

**CONSUMER PROTECTION and GOVERNMENT OPERATIONS  
of the  
SUFFOLK COUNTY LEGISLATURE**

**Minutes**

A regular meeting of the Consumer Protection and Government Operation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on **August 1, 2002**.

**MEMBERS PRESENT:**

Legislator Cameron Alden - Chairman  
Legislator Lynne Nowick - Vice-Chair  
Legislator William Lindsay  
Legislator Martin Haley

**MEMBERS NOT PRESENT:**

Legislator Allan Binder

**ALSO PRESENT:**

Paul Sabatino - Counsel to the Legislature  
Ed Hogan - Aide to Legislator Nowick  
Warren Green - Aide to Legislator Alden  
Bill Faulk - County Executive's Office  
Meghan O'Reilly - Aide to Presiding Officer Tonna  
Joe Muncey - Budget Review Office  
Charles Gardner - Director of Consumer Affairs  
Bruce Dragonette - Department of Consumer Affairs  
Pat Brodhagen - Food Industry Alliance  
Colleen Meares - Stop and Shop

**MINUTES TAKEN BY:**

Donna Barrett - Court Stenographer

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(\*THE MEETING WAS CALLED TO ORDER AT 11:40 A.M.\*)

**CHAIRMAN ALDEN:**

Good morning. We'll call the Consumer Protection Meeting to order, and what we'll do is we'll have the Pledge, and we'll have Legislator Lindsay lead in the Pledge.

**SALUTATION**

CHAIRMAN ALDEN:

Thanks. I just want to comment on Legislator Lindsay's performance last night, it was stellar. He was pitching pretty hard, and also, he did well at the plate. So congratulations, Bill. And they pulled him out of retirement to come and make that appearance. Marty Haley didn't show up.

LEG. HALEY:

Mr. Chairman, I understand they asked Legislator Guldi to play, but they wanted him to lay perfectly still and be third place

CHAIRMAN ALDEN:

He was the catcher though last night. He caught a little bit. And Allan Binder is supposed to be here today, but he had some kind of either an emergency or something like that that he called. So he's got an excused absence. We have really only one thing on the agenda. And Pat Brodhagen is here to speak about, and it's my legislation that would increase the fines for item pricing violations. So Pat, if you want to come up. Or do you want the Commissioner to make his comments first. Good morning.

MS. BRODHAGEN:

My name is Pat Brodhagen and I work for the Food Industry Alliance of New York State. Let me introduce Colleen Meares, who works for Stop and Shop Supermarkets. Okay. I want to address, as Legislator Alden said, his bill to increase fines for item price violations. I think at your last meeting, I was unable to be here, but I did submit a letter to you, so you probably have that. And then I did testify at the public hearing out in Riverhead maybe a month -- has that been a month already, at your last meeting.

CHAIRMAN ALDEN:

At our last meeting, yes.

MS. BRODHAGEN:

But let me go over it again now, if I could. At the outset, what I would like to say, first of all, about item pricing, which is that process of sticking little stickers on individual products in a supermarket, just so we're clear. And the law requires that anybody who sells items in four categories has to do that. And the four categories are food, paper products, detergents and cleaning products and health and beauty aids and non-prescription drugs. And in Suffolk County, any entity that sells those things has to individually price them. And what I want to say is notwithstanding our longstanding position on whether or not that requirement is any longer --

LEG. HALEY:  
Valid.

MS. BRODHAGEN:

Valid. Thank you, Legislator Haley. In today's world, our position as an industry and our position as the Food Industry Alliance, and I know I speak for Stop and Shop, is we don't ignore laws. Once a law is on the books, we try to live by it. We'll work with you to fix it or change it or work with regulators or whatever, but our position, and I would hope that Charlie Gardner would support me in this, is that we always take the position if there's a law on the books, we're going to do our darndest to comply with it to the best of our ability. That's number one.

