

HOUSE No. 100

The Commonwealth of Massachusetts

PRESENTED BY:

Carlo Basile

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 disclosures.

PETITION OF:

NAME:

Carlo Basile

DISTRICT/ADDRESS:

1st Suffolk

HOUSE No. 100

By Mr. Basile of Boston, a petition (accompanied by bill, House, No. 100) of Carlo Basile relative to price disclosures. Community Development and Small Businesses.

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act relative to clear and conspicuous price disclosures.

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 2006 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 retail 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 retail 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 “Checkout price”, the retail price of an item to be charged to the consumer whether purchased or
13 not as listed on an automated checkout system display or on an itemized sales receipt.

14 “Clear and conspicuous”, of such size, color or contrast so as to be readily noticed and
15 understood by a reasonable person.

16 “Code”, a unique identifier of an item including without limitation symbols, letters, numbers,
17 bars or combinations thereof.

18 “Consumer price scanner”, an electronic scanner provided for consumer use that is capable of
19 reading an item’s code and displaying a description of the item and its correct price after
20 searching the electronic price database.

21 “Correct price”, the advertised price in any circular, newspaper, magazine, television or radio
22 commercial or in any other medium, or any published correction thereof. If an item is not
23 advertised, the correct price shall be the lowest display price indicated on any store sign for the
24 item, but not if the checkout price is lower. If an item has no display price, the correct price shall
25 be the price of the item on its unit price label, but not if such item is rung up at a lower price. If
26 no unit price label is displayed, the correct price shall be the price rung up by the food store’s or
27 a retailer containing a food department’s automatic checkout system. If the foregoing provisions
28 for establishing the correct price are not determinative in a particular situation, the correct price
29 shall be the price on the seller’s current price list.

30 “Deputy director”, the deputy director of the division of standards established pursuant to section
31 5 of chapter 24A, or his designee including but limited to an inspector, a sealer or a deputy as
32 defined in section 1 of chapter 98.

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

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

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

38 “Food”, anything edible.

39 “Food department”, the grocery item section, area, or display of any seller other than a food store
40 or warehouse club which sells 200 or more different food items for consumption off the seller’s
41 premises at least in part to individuals for their own personal, family, or household use; provided,
42 however, that any food section which is within a larger business and is the functional equivalent
43 of a supermarket with its own separate checkout, may be deemed a food store by the director of
44 standards .

45 “Food store”, any store, shop, supermarket, grocer, convenience store, or other seller, whose
46 primary business is selling either food for consumption off the seller’s premises alone or in
47 combination with grocery items or other nondurable items typically found in a supermarket, and
48 such items are sold at least in part to individuals for their own personal, family, or household use.
49 For the purposes of this section and sections 184C to 184E, a warehouse club shall not be
50 considered a food store.

51 “Grocery item”, any food, pet food or supply, soap, household cleaner or laundry product.

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

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

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

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

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

64 “Retailer”, includes (i) every person engaged in the business of making sales at retail; (ii) every
65 person engaged in the making of retail sales at auction of tangible personal property whether
66 owned by such person or others; (iii) every person engaged in the business of making sales for
67 storage, use or other consumption, or in the business of making sales at auction of tangible
68 personal property whether owned by such person or others for storage, use or other consumption;
69 (iv) every salesman, representative, peddler or canvasser who, in the opinion of the
70 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent
71 of the dealer, distributor, supervisor or employer under whom he operates or from whom he
72 obtains the tangible personal property sold by him, in which case the commissioner may treat
73 and regard such agent as the retailer jointly responsible with his principal, employer or
74 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the

75 commonwealth, or any political subdivision thereof, or their respective agencies when such 54
76 entity is engaged in making sales at retail of a kind ordinarily made by private persons.

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

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

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

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

85 Section 184C. (a) The correct retail price of an item offered for sale by a food store or in a
86 retailer’s food department shall be disclosed to consumers in a clear and conspicuous manner.
87 The food store or retailer containing a food department may elect to disclose the retail price
88 using either an individual item pricing system or a consumer scanner pricing system; provided
89 that the food store or retailer containing a food department has been granted permission by the
90 Division of Standards; provided, further, that all prices represented to the consumer shall be
91 consistent with each other and the correct price.

92 (b) An individual item pricing system shall affix the correct price on each unit in a clear and
93 conspicuous manner by means of a price sticker, ticket, tag, ink stamp, pre-printing or other
94 label; and provided further that a food store or a retailer containing a food department attaches a
95 correct display price for each separate SKU or separately-coded item.

96 (c) A consumer scanner pricing system shall have the code of an item affixed to each individual
97 unit by means of a sticker, ticket, tag or other label that can be read by a consumer scanner and
98 automated checkout system to display the correct price. The item's code, its unabbreviated
99 description and its correct price shall be disclosed in a clear and conspicuous manner by a correct
100 display price not less than one inch high.

