

**HOUSE . . . . . No. 03491**

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
PRESENTED BY:

*Linda Dorcena Forry*

\_\_\_\_\_

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to clear and conspicuous price disclosure.

\_\_\_\_\_  
PETITION OF:

NAME: \_\_\_\_\_ | DISTRICT/ADDRESS: \_\_\_\_\_

# HOUSE . . . . . No. 03491

By Ms. Forry, for the committee on Community Development and Small Business, on Senate, Nos. 77, 94, 1844, 1848, and House, Nos. 100, 987, 993, and 995, a Bill relative to clean and conspicuous price disclosure (House, No. 3491). June 8, 2011.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to clear and conspicuous price disclosure.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. Chapter 94 of the General Laws is hereby amended by striking out sections 184B
- 2 to 184E, inclusive, as appearing in the 2008 Official Edition, and inserting in place thereof the
- 3 following 4 sections:-
  
- 4 Section 184B. As used in this section and sections 184C to 184E, inclusive, the following words
- 5 shall, unless the context clearly requires otherwise, have the following meanings:
  
- 6 “Advertised price”, the price of an item published or disclosed in any circular, newspaper,
- 7 magazine, television or radio commercial, or in any other medium, or any published correction
- 8 thereof.
  
- 9 “Automated checkout system”, a cash register, computer terminal, or other device capable of
- 10 determining the price of an item from the item’s code after searching the electronic price
- 11 database and printing an itemized sales receipt for a consumer.

12 “Card price”, the price a loyalty card holder will be charged if different from the non-card price.

13 “Checkout price”, the price of an item to be charged to the consumer whether purchased or not as

14 listed on an automated checkout system display or on an itemized sales receipt.

15 “Clear and conspicuous”, of such size, color or contrast so as to be readily noticed and

16 understood by a reasonable person.

17 “Code”, a unique identifier of an item including without limitation symbols, letters, numbers,

18 bars or combinations thereof.

19 “Consumer price scanner”, an electronic scanner provided for consumer use that is capable of

20 reading an item’s code and displaying a description of the item and its correct price after

21 searching the electronic price database.

22 “Correct price”, the advertised price in any circular, newspaper, magazine, television or radio

23 commercial, or in any other medium, or any published correction thereof. If an item is not

24 advertised, the correct price shall be the lowest display price indicated on any store sign for the

25 item, but not if the checkout price is lower. If an item has no display price, the correct price shall

26 be the price of the item on its unit price label, but not if such item is rung up at a lower price. If

27 no unit price label is displayed, the correct price shall be the price rung up by the food store’s or

28 a a food department’s automatic checkout system. If the foregoing provisions for establishing the

29 correct price are not determinative in a particular situation, the correct price shall be the price on

30 the seller’s current price list.

31 “Deputy director”, the deputy director of the division of standards established pursuant to section

32 5 of chapter 24A, or his designee including but limited to an inspector, a sealer or a deputy as

33 defined in section 1 of chapter 98. Deputy director is to be used interchangeably with director of  
34 standards and director.

35 “Discount”, a percentage off or special price reflected in the checkout price and indicated on the  
36 itemized sales receipt.

37 “Display price”, the price on a sign or label affixed to a display, table, shelf, or other upon  
38 which the unit is placed.

39 “Division”, the division of standards established pursuant to section 5 of chapter 24A.

40 “Dual pricing system”, a separate pricing system that allows for 1 correct price for non-loyalty  
41 cardholders and 1 correct price for loyalty card holders.

42 “Food”, anything edible.

43 “Food department”, any seller, other than a warehouse club or a food store, with any grocery  
44 item section, area, or display and which sells 100 or more different food items for consumption  
45 off the seller’s premises at least in part to individuals for their own personal, family, or  
46 household use; provided, however, that any food section which is within a larger business and is  
47 the functional equivalent of a supermarket with its own separate checkout, may be deemed a  
48 food store by the director of standards.

49 “Food store”, any store, shop, supermarket, grocer, convenience store, or other seller, whose  
50 primary business is selling either food for consumption off the seller’s premises alone or in  
51 combination with grocery items or other nondurable items typically found in a supermarket, and  
52 such items are sold at least in part to individuals for their own personal, family, or household use.

