



BOSTON INSPECTIONAL SERVICES DEPARTMENT

THOMAS M. MENINO
Mayor

May 4, 2011

Senator Sal N. DiDomenico, Co-Chair
Representative Linda Dorcena Forry, Co-Chair
Joint Committee on Community Development and Small Business
State House, Room 26
Boston, MA 02133

Re: Written Testimony relating to Various Item Pricing Bills

Dear Chairman DiDomenico and Chairwoman Forry:

On behalf of the City of Boston, I submit to the Joint Committee on Community Development and Small Business this written testimony for your consideration.

The City of Boston is opposed to House bills H.987, H.993, H.994, H.995, and H. 1869 as well as Senate bill S. 1844, and S.1848.

First and foremost, the City of Boston maintains its support for the current Item Price Law. In this difficult and trying economy, consumers, particularly our most vulnerable citizens, need more consumer protection, not less.

As Assistant Commissioner of the City of Boston's Weights and Measures program, I have two goals: first, to protect consumers in the transaction of their everyday purchases, and secondly, to provide "equity in the marketplace." It is the position of the City that these bills, while well intentioned, do not fully accomplish the concerns that were raised in a hearing held by this committee two years ago.

The practice of replacing individual price stickers with "consumer price scanners" does not benefit the consumer. Although the Committee added language stipulating guidelines consistent with the Americans with Disabilities Act and the Architectural Access Board CMR, these provisions deal with handicap access issues, such as access for wheelchairs, the height at which scanners are placed, and the consumer's ability to operate them. While these protections are worthwhile, we remain concerned with accessibility issues for seniors and anyone else with mobility problems. Instead of clearly marked prices, seniors would still have to first locate these scanners, and then carry items to check the price of an item, only to have to return it to the shelf if they choose not to buy it.

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Those of you familiar with the act of finding or using these aisle scanners may identify with the fact that it can be difficult to seek out a machine to determine the correct price, placing an additional burden on the consumer.

It is my strong belief that legislation dealing with Massachusetts pricing practices should be equitable; however, this legislation does not address the large number of retailers not affected by the "Food and Grocery Item Price Law." While some of this marketplace is covered by the Attorney General's Pricing Regulation, the Attorney General does not have enough inspectors to fully enforce this regulation. The reality is that there is little accountability in non-food or grocery stores relating to price posting. Some legislation also seeks to exempt warehouse clubs from the law, thus giving these retailers an unfair competitive advantage over their food store and food department competitors. The fact is that you can often shop in these stores without a membership card and they are practically no different than regular stores.

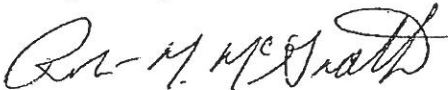
To that end, it is my recommendation that House bills 987, 993 and Senate bills 1844 and 1848 require further study in order to address these consumer protection concerns. Below are other concerns:

- H. 1869 repeals the Item Price Law
- H. 994 & H. 995 both raise the number of items from 10 to 200, for a store to be required to adhere to the law. In a community with many small stores, this amount is problematic.

Finally, the item price law is not an obtrusive burden on the industry, which is proved by the certain stores who exhibit simple and regular compliance. Sadly, we have witnessed businesses blatantly ignoring the law, seemingly calculating that it is cheaper to pay a fine or two rather than invest resources in order to comply. I am skeptical about reducing the accountability of companies that have demonstrated in the past this blatant contempt toward our State Law by now "lowering the bar" of consumer protection.

It is our hope that the Committee will invite all stakeholders to contribute to developing an equitable pricing law that will address the aforementioned concerns and will serve as a consumer protection model for the nation.

Respectfully submitted,



Robert M. McGrath
Assistant Commissioner/Sealer
City of Boston Inspectional Services Department

Testimony of

**Cambridge Consumers' Council
Massachusetts Consumers' Coalition**

**By Corey R. Pilz
Cambridge Consumers' Council**

**Before the Joint Committee on Community Development and Small Business
Commonwealth of Massachusetts**

**Representative Linda Dorcena Forry, Co-Chair
Senator Sal N. DiDomenico, Co-Chair**

**Committee Hearing Examining Item Pricing Legislation: S. 77, S. 1844, S. 1848,
H. 987, H. 993, H. 994, H. 995, and H. 1869.**

04 May 2011

Chairwoman Forry, Chairman DiDomenico, and Members of the Committee on Community Development and Small Business:

My name is Corey Pilz, Consumer Information Specialist for the Cambridge Consumers' Council. The Council, a City of Cambridge agency, works in cooperation with the Office of the Attorney General in investigating and monitoring consumer problems and trends in the marketplace.¹ Using the experience and information gained from the hundreds of individual complaints filed each year by area residents, the Council serves as an informed voice offering suggestions for new or amended legislation that would influence consumer protection for the citizenry. My testimony today is also on behalf of the Massachusetts Consumers' Coalition, an association of local, state and federal consumer agencies; consumer advocacy organizations; and nonprofit agencies who are concerned with protecting the citizenry and ensuring fairness in the marketplace.