Number two, we are well aware that new competitors have come into the market place. Nobody knows that better than we do in terms of big box stores, in terms of drug stores and others who are -- who are head to head competition for conventional supermarkets. And we basically represent conventional supermarkets, the chains as well as the independents who do business here in Suffolk County. And increasingly, those entities have started selling food and health and beauty aids and paper products and soda and what have you. And they should, in fact, be item pricing. And what Legislator Alden did in his press release announcing this particular legislation was he exposed the fact that there are some of those entities who have for whatever reason not been complying with that law that we have been trying to comply with, as I said, for years. And we applaud you for doing that. And we certainly feel that to the extent that that law is out there it should be a level playing field, and everybody who's under it, needs to comply with it.

So I want to say those two things, that we certainly agree that so long as we have that kind law, we're going to try to do our best. And we think that everybody who's under the law should be -- should be doing the same. The problem that we have with this bill, and you knew I was going to get to that, is that the solution to bringing some of those players in is envisioned as increasing the penalties. You know, if we can just get that penalty high enough, maybe they'll pay attention. The problem with that is it will penalize all of those good operators out there who really do make an effort to comply with this law. It's not a situation where you can say, well, you know, if you're complying with the law, you're not going to get any penalties. That's where you have to sort of think about what it item pricing really means. Item pricing means affixing that little price sticker on every item.

In a conventional supermarket, I'll look at Colleen just to be sure I'm saying this right, we might have 30 to 40,000 SKUs, an SKU being a Stock Keeping Unit, which means each individual item of the same label description size and price like eight ounces of Hunts Tomato Sauce would be one SKU, 16 ounces would be another SKU, { Scallfanis} version would be another SKU. We have 30 or 40,000 of those in the grocery.

And on the shelf there is, you know, 24 or more individual containers in each one of those. Anyway, you do the math, pretty soon you get to more than a million individual packages. And they all have to be stickered, most of them all have to be stickered. There are some

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exceptions in the law. And that's done usually on weekend night when we're changing prices. There are price changes to keep up with. We're always looking for more help in our stores. It's not an easy job. It's a time consuming job, and it's easy enough to make a mistake or not get that sticker on there.

Now, what constitutes a violation is when an inspector comes into a store, he looks at an SKU, you might have 25 or 36 or 48 cans on the shelf, if just three of them don't have a sticker, that's a violation. So -- and that costs \$50, that's the current law. And honestly we think, you know, that's about right that -- that you are going to make mistakes or you're going to overlook an SKU now and then or you're going to not sticker more than three, and you'll get a violation. But putting that in context of the whole supermarket operation and the larger context of, you know, business operations and everything else, it doesn't seem to us that that particular violation is a huge -- a huge thing that requires tougher penalties. In other words, tougher penalties will not help our members do it better, they are doing it as good as they can right now, and I think most of them have actually very very good records on item pricing.

What higher penalties will do is increase our cost, pure and simple. Now that's not to say that I don't think we should get those other folks in, I think we should. So at least for us it has worked, because we have had members who from time to time have not obeyed the law so well, and they've been exposed quite honestly. And when that has happened, we've worked the Commissioner -- the Director of Consumer Affairs, and we've rectified those problems. And it seems to me that with your bully pulpit you with the law that you currently have and with an aggressive enforcement team, which you also have that, that it's possible to bring those nonplayers in without at the same time harming, basically increasing the cost, the penalties, for those players in the market place who really are making an effort on this. So --

CHAIRMAN ALDEN:

Just one comment. Sorry to interrupt you, but one of the why reasons why I proposed higher fines was interviews that I conducted with some managers and store owners where they actually indicated that we don't care, for this price we're just not going to comply with the law, we'll just -- when we get caught -- when and if we get caught, we'll pay this fine, because it means nothing to us. If it was a steeper fine, then it would mean something to them. So actually, I've had

comments and then some conversations with Charlie, and I think that he'll put some stuff on the record. And what we might be able to do is create a separate class of violation, you know, something along those lines, or redefine what significant compliance would be and either leave the fine at what it is, the lower amount, or, you know, some small adjustment in that -- that regard. And I'm willing to do that, but my concern was that there are people out there now, major chains, that have come into the area and they're selling groceries, and they're not -- they're not even making an attempt to comply with the law even though they know the law is out there. And that it does protect certain people, mainly senior citizens, and that's who we get the calls from, senior citizens and that type of persons that, you know, they're a little bit confused maybe at the register, and then

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when they get everything home, they take their receipt and match it up to the individual items that they bought, and they find out that, you know, either they were overcharged or maybe charged incorrectly, things like that. Those are the types of mistakes. And Charlie and I have been talking about actually the scanning violations too. So that's something that we might want to -- like increase the violation penalty for that, and maybe even include that in the bill. So I'm ready, willing and able to work with you. And I hear what you're saying, and we don't want to -- it's not you that we want to penalize.