53 For the purposes of this section and sections 184C to 184E, a warehouse club shall not be  
54 considered a food store.

55 “Grocery item”, any food, pet food or supply, soap, household cleaner of any type, laundry  
56 product, light bulbs, or disposable paper or plastic products.

57 “Individual item”, one of an item, to be used interchangeably with “unit.”

58 “Item”, a specific and distinct product, good or commodity available for sale differentiated from  
59 another item by having a different universal product code or SKU for items so coded, and for  
60 items not so coded, an item having any distinguishing characteristics compared to another item.

61 “Itemized sales receipt”, a printed and dated sales receipt listing, at a minimum, the price  
62 charged to the consumer for each item and the quantity sold.

63 “Loyalty card,” a card or other device issued that confers certain benefits to cardholders,  
64 including discount prices upon presentation of the card. This shall not include membership cards  
65 issued by warehouse retailers.

66 “Price accuracy rate”, the percentage of individual items for which the checkout price in an  
67 automated checkout system is consistent with the correct price during an inspection conducted  
68 pursuant sections 184C to 184E, inclusive.

69 “Price list”, an easily referenced list that indicates the code, the description and the current  
70 correct price of each item excluded under subsection (c) of section 184C.

71 “Scanner price”, the price of an item as displayed on a consumer price scanner.

72 “Seasonal employment”, services performed for wages for a seasonal employer during the  
73 seasonal period in the employer’s seasonal operations, after the effective date of a seasonal  
74 determination with respect to the seasonal employer.

75 “SKU”, the stock-keeping unit, number or code used to identify each unique product or item for  
76 sale in a food store or food department.

77 “Sticker price”, the price on a sticker, ticket, tag or other label affixed to an individual item.

78 “Warehouse club”, a retail store in which customers pay annual membership fees in order to  
79 purchase items at member-only prices.

80 Section 184C. (a) The correct price of an item offered for sale by a food store or a food  
81 department shall be disclosed to consumers in a clear and conspicuous manner. The food store or  
82 food department may elect to disclose the correct price using either an individual item pricing  
83 system or a consumer price scanner system; provided, that the food store or food department has  
84 been granted permission by the division of standards; and provided, further, that all prices  
85 represented to the consumer shall be consistent with each other and the correct price.

86 (b) An individual item pricing system shall affix the correct price on each unit in a clear and  
87 conspicuous manner by means of a sticker price ; provided, that a food store or a food  
88 department attaches a correct display price not less than 1 inch high for each separate SKU or  
89 separately-coded item. In the case of a food store or a food department that utilizes loyalty cards  
90 or otherwise maintains a dual pricing system, the non-card price shall be affixed to the item if it  
91 differs from the loyalty card price, provided further that a sign at the point of display shall  
92 include both the loyalty card price and the non-card price, so labeled if they differ, as well as  
93 either the amount of savings per unit or the percent of savings.

94 (c) A consumer price scanner system shall have the code of an item affixed to each individual  
95 unit by means of a sticker, ticket, tag or other label that can be read by a consumer price scanner  
96 and automated checkout system to display the correct price. The item's code, its unabbreviated  
97 description and its correct price shall be disclosed in a clear and conspicuous manner by a correct  
98 display price not less than 1 inch high. In the case of a food store or a food department that uses  
99 loyalty cards or otherwise maintains a dual pricing system, the sign at the point of display shall  
100 include both the loyalty card price and non-card price, so labeled if they differ, as well as the  
101 either the amount of savings per unit or the percent of savings.

102 (d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code, its  
103 description and its correct price is posted where these items are displayed; (ii) the cashier can  
104 readily discern the item's correct price, (iii) the food store or food department maintains an  
105 itemized price list for all exempted items, and (iv) the price list is available at each checkout and  
106 can be reviewed by a customer upon request, a food store or a food department may exempt the  
107 following classes of items from its individual item pricing system : (1) unpackaged: produce,  
108 meat, fish, poultry, delicatessen, bakery items, and any other items that are unpackaged and  
109 offered from a bulk display; provided, however, that any such item weighed or wrapped to order  
110 by a food store or a food department but paid for at a place other than at the point of such  
111 weighing or wrapping shall have the correct price marked on the item; (2) gallons and half  
112 gallons of milk; (3) eggs; (4) cigarettes, cigars, tobacco and tobacco products; (5) individual  
113 items within a multi-item package, if the package is marked with the correct price; (6) cakes,  
114 gum, candy, chips, nuts and other snack foods, if offered for sale individually, and located at the  
115 checkout area; (7) individual greeting cards, if marked with a price code readily understandable  
116 by the consumer; (8) individual containers of baby food of the same brand and price where