To begin, I wish to thank you for the opportunity to testify today. Before you are several pieces of proposed legislation regarding the Food Store Item Pricing Law, which have prompted great distress among consumer advocates throughout the Commonwealth as each piece of legislation essentially seeks to weaken or repeal the current law. As such, we ask you to *oppose S. 77, S. 1844, S. 1848, H. 987, H. 993, H. 994, H. 995, H. 1869* and maintain the current law and the fundamental protections it affords to consumers.

In this testimony, we hope to provide background on why the current law is not only beneficial to consumers, but how the current item pricing is preferred among shoppers in comparison to the alternatives offered by these bills. We will then comment on why the proposed changes to the law would only hurt consumers in the long run by creating an unlevel playing field within the relationship between the consumer and the retailer.

SUMMARY

The Food Store Item Pricing Law (M.G.L. c. 94, §184B-E) essentially requires goods to be individually priced with stickers or tags in grocery stores and other stores that maintain food departments. Such a system allows consumers to easily identify the price of an item just by looking at it. As the law stands, all items are required to be individually priced using such a method unless it falls within one of the categories of exemptions. The Office of the Attorney General also maintains a regulation (940 CMR 3.13(1)) promulgated pursuant to M.G.L. c. 93A, §2(c) that is applicable to retail stores that carry non-grocery items. Such regulation also requires items to be individually priced by sticker or tag unless (1) the item falls within one of the categories of exemptions or (2) the store installs and maintains self-service price check scanners every 5,000 square feet which allow the consumer to affix the price to the item.

Although no Attorney General has brought an action under this regulation, the Food Store Law allows enforcement by means of compliance inspections conducted by the Director of the Commonwealth's Division of Standards or his inspectors, and sealers and inspectors of weights and measures. For example, the Division of Standards fined ten (10) food retailers a total of \$143,750 after finding 2,443 instances where items were missing pricing labels over the course of

¹ My written testimony, presentation and responses to questions are my own and do not necessarily reflect the views of the City of Cambridge or any member of the Cambridge City Council.

one hundred (100) different store locations after a series of inspections conducted in July 2010.² Such an enforcement mechanism has proven to be an essential component in adequately measuring and ensuring compliance by food stores.

It also important to recognize that the Attorney General modified the above referenced regulation in July 2003 by adding an exemption to allow retail stores to stop individually pricing items if a self-service price scanner was installed every 5,000 square feet. Once again, this regulation only applies to non-food stores, and not the grocery store, supermarket, warehouse clubs or retailers with food departments. Thus, it is important to consider the grocery shopping experience versus shopping at another retailer when you consider the bills in front of you today.

THE BENEFITS AND PROTECTIONS OF ITEM PRICING

Price disclosure has always been seen as a fundamental way for consumers to exercise their rights within the marketplace whether they are purchasing an automobile or a box of cereal. The current Food Store Law allows consumers to easily identify the price of an item just by looking at it and provides for many additional benefits that proposed alternatives simply do not allow for.

By allowing a consumer to easily access the price of an item, we are enabling them to make smart buying decisions, which is especially essential during these rough economic times. As it stands, item pricing makes comparing the price of goods uncomplicated. For example, if I wanted to compare the price of a store brand can of vegetables with a name brand, currently I could do so by merely contrasting the two price stickers. Without a price sticker on the can, it can easily become a hassle to determine which shelf tag goes with which can, especially when the cans have found themselves intermingled on the shelf.

If the price stickers or tags slowly disappear from items, the burden of pricing an item will slowly start to shift from that of the retailer to the consumer—both while standing in the aisle and at the checkout counter. Using the price sticker on an item, the consumer can verify that the price on the item, the price on the shelf and the price at the checkout counter are all the same. Without the sticker, this verification process is all but eliminated and such a process is essential to the grocery shopping experience given the frequency of sales. Many shoppers check their receipts at the end of a sale to ensure they were charged properly for all items, particularly sale items. Without a price sticker on the item, it would be almost impossible to do so after leaving the store as there would be nothing to compare the price on the register receipt to.

It is no secret that food costs are one of the biggest parts of a household budget, and looking for lower costs is important for many families as the price of food rises. In November 2010, the Office of Consumer Affairs and Business Regulation conducted a survey of three (3) grocery stores around Boston and the neighboring region, checking on prices for a number of everyday items such as bread, peanut butter, tuna and cereal. A total of thirty-four (34) store locations were surveyed, and it was discovered that the price of the same items ranged not only from grocery store

²See OCABR Press Release, Patrick-Murray Administration's Division of Standards Fines Food Retailers \$143,000 for Item Pricing Violations (Sep. 7, 2010), http://www.mass.gov/?pageID=ocapressrelease&L=1&L0=Home&sid=Eoca&b=pressrelease&f=20100907_DOS_itempricing&csid=Eoca.

to grocery store, but also within the same grocery store chain.³ Therefore, consumers need an easy way to comparison shop more than ever, and item pricing continues to serve as a quick and accurate means to do so.

