

HOUSE No. 987

The Commonwealth of Massachusetts

PRESENTED BY:

Linda Dorcena Forry and Michael O. Moore

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:
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>

HOUSE No. 987

By Representative Forry of Boston and Senator Moore, a joint petition (accompanied by bill, House, No. 987) of Linda Dorcena Forry and others relative to clear and conspicuous price disclosure. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ HOUSE

□ , NO. 4430 OF 2009-2010.]

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
2 184B to 184E, inclusive, as appearing in the 2006 Official Edition, and inserting in place thereof
3 the 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 “Card price,” the price a loyalty card holder will be charged if different from the non-card price.

13 “Checkout price”, the retail price of an item to be charged to the consumer whether purchased or
14 not as 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 retailer containing a food department’s automatic checkout system. If the foregoing provisions

29 for establishing the correct price are not determinative in a particular situation, the correct price
30 shall be the price on 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.

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

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

38 "Division", the division of standards established pursuant to section 5 of chapter 24A.

39 "Dual pricing system", a separate pricing system that allows for one correct price for non-
40 loyalty cardholders and one correct price for loyalty card holders.

41 "Food", anything edible.

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

48 "Food store", any store, shop, supermarket, grocer, convenience store, or other seller, whose
49 primary business is selling either food for consumption off the seller's premises alone or in

50 combination with grocery items or other nondurable items typically found in a supermarket, and
51 such items are sold at least in part to individuals for their own personal, family, or household use.
52 For the purposes of this section and sections 184C to 184E, a warehouse club shall not be
53 considered a food store.

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

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

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

61 “Itemized sales receipt”, a printed and dated sales receipt listing, at a minimum, the retail 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 retail
70 price of each item excluded under subsection (c) of section 184C.

71 “Retailer”, includes (i) every person engaged in the business of making sales at retail; (ii) every
72 person engaged in the making of retail sales at auction of tangible personal property whether
73 owned by such person or others; (iii) every person engaged in the business of making sales for
74 storage, use or other consumption, or in the business of making sales at auction of tangible
75 personal property whether owned by such person or others for storage, use or other consumption;
76 (iv) every salesman, representative, peddler or canvasser who, in the opinion of the
77 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent
78 of the dealer, distributor, supervisor or employer under whom he operates or from whom he
79 obtains the tangible personal property sold by him, in which case the commissioner may treat
80 and regard such agent as the retailer jointly responsible with his principal, employer or
81 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the
82 commonwealth, or any political subdivision thereof, or their respective agencies when such 54
83 entity is engaged in making sales at retail of a kind ordinarily made by private persons.

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

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

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

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

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

99 (b) An individual item pricing system shall affix the correct price on each unit in a clear and
100 conspicuous manner by means of a price sticker, ticket, tag, ink stamp, pre-printing or other
101 label; and provided further that a food store or a retailer containing a food department attaches a
102 correct display price for each separate SKU or separately-coded item. In the case of a food store
103 or a retailer containing a food department that utilizes loyalty cards or otherwise maintains a dual
104 pricing system, the non-card price shall be affixed to the item if it differs from the club card
105 price, provided further that a sign at the point of display shall include either the amount of
106 savings per unit or the percent of savings.

