

Title D-8
Item Pricing and Pricing Accuracy

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§ 21-18.0 **Legislative intent.** The Legislature recognizes that clear, accurate item pricing is a basic consumer right that is not protected under current state law. It is further determined that it is the intent of this legislation to ensure that consumer goods offered for sale in the County of Nassau are clearly, accurately and adequately marked as to selling price.

§ 21-18.1 **Definitions.**

- (a) "Commissioner" shall mean the Commissioner of Consumer Affairs.
- (b) "County" shall mean the County of Nassau.
- (c) "Person" shall mean an individual, firm, partnership, association or corporation.
- (d) "Office" shall mean the Nassau County Office of Consumer Affairs.
- (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) "Inspector" shall mean the Commissioner or authorized agent to enforce the provisions of this Title.
- (g) "Item price" shall mean the tag, stamp or mark affixed to a stock keeping item which sets forth, in Arabic numerals, the retail price of each item of consumer goods.
- (h) "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 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.
- (i) "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 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 two full-time employees; or
 2. had annual gross sales in a 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 in the previous calendar year of three million dollars or more; or
 3. 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.
- (j) "Sale Item or weekend special" shall mean stock keeping item offered for sale for a period of seven days or less in a retail store at a price below the price, that the item is usually sold for in such store.
- (k) "Stock keeping unit" shall mean each group of items offered for sale of the same brand name, quantity of contents, retail price, and variety.
- (l) "Stock keeping item" shall mean each item of a stock keeping unit offered for sale.
- (m) "Universal product coding" shall mean any system of coding which entails electronic pricing.
- (n) "Retail area" shall mean the area designated in a retail store to display and sell products, provide customer service and checkout. The retail area does not include the storage area, back rooms, stock area, maintenance areas, or other locations which are not intended to be accessible to consumers.

§ 21-18.2 Item Pricing.

- (a) Notwithstanding the provision of any local law or regulation to the contrary, every person who 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 as defined in section 21-18.1(g).
- (b) Certain items exempted. The following stock keeping items need not be item priced as provided in subdivision (a) of this section provided that a shelf price adjacent to the display is maintained for such stock keeping items:
- (1) Stock keeping items which are under three cubic inches in size, and weigh less than three ounces, and are priced under fifty cents,
 - (2) Items sold through a vending machine,
 - (3) Milk,

- (4) Eggs,
 - (5) Loose fresh produce,
 - (6) Stock keeping items which are offered for sale in single packages and weighing three ounces or less,
 - (7) Stock keeping items offered as a sale item or weekend special,
 - (8) Strained and junior size baby foods packaged in jars,
 - (9) Single cans or bottles of soda where the selling price for different flavors packaged in identical sizes or quantities is the same,
 - (10) Stock keeping items which are displayed for sale in bulk which are either packaged for or by the consumer,
 - (11) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less,
 - (12) Food sold for consumption on premises, and
 - (13) Frozen juice and ice cream,
 - (14) Nonfood consumer goods which are not packaged prior to sale; displayed for sale in bulk and are either packaged for or by the consumer at time of sale.
- (c) The provisions of this section may be subsequently modified or amended by order of the Commissioner, either by adding or deleting stock keeping units from the list of exemptions or by further directing the manner in which the selling price of exempted stock keeping units shall be posted.

§ 21-18.3 Pricing Accuracy.

- (a) 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. In the event that the 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 section 21-18.4.
- (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 anyone stock keeping item within a stock keeping unit sold in the store with the programmed computer price.