117 vegetable or fruit is the predominant ingredient other than water, but not including juices; (9) soft  
118 drink bottles and cans; (10) frozen food products; (11) items sold by length, area, weight or  
119 volume, including without limitation chain, rope, flooring, lumber, fabric, stone or soil, that are  
120 unpackaged; (12) items that must be retrieved for the consumer by store staff, including without  
121 limitation large electronics or appliances, display or representative items or items displayed in a  
122 locked case or out of reach of consumers; (13) packaged self-service items that are small in size  
123 and are offered for sale located at the checkout area; (14) live animals; (15) items sold in a coin  
124 operated vending machine; and (16) for a food store or food department using an individual item  
125 pricing system, not more than 60 additional items that are accessible to the consumer in a free  
126 standing or end-aisle display that has at least 50 individual items of the same item; provided,  
127 however, that unless the deputy director determines otherwise, individual items that differ only  
128 by color, flavor or scent shall be counted as the same item for the purpose of this clause if they  
129 are identical in all other aspects, including price, size and brand.

130 (e) Food stores or food departments utilizing an individual item pricing system shall be allowed  
131 to exempt a number of additional items, the exact number of which shall be based on the number  
132 of operable, but not necessarily active, cash registers located at the main checkout location.

133 Food stores or food departments with 1 operable cash register shall be allowed to exempt twenty  
134 additional items of their own choosing. Food stores or food departments with 2, 3 to 4, or 5 to 6  
135 cash registers shall be allowed to exempt 50, 100 or 200 additional items respectively. Food  
136 stores or food departments with 7 or more cash registers may exempt up to 400 additional items.  
137 In the case of a food department, the number obtained in the above calculation shall be reduced  
138 by 75 percent. In no case shall the number of exemptions permitted by this exception exceed 4  
139 and one-half per cent of the number of packaged grocery items carried by the seller.



140 All additional exemptions allowed under subsection (e) will be granted provided that the food  
141 store or food department maintains an electronic pricing system which has been determined to be  
142 at least 95 percent accurate during a price accuracy inspection conducted by the division or their  
143 designee, and further provided that a food store or a food department maintains a dated, written  
144 price list of the items it has chosen to exempt. The price list shall include a readily  
145 understandable description of each item and the code number understood by the seller's  
146 automatic checkout system. Deletions may be made from the list at any time, but no additions,  
147 substitutions, or changes may be made to the list except twice a year in January and July. The  
148 exemption permitted by this section shall not apply to any item not on that price list and shall not  
149 apply unless such price list has been established and is available upon request at the food store or  
150 food department to any consumer or any representative authorized by the deputy director and  
151 referenced easily by the person requesting it. No seller may choose to exempt items required to  
152 be price marked by other laws or regulations governing specific types of items, or may exempt  
153 more than 200 items in any 1 department except in the dry grocery department.

154 (f) A food store or a food department utilizing a consumer price scanner system, may exempt the  
155 following items from displaying the correct price at its consumer price scanners, provided it  
156 complies with the criteria (i)-(iv) in subsection (d): (1) unpackaged and uncoded items to which a  
157 price sticker cannot be reasonably affixed; (2) loose produce with SKU numbers.

158 (g) Items purchased at a food store or a food department shall appear on an itemized sales receipt  
159 that shall be provided to all consumers.

160 (h) If the consumer purchases a sale item or qualifies for a discount, including discounts granted  
161 for displaying a loyalty card, the amount saved shall be reflected in the checkout price and  
162 printed on the consumer's itemized sales receipt.