Item pricing has not only proved to be a beneficial tool to shoppers, but is also the preferred method of price disclosure. In July 2009, Consumer World released a survey showing 2 out of 3 shoppers prefer to find out the price of an item by looking at the price sticker on the item itself, rather than some other way. In addition 95% of the people surveyed wished stores that did away with price stickers, like Target and CVS, went back to putting prices directly on these items.⁴

DANGERS OF PROPOSED ALTERNATIVES AND ALLOWING MORE EXEMPTIONS

The eight item pricing bills that appear before the committee today will derail the protections afforded to consumers, and once again, we must ask you to oppose them.

Some of these bills call for the installation of aisle scanners that would allow the consumer to price the item themselves. We believe replacing item pricing with aisle scanners is not the answer to clear price disclosure, especially when a shopper may have to travel two to three aisles over to find a scanner that may or may not be able to print a price label. This could become quite burdensome given the number of items grocery shoppers purchase at a time compared to other retail shopping. Surveyed consumers not only find these more difficult to use, but many scanners often fail to function properly or be in compliance with the Attorney General's regulations.⁵ In addition, aisle scanners provide no safeguard that a consumer has been charged the proper price after they leave a store.

Furthermore, allowing more exemptions for either food departments or food stores will only weaken a consumer's price awareness of an item—both grocery and non-grocery. Instead of being able to keep a "running tab" of how much one has spent just by looking at the stickers on goods in their shopping cart, a consumer will now be forced to estimate the total cost of their shopping trip unless they wish to scan all items if an in-aisle scanner is available. Unfortunately, sometimes shopping circumstances simply do not allow for this.

Finally, allowing more items, particularly sale items, to be placed on shelves without a price sticker does not guarantee accurate price disclosure even if a shelf tag and/or an additional sticker label is required. Shelf tags are often found to be out-dated or placed with wrong items while stickers are frequently removed or damaged by the general public. In this case, a sticker in the hand is truly worth more than two signs on the shelf.

³ See OCABR, Not All Grocery Stores the Same (Nov. 22, 2010), <http://consumer.blog.state.ma.us/blog/2010/11/not-all-grocery-stores-the-same.html>.

⁴ Consumer World® is a Boston-based, public service, non-commercial consumer resource website. See Consumer World, Shopping Survey by WBZ Call for Action for Consumer World (July 23, 2009), <https://pincdn.s3.amazonaws.com/assets/345923e54fc8892f5b9172353203a45f/item-pricing-survey.doc>.

⁵ In 2009, Consumer World Tested 150 aisle scanners at stores where the AG's rules allowed their use instead of item pricing. Fully 70% of them failed to function properly, or otherwise comply with the law. See Consumer World, Retailers Flunk Scanner Test (July 23, 2009), <https://www.masspirg.org/static/itemscanprsconsumerworld.pdf>.

CONCLUSION

Certainly in these tough economic times, we must recognize that consumers need *more* price disclosure, as violations of the current law are still being found within stores that our consumers depend on for their basic, essential needs. Weakening the enforcement mechanisms of the current law only allows retailers a greater opportunity to take advantage of the consumer in the marketplace. Removing labels from items that we find on the shelves cripples a consumer's basic right to know the price of an item before they make the choice as to whether or not they wish to purchase it. Each of these bills will help severely weaken a consumer's influence in the retail industry. As we have learned in the past, when a consumer's clout is compromised, an equal playing field no longer exists in the marketplace. Therefore, I ask the Committee oppose these item pricing bills.

Thank you for this opportunity to share our concerns. We look forward to continue working with this Committee to ensure an equal playing field exists between the consumer and the retailer in the marketplace.



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May 4, 2011

Representative Linda Dorcena Forry, Co-Chair
Senator Sal N. DiDomenico, Co-Chair
Joint Committee on Community Development and Small Business
State House, room 26
Boston, MA 02133

Dear Chairpersons Forry and DiDomenico, and Committee Members:

I am writing to ask you to **oppose S. 77, S. 1844, S. 1848, H. 987, H. 993, H. 994, H. 995, and H. 1869**, eight bills that would severely weaken or repeal the Food Store Item Pricing Law – the most important and basic price disclosure law.

The price sticker may be old-fashioned, but no technology has yet been able to duplicate all its benefits: it is the easiest way to find the price of an item, compare prices around the store, and tally one's basket while shopping. In addition, it is the surest way to catch overcharges at the checkout or after going home, and it helps shoppers remember prices merely by checking the item in their cupboard.

