

Update Bulletin

L.A. Law

February 28, 2002

No, this is not April 1 – that’s next month. It just **seems** like April Fools’ Day.

But the actual holiday in question here is the birthday of Abraham Lincoln, known to all schoolchildren – or at least those who went to school before the advent of artificial holidays like “Presidents’ Day” – as February 12. In a fit of irony, the Los Angeles County Board of Supervisors chose this particular day to approve an astonishing new ordinance, well meaning of course, but doomed to accomplish nothing but yet another blizzard of paperwork, higher prices and general anguish. As if populous of L.A. doesn’t suffer enough already from the alternating draughts, floods, wildfires, mudslides, earthquakes and abuses of valet parking ... now this.

The rumored motive for this law is due to a particularly dark urban legend regarding a visit to a couple of mass merchandise stores by members of this same county board, and finding a price charged at the cash register to be different than the advertised price, or perhaps different than the price on the shelf. It hardly matters. The assumption was reportedly that “the scanners must be broken.”

And their response was perfectly logical, at least if you’re a County Supervisor: create an entire new bureaucracy to make sure that scanners **aren’t** broken so the consumer won’t be cheated. The actual ordinance is attached (read it and weep) but here’s the short form if you have better things to do:

- The ordinance specifically applies to **every** store with a cash register where “anything is bought and sold” using any kind of scanner or file.
- Anyone with a store using a point of sale terminal must now get a special certificate from L.A. County in order to operate that equipment. Think a chain could get one certificate covering all their stores? Nope. Each store needs to be certified separately.
- It’s illegal to do business without posting the certificate.
- The registration certificates must be renewed every year.
- To fund this whole system, the additional clerks and all the extra paperwork, the retailers will have to pay published fees for the privilege of being certified. And, of course, for the benefit of those failing to comply, there is a whole schedule of late penalties, fines, beheadings etc.
- The law goes into effect on March 14. **This** March 14 – 2002.

Could there be glitches getting this program off the ground? To put this into perspective, more people live in L.A. County than the entire populations of 42 states in the nation (true fact), so we’re talking a whole lot of stores here – the white-page business listings alone comprise a separate phone book four inches thick. There are 218 newspapers published in 88 separate cities, but there aren’t enough seats in the L.A. Coliseum to hold the inspectors they’ll need to buzz around the county’s 4,100 square miles and scrutinize each of these scanners. Fourteen shopping days left to train these guys and hit every store – and the clock is ticking.

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L.A. already has 37 major county departments and a budget of \$16.5 billion – just slightly less than the GNP of Russia – so what’s one more. But maybe paying half the population to drive around in county vehicles inspecting “scanners” is just not realistic, so the program becomes yet another paperwork exercise. Picture this: in the next few days, every poor assistant manager at every Gap, The Limited and Joe’s Fine Foods will be dispatched to the L.A. County Courthouse (if you like the new lines at the airports, you’re gonna *love* this!) to fill out a Shaquille O’Neal sized pile of forms, pay those fees and bring back the prized certificate to tape up on the wall next to “Employee of the Month”. Now **that’s** consumer protection!

Wherever you are, it can happen there too. According to one grocery chain using ISS45 in L.A. County, the Board of Supes is soliciting other California counties to adopt similar measures – this could get contagious. Over the years, grocers have worked hard to make sure their shelf prices match the PLU file, and the answer to the accuracy issue has been found in good process, operational discipline and verification technology. Certificates are remarkably ineffective. Especially if they cost money that could otherwise be spent on people, hardware and software that actually **do** prevent pricing inconsistency. Your customers may need to make sure that their local agencies understand this fact before they get stuck with an ordinance like this one.

The new law is attached below.

To Your Success,

Tony

Antony van Leventer
Director: Supermarket Systems

ANALYSIS

This ordinance adds Chapter 2.41 to Title 2 of the County Code to establish a system to identify, inspect and register automated point of sale stations, commonly known as "scanners," and to monitor the utilization of such devices.

In addition, this Chapter authorizes cost recovery for the testing and inspection of point of sale stations, and establishes penalties for failure to properly register.

LLOYD W. PELLMAN
County Counsel

By
ELIZABETH M. CORTEZ
Principal Deputy County Counsel
Special Services Division

EMC:mv

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ORDINANCE NO.

An ordinance adding Chapter 2.41 to Title 2 - Administration of the Los Angeles County Code relating to consumer protection automated point of sale stations.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 2.41 is added to Title 2 of the Los Angeles County Code, to read as follows:

Chapter 2.41

CONSUMER PROTECTION REGISTRATION CERTIFICATE

2.41.010. Introduction. The Board of Supervisors finds and determines that it is in the public's interest to identify; inspect and register automated point of sale stations, commonly known as "scanners," and to monitor the utilization of such devices.

2.41.020. Purpose and Authority. It is unlawful to charge, at the time of sale, a value that is more than the price that is advertised, posted or quoted. Pursuant to California Business and Professions Code sections 12103.5, 12024.2, and 12024.6, the purpose of this Chapter is to ensure that the advertised, posted or quoted price of a commodity is the price charged for that commodity. This Chapter establishes a system to identify, inspect and register point of sale stations in retail commodity sales. In addition, this Chapter authorizes cost recovery for the testing and inspection of these point of sale stations, penalties for failure to register or for late registration and failure to possess and post a current registration certificate.

