

Legislative History Project

To: Professor Sean Kealy
From: Benjamin Vick
Date: December 10, 2012
Subject: H.4089 Legislative History

This memorandum recounts the history of H.4089, An Act Relative to Clear and Conspicuous Price Disclosure, beginning with its inception on January 24, 2011, and ending with its enactment into law on July 3, 2012. Prior law required storeowners to place individual price tags on each for-sale item in their stores. Grocers found this law especially burdensome because it required them to place a price tag on each individual food item, including each individual banana within a hand¹ of bananas. Consumer advocates favored then-current law because it provided certainty for consumers who, absent such pricing requirements, would not know how much a store item costs before they reached the cashier and would be unable to spot pricing errors at checkout. H.4089 provides relief for storeowners by permitting them to use in-store pricing scanners in lieu of individual price tags.

H.4089 began as S.77, S.94, S.1844, S.1848, H.100, H.987, H.993 and H.995, all of which were ultimately combined into a single bill. Each of the initial proposed bills in some way eased price-tag requirements for storeowners. On January 24, 2011, the Massachusetts House of Representatives (“House”) and Senate referred S.77, S.1844, S.1848, H.987, H.993 and H.995 to the Joint Committee on Community Development and Small Business (“CDSM”), and referred S.94 and H.100 to the Joint Committee on Consumer Protection and Professional Licensure (“CPPL”). On April 4, 2011, and May 9, 2011, CPPL referred S.94 and H.100, respectively, to CDSM, thus placing each of the eight initial bills in CDSM. On April 25, 2011,

¹ Interestingly, the formal term for a cluster or group of bananas is a “hand.”

CDSM held a hearing on each of the six bills initially referred to CDSM by the House and Senate. On June 1, 2011, CPPL held a hearing on S.94 and H.100.

Both hearings invoked a great deal of commentary and testimony from a wide range of constituents and policymakers. Those in favor of the bills, such as owners of large and small grocery stores, generally expressed approval of lax pricing requirements and explained that then-current law increased costs of doing business and resulted in inefficient use of labor resources. Bill supporters such as labor unions and consumer protection advocates argued the proposed changes would harm consumers, who would be unable to discern the price of a good until checking out of the store. Supporters also claimed that the proposed laws would harm businesses, who would suffer from losses as uncertain customers opted against purchases.

After the April 25, 2011, and June 1, 2011, hearings, CDSM amended and consolidated all eight bills into a single bill, H.3491. On June 9, 2011, CDSM reported favorably on H.3491 and referred it to the House Committee on Ways and Means (“CWM”). CWM then amended H.3491 in committee. Unfortunately, I was unable to determine the precise amendments or purpose behind amendments made to H.3491. I have left two voicemails for Katie Hollihan of CWM in an attempt to determine the exact changes, but Ms. Hollihan has not yet returned my calls. That said, the most contentious aspect of H.4089 was allowing storeowners to install price scanners that customers would then use to determine the price of food items. Consumer protection advocates claimed that these scanners were generally inaccurate and did not afford consumers an adequate ability to spot pricing errors during checkout. It seems likely that any amendments to the bill dealt with or in some way clarified permissible use of pricing scanners by storeowners.

On May 14, 2012, nearly one year after H.3491 was referred to CWM, CWM substituted for H.3491 an amended bill with the same title, H.4089. After the second reading, which took place on that same day, the House approved CWM's proposed amendments. On May 17, 2012, the House read H.4089 for the third time and passed H.4089 to be engrossed. On June 25, 2012, the Senate commenced and completed the first, second, and third readings, and passed H.4089 to be engrossed. Later that day, the House and Senate enacted H.4089 and laid it before Governor Deval L. Patrick. The governor signed H.4089 into law on July 3, 2012, and, in doing so, made Massachusetts the final state in the United States to eliminate an individual-item pricing requirement for storeowners.

Sources of information for this legislative history project include Instatrac, a bill-tracking service; the State Library of Massachusetts; Mass.gov; the Massachusetts Legislature website, located at malegislature.gov; the Massachusetts Senate and House Journals; Westlaw; LexisNexis; and various online news sources such as State House News Service, the Associated Press, the Boston Globe, and the Boston Herald.