163 (i) Notwithstanding subsection (h) of section 184D if there is a discrepancy between the  
164 advertised price, the sticker price, the scanner price or the display price and the checkout price on  
165 any item, a food store or a food department shall charge a consumer the lowest price. If the  
166 checkout price or scanner price is not the lowest price or does not reflect any qualifying discount,  
167 the seller: (i) shall not charge the consumer for 1 unit of the item, if the lowest price is \$10 or  
168 less; (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the item, if the lowest  
169 price is more than \$10; and (iii) shall charge the consumer the lowest price for any additional  
170 units of the item. This subsection shall not apply if: (1) there is evidence of willful tampering or  
171 (2) the discrepancy is a gross error, in that the lowest price is less than half of the checkout price  
172 and the seller, in the previous 30 days, did not intend to sell the item at the lowest price. All food  
173 stores and food departments, which use a consumer price scanner system, must post signage at  
174 each register detailing this law. For each register that fails to display appropriate signage, the  
175 food store or food department shall be subject to a fine of \$200, up to a maximum of \$500 per  
176 inspection by the deputy director. All food stores and food departments shall maintain data on  
177 price discrepancies. This data shall be provided to the division upon request. The provisions of  
178 this subsection shall be clearly and conspicuously posted by all affected sellers.

179 (j) A consumer may submit a complaint to the office of the attorney general or to the deputy  
180 director regarding compliance with this section.

181 (k) The deputy director may require sellers to disclose a consumer's rights under sections 184C  
182 to 184E, inclusive.

183 Section 184D. (a) The deputy director or his inspectors, and sealers of weights and measures and  
184 their deputies, as defined in section 1 of chapter 98, shall inspect each food store and food  
185 department for compliance with sections 184B through 184E of chapter 94. The inspections shall  
186 be conducted pursuant to the national industry standards adopted by the National Conference on  
187 Weights and Measures of the National Institute of Standards and Technology or any other rules  
188 or guidelines promulgated by the division pertaining to the implementation and enforcement of  
189 those sections; provided, that nothing shall inhibit the oversampling of sale items during  
190 inspections. The food stores and food departments shall provide the inspector with access  
191 necessary to conduct an inspection. The deputy director shall notify the food stores and food  
192 departments in writing of violations of this section and of any fines imposed pursuant to sections  
193 184B through 184E of chapter 94.

194 (b) The division shall not assess any fee upon a a seller that is not a food store or food  
195 department using an individual item pricing system for an inspection pursuant to this section;  
196 provided, however, that the seller shall be subject to fees imposed pursuant to section 56 of  
197 chapter 98.

198 (c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines shall  
199 be levied shall include, but not be limited to: (1) having no price marked on any unit that is  
200 required to be priced and is not exempted; (2) having an incorrect price on any unit; (3) having  
201 an incorrect or missing sign; or (4) overcharging on any unit. A unit shall be deemed to be  
202 overcharged once it is rung up at a price higher than any represented price. Notwithstanding the

203 method for determining the amount of civil fines pursuant to section 29A of chapter 98, a civil  
204 citation may be issued for \$200 for each violation, up to a maximum of \$5,000 per inspection.  
205 If an item is advertised either in the food store, food department or in a circular as “on sale” or  
206 discounted because of a loyalty card price and the item registers at a higher price at the checkout  
207 counter than indicated by any “sale” or loyalty card price, a civil citation will be issued for \$300  
208 for each violation, up to a maximum of \$5,000 per inspection. The deputy director shall not  
209 issue a fine pursuant to this section and said sections 184B through 184E, inclusive, and section  
210 56D of chapter 98 for the same violation.

211 (d) A fine imposed by the deputy director shall be paid within 21 days of issuance of the notice,  
212 unless the seller appeals pursuant to the civil citation appeal process found in section 29A of  
213 chapter 98. The food store or food department shall immediately correct any noncompliance  
214 with section 184C when notified by the inspector.

215 (e) The deputy director or any representative authorized by the division may conduct inspections  
216 of any item and shall issue notices of violation to any food store or food department for any  
217 violation of this section and sections 184B through 184E, inclusive, provided, however, that no  
218 food store or food department shall be inspected more than once a month, unless such inspection  
219 is intended to verify the correction of violations found during a recent inspection or to verify the  
220 validity of a specific consumer complaint made through the process in subsection (f) of section  
221 184D. For purposes of this section each occasion that an item scans erroneously during an  
222 inspector’s attempt to verify its correct price shall constitute a separate civil violation. The seller  
223 shall immediately correct all violations including those where a tolerance was granted.

