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HARRISBURG
INDEPENDENT REGULATORY REVIEW COMMISSION

April 2, 1999

Comments: Notice of Final Rulemaking
Department of Agriculture
"Weights, Measures and Standards"
70 Pa. Code Chapters 1-10, 21, 35 and 39

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Mr. John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Dear Chairman McGinley,

I am the customer at the checkout. I have been overcharged hundreds of times over the past fifteen or so years on items that I was buying for my family. Overcharges happen in all types of retail. Uninformed or unaware consumers are easily cheated. Someone must apply some common sense to the current proposed oversight of scanner checkout systems.

Consumers in Pennsylvania deserve no less than basic consumer protection when it comes to weights and measures issues in the marketplace. Technology has advanced so rapidly that matters of oversight have not kept pace. Act 155 of 1996 includes, for the first time, the inspection of UPC scanning systems and PLU devices as the responsibility of the Department of Agriculture, designated under Weights, Measures and Standards.

Act 155 allows for a qualified private certification program to conduct inspections of UPC scanning systems and PLU devices as an alternative to routine inspections by state or county inspectors. Private certification programs, however, are not actually defined in the Act. The Act does state clearly, though, that "the device or system is inspected at least annually on an unannounced basis." The term "unannounced" inspection implies that no one within the company being inspected should know of the date, time, and/or place of the inspection until the inspector arrives. "Unannounced" means a second party, an objective entity, must be involved. "Unannounced" totally eliminates self-inspection, that is an employee inspecting the employer. Inspectors and/or the programs that provide private certification must be independent of the businesses or corporations they certify. Self-inspection with regard to UPC systems/PLU devices is no more appropriate than gas station owners inspecting and certifying their own pumps.

There are real concerns from the consumer perspective about the lack of definition of "private certification programs" in the regulations and the Department's responsibility of their oversight and monitoring. Simply by omitting specifics, persons are able to make any interpretation they choose, thereby negating the intent of the law___ protection of consumers from electronic overcharges (electronic shopperlifting) and recourse in oversight.

Within the Regulation Writing Team there was always a differentiation between private certification programs and "self-examination". Somehow in the process, they became one and the same. They are not. The latter completely eliminates objective, independent oversight. There is absolutely no way the Department can know and guarantee whether a price verification is unannounced, especially when an employee is inspecting the employer.

There is nothing in the regulations stating how the general public will be made aware of the inspected or certified status of a retailer's UPC scanning system or PLU device. All stores are required to have been inspected prior to June 30, 1999, and then at least yearly afterward. Customers of an establishment deserve to know when the store was inspected and by whom. A seal, certificate, or decal should be prominently displayed for the customers' benefit and assurance.

Many other states have demonstrated by their legislated actions the fact that effective oversight of UPC scanning systems and PLU devices is a needed consumer protection. There should be enforceable oversight with specific penalties. We shouldn't pretend that electronic overcharging doesn't exist in Pennsylvania. The Act, the loopholes, and the approach of the Department do not seem to create a system that instills in the merchant a responsibility to maintain pricing accuracy, nor does it empower the consumer with a sense that Pennsylvania cares about them. The direction of our state, manifested in these regulations, is the protection of businesses, to the detriment of consumers.

Sincerely,



Mary Bach

Enclosures

CONSUMER ADVOCATE

Shrewd shopper fights back

Woman takes department stores to court over claims of improper pricing

By William Opalka

TRIBUNE-REVIEW

Nothing gets consumer advocate Mary Bach steamed quicker than having the price of an item electronically scanned in a department store come up wrong.

So when she tired of making calls and sending letters to managers responsible for the Monroeville Ames and Kmart department stores — where she alleges she was overcharged on five occasions — she took her ball to a different court.

District Court.

Bach, a Murrysville, Westmoreland County, resident and independent consumer advocate, recently filed two complaints in Monroeville District Court on two of the overcharges.

She has hit the airwaves and newspapers in the past, but has never filed complaints in a lower-level court.

Ames already has admitted responsibility. A hearing for the Kmart complaint has been scheduled for 9 a.m. Aug. 9 before Monroeville District Justice Walter Luniewski.

Bach is alleging violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law. She was seeking the minimum fine of \$100 for two occurrences, instead of all five. She claims she was overcharged on nine separate items.

Ames agreed to pay the fine and Bach's filing costs of \$36.50.

"I'm not after money, I'm after the principle," she said.

Bach appeared on NBC's "Dateline" television news magazine last year. But Bach said stores still haven't gotten the message.

She said she recently documented additional overcharges at a Wal-Mart and a Kmart store, both in Westmoreland County.

In Monroeville, Bach said she twice bought two cosmetic items that were advertised on sale at Kmart May 6; all scanned above the advertised prices, one at about 25 cents and the other at about 50 cents.

At Ames in mid-June, Bach said she bought boxed snack items on three consecutive days that were advertised at 20 percent off their regular price.

In each case, Bach summoned the store managers, pointed out the errors and was charged the correct prices.

But Bach said she was "tired of the excuses" stores

offered about the overcharges: mistakes, mislabeling and improper shelf placement.

An Ames executive last week said he had a "positive" conversation with Bach. "I spoke to her and it was very constructive," said senior vice president and corporate counsel David Lissy.

"We think we have a very good record, but she pointed out some things that will help us."

Lissy said the store wanted to "deal with this issue head-on, and not circle the wagons."

Bach said that's the consumer policy a store should have.

"If they're offering something at a certain price, that's what the customer should pay. It's the store's job to know what price should be charged," Bach said.

"Right, it shouldn't be the customer's responsibility to make sure the prices are right," said Mary Lorencz, manager of public communications for Kmart Corp. in Troy, Mich.

She added it was company policy not to comment on cases in litigation.

She defended the use of scanners and offered a general defense: "There's nothing wrong with the technology or the scanners. All the problems can be traced to human error," Lorencz said.

She blamed incorrect data entered by clerks into the scanning programs or sale items mislabeled or put in the wrong place on the shelves.

The chain has started a program in which an "area coordinator" in each store is responsible for making sure pricing information is correct.

"It's not something we've had a lot of problems with in a lot of states," she said.

Lorencz said a handful of complaints have been initiated by the California Bureau of Weights and Measures.

Settling those complaints was not a minor matter, according to Bill Stephans, a South Side native who serves as deputy agriculture commissioner/sealer of weights and measures for San Diego County, Calif.

Kmart paid \$985,000 in May 1994 to various governmental entities in fines, investigative costs and forfeitures to settle a civil claim.

"That case started as a consumer complaint and led to our investigation," Stephans said.