MS. BRODHAGEN:

I understand that. And there's such a difference between -- I don't know if I should use names but -- a Wal-Mart, on the one hand, that maybe has a few stores in the County and is the biggest company in the world and their ability to absorb some penalties versus an IGA that has one store in this County. And that's the problem, and that's what we're trying to get at. You know, we're not scooping up everybody in the same -- and I hear you, I think we do have a --

CHAIRMAN ALDEN:

Legislate Nowick had, I think, a question.

LEG. NOWICK:

Thank you. That was an excellent presentation. I have a question about the law, maybe Paul can answer that. Item pricing -- is that what -- did you raise your hand? The law on the item pricing, you mentioned four categories. Does that mean four different categories have to be in the same store? How does that work, the law on that, Paul? What is the law on the item pricing right now? What stores must have each individual item marked?

MR. SABATINO:

I'd have to go back and look at the definition, but it's all, you know, it's -- I mean, there's so many exceptions in different

categories. You have to pull the statute out. I don't mind doing it, I'll go grab it real quick.

MS. BRODHAGEN:  
I think if you sell any --

MR. SABATINO:  
Charlie knows it from memory, I don't deal with it everyday.

LEG. NOWICK:  
I'm just curious what it is.

MR. GARDNER:  
The law, as Pat mentioned, implies to four different broad categories. It doesn't matter the type of store, and it doesn't mean that a store has to sell all of those four different categories. Simply put, the law says if the store sells food or food products including pet foods, detergent and cleaning products, paper goods, paper plates, napkins, etcetera, health and beauty aides. Those items with some exceptions need to be item priced. Now, there are the -- also the typical exemptions for the stores, basically it's the mom and pop exemption, but other than that, whether it's a K-Mart, a Genovese, A Rite-Aide, a

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Stop and Shop, the stores that sell those items, those items need to be item priced. The misconception is that item pricing applies only to supermarkets, and while that was essentially true when the law came into being 25 and 30 years ago and amended a few times since then, it applied essentially only to supermarkets back then, simply because of the state of the market place because it was mostly only supermarkets that sold these types of items in any volume.

Since then, however, you have almost everyone of the drug chains; Genovese, Rite-Aide, Eckerd, CVS, they have four, five, six, seven, eight aisles of food items. They didn't have that 20 years ago. You have K-Mart and Wal-Mart and Target who are now selling dairy items and frozen foods and ice cream, and again, aisle upon aisle upon aisle of food items. They come under the item pricing law just as King Kullen and Stop and Shop do. So it's those four -- now, what does it not apply to? For instance, Sears, Macys, you know, clothing, clothing goods, you know, stationery items, things like that. There is no law that requires the individual item pricing of those types of items.

LEG. NOWICK:  
So you don't have to have food in the store. In other words, a store like Ulta 3, which is a store --

MR. GARDNER:

Health aides and beauty aides.

LEG. NOWICK:

-- that's completely beauty supplies; hair products.

MR. GARDNER:

Because it's a retail establishment that sells those types of items that are statutorily defined in this law.

LEG. NOWICK:

So a store like that would have to have each item individually priced.

MR. GARDNER:

That's right.

CHAIRMAN ALDEN:

I'm completely unfamiliar with the type of store you mentioned. Legislator Haley.

LEG. HALEY:

Thank you, Mr. Chairman. I just stepped out for a moment. Could you repeat your comments relative to the store such as, like, a BJs, that you brought up earlier. Didn't you bring up something in your comments?