224 (f) A consumer may submit a complaint to the office of the attorney general or to the deputy  
225 director regarding noncompliance with sections 184B through 184E. All food stores and food  
226 departments subject to sections 184B through 184E shall provide, upon request, a complaint  
227 form for the consumer to complete and submit. Each submitted complaint shall be investigated.  
228 In the case of any verified consumer complaint, fines for overcharging shall be limited to 1  
229 violation per item. A fine shall be issued upon verification of any consumer complaint alleging  
230 overcharging or improper price marking except for those units where the seller honored the price  
231 accuracy guarantee discounts as described in subsection (i) of section 184C.

232 (g) If the deputy director determines that a food store or a food department is either intentionally  
233 or through gross negligence violating any provisions of this section and sections 184B through  
234 184E, inclusive, then the deputy director shall provide written notice of such determination to the  
235 food store or food department and said food store or food department shall have 30 days to cure  
236 these violations. If upon re-inspection, and payment of a \$200 re-inspection fee, the deputy  
237 director determines that the food store or food department still is not in substantial compliance  
238 with the provisions of this section and sections 184B through 184E, inclusive, then all the food  
239 store's or food department's exemptions shall be rescinded for a period of 12 months, and the  
240 matter shall be referred to the attorney general for action against such food store or food  
241 department. Uncontested fines levied under said sections shall be paid within 21 days of  
242 issuance of the notice of violation. Any aggrieved seller may appeal any unjustified fines to the  
243 director of standards if such appeal is filed within 30 days of issuance of the notice of violation.

244 (h) This section and sections 184B through 184E, inclusive, shall only apply to food stores and  
245 to grocery items in food departments. Said sections shall not diminish any obligations under  
246 other laws or regulations regarding item pricing for sellers other than food stores or for items

247 other than grocery items in food departments. Where a seller is also subject to the item pricing  
248 regulations or guidelines of another agency, in cases where a specified number of items is  
249 allowed to be exempted under 2 similar exceptions to the requirement of item pricing, such  
250 similar provisions shall not be additive. Compliance with another agency's regulations or  
251 guidelines which differ from said sections or any regulations issued hereunder by the deputy  
252 director shall not be a defense to a violation of said section or any regulations promulgated  
253 hereunder.

254 (i) The division may retain all registration fees and fines it collects under sections 184B through  
255 184E of chapter 94 and sections 56D and 56E of chapter 98 not to exceed \$3.5 million annually  
256 in order to support its enforcement activities; provided, however, that any excess fees and fines  
257 up to \$1 million in excess of this figure shall be used to fund the division of standards municipal  
258 grant program for approved agents to assist the division in lieu of a legislative appropriation. In  
259 the event that the division and the municipal grant program are fully funded, all additional  
260 revenue shall be turned over to the General Fund.

261 Section 184E. (a) Any food store or food department wishing to convert from an individual item  
262 pricing system to a consumer price scanner system must seek a waiver from the division. The  
263 waiver shall be granted by the division provided that the food store or food department has no  
264 outstanding fines under sections 184B to 184D, inclusive, or section 56D of chapter 98 and pays  
265 a \$500 fee annually to the division if the retail space is less than 15,000 square feet, \$500 fee if  
266 the retail space is 15,000 square feet up to 30,000 square feet, or a \$1,000 fee if the retail space is  
267 30,000 square feet or more.

268 (b) Pursuant to the regulations promulgated under this chapter, the division will require that each  
269 applicant complete a “no job loss” affidavit stating the number of people employed at the time of  
270 the application process, including without limitation, establishment of a complaint process, so  
271 that full and part time employees will not suffer any wage or benefit loss due to said transfer.  
272 After the filing of the affidavit, if there is any resulting job loss at the store due to the  
273 implementation of the waiver, not attributed to seasonal employment or verifiable economic  
274 pressures, the store will be required to item price for one year pursuant to sections 184B through  
275 184E, inclusive, or other applicable Massachusetts law or regulation promulgated hereunder, and  
276 be subject to a fine of not more than \$5,000.