21-18.3.1 Waiver from Item Pricing

- (a) Every person, store, firm, partnership, corporation, or association which uses a computer-assisted checkout system and which would otherwise be required to item price as provided in section 21-18.2 of this Title may make an application in writing to the Commissioner for a waiver of said item pricing requirement. A

separate application shall be required for each store. Each application shall be subject to a non-refundable waiver fee based upon the retail square footage of each store as set forth according to the following schedule:

<u>Store Size – (Retail Square Footage)</u>	<u>Waiver Fee</u>
Under 3,000 sq. ft.	\$ 600.00
Between 3,001 and 10,000 sq. ft.	\$ 1,200.00
Between 10,001 and 30,000 sq. ft.	\$ 3,600.00
Between 30,001 and 60,000 sq. ft.	\$ 6,000.00
Between 60,001 and 90,000 sq. ft.	\$12,000.00
Over 90,000 sq. ft.	\$16,000.00

- (b) Waiver applications and the required fee must be received at the Office of Consumer Affairs on or before May 1, 2003, and on or before each May 1, thereafter. Stores that fail to comply will be subject to §21-18.2 of this code. New stores or establishments which did not previously hold waivers may apply after the May 1 deadline and the application fee and the length of waiver will be prorated accordingly.
- (c) Upon receipt of an application and fee as provided in subsection (a) of this section, the Commissioner shall cause to be conducted two scanner accuracy inspections of the store for which the application has been submitted. These inspections shall be conducted on two separate days, and in the manner prescribed by the Commissioner. At stores with a retail area in excess of 20,000 square feet a minimum of 100 items shall be checked at each inspection. At stores with a retail area of 20,000 square feet or less a minimum of 50 items shall be checked. If, considering both inspections together, the number of stock keeping units found to be in violation does not exceed two percent of all those stock keeping units inspected, the Commissioner 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 §21-18.2 of this code.
- (d) A waiver from item pricing shall be valid for a period of one year from the date of issuance. Stores must reapply annually for renewal of waiver at the rates established in subsection (a) of this section. The waiver fee and two inspections shall be required for each annual renewal application, as required for an original waiver application.
- (e) In the event that total violations in excess of two percent are discovered in the inspections provided for herein, the Commissioner shall not grant a waiver to the applicant. Such a store may reapply for a waiver and pay an additional waiver fee equal to one-half of the initial waiver fee to the Commissioner within five business days after being notified of the failure. Stores which do not reapply must be in compliance with all the requirements of this code within thirty days from the date of failure.
- (f) In the event that the Commissioner is unable to conduct inspections pursuant to subsection (c) of this section within ninety days of receipt of a complete waiver application and proper waiver fee, the Commissioner shall grant a temporary waiver pending completion of the inspections. The Commissioner shall cause said inspections to be completed as soon as practicable. If, upon completion, the inspections detect a violation rate of less than two percent, the Commissioner shall issue a regular waiver with an expiration date one year from the date of the

temporary waiver. If the inspections detect a violation rate in excess of two percent, the temporary waiver shall be immediately revoked and the provisions of subsection (e) shall apply.

(g) As a condition of the waiver from item pricing pursuant to this section, each store which accepts a waiver must agree to meet the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:

(i) The store shall designate and make available price check scanners to enable consumers to confirm the price of the stock keeping item. These price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering to identify the units to the consumers. The number of price check scanners shall be dependent on the stores areas as follows:

<u>Store Size</u>	<u>Scanners Required</u>
Up to 20,000 sq. ft.	1
Between 20,001 and 30,000	a minimum of 2 and such additional scanners as the Commissioner may deem appropriate; and
Between 30,001 and 60,000	a minimum of 3 and such additional scanners as the Commissioner may deem appropriate; and
Between 60,001 and 90,000	a minimum of 4 and such additional scanners as the Commissioner may deem appropriate; and
Over 90,000 sq. ft.	a minimum of 5 and such additional scanners as the Commissioner may deem appropriate; and

(ii) The store shall not charge any customer a price for any stock keeping item which exceeds the item, shelf, sale, or advertised price, whichever is less; and

(iii) The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.

(iiii) Stores must have a shelf price for each stock keeping item which is visible to the consumer and which is located directly under the item on the shelf where the item is displayed; or if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement.

(h) The Commissioner may revoke a waiver from item pricing for any of the following reasons:

(i) Failure to comply with any provisions of this code;

(ii) Deliberate overcharging of any consumer;

(iii) Material misrepresentation in the application for a waiver.

(Added by Local Law No. 20-2002, in effect November 15, 2002.

§ 21-18.4 Enforcement.