MS. BRODHAGEN:

I did. I'm not sure --

LEG. HALEY:

Or was it simply that the problem was that the larger entities, such as Wal-Mart's can bear the cost, so therefore, they don't bother

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complying?

MS. BRODHAGEN:

Both things, right. That -- we certainly agree that anybody who's now in the business ought to come under the law, and the law is the law, and so we would agree that you have to do what you can do to assure compliance in those stores. So that was one thing that I said. On the other hand, increasing the penalties, many of them have a much greater capability to absorb penalties say than an independent supermarket does just because of the natures of how big they are.

LEG. HALEY:

You know, I'm not -- I'm not necessarily crazy about item pricing, but I think if the County decides that we're going to have some sort of fines, then I think that the fine should be able to compound; first offense, 50; second offense -- you know, and keep it going and

aggregate it maybe over a period -- you know, a period of time, a decent period of time so that we send the correct message. But do you think -- I'll ask this of Charlie, do we have a problem with some of the big box stores?

MR. GARDNER:

We have a problem with some of the national chains that they themselves think that item pricing does not apply to them. And we'll go in and make an item pricing inspection for instance, and the law requires that we take a minimum sample of 25 different commodities. Now that doesn't mean 25 jars of Hellmans, it means 25 different types of commodities off of a sale. That's constitutes a legal inspection. We'll go into some of these places, check 25 different items, and, you know, that could be five or six or 700 individual packages or containers, not one of them will be item priced, nothing, zero. As opposed to even the worst quote, unquote, violators from the supermarket industry, we rarely see that. I mean, even if we had a lot of violations in an individual supermarket, you're going to find some things were item priced, 50% of them or 40%. Very rarely do we go into a supermarket and find nothing item priced. However, there are some of the larger chains, for what reason, I don't know, Pat -- Pat had a suggestion -- but nothing is item priced. So they have started to pay the maximum penalties under the law.

LEG. HALEY:

Yeah, but that's -- to them, that's just the cost of doing business.

MR. GARDNER:

It could very well be, yes.

LEG. HALEY:

So that, you know, in that regard, maybe that's what the Chairman is thinking about doing.

MR. GARDNER:

And I have to say in the supermarket industry, and it's ironic that Colleen Meares is here, and I didn't know that she was going to be here today --

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LEG. HALEY:

What, are you going to hand her a fine?

MS. MEARES:

No, we already went through that.

MS. BRODHAGEN:

Been there, done that.

MR. GARDNER:

Yes, and, in fact, that's one of the points I wanted to make. It certainly can be that the law is not so onerous that it cannot be complied with, and Stop and Shop happens to be a very good example. It's public knowledge that last year -- a little bit more than a year ago, fairly soon after the introduction of Stop and Shop into the County, taking over the Food Towns and the Edwards Supermarkets, we did item pricing inspection in Stop and Shop. And every single Stop and Shop store failed the inspection, and every single Stop and Shop store paid a penalty and fairly high, because the violations were gross. There were -- there were very few items were item priced. This year upon our reinspections, every single Stop and Shop store had been inspected passed and no violations. So can it be done. It just shows that they are certain chains that say, you know, this is the law, we didn't realize it at the time. Stop and Shop happens to be a big proponent of the electronic shelf labeling, and in Connecticut and Massachusetts that's what they have. Unfortunately, they just -- they came in and, you know, didn't item price. Now, however, they do. So our office whether it's licensing of contractors or retailing laws, we are very aware of level playing fields. So that, yeah, whether it's, and I'll mention names, because again, it was public, Target, Wal-Mart or K-Mart, they need to comply with the item pricing laws just as do King Kullen Waldbaums and Stop and Shop.

LEG. HALEY:

Okay. Just a quick off the wall question. How long is has the name Stop and Shop been around.

MS. MEARES:

I believe since the early 1900s, up in New England and Massachusetts.

LEG. HALEY:

I grew up in Hicksville, and I remember on Jerusalem Avenue there was a Stop and Shop, but I was just curious. Thanks, Mr. Chairman.

CHAIRMAN ALDEN:

That was around the turn of the other century too. Good. Legislator Lindsay.

