

Chapter 173

ITEM PRICING

§ 173-1. Legislative intent.

This chapter recognizes that clear, accurate item pricing is a basic consumer right that is not protected under current state law. It is the intent of this legislation to ensure that consumer goods offered for sale in Putnam County are clearly, accurately and adequately marked as to their selling prices.

§ 173-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

COMPUTER-ASSISTED CHECKOUT SYSTEM — 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.

INSPECTOR — An authorized government official having jurisdiction to enforce the provisions of this chapter.

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ITEM PRICE — The tag, stamp or mark affixed to a stock-keeping item by an authorized person which sets forth, in Arabic numerals, the retail price.

PERSON — Includes, without limitation, any individual, firm, joint venture, association, copartnership, group, corporation or any other legal entity or combination of entities whatsoever.

PRICE LOOK-UP FUNCTION — The capability of any checkout system to determine the retail price of a stock-keeping item by way of the manual entry into the system of a code number assigned to that particular unit by the retail store or by way of the checkout operator's consultation of a file maintained at the point of sale.

RETAIL STORE — 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:

- A. Has as its only full-time employee the owner thereof or the parent or the spouse or child of the owner or, in addition thereto, not more than two full-time employees;
- B. Had annual gross sales in a previous calendar year of less than \$3,000,000, unless the retail store is part of network of subsidiaries,

affiliates or other member stores under direct or indirect common control which, as a group, had annual gross sales in the previous calendar year of \$3,000,000 or more; or

- C. Engages primarily in the sale of food for consumption on the premises or in a specialty trade which the Director of Weights and Measures determines, by regulation, would be appropriate for item pricing.

SHELF PRICE — The tag or sign placed by an authorized person at each point of display of a stock-keeping unit which clearly sets forth the retail price of the stock-keeping items within the unit.

STOCK-KEEPING ITEM — Each item of a stock-keeping unit offered for sale.

STOCK-KEEPING UNIT — Each group of items offered for sale of the same brand name, quantity of contents, retail price and variety within the following categories of consumer goods:

- A. 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;
- B. Napkins, facial tissues, toilet tissues and any disposable wrapping or container for the storage, handling or serving of food;
- C. Detergents, soaps, other cleansing agents and cleaning implements; and
- D. Nonprescription drugs, feminine hygiene products and health and beauty aids.

UNIVERSAL PRODUCT CODING — Any system of coding which entails electronic pricing.

§ 173-3. Word usage.

In this chapter, unless the context otherwise requires:

- A. Words in the singular number include the plural, and words in the plural include the singular.
- B. Words of the masculine, feminine or neuter gender include the feminine, neuter and/or masculine genders.

§ 173-4. Item pricing required.

- A. Every person, firm, partnership, corporation or association which sells, offers for sale or exposes for sale in a retail store a stock-keeping unit that bears a Universal Product Code shall disclose to the consumer the item price of each stock-keeping item.
- B. Certain items exempted. The following stock-keeping items need not be item priced as provided in Subsection A of this section, provided that a

shelf price and a price look-up function are maintained for such stock-keeping items:

- (1) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.
- (2) Stock-keeping items which are under three cubic inches in size and weigh less than three ounces and are priced under \$1.
- (3) Items sold through a vending machine.
- (4) Fresh milk.
- (5) Fresh eggs.
- (6) Fresh produce which is not packaged prior to sale, displayed for sale in bulk and either packaged for or by the consumer at the time of sale.
- (7) Foods sold for consumption on the premises.
- (8) Consumer goods offered for a period of 14 days or fewer on sale in good faith at a price below the price such commodities are usually sold for in the store, provided that the sale price is clearly indicated to the consumer at both the point of display of such goods and at the point of sale.
- (9) Consumer goods which are not packaged prior to the sale in bulk and are either packaged for or by the consumer at the time of sale.
- (10) Cigarettes and cigars sold by the pack or the carton.
- (11) Single cans or bottles of soda where the selling price for different flavors packaged in identical sizes or quantities are the same.
- (12) Nonfood consumer goods which are subject to uniform, across-the-board price changes in the ordinary course of business and which are customarily marked in good faith with either an alphabetic or color code referring directly to the corresponding numerical prices displayed on signs; provided, however, that such corresponding signs are clearly visible to the consumer at both the point of display of such goods and at the point of sale.
- (13) Yogurt.
- (14) Baby food in containers with a net weight of six ounces or less.
- (15) Tuna fish.
- (16) Frozen foods.
- (17) Packaged nonrefrigerated gelatin or pudding and gelatin or pudding products.

§ 173-5. Pricing accuracy.