101 (d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code, its
102 description and its retail price is posted where these items are displayed; (ii) the cashier can
103 readily discern the item's retail price, (iii) the food store or retailer containing a food department
104 maintains an itemized retail price list for all exempted items, and (iv) the retail price list is
105 available at each checkout and can be reviewed by a customer upon request, a food store or
106 retailer containing a food department may exempt the following classes of items from its
107 individual item pricing system : (1) produce, meat, fish, poultry, delicatessen, bakery items, and
108 any other items that are unpackaged and offered from a bulk display; provided, however, that
109 any such item weighed or wrapped to order by the food store or a retailer containing a food
110 department but paid for at a place other than at the point of such weighing or wrapping shall have
111 the correct retail price marked on the item; (2) gallons and half gallons of milk; (3) eggs; (4)
112 cigarettes, cigars, tobacco and tobacco products; (5) individual items within a multi-item
113 package, if the package is marked with the correct retail price; (6) cakes, gum, candy, chips, nuts
114 and other snack foods, if offered for sale individually, and located at the checkout area; (7)
115 individual greeting cards, if marked with a price code readily understandable by the consumer;
116 (8) individual containers of baby food of the same brand and retail price where vegetable or fruit
117 is the predominant ingredient other than water, but not including juices; (9) soft drink bottles and
118 cans; (10) frozen food products; (11) items sold by length, area, weight or volume, including

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

130 (e) Food stores or retailers containing a food department utilizing an individual item pricing
131 system shall be allowed to exempt a number of additional items, the exact number of which shall
132 be based on the number of operable, but not necessarily active, cash registers located at the main
133 checkout location. Food stores or retailers containing a food department with one operable cash
134 register shall be allowed to exempt twenty additional items of their own choosing. Food stores or
135 retailers containing a food department with two, three to four, or five to six cash registers shall
136 be allowed to exempt fifty, one hundred or two hundred additional items respectively. Food
137 stores or retailers containing a food department with seven or more cash registers may exempt up
138 to four hundred additional items. In the case of a retailer containing a food department, the
139 number obtained in the above calculation shall be reduced by 75 percent. In no case shall the
140 number of exemptions permitted by this exception exceed four and one-half per cent of the
141 number of packaged grocery items carried by the seller.

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

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

160 (g) Items purchased at a food store or a retailer containing a food department shall appear on an
161 itemized sales receipt that shall be provided to all customers.

162 (h) If the consumer purchases a sale item or qualifies for a discount, the amount saved shall be
163 reflected in the checkout price and printed on the consumer's itemized sales receipt.

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

181 (j) A consumer may submit a complaint to the office of the attorney general regarding
182 compliance with this section.

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

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

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

199 (c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines shall
200 be levied shall include, but not be limited to: having no price marked on any unit that is required
201 to be priced and is not exempted; having an incorrect price on any unit; having an incorrect or
202 missing sign; or overcharging on any unit. A unit shall be deemed to be overcharged once it is
203 rung up at a price higher than any represented price. Notwithstanding the method for
204 determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation
205 may be issued for up to \$200 for each violation, up to a maximum of \$2500 per inspection. If
206 an item is advertised either in the store or in a circular as “on sale” or discounted because of a
207 card price and the item registers at a higher price at the checkout counter than indicated by any

208 “sale”, a civil citation will be issued for up to \$300 for each violation, up to a maximum of
209 \$2500 per inspection. The director of standards shall not issue a fine pursuant to this section
210 and said sections 184B through 184E, inclusive, and section 56D of chapter 98 for the same
211 violation.

212 (d) A fine imposed by the deputy director shall be paid within 30 days of issuance of the notice,
213 unless the retailer appeals to the deputy director. The store or department shall immediately
214 correct any noncompliance with section 184C when notified by the inspector.

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

225 (f) A consumer may submit a complaint to the office of the attorney general regarding
226 noncompliance with sections 184B through 184E. Each submitted complaint shall be
227 investigated. In the case of any verified consumer complaint, fines for overcharging shall be
228 limited to one violation per item. A fine shall be issued upon verification of any consumer

229 complaint alleging overcharging or improper price marking except for those units where the
230 seller honored the price accuracy guarantee discounts as described in Section 184C (i).