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

115 (d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code, its
116 description and its retail price is posted where these items are displayed; (ii) the cashier can
117 readily discern the item's retail price, (iii) the food store or retailer containing a food department
118 maintains an itemized retail price list for all exempted items, and (iv) the retail price list is
119 available at each checkout and can be reviewed by a customer upon request, a food store or
120 retailer containing a food department may exempt the following classes of items from its
121 individual item pricing system : (1) produce, meat, fish, poultry, delicatessen, bakery items, and
122 any other items that are unpackaged and offered from a bulk display; provided, however, that
123 any such item weighed or wrapped to order by the food store or a retailer containing a food
124 department but paid for at a place other than at the point of such weighing or wrapping shall have
125 the correct retail price marked on the item; (2) gallons and half gallons of milk; (3) eggs; (4)
126 cigarettes, cigars, tobacco and tobacco products; (5) individual items within a multi-item
127 package, if the package is marked with the correct retail price; (6) cakes, gum, candy, chips, nuts
128 and other snack foods, if offered for sale individually, and located at the checkout area; (7)
129 individual greeting cards, if marked with a price code readily understandable by the consumer;
130 (8) individual containers of baby food of the same brand and retail price where vegetable or fruit
131 is the predominant ingredient other than water, but not including juices; (9) soft drink bottles and
132 cans; (10) frozen food products; (11) items sold by length, area, weight or volume, including
133 without limitation chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged; (12)
134 items that must be retrieved for the consumer by store staff, including without limitation large
135 electronics or appliances, display or representative items or items displayed in a locked case or
136 out of reach of consumers; (13) packaged self-service items that are small in size and are offered
137 for sale located at the checkout area; (14) live animals; (15) items sold in a coin operated

138 vending machine; and (16) for a food store or a retail store with a food department using an
139 individual item pricing system, not more than 60 additional items that are accessible to the
140 consumer in a free standing or end-aisle display that has at least 50 individual items of the same
141 item; provided, however, that unless the deputy director determines otherwise, individual items
142 that differ only by color, flavor or scent shall be counted as the same item for the purpose of this
143 clause if they are identical in all other aspects, including retail price, size and brand.

144 (e) Food stores or retailers containing a food department utilizing an individual item pricing
145 system shall be allowed to exempt a number of additional items, the exact number of which shall
146 be based on the number of operable, but not necessarily active, cash registers located at the main
147 checkout location. Food stores or retailers containing a food department with one operable cash
148 register shall be allowed to exempt twenty additional items of their own choosing. Food stores or
149 retailers containing a food department with two, three to four, or five to six cash registers shall
150 be allowed to exempt fifty, one hundred or two hundred additional items respectively. Food
151 stores or retailers containing a food department with seven or more cash registers may exempt up
152 to four hundred additional items. In the case of a retailer containing a food department, the
153 number obtained in the above calculation shall be reduced by 75 percent. In no case shall the
154 number of exemptions permitted by this exception exceed four and one-half per cent of the
155 number of packaged grocery items carried by the seller.

156 All additional exemptions allowed under subsection (e) will be granted provided that the food
157 store or a retailer containing a food department maintains an electronic pricing system which has
158 been determined to be at least 95 percent accurate during a price accuracy inspection conducted
159 by the division or their designee, and further provided that a food store or retailer containing a
160 food department maintains a dated, written list of the items it has chosen to exempt. The list shall

161 include a readily understandable description of each item and the code number understood by the
162 seller's automatic checkout system. Deletions may be made from the list at any time, but no
163 additions, substitutions, or changes may be made to the list except twice a year in January and
164 July. The exemption permitted by this section shall not apply to any item not on that list and
165 shall not apply unless such list has been established and is available upon request at the food
166 store or retailer containing a food department to any consumer or any representative authorized
167 by the director of standards and referenced easily by the person requesting it. No seller may
168 choose to exempt items required to be price marked by other laws or regulations governing
169 specific types of items, or may exempt more than two hundred items in any one department
170 except in the dry grocery department

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

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

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

181 (i) Notwithstanding the provisions of Section 184D (h) if there is a discrepancy between the
182 advertised price, the sticker price, the scanner price or the display price and the checkout price on

183 any item, a food store or a retailer containing a food department shall charge a consumer the
184 lowest price. If the checkout price is not the lowest price or does not reflect any qualifying
185 discount, the retailer: (i) shall not charge the consumer for 1 unit of the item, if the lowest price
186 is \$10 or less; (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the item, if the
187 lowest price is more than \$10; and (iii) shall charge the consumer the lowest price for any
188 additional units of the item. This subsection shall not apply if: (1) there is evidence of willful
189 tampering or (2) the discrepancy is a gross error, in that the lowest price is less than half of the
190 checkout price and the retailer, in the previous 30 days, did not intend to sell the item at the
191 lowest price. All food stores and retailers containing a food department, which use a consumer
192 pricing scanning system, must post signage at each register detailing this law. For each register
193 that fails to display appropriate signage, the food store or retailer containing a food department
194 shall be subject to a fine of \$200, up to a maximum of \$500 per inspection by the Division of
195 Standards. All food stores and retailers with food departments shall maintain data on price
196 discrepancies. This data shall be provided to the division upon request. The provisions of this
197 subsection shall be clearly and conspicuously posted by all affected retailers.