2.41.030. Definitions. For the purpose of this Chapter, the following words and phrases are defined and shall be construed as having the following meaning:

A. "Department" shall mean the Department of Agricultural Commissioner/Weights and Measures of the County of Los Angeles.

B. "Person" shall mean any person, firm, corporation, business or association.

C. "Sell" includes barter, exchange, trade, keep for sale, offer for sale or expose for sale in any of their variant forms.

D. "Point of sale station" shall mean individual and separate equipment that is capable of recovering electrically stored price information that is used to charge consumers for the purchase of commodities. "Point of sale stations" shall include, but is not limited to, equipment that uses Universal Product Code scanners, price look-up codes, or any other system that relies on the retrieval of electronically stored information to complete a transaction of commerce between a retailer and consumer.

E. "Location" shall mean a premise on which a single business operates point of sale stations.

F. "Commercial purpose" includes any sale of a commodity or thing by a person to a consumer.

G. "Commodity" shall mean any article of commerce or anything that is bought or sold.

H. "Advertise" shall mean a notice to attract public attention.

2.41.040. Registration Certificate Requirements.

A. It shall be unlawful for a person to use a point of sale station for commercial purposes without first obtaining a registration certificate in accordance with the provisions of this Chapter. A separate registration certificate shall be required for

each location. The registration certificate shall be in addition to any other certificate, license, or permit which may be required by the County or any public entity.

B. Registration certificates shall be issued by the Department upon payment of all applicable fees and late penalties as set forth in sections 2.41.080 and 2.41.090 of this Chapter.

2.41.050. Duration and Transferability of Registration Certificate.

A. All registration certificates shall be valid for up to one calendar year and expire on the first day of the following year. Renewal of a certificate shall be made in a manner similar to the issuance of the original certificate. Registration certificates not renewed by January 31 of the applicable year shall be considered expired, until such time as the certificate fee and the applicable penalty fee have been received by the Department.

B. Registration certificates shall not be transferable between persons or locations.

C. A holder of a registration certificate shall not lease, sublet, subcontract, or in any manner allow any other person or entity to engage in activities regulated under the certificate, except as an employee of the certificate holder.

2.41.060. Posting of Registration Certificate. At each location, the applicable registration certificate shall be readily available to any official of the Department.

2.41.070. Lost Registration Certificate. If a current registration certificate has been lost, the person to whom it was issued may obtain a replacement from the Department upon payment of a \$10 replacement fee.

2.41.080. Fees.

A. Registration certificate fees shall be based upon the number of point of sale stations at each retail location. Payment shall be made to the Department according to the following schedule:

Number of Point of Sale Stations	Fee
1-3	\$160.00
4-9	\$240.00
More than 10	\$300.00

B. Fees shall be paid to the Department, and shall only be used for the enforcement of California Business and Professions Code, Division 5, Weights and Measures, and Title 2 of the Los Angeles County Code.

2.41.090. Late Registration Certificate Fees. To any registration certificate fee not submitted by January 31 of the year for which the fee is due, there shall be added a late fee as follows:

A. To any registration certificate fee paid within 30 days following the last day on which such payment could have been timely made pursuant to section 2.41.080, there shall be added a penalty fee of \$50.

B. To any registration certificate fee paid more than 30 days, but within 90 days following the last day on which such payment could have been timely made pursuant to section 2.41.080, there shall be added a penalty fee which shall be the greater of:

1. \$50; or
2. A sum equal to 50 percent of the registration certificate fee.

C. To any registration certificate fee paid more than 90 days following the last day on which such payment could have been timely made pursuant to section 2.41.080, there shall be added a penalty fee of a sum equal to the registration certificate fee.

2.41.100. Violations. It shall be unlawful for any person, or any registration certificate holder, employee or agent thereof to violate any provisions of this Chapter, and specifically it shall be unlawful to:

- A. Use point of sale stations without a current registration certificate.
- B. Fail to post the registration certificate as required.

2.41.110. Penalties.

A. Unless otherwise provided, any person failing to comply with any provisions of this Chapter shall be guilty of an infraction or misdemeanor as hereinafter specified.

- B. Any person so convicted shall be:
 - 1. Guilty of an infraction offense, punishable by a fine not exceeding one hundred dollars (\$100) and not less than fifty dollars (\$50) for a first offense.
 - 2. Guilty of an infraction offense, punishable by a fine not exceeding two hundred dollars (\$200) and not less than one hundred dollars (\$100) for a second offense.

3. Guilty of a misdemeanor for the third and any additional offenses and punished by a fine not exceeding one thousand dollars (\$1,000) and not less than five hundred dollars (\$500) or any other penalty imposed by a court, or both.

C. Pursuant to Government Code section 25132, an offense may be charged and prosecuted as a misdemeanor.

D. Payment of any fine or other penalty imposed by a court shall not relieve a person from the responsibility of obtaining a registration certificate for a point of sale station.

E. In addition to all other remedies provided by this Chapter or state law, in the event of continuing violation of the provisions of this Chapter, the Department may seek injunctive relief to restrain further violations.