277 (c) All food stores or food departments using a consumer price scanner system shall be subject to  
278 inspection by the deputy director for compliance with the provisions outlined in this section;  
279 provided, however, that the deputy director shall not cause any food store or food department  
280 using a consumer price scanner system to be inspected more than once per calendar month;  
281 provided, however, the division may inspect any food store food department using a consumer  
282 scanner pricing system once every week until the food store or food department is found to be in  
283 compliance with this section if: (1) within the previous 30 days, there is a verified pattern of  
284 consumer complaints; or (2) upon regular inspection the food store or food department is not in  
285 compliance with this section.

286 (d) Each food store or food department with more than 5,000 square feet of retail space that  
287 employs a consumer price scanner system shall have at least 1 fully operational consumer price  
288 scanner for every 2,500 square feet of retail space or part thereof. The location of a consumer  
289 price scanner shall be disclosed via 1 clear and conspicuous sign at eye-level and 1 clear and  
290 conspicuous sign above eye level. Consumer price scanners shall be located in convenient

291 places, roughly equally spaced throughout the store, in fixed locations. A food store or food  
292 department with more than 5,000 square feet shall have at least 1 fully operational consumer  
293 price scanner capable of producing an individual item pricing tag. At all such scanner locations,  
294 the seller must also provide the consumer with a means by which such pricing tag may be affixed  
295 or appended to the item or its packaging, such as tape or an adhesive price tag. The deputy  
296 director may, by regulation, authorize new technologies in lieu of required consumer price  
297 scanners which further the intent of this section, including, but not limited to hand held or  
298 shopping cart attached scanners which retain in memory and itemize all scanned items. Such  
299 technologies may reduce the required number of consumer scanners by no more than 50 per cent.

300 (e) Consumer price scanners are to be deemed fully operational if: (1) the consumer price  
301 scanner clearly and conspicuously identifies and displays the item by name or other  
302 distinguishing characteristics; (2) the consumer price scanner displays the item's correct price  
303 when the item is scanned at it and that, in the case of a food store or food department that uses  
304 loyalty cards or otherwise maintains a dual pricing system, the consumer price scanner displays  
305 both the loyalty card price and the non-card price if they differ. Each consumer price scanner  
306 must also display contact information for the deputy director so that consumers may report  
307 broken consumer price scanners. Such consumer price scanners shall be in compliance with the  
308 Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the  
309 Massachusetts architectural access board regulations 521 CMR 1.00, et. seq. Any violation of  
310 this subsection shall be considered in determining a consumer price scanner's pass or fail  
311 designation as defined in subsection (h).

312 (f) Any food store or food department with more than 5,000 square feet of total space wishing to  
313 convert from an individual item pricing system to a consumer price scanner pricing system must



314 within 3 months of such a conversion hire or maintain not less than 2 employees whose  
315 responsibilities must include the maintenance of all consumer price scanners within said food  
316 store or food department.

317 (g) An inspector may also elect to test a food store or food department's consumer price scanner  
318 system for accuracy. The inspector may choose the sample size for accuracy tests provided that  
319 the size of sample is no less than 50 items and does not exceed 200 items. Any scanning that  
320 yields an incorrect price that also causes a food store or food department's consumer price  
321 scanner accuracy rating to fall below 98 per cent shall constitute a separate violation. This  
322 subsection shall not be used to impact a scanner's pass or fail grade as defined in subsection (h)  
323 but the cumulative violations of this subsection in any particular store or department shall be  
324 used in contributing toward the maximum fine imposed under the same subsection.

325 (h) Upon inspection, the deputy director shall notify the store manager, who shall provide the  
326 inspector with a map of the food store or food department outlining the consumer price scanner  
327 locations and the food store or food department's square footage of retail space. The food store  
328 or food department's number of scanners shall be sufficient for the food store or food  
329 department's size as outlined in subsection (d). Any violation of this subsection shall result in a  
330 fine of \$1,000, which shall not count toward the maximum fine established under subsection (i);  
331 provided, however, that the deputy director may reduce this fine consistent with section 29A of  
332 chapter 98.

333 (i) Each consumer price scanner shall be graded on a pass or fail basis by inspectors, including  
334 missing consumer price scanners or inadequate signage under subsection (d), which shall be  
335 considered to have failed. Each scanner found to have failed the test shall constitute a separate

336 violation of this section. Notwithstanding the method for determining the amount of civil fines  
337 pursuant to section 29A of said chapter 98, a civil citation may be issued for \$200 for each  
338 violation, up to a maximum of \$2,500 per inspection; provided, however, that the deputy director  
339 may reduce any fine imposed pursuant to this section consistent with section 29A of chapter 98.