- A. No retail store shall stamp, tag, label, mark or otherwise charge a retail price for any exempt or nonexempt stock-keeping item which exceeds the lower of any item, shelf, sale or advertised price of such stock-keeping item. In the event that the programmed computer price exceeds the lowest price a store is permitted to charge for a stock-keeping unit, the store will be subject to a penalty as described in § 173-6E.
- B. In a store with a laser scanning or other computer assisted checkout system, the enforcing agent shall be permitted to compare the item, shelf, sale or advertised price of any one stock-keeping item sold in the store with the programmed computer price.

§ 173-6. Enforcement; penalties for offenses.

- A. Item pricing inspection procedures. For the purposes of determining a store's compliance with the requirements of § 173-4, an inspection shall be conducted on a sample of no less than 100 stock-keeping units.
- B. Laser scanner accuracy inspection procedures. For any inspection under § 173-5, the store representative shall afford the inspector access to the test mode of the checkout system in use at that store or to a comparable function of said system and to the retail price information contained in a price look-up function.
- C. Stop-removal order. An inspector shall have the authority to issue a stop-removal order with respect to any stock-keeping item, device or system being used, handled, sold, offered for sale or exposed for sale in violation of this section.
 - (1) 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.
 - (2) 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 prices.
- D. Penalties for item pricing violations. Any person who fails to mark any stock-keeping item in violation of § 173-4 shall be subject to the penalties of not less than \$20 and not more than \$50 per violation. For

additional violations during a subsequent inspection in a twelve-month period, the above penalties shall be doubled.

- (1) For purposes of this section, failure to mark a clear price on 12 identical stock-keeping items of the same commodity shall be considered a violation of this section; in the event that fewer than 12 identical stock-keeping items of the same commodity are displayed for sale, failure then to mark a clear price on two identical stock-keeping items of the same commodity shall be considered a violation.
 - (2) Each additional group of 12 identical units not item priced or improperly priced shall constitute a violation.
 - (3) Each day a violation is continued shall constitute a separate violation.
- E. Scanner accuracy violations. For purposes of determining a retail store's compliance with the requirements of § 173-4, an inspection shall be conducted of a sample of no less than 100 stock-keeping units and no more than 250 stock-keeping units, with each unit represented by an individual stock-keeping item. The sample shall also be randomly selected by the inspector. Each retail store shall provide access to the computer-assisted checkout system and portable scanning equipment as necessary for the inspector to conduct the inspection.
- F. Penalties for scanner accuracy violations. In the event that the programmed computer price exceeds the item, shelf, sale or advertised price of any one stock-keeping item sold in the store, the store will be subject to the following penalties:
- (1) For the first two items of individual stock-keeping units found to be in violation, no fine shall be imposed.
 - (2) For the next two items of individual stock-keeping units found to be in violation, the fine shall be \$50.
 - (3) For the next three items of individual stock-keeping units found to be in violation, the fine shall be \$100.
 - (4) For the next three items of individual stock-keeping units found to be in violation, the fine shall be \$200.
 - (5) For each additional individual stock-keeping unit found to be in violation, the fine shall be \$50; but in no event shall the penalties for the violations found during the first inspection in a twelve-month period exceed \$500; for additional violations during a subsequent inspection in a twelve-month period, the fines shall be doubled, but in no event shall the penalties for the violations found during the second inspection in a twelve-month period exceed \$2,000; in the event of violations found during a third of

subsequent inspection in a twelve-month period, the fines shall be imposed in accordance with this section without limit.

- G. The County Sealer of Weights and Measures and/or the Consumer Affairs Director and their departmental designees shall act as administration and enforcement officers for this chapter and any regulations promulgated hereunder, except where otherwise noted herein.
- H. The County Attorney, in the name of the County, may, upon request of either the County Sealer of Weights and Measures or the Consumer Affairs Director, in addition to any other action authorized hereunder, maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or restrain by injunction any violation of this chapter, notwithstanding any other provision hereof providing for a penalty or other punishment.

§ 173-7. Disposition of fines and penalties.

All penalties imposed and collected by the County Sealer of Weights and Measures or the County Consumer Affairs Director shall be paid to the County of Putnam and credited to the general fund.