198 (j) A consumer may submit a complaint to the office of the attorney general or to the division
199 regarding compliance with this section.

200 (k) The deputy director may require retailers to disclose a consumer's rights under sections
201 184C to 184E, inclusive.

202 Section 184D. (a) The deputy director or his inspectors, and sealers of weights and measures and
203 their deputies, as defined in Section of Chapter 98, shall inspect each food store and retailer
204 containing a food department for compliance with sections 184B through 184E of chapter 94.

205 The inspections shall be conducted pursuant to the national industry standards adopted by the
206 National Conference on Weights and Measures of the National Institute of Standards and
207 Technology or any other rules or guidelines promulgated by the division pertaining to the
208 implementation and enforcement of those sections; provided that nothing shall inhibit the
209 oversampling of sale items during inspections. The food stores and retailers containing a food
210 department shall provide the inspector with access necessary to conduct an inspection. The
211 deputy director shall notify the stores and departments in writing of violations of this section and
212 of any fines imposed pursuant to sections 184B through 184E of chapter 94.

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

216 (c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines shall
217 be levied shall include, but not be limited to: having no price marked on any unit that is required
218 to be priced and is not exempted; having an incorrect price on any unit; having an incorrect or
219 missing sign; or overcharging on any unit. A unit shall be deemed to be overcharged once it is
220 rung up at a price higher than any represented price. Notwithstanding the method for
221 determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation
222 may be issued for \$200 for each violation, up to a maximum of \$2500 per inspection. If an item
223 is advertised either in the store or in a circular as “on sale” or discounted because of a card price
224 and the item registers at a higher price at the checkout counter than indicated by any “sale” or
225 loyalty care price, a civil citation will be issued for \$300 for each violation, up to a maximum of
226 \$2500 per inspection. The director of standards shall not issue a fine pursuant to this section

227 and said sections 184B through 184E, inclusive, and section 56D of chapter 98 for the same
228 violation.

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

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

242 (f) A consumer may submit a complaint to the office of the attorney general or to the division
243 regarding noncompliance with sections 184B through 184E. All food stores and retailers
244 containing a food department subject to sections 184B through 184E shall provide, upon request,
245 a complaint form for the consumer to complete and submit. Each submitted complaint shall be
246 investigated. In the case of any verified consumer complaint, fines for overcharging shall be
247 limited to one violation per item. A fine shall be issued upon verification of any consumer

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

250 (g) If the director of standards determines that a food store or a retailer containing a food
251 department is either intentionally or through gross negligence violating any provisions of this
252 section and sections 184B through 184E, inclusive, then the director shall provide written notice
253 of such determination to the food store or retailer containing a food department and said food
254 store or retailer shall have thirty days to cure these violations. If upon re-inspection, and
255 payment of a \$200 re-inspection fee, the director of standards determines that the food store or
256 retailer's food department still is not in substantial compliance with the provisions of this section
257 and sections 184B through 184E, inclusive, then all the store's exemptions shall be rescinded for
258 a period of twelve months, and the matter shall be referred to the attorney general for action
259 against such food store or retailer containing a food department. Uncontested fines levied under
260 said sections shall be paid within thirty days of issuance of the notice of violation. Any aggrieved
261 seller may appeal any unjustified fines to the director of standards if such appeal is filed within
262 thirty days of issuance of the notice of violation.