340 SECTION 2. Chapter 98, of the General Laws is hereby amended by striking out section 56D, as  
341 appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

342 Section 56D. (a) The director or his inspectors, and sealers and inspectors of weights and  
343 measures and their deputies, shall in every 24 month period, examine and test the operation of all  
344 automated retail checkout systems, in all establishments with 3 or more cash registers, and shall  
345 upon complaint to said officials examine and test the operation of any automated retail checkout  
346 system to determine whether the price which an item is offered or advertised for sale, including  
347 any advertised special price offered to a customer with a store-issued discount or loyalty card,  
348 conforms to the unit and/or net prices displayed to the customer on the visual display and  
349 conforms to the price for which a purchaser is charged by such automated retail checkout system  
350 to determine whether the total price for items purchased is correctly represented, and may issue  
351 notices of violations of this section, pursuant to section 29A and this section; provided, however,  
352 that nothing herein shall prohibit the director or his inspectors and sealers and inspectors of  
353 weights and measures and their deputies from examining and testing any system at any time  
354 irrespective of the number of cash registers within the establishment.

355 (b) If such examination and test reveals that there is evidence of price misrepresentation, or  
356 misleading or deception of the purchaser of items, or that consumer price scanners, as defined in  
357 section 184B of chapter 94, do not meet the operational standards set forth below, the owner,

358 manager or the designee of said owner or manager of a retail establishment using such automatic  
359 checkout system shall be punished for the first failed inspection by a civil fine of \$200, for the  
360 second failed inspection by a civil fine of \$500, and for any subsequent failed inspection, by a  
361 civil fine of \$1,000; provided, however, that there shall be no punishment for any inoperable  
362 consumer price scanner that is deployed for reasons other than to obtain an exemption from any  
363 law or regulation of the commonwealth requiring the individual price-marking of items offered  
364 for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate  
365 to the satisfaction of the inspector that he has communicated in writing with an authorized repair  
366 agent, prior to such examination and test, requesting that the inoperable electronic scanner be  
367 repaired. For purposes of this section consumer price scanners are to be deemed fully  
368 operational if they operate in the following manner: (1) the consumer price scanner clearly and  
369 conspicuously identifies and displays the item by name or other distinguishing characteristics;  
370 (2) the consumer price scanner displays the item's correct price when the item is scanned at it  
371 and that, in the case of a retail establishment that uses loyalty cards or otherwise maintains a dual  
372 pricing system, the scanner displays both the loyalty card price and the non-card price if they  
373 differ. Each consumer price scanner must also display contact information for the division of  
374 standards so that they may report broken scanners. Such consumer price scanners must also be in  
375 compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36,  
376 Appendix A and the Massachusetts Architectural Access Board Regulations 521 CMR 1.00.  
377 Notwithstanding the method for determining the amount of civil fines pursuant to said section  
378 29A, a civil citation may be issued for \$200 for each violation, up to a maximum of \$2,500 per  
379 inspection. For purposes of this section each item which scans erroneously shall constitute a  
380 separate civil violation.

381 (c) The director shall promulgate and shall enforce regulations based on national industry  
382 standards and other criteria necessary to carry out the provisions of this section.

383 (d) For the purposes of this section, an automated check out system shall mean a cash register,  
384 computer, terminal, consumer price scanner or other device capable of interpreting the universal  
385 product code, or any other code which is on an item offered for sale to consumers used to  
386 determine the price of the item being purchased, regardless of whether the code entry is  
387 accomplished manually, or automatically by a machine.

388 SECTION 3. The division of standards, in conjunction with the secretary of labor and workforce  
389 development shall annually file with the general court's's joint committee on community  
390 development and small business, a report consisting of the impact of consumer price scanner  
391 implementation on pricing accuracy and employee job loss or change of employment status, if  
392 any, resulting from the item pricing waiver program conducted under the jurisdiction of the  
393 division of standards. This report shall also contain recommendations for legislative changes, if  
394 any, which the director of the division of standards deems necessary to affect the purposes of the  
395 program. This report shall be filed annually on or before December 31st.

396 SECTION 4. This act shall take effect on January 1, 2012.