LEG. LINDSAY:

Both the Chairman and Legislator Haley have mentioned maybe modifying this legislation to some degree of violation. Charlie, is that workable?

MR. GARDNER:

I don't see why not. For item pricing -- again, first of all, the law mandates that we take a minimum sample of 25 items. Now, a violation

is three or more unmarked items. So you can go into a store, and let's say we went to one of those national chains we talked about, the inspector looks at 25 different items, and we have a random sampling procedure so that an inspector can't just walk in and go to the first 25 or stay there for four hours until he gets 35 violations, let's say. That can't -- that's not -- doesn't happen in Suffolk County, because we have a random sampling plan that they have to adhere to. So using that plan, the inspector could look at 25 different items, find absolutely nothing item priced, he might look at again say 500 different individual items, no item prices, that's 25 individual violations. He could go into a supermarket, look at 25, he could still have 25 violations, but maybe of 50 jars of pickles on the shelf, three of them aren't marked, that's a violation. Thirty jars of ketchup on the shelf, three of them aren't marked, that's a violation. The point is he could also get 25 violations like that. So which is worse? So I would be in favor of a graduated, you know, compounding, right now we can only double, or some type of a significant compliance, whether it's in Legislative intent or rules and regs that the Legislature would agree to. You know, you could, in fact, check a store now and find 80% compliance in the store or more, and they would -- they could still get the maximum number of violations in an inspection.

LEG. LINDSAY:

What I was thinking about is some kind of fine that would be attached to blatant disregard for the statute.

MR. GARDNER:

Which certainly we have seen and seen this year in some inspections, again, where we have looked at 25 items at random and not one single item has been item priced. That is a much different violation in my estimation than it is to look and find mixed results. You know, sometimes we find a store, they had an item pricing violation a month ago, so we'll do a follow up, because, you know, we want to see how they're doing. So we'll go back and there's still -- it's still a violation, but at least we see, you know, a huge improvement. They're still going to get violations, but it's -- we can see they're working toward it, and they got more guns, they've assigned another clerk or two to overnight or on the weekend to keep up with it, whatever, but we can see they're trying. Some of the others haven't yet gotten the message. Some of the nationals have, by the way. I mean, I can say that some of the nationals they've gotten penalties on the second round, but the penalties have been much lower. So it shows that they have made some significant strides towards compliance with the law. Some others still need a shot upside the head.

1696-2002. Adopting Local Law No. -2002, a Local Law to toughen fines for item pricing violations within Suffolk County. (ALDEN)

CHAIRMAN ALDEN:

What I'd like to do is table this today. I'll have a meeting with Charlie, and then I'll come back to the members of the committee with some suggestions that we work out, we'll circulate that to the industry and get their input. And I think that now we're heading towards, you know, really doing what we want to do and make the people come in compliance and not just take a fine because it's cheaper to

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pay a fine for a national company then to comply with the law. So I'm going to make a motion to table, and this is 1696, seconded by Legislator Nowick. All those in favor? Opposed? This legislation stands TABLED. (VOTE: 4-0-0-1) (Not present; Leg. Binder)

The only other thing we have on this agenda is a tabled -- oh, no, we have -- yeah, a Tabled Sense Resolution. It has to do with the Yankees and the YES Network and things like that. Cablevision is going -- they're holding some kind of a meeting with their shareholders, so I think they're going to have a few problems. They've had some mass exodus from -- from their ranks as far as subscribers, so I'm going to make a motion to table this subject to call, seconded Legislator Nowick. All in favor? Opposed? That's TABLED SUBJECT TO CALL, that's Sense 33-2002. (VOTE: 4-0-0-1) (Not present; Leg. Binder)

We don't have anything else on the agenda. Was there anything else that anybody else -- Legislator Lindsay.

LEG. LINDSAY:

Charlie, and this is a question really I'm asking all Commissioners and Department Heads, the early retirement incentive, how is that going to affect your department?