263 (h) This section and sections 184B through 184E, inclusive, shall only apply to food stores and
264 to grocery items in retailers containing a food department. Said sections shall not diminish any
265 obligations under other laws or regulations regarding item pricing for sellers other than food
266 stores or for items other than grocery items in retailers containing a food department. Where a
267 seller is also subject to the item pricing regulations or guidelines of another agency, in cases
268 where a specified number of items is allowed to be exempted under two similar exceptions to the
269 requirement of item pricing, such similar provisions shall not be additive. Compliance with
270 another agency's regulations or guidelines which differ from said sections or any regulations

271 issued hereunder by the director of standards shall not be a defense to a violation of said section
272 or any regulations promulgated hereunder.

273 (i) The division may retain all registration fees and fines it collects under sections 184B through
274 184E of chapter 94 and sections 56D and 56E of chapter 98 not to exceed \$3.5 million annually
275 in order to support its enforcement activities; provided further that any excess fees and fines up
276 to \$1 million in excess of this figure shall be used to fund the Division of Standards municipal
277 grant program for approved agents to assist the division in lieu of a legislative appropriation. In
278 the event that the division and the municipal grant program are fully funded, all additional
279 revenue shall be turned over to the General Fund.

280 Section 184E. (a) Any food store or a retailer containing a food department wishing to convert
281 from an individual item pricing system to a consumer scanner pricing system must seek a waiver
282 from the division. The waiver shall be granted by the division provided that the food store or
283 retailer containing a food department has no outstanding fines under sections 184B-D of chapter
284 94 or section 56D of chapter 98 and pays a \$500 fee annually to the division if the retail space is
285 less than 15,000 sq. feet, \$500 fee if the retail space 15,000 sq. feet up to 30,000 sq. feet, or a
286 \$1,000 fee if the retail space is 30,000 square feet or more.

287 (b) Pursuant to the regulations promulgated under this chapter, the Division will require that each
288 applicant complete a “no job loss” affidavit stating the number of people employed at the time of
289 the application process, including without limitation, establishment of a complaint process, so
290 that full and part time employees will not suffer any wage or benefit loss due to said transfer..
291 After the filing of the affidavit, if there is any resulting job loss at the store due to the
292 implementation of the waiver, not attributed to seasonal employment or verifiable economic

293 pressures, the store will be required to item price for one year pursuant to sections 184B through
294 184E, inclusive, of chapter 94, or other applicable Massachusetts law or regulation promulgated
295 hereunder, and be subject to a fine of not more than five thousand dollars.

296 (c) All food stores or retailers containing a food department using a consumer scanner pricing
297 system shall be subject to inspection by the division for compliance with the provisions outlined
298 in this section; provided, however, that the division shall not cause any food store or a retailer
299 containing a food department using a consumer scanner pricing system to be inspected more than
300 once per calendar month; provided, however, the division may inspect any food store or retailer
301 containing a food department using a consumer scanner pricing system once every week until the
302 food store or retailer containing a food department is found to be in compliance with this section
303 if: (1) within the previous 30 days, there is a verified pattern of consumer complaints; or (2) upon
304 regular inspection the food store or retailer containing a food department is not in compliance
305 with this section.

306 (d) Each food store or a retailer containing a food department with more than 5,000 square feet
307 of retail space that employs a consumer scanner pricing system shall have at least one fully
308 operational consumer price scanner for every 5,000 square feet of retail space or part thereof.
309 The location of a consumer scanner shall be disclosed via one clear and conspicuous sign at eye-
310 level and one clear and conspicuous sign above eye level. Consumer scanners shall be located in
311 convenient places, roughly equally spaced throughout the store, in fixed locations. A food store
312 or a retailer containing a food department with more than 5,000 square feet must have at least
313 one fully operational consumer scanner price scanner capable of producing an individual item
314 pricing tag. At this scanner location, the seller must also provide the consumer with a means by
315 which such pricing tag may be affixed or appended to the item or its packaging, such as tape or

316 an adhesive price tag. The Deputy Director may by regulation authorize new technologies in
317 lieu of required consumer scanners which further the intent of this section, including, but not
318 limited to hand held or shopping cart attached scanners which retain in memory and itemize all
319 scanned items. Such technologies may reduce the required number of consumer scanners by no
320 more than 50%.