- (a) The provisions of this Title shall be enforced by the Office. Upon presentation of appropriate credentials, the Office shall have the right to enter upon the premises of any retail store to make an inspection and to determine compliance with the provisions of this Title.
- (b) Item pricing inspection procedures. For the purposes of determining a store's compliance with the requirements of section 21-18.2, an inspection shall be conducted of a sample at no less than twenty-five stock keeping units.
- (c) For the purpose of a violation of section 21-18.2(a), no item shall be cited more than once in a forty-eight hour period.
- (d) With respect to the item price of any exempt item, the Commissioner, in his or her discretion, may direct a retail store to post a sign in a conspicuous and unobstructed location in the manner and form prescribed by him or her.
- (e) Laser scanner accuracy inspection procedures. For any inspection under section 21-18.3, 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.
- (f) Stop removal order. The inspector shall have the authority to issue a stop removal order with respect to any stock keeping unit being used, handled, or offered for sale in violation of sections 21-18.2 and 21-18.3. Any such order shall be in writing and direct that the stock keeping item shall be removed from sale pending correction.
- (g) A violation pursuant to section 21-18.2(a) shall exist any time three or more items within a stock keeping unit are found not to be properly item priced. If a stock keeping unit consists of less than three items, failure to item price one or more items shall constitute a violation.
- (h) Penalties for violations. Any person who fails to comply with the provisions of this title or any regulation or order promulgated thereunder with the exception of section 21-18.4(d) of this title, shall be subject to civil penalties of not more than one hundred dollars per violation, not to exceed two thousand dollars per inspection. A person who fails to comply with the provisions of section 21-18.4(d) shall be subject to a civil penalty of not more than one hundred fifty dollars per violation, not to exceed one thousand dollars per inspection. Such civil penalties may be recovered after a hearing. For additional violations during a subsequent inspection in a twelve month period, the above civil penalties shall be doubled.
- (i) Failure to pay violations within ninety days may result in additional penalties assessed for up to five thousand dollars.
- (j) Settlement.

1. In lieu of instituting or continuing a hearing to recover a civil penalty or penalties, the Commissioner may release, settle or compromise any alleged violation by accepting written assurance of discontinuance of any act or practice in violation of this Title.

2. An assurance entered into pursuant to this Title shall not be deemed an admission of a violation unless it does so by its terms. Violation of an assurance entered into pursuant to this Title shall be treated as a violation and shall be subject to all the penalties provided therefore.

(k) Hearing.

1. A hearing held on any violation or violations of the provisions of this Title shall be scheduled on a date not less than five (5) business days after notification to the person involved, of such hearing. The hearing shall be conducted by an officer or employee designated by the Commissioner for such purpose. The person conducting the hearing shall make a written determination. Such determination may be appealed to the Commissioner who, after due deliberation, shall issue an order accepting, modifying or rejecting such determination.

2. Notice shall be served upon such person either personally or by certified mail and shall contain a concise statement of the facts constituting the alleged violation or violations as well as setting forth the date, time and place the hearing will be held.

3. At the hearing conducted by the officer or employee designated by the Commissioner, the Office shall be authorized to recover any penalty imposed as the result of a finding of a violation of the provisions of this Title.

4. The person against whom the charges are pending has the right to be heard in his defense and be represented by counsel, or have counsel appear on his or her behalf and such person or the attorney for such person shall have the right to call witnesses and produce evidence on behalf of such person. For the purpose of this title, the Commissioner or any officer or employee of the Office designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents pertinent to the subject of the investigation, pursuant to section twenty-two hundred thirteen of the County Government Law of Nassau County.

§ 21-18.5 Regulations. In addition to the powers and duties elsewhere prescribed in this Title, the Commissioner shall have the power to adopt, amend or rescind after a public hearing, such regulations as may be necessary to effectuate the purposes of this Title with respect to item pricing and pricing accuracy. At least seven days prior notice of such public hearing shall be published in the official newspaper of the county. A copy of the regulations adopted hereunder and any amendments thereto shall be filed in the office of the Clerk of the Board of Supervisors.

§ 21-18.6 Separability. If any part of or provision of this title or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part of or the provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of the Title or the application thereof to other persons or circumstances.