231 (g) If the director of standards determines that a food store or a retailer containing a food
232 department is either intentionally or through gross negligence violating any provisions of this
233 section and sections 184B through 184E, inclusive, then the director shall provide written notice
234 of such determination to the food store or retailer containing a food department and said food
235 store or retailer shall have thirty days to cure these violations. If upon re-inspection, and
236 payment of a \$200 re-inspection fee, the director of standards determines that the food store or
237 retailer's food department still is not in substantial compliance with the provisions of this section
238 and sections 184B through 184E, inclusive, then all the store's exemptions shall be rescinded for
239 a period of twelve months, and the matter shall be referred to the attorney general for action
240 against such food store or retailer containing a food department. Uncontested fines levied under
241 said sections shall be paid within thirty days of issuance of the notice of violation. Any aggrieved
242 seller may appeal any unjustified fines to the director of standards if such appeal is filed within
243 thirty 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 retailers containing a food department. Said sections shall not diminish any
246 obligations under other laws or regulations regarding item pricing for sellers other than food
247 stores or for items other than grocery items in retailers containing a food department. Where a
248 seller is also subject to the item pricing regulations or guidelines of another agency, in cases
249 where a specified number of items is allowed to be exempted under two similar exceptions to the
250 requirement of item pricing, such similar provisions shall not be additive.

251 (i) The division may retain all registration fees and fines it collects under sections 184B through
252 184E of chapter 94 and sections 56D and 56E of chapter 98 not to exceed \$3.5 million annually
253 in order to support its enforcement activities; provided further that any excess fees and fines up
254 to \$1 million in excess of this figure shall be used to fund the Division of Standards municipal
255 grant program for approved agents to assist the division in lieu of a legislative appropriation. In
256 the event that the division and the municipal grant program are fully funded, all additional
257 revenue shall be turned over to the General Fund.

258 Section 184E. (a) Any food store or a retailer containing a food department wishing to convert
259 from an individual item pricing system to a consumer scanner pricing system must seek a waiver
260 from the division. The waiver shall be granted by the division provided that the food store or
261 retailer containing a food department has no outstanding fines under sections 184B-D of chapter
262 94 or section 56D of chapter 98 and pays a \$500 fee annually to the division if the retail space is
263 less than 15,000 sq. feet, \$500 fee if the retail space 15,000 sq. feet up to 30,000 sq. feet, or a
264 \$1,000 fee if the retail space is 30,000 square feet or more.

265 (b) Any food store or retailer containing a food department that possesses an applicable
266 collective bargaining unit and intends to transfer from an individual item pricing system to a
267 consumer scanner pricing system shall submit an affidavit to the deputy director prior to the
268 implementation of the transfer stating that protections, including without limitation, a complaint
269 process, are in place so that full and part time employees will not suffer any wage or benefit loss
270 due to said transfer. Said affidavit shall include without limitation, the number of full and part
271 time employees working for the food store or retailer containing a food department on the date
272 the administering agency head allows for the transfer to a consumer scanner pricing system, the
273 number of full or part time employees working for the food store or retailer containing a food

274 department on December 31 of each calendar year that the food store or retailer containing a
275 food department is utilizing a consumer scanner pricing system and the average salary and
276 benefits of such employees; If an employee or applicable collective bargaining unit believes that
277 the employee wages or benefits in any location have been reduced due to said transfer and not
278 due to seasonal employment, the employee or collective bargaining unit may bring a complaint
279 against the food store or retailer containing a food department before the division after paying a
280 nominal fee, which shall be established by the division. If the division determines that the
281 complaint is valid, the retailer shall disclose retail prices using an individual item pricing system
282 for a period of not less than 12 months. The wage and employee data provided to the Division
283 for the purposes of transfer from an individual item pricing system to a consumer scanner pricing
284 system is proprietary in nature and is not available to the public.

285 (c) All food stores or retailers containing a food department using a consumer scanner pricing
286 system shall be subject to inspection by the division for compliance with the provisions outlined
287 in this section; provided, however, that the division shall not cause any food store or a retailer
288 containing a food department using a consumer scanner pricing system to be inspected more than
289 once per calendar month; provided, however, the division may inspect any food store or retailer
290 containing a food department using a consumer scanner pricing system once every week until the
291 food store or retailer containing a food department is found to be in compliance with this section
292 if: (1) within the previous 30 days, there is a verified pattern of consumer complaints; or (2) upon
293 regular inspection the food store or retailer containing a food department is not in compliance
294 with this section.

295 (d) Each food store or a retailer containing a food department with more than 5,000 square feet
296 of retail space that employs a consumer scanner pricing system shall have at least one fully

297 operational consumer price scanner for every 2,500 square feet of retail space or part thereof.
298 The location of a consumer scanner shall be disclosed via one clear and conspicuous sign at eye-
299 level and one clear and conspicuous sign above eye level. Consumer scanners shall be located in
300 convenient places, roughly equally spaced throughout the store, in fixed locations. A food store
301 or a retailer containing a food department with more than 5,000 square feet must have at least
302 one fully operational consumer scanner price scanner capable of producing an individual item
303 pricing tag. At this scanner location, the seller must also provide the consumer with a means by
304 which such pricing tag may be affixed or appended to the item or its packaging, such as tape or
305 an adhesive price tag. The Deputy Director may by regulation authorize new technologies in
306 lieu of required consumer scanners which further the intent of this section, including, but not
307 limited to hand held or shopping cart attached scanners which retain in memory and itemize all
308 scanned items. Such technologies may reduce the required number of consumer scanners by no
309 more than 50%.