321 (e) Consumer scanners are to be deemed fully operational if: (1) the scanner clearly and
322 conspicuously identifies and displays the item by name or other distinguishing characteristics;
323 (2) the scanner displays the item's correct price when the item is scanned at it and that, in the
324 case of a food store or retailer containing a food department that uses loyalty cards or otherwise
325 maintains a dual pricing system, the scanner displays both the card price and the non-card price
326 if they differ. Each scanner must also display contact information for the Division of Standards
327 so that consumers may report broken scanners. Such scanners must also be in compliance with
328 the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and
329 the Massachusetts Architectural Access Board Regulations 521 CMR 1.00. Any violation of this
330 subsection shall be considered in determining a scanner's pass or fail designation as defined in
331 subsection (h).

332 (f) Any food store or retailer containing a food department with more than 5,000 square feet of
333 total space wishing to convert from an individual item pricing system to a consumer scanner
334 pricing system must within three months of such a conversion hire or maintain not less than 2
335 employees whose responsibilities must include the maintenance of all consumer price scanners
336 within said food store or food department.

337 (g) An inspector may also elect to test a food store or a retailer containing a food department's
338 consumer price scanning system for accuracy. The inspector may choose the sample size for
339 accuracy tests provided that the size of sample is no less than fifty items and does not exceed two
340 hundred items. Any scanning that yields an incorrect price that also causes a food store or a
341 retailer containing a food department's consumer price scanner accuracy rating to fall below
342 98% shall constitute a separate violation. This subsection shall not be used to impact a scanner's
343 pass or fail grade as defined in subsection (h) but the cumulative violations of this subsection in
344 any particular store or department shall be used in contributing toward the maximum fine
345 imposed under the same subsection.

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

354 (i) Each scanner is to be graded on a pass or fail basis by inspectors, including missing scanners
355 or inadequate signage under subsection (d), which shall be considered to have failed. Each
356 scanner found to have failed the test shall constitute a separate violation of this section.
357 Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of
358 said chapter 98, a civil citation may be issued for \$200 for each violation, up to a maximum of

359 \$2500 per inspection; provided, however, that the deputy director may reduce any fine imposed
360 pursuant to this section consistent with section 29A of chapter 98.

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

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

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

378 (b) If such examination and test reveals that there is evidence of price misrepresentation, or
379 misleading or deception of the purchaser of items, or that consumer scanners do not meet the
380 operational standards set forth below, the owner, manager or the designee of said owner or

381 manager of a retail establishment using such automatic checkout system shall be punished for the
382 first failed inspection by a civil fine of \$200, for the second failed inspection by a civil fine of
383 \$500, and for any subsequent failed inspection, by a civil fine of \$1000; provided, however, that
384 there shall be no punishment for any inoperable consumer scanner that is deployed for reasons
385 other than to obtain an exemption from any law or regulation of the Commonwealth requiring
386 the individual price-marking of items offered for sale or for any inoperable consumer scanner
387 for which a retailer is able to demonstrate to the satisfaction of the inspector that he has
388 communicated in writing with an authorized repair agent, prior to such examination and test,
389 requesting that the inoperable electronic scanner be repaired. For purposes of this section
390 consumer scanners are to be deemed fully operational if they operate in the following manner:
391 (1) the scanner clearly and conspicuously identifies and displays the item by name or other
392 distinguishing characteristics; (2) the scanner displays the item's correct price when the item is
393 scanned at it and that, in the case of a retail establishment that uses loyalty cards or otherwise
394 maintains a dual pricing system, the scanner displays both the card price and the non-card price
395 if they differ. Each scanner must also display contact information for the Division of Standards
396 so that they may report broken scanners. Such scanners must also be in compliance with the
397 Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the
398 Massachusetts Architectural Access Board Regulations 521 CMR 1.00 Notwithstanding the
399 method for determining the amount of civil fines pursuant to said section 29A, a civil citation
400 may be issued for \$200 for each violation, up to a maximum of \$2500 per inspection. For
401 purposes of this section each item which scans erroneously shall constitute a separate civil
402 violation.

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

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

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

418 SECTION 4. This act shall take effect on January 1, 2011.