§ 173-8. Waiver of item pricing requirements based upon pricing accuracy; consumer protections. [Added 11-13-2012 by L.L. No. 13-2012; amended 5-1-2013 by L.L. No. 5-2013]

- A. Every retail store subject to this chapter may make application in writing for a waiver of the item pricing requirements as contained herein. The application shall be submitted to the Director of Consumer Affairs for the County of Putnam. A separate application shall be required for each retail store.
- B. All written requests for an item pricing waiver shall include a biennial, nonrefundable waiver application fee based upon the store's square footage of retail area. Retail area, or retail square footage, means the area designated in a retail store to display and sell products, provide customer service and checkout. The retail area does not include storage area, back rooms, stock area, maintenance areas or other locations which are not intended to be accessible to consumers. Said waiver application fee shall be set by resolution of the Legislature. A schedule of waiver application fees shall be furnished by the Department of Consumer Affairs upon request, or at the time of application for such waiver.
- C. Waivers shall be valid for a period of two calendar years. Retail stores must reapply biennially for renewal. The waiver fee and inspection shall be required with each biennial renewal application, as is required for an original application. Late application(s) shall be subject to late fees as determined by the Department of Consumer Affairs.

D. Conducting of inspections.

- (1) Upon receipt of an application and fee as provided in Subsections A and B of this section, the Director of Consumer Affairs 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 a comparison of the shelf, sale and/or the advertised price of any stock-keeping unit with the computer-assisted checkout system price. (In the event that any violations are detected, penalties shall be assessed as provided in § 173-6, Subsection F.) 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 Director of Consumer Affairs shall grant the applicant a revocable waiver from item pricing requirements, provided that the applicant has paid all outstanding penalties imposed in connection with this section. Any store with a current waiver shall not be subject to the item pricing provisions set forth in § 173-4.
- (2) During the second calendar year of the biennial waiver period, the Director of Consumer Affairs shall cause to be conducted one scanner accuracy inspection of the store which was approved for an item pricing waiver during the preceding year. If the store fails this inspection, the Director of Consumer Affairs shall give the store at least one week to correct any problems before coming back for another inspection. If the store fails this second inspection, the store shall lose the waiver and must reapply for the waiver pursuant to Subsections A and B of this section.

E. In the event that the inspections provided for in Subsection D herein discover total violations in excess of 2% of all stock-keeping units inspected, the Director of Consumer Affairs shall not grant a waiver to the applicant. Such a store may reapply for a waiver by submitting another application with the required fee within five business days after being notified of the failure. Stores which do not reapply must be in compliance with all the requirements of § 173-4 within 60 days from the date of failure, and may be subject to additional penalties.

F. Any retail store that obtains a biennial waiver from item pricing shall be required to:

- (1) Display 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. Shelf tags shall contain all pricing information required by § 214-h of the New York State Agriculture and Markets law, as such law is amended from time to time.
- (2) Post a notice for the consumer, in a conspicuous location, that the item pricing waiver has been granted. The notice shall indicate

consumer rights with respect to the accurate pricing of items and price discrepancies.

- (3) Designate and make available the number of price check scanners set forth in the following table to enable consumers to confirm the price of a stock-keeping item:

Retail Square Footage

(square feet)	Number of Scanners
Under 1,500	No price check scanners required. However, an item(s) shall be scanned for the price, upon consumer request.
Between 1,501 and 3,000	1
Between 3,001 and 10,000	2
Between 10,001 and 30,000	3
Between 30,001 and 90,000	4
Over 90,000	5

- (4) Assist County inspectors with store inspections. The retail store may make store personnel or hand-held price scanners available to a County inspector to assist with price accuracy inspections. Inspections of retail stores may be unannounced; provided, however, that the inspector shall notify the store upon arrival.
- (5) Item price certain stock-keeping units that are too large or too heavy to be price scanned by the consumer in a reasonably simple manner. These stock-keeping units shall include all items over six pounds of net weight.

A retail store failing to comply with any of the requirements of this Subsection F, after the County Sealer of Weights and Measures and/or the Consumer Affairs Director and their departmental designees who shall act as administration and enforcement officers for this chapter and any regulations promulgated hereunder has made such determination, shall be subject to a penalty in the amount of \$500 per violation.

- G. A biennial waiver shall be immediately revoked if a store falls below 98% accuracy on two consecutive pricing accuracy inspections. Failure to meet the scanning accuracy requirement or failure to pay the annual application fee shall subject the retail store to the item pricing requirements of this chapter within 10 days of the last inspection, and may subject it to additional penalties.
- H. In the event that the Director of Consumer Affairs, or his/her designee, is unable to conduct inspections pursuant to Subsection D of this section within 30 days of receipt of a completed written waiver application, the Director of Consumer Affairs shall grant a temporary

waiver pending completion of the inspections. If, upon completion, the item pricing inspections detect a violation rate in excess of 2%, the temporary waiver shall be immediately revoked and the item pricing provisions of this chapter shall become immediately applicable.