MR. GARDNER:

Well, so far, not too well. As you know, we have until August the 10th until the final notice of intent are filed, but as of now, we have -- we have 45 positions, but we have 44 filled positions and 11 people have filed for early retirement, and there might be a couple more. But so far, 11. The most critical is the lobby at the certification unit where the contractors come in to renew, amend, apply for new licenses, get -- take tests, etcetera, etcetera. We do about 1200 people a month come through that lobby. It's a six-person operation right now, four of them are retiring including the two supervisors. That leaves us with two people to handle those 1200 a month plus the five to 600 renewals that get mailed out. So it's going to be certainly different come the first week of September.

LEG. LINDSAY:

The shortage in manpower will -- I mean, it's a stupid question -- is going to affect our revenue stream.

MR. GARDNER:

Well --

LEG. LINDSAY:

How much does the department take in?

MR. GARDNER:

Just in revenue, just around \$2 million, a little bit less. This is going to be a bigger year because of the increase in the fees, but round figures, \$2 million. Now affecting the revenue there's two ways to look at what we're -- a lot of the -- a lot of the renewals are kind of automatic so to speak. It's -- even if we do the mailing of the renewals, that money is going to come in. Who's going to be there to do the posting and the receipting and most importantly, the

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depositing? That's what we are gearing up for now, to direct our energies towards making sure that the front office -- that the front of the office, meaning intake and certification continues, because one thing I will -- we will not stand for is having thousands of dollars laying around in boxes just because the checks are coming in and we don't have anybody -- I mean, we have to do that. We just can't afford to have that much money lying around and not be deposited. So it could affect revenue that way. It could affect revenue in the other in that the people that don't renew, we need to follow up. Some -- if you forget to renew your license, well, now we have we, you know, we go after you. Well, we're going to need people to do that follow up. Yes, that's where revenue could be lost. So that's where were going to be directing our efforts as of the first week of September. Other things are going to have to go by the wayside.

LEG. LINDSAY:

So you have some kind of restructuring plan to at least handle the short term.

MR. GARDNER:

Fairly major, fairly dramatic, yeah. I mean, we're going to be taking in some weights and measures inspectors, they're not going to be doing weights and measures duties. They're going to have to come into the office. We've already spoken to them. We have some rearranging -- in the Bureau of Complaints, as of the first weekend -- first week of September in the Bureau of Complaints, we're going to have one person, one investigator who happens to be the newest investigator, that's it for the whole Bureau. The Bureau Chief is retiring, as are several investigators. We're going to have one investigator in the Bureau of Complaints. So in effect we won't have a Bureau of Complaints.

LEG. LINDSAY:

And what's the process to replace these people?

MR. GARDNER:

Well, we don't know yet. I mean, you know, we'll put in our requests and our justifications, and based on the overall needs of the County, we'll see where we stand.

LEG. LINDSAY:

And the earliest that you would hear about back filling some of those spots.

MR. GARDNER:

I don't know. Obviously that's -- that's between the County Executive and the Legislature and the two Budget Offices. You know, we'll do our requests, we'll have our justifications in, and then again, prioritization of County needs will take effect.

LEG. LINDSAY:

You know, and really just to the rest of my fellow Legislators, the point that I'm trying to make here is, you know, we were certainly depending on the early retirement incentive to save some money in this very troubling budget year, but in the department like yours, if it's going to cost us revenue, it has almost the total opposite effect of what we were hoping for.

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MR. GARDNER:

Yeah. And as I said, the certification unit, that's where probably 90% of all our revenue comes in through those front doors and through that unit. And again, we're losing four out of six people, and two that are current -- the two current supervisors. So we're going to be left with one person who's been around a long time, she's very very confident, and another fairly new employee for six people. So naturally there's going to be some pretty dramatic personnel shift and changes in duties and responsibilities within the scope of the contract.

CHAIRMAN ALDEN:

There's going to be a major discussion on that when we start talking about the budget for -- the proposed budget. Anything else?

LEG. LINDSAY:

No.

CHAIRMAN ALDEN:

All right. Thank you very much for coming. And we stand adjourned.

(\*THE MEETING WAS ADJOURNED AT 12:10 P.M.\*)

{ } DENOTES BEING SPELLED PHONETICALLY