310 (e) Consumer scanners are to be deemed fully operational if: (1) the scanner clearly and
311 conspicuously identifies and displays the item by name or other distinguishing characteristics;
312 (2) the scanner displays the item's correct price when it is scanned. Each scanner must also
313 display contact information for the Division of Standards so that consumers may report broken
314 scanners. Such scanners must also be in compliance with the Americans with Disabilities Act
315 Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts Architectural
316 Access Board Regulations 521 CMR 1.00. Any violation of this subsection shall be considered
317 in determining a scanner's pass or fail designation as defined in subsection (h).

318 (f) Any food store or retailer containing a food department with more than 5,000 square feet of
319 total space wishing to convert from an individual item pricing system to a consumer scanner

320 pricing system must within three months of such a conversion hire or maintain not less than 2
321 employees who responsibilities must include the maintenance of all consumer price scanners
322 within said food store or food department.

323 (g) An inspector may also elect to test a food store or a retailer containing a food department's
324 consumer price scanning system for accuracy. The inspector may choose the sample size for
325 accuracy tests provided that the size of sample is no less than fifty items and does not exceed two
326 hundred items. Any scanning that yields an incorrect price that also causes a food store or a
327 retailer containing a food department's consumer price scanner accuracy rating to fall below
328 98% shall constitute a separate violation. This subsection shall not be used to impact a scanner's
329 pass or fail grade as defined in subsection (h) but the cumulative violations of this subsection in
330 any particular store or department shall be used in contributing toward the maximum fine
331 imposed under the same subsection.

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

340 (i) Each scanner is to be graded on a pass or fail basis by inspectors, including missing scanners
341 or inadequate signage under subsection (d), which shall be considered to have failed. Each

342 scanner found to have failed the test shall constitute a separate violation of this section.
343 Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of
344 said chapter 98, a civil citation may be issued for up to \$200 for each violation, up to a maximum
345 of \$2500 per inspection; provided, however, that the deputy director may reduce any fine
346 imposed pursuant to this section consistent with section 29A of chapter 98.

347 (j) The division or its authorized inspectors shall not issue fines under this section if a store can
348 document that it identified an error and made a good faith effort to remedy it expeditiously.

349 SECTION 2. Section 56D of chapter 98 is hereby amended by striking it in its entirety and
350 inserting in place thereof the following section:-

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

364 (b) If such examination and test reveals that there is evidence of price misrepresentation, or
365 misleading or deception of the purchaser of items, or that consumer scanners do not meet the
366 operational standards set forth below, the owner, manager or the designee of said owner or
367 manager of a retail establishment using such automatic checkout system shall be punished for the
368 first failed inspection by a civil fine of up to \$200, for the second failed inspection by a civil fine
369 of up to \$500, and for any subsequent failed inspection, by a civil fine of up to \$1000; provided,
370 however, that there shall be no punishment for any inoperable consumer scanner that is deployed
371 for reasons other than to obtain an exemption from any law or regulation of the Commonwealth
372 requiring the individual price-marking of items offered for sale or for any inoperable consumer
373 scanner for which a retailer is able to demonstrate to the satisfaction of the inspector that he has
374 communicated in writing with an authorized repair agent, prior to such examination and test,
375 requesting that the inoperable electronic scanner be repaired. For purposes of this section
376 consumer scanners are to be deemed fully operational if they operate in the following manner:
377 (1) the scanner clearly and conspicuously identifies and displays the item by name or other
378 distinguishing characteristics. Each scanner must also display contact information for the
379 Division of Standards so that they may report broken scanners. Such scanners must also be in
380 compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36,
381 Appendix A and the Massachusetts Architectural Access Board Regulations 521 CMR 1.00
382 Notwithstanding the method for determining the amount of civil fines pursuant to said section
383 29A, a civil citation may be issued for up to \$200 for each violation, up to a maximum of \$2500
384 per inspection. For purposes of this section each item which scans erroneously shall constitute a
385 separate civil violation.

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

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

393 SECTION 3. The Division of Standards, in conjunction with the Secretary of Labor and
394 Workforce Development shall annually file with the Legislature's Joint Committee on
395 Community Development and Small Business, a report consisting of the impact of scanner
396 implementation on pricing accuracy and employee job loss or change of employment status, if
397 any, resulting from the item pricing waiver program conducted under the jurisdiction of the
398 Division of Standards. This report shall also contain recommendations for legislative changes, if
399 any, which the Director deems necessary to affect the purposes of the program. This report shall
400 be filed on or before December 31st of each calendar year.

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