inaccurate retail pricing systems which can result in overcharging.

**Section 50.03. Definitions.**

- A. "Retail store" shall mean a store selling stock keeping units at retail and which charges sales tax. It shall include premises which impose a membership fee on customers. It shall not include premises engaged primarily in the sale of food for consumption on the premises or stores subject to the provisions of chapter 45 of the Schenectady County Codified Local Laws commonly known as "The Schenectady County item pricing law."

- B. "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 an in-house product code, or by use of its price look-up function.
- C. "Pricing accuracy inspection" shall mean an inspection of a retail store for purposes of determining if programmed computer prices are consistent with item, shelf, sale or advertised price. A pricing accuracy inspection shall consist of not fewer than 100 and no more than 300 stock keeping units, or 25 stock keeping units in retail stores, which offer for sale fewer than 100 stock keeping units. The inspection shall represent a cross-section of all stock keeping units offered for sale.
- D. "Stock keeping item" shall mean each item within a stock keeping unit being offered or exposed for sale.
- E. "Stock keeping unit" shall mean each group of items offered for sale of the same brand name, quantity of contents, retail price, and having present differing colors, flavors or varieties.
- 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 price of the stock keeping items within the unit, in type size no smaller than that required under section 214-h of the New York State Agricultural and Markets Law, 1 NYCRR section 345.1 et seq. of the New York State Agricultural and Market Law, and any and all other relevant statutes.
- G. "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.
- H. "Enforcing agent" shall mean the authorized county government official and his or her agents or employees having jurisdiction to enforce the provisions of this local law.
- I. "Retail Area" shall mean the area designated in a retail store to display and sell products, provide customer service, and check out. The retail area does not include the storage area, back rooms, stock areas, maintenance areas, or other locations which are not intended to be accessible to consumers.

**Section 50.04. Use of scanning equipment, shelf tags and penalties.**

- A. In retail stores equipped with a "computer assisted checkout system", the county enforcing agent shall have the authority to conduct pricing accuracy inspections. Retail stores, with computer assisted checkout systems, as defined herein, which do not place price stickers on individual stock keeping units, shall be required to:
  - 1. Display shelf prices on easy to read and properly located shelf tags or signs on every stock keeping 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 three hundred dollars (\$300) for the first violation, and six hundred dollars (\$600) for the second and each subsequent violation in a 7-day period.

2. Designate and make available a price check scanner in retail stores that offer for sale more than 100 stock keeping units to enable consumers to confirm the price of a stock keeping unit. The store may utilize this scanner to meet unanticipated customer checkout needs. Retail Stores whose retail area contains less than 5,000 sq. ft. of space shall not be required to install a separate scanner in the retail area. Such Retail Stores shall (1) comply with all other pricing requirements, including those contained in section 214-h of the New York State Agriculture and Markets Law; (2) have a Uniform Pricing Code System; and (3) shall maintain registers with a scanner system that clearly displays to the consumer the price of each product that is scanned.
  3. Notify the county enforcing agent in writing of the use or initial installation of scanning equipment within 60 days of installation and operation. A retail store failing to comply with this provision shall be assessed a penalty of no greater than three hundred dollars (\$300) per establishment.
- B. The county enforcing agent 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 (\$100) per inspection found shall be assessed. Inspections conducted in response to a consumer complaint shall not be considered a pricing accuracy inspection.
- C. In the event the programmed computer price exceeds the retail price, the retail store shall be required to correct the pricing error before the county enforcing agent leaves the store.

**Section 50.05. Pricing accuracy inspection and penalties.**

- A. The following penalties are established for pricing accuracy inspection violations, based on a sample of not fewer than 100, nor more than 300 stock keeping units, or 25 stock keeping units in retail stores, which offer for sale fewer than 100 stock keeping units. The pricing accuracy inspection shall represent a cross section of all stock keeping units for sale to ascertain that the retail price is the same as the computer assisted checkout price. A violation exists when the programmed computer price exceeds the retail price:
1. 98% or better pricing accuracy, pricing corrected;
  2. 97% pricing accuracy, a penalty of five hundred dollars (\$500);
  3. 96% pricing accuracy, a penalty of seven hundred fifty dollars (\$750);
  4. 95% pricing accuracy, a penalty of one thousand dollars (\$1,000); and
  5. Below 95% pricing accuracy, a penalty of one thousand five hundred dollars (\$1,500)
- B. If a retail store fails to achieve a pricing accuracy level of 95% on 2 consecutive pricing accuracy inspections, a penalty in the amount of two thousand dollars (\$2,000) shall be assessed.

**Section 50.06. Frequency of inspections.**

The county enforcing agent may reinspect retail stores no fewer than 7 days from the previous inspection.

**Section 50.07. Consumer complaints.**

In addition to a pricing accuracy inspection, the enforcing agent may respond to a consumer complaint at any time to verify the pricing accuracy on one or more stock keeping units.