By way of background, I am a former Assistant Attorney General in Consumer Protection, I served as Director of Consumer Education for five Secretaries of Consumer Affairs, as a consultant to the Undersecretary of Consumer Affairs in the Patrick administration, and am the primary author of the existing Food Store Item Pricing Law that these bills are now seeking to amend. I am also a member of the Massachusetts Consumers' Coalition, which counts as its members most of the state, local and private consumer groups in the Commonwealth.

Background

There are two sources of law governing "item pricing" (individual price marking of goods with price stickers or tags): the Food Store Item Pricing Law (Ch. 94, sec. 184B-E) which applies to grocery stores and other sellers that have food departments, and a separate regulation of the Attorney General's office promulgated pursuant to Ch. 93A applicable to retail stores other than grocery stores (940 CMR 3.13(1)).

The Attorney General modified his regulation in July 2003 (contrary to consumer advocates' wishes) to allow retail stores (not including supermarkets) to stop item pricing if they installed one self-service price check scanner every 5000 square feet. These aisle-based scanners must be capable of printing price stickers for shoppers to attach to items themselves. This "do-it-yourself" alternative to item

approach these bills use to take away that right sets a bad public policy precedent. Put simply, the waiver provision of these bills says to retailers if you pay the state some money, you no longer will have to comply with that law. It seems to me, that consumer rights should not be auctioned off like surplus state property. What's next? Car dealers who want to avoid Lemon Law responsibilities need only pay a higher licensing fee? Those regulated by health, safety or environmental laws can pay more to ease strict requirements?

- **With only one aisle scanner every 5000 sq. feet**, shoppers will have to walk two or three aisles over just to verify a price. Five thousand square feet is twice the size of the average larger home. Imagine having to walk through all that space just to find the price checking machine. Last session's version of the bill called for aisle scanners every 2500 square feet – still not in every aisle, but at least more conveniently located.
- **The aisle scanners prescribed in these bills are not required to print price stickers.** This is in conflict with the Attorney General's regulation that requires all such machines to print them. These bills only require that one machine in the entire store have that capability. That means shoppers will have to comb the entire store to find that one machine. This is an unreasonable provision that will only inconvenience shoppers. The whole point of allowing scanners to substitute for price stickers is that they be able to print stickers so shoppers can affix them to products themselves if they so desire. The momentary display of a price on an aisle scanner doesn't help the shopper recall the price of each item while shopping, at the cash register to catch overcharges, and once they get home to check against their receipt.
- The inspections and \$200 fines that apply to aisle scanners in the grocery department of stores like Wal-mart, CVS, and Target do not apply to any of the other aisle scanners in other parts of those stores, so there is less incentive to have those other scanners operating properly, though they are no less important.
- The bills provide that **stores 5000 square feet or less do not have to install any aisle scanners** in order to stop putting prices on items. Shoppers in these stores will be forced to play "guess the price" since shelf labels are often outdated, or not under the right item. Shoppers are being asked to give up an important tool – item pricing – and to get nothing in return as a substitute. That simply is not a fair deal. Not having even a single scanner in stores 5000 square feet or less means shoppers will have a harder time finding out the price in stores like CVS, Walgreens, Store 24, Cumberland Farms, and small grocery stores. **Any store, irrespective of size, that wants to stop item pricing should be required to have a least one printing aisle scanner.**
- Stores that continue item pricing would **no longer** have to put up a small price shelf label or sign with the **price big and bold, at least 1 inch high**, for any items that are exempt, making prices harder to read and to find for shoppers.
- **Stores that continue to item price would not have to put the sale/card price either on the item or on the shelf.** How is a shopper to know the sale price then?
- Stores that continue item pricing **would be allowed to stop price marking thousands of new items** because definitional changes, and additional exemptions or loosened exemption criteria in these bills. For example, new exemptions include: all snack foods regardless of price or size

The practical effects of these bills will negatively affect most shoppers:

- It will be harder to find out the price of items, and require the majority of shoppers to change their habits of where they look for the price.
- Shopping will take longer if you have to lug a cartful of items to a scanner several aisles over to verify prices.
- Catching overcharges at the register will be harder with no prices on items.
- If a scanner is broken, or price signs are missing or incorrect, the customer has no immediate recourse or rights.
- Shoppers will not be able to check their sales receipt at home for overcharges because the items will have no prices on them to compare to.
- Without stronger enforcement and higher fines, compliance will drop, meaning that aisle scanners may not function properly, and price signs could become outdated. (Similar aisle scanners have already been shown to be unreliable in other stores. See attached study.)
- Shoppers will become less price aware without the ability to see what they paid for items in their cupboard.
- In stores that still item price, 1000s of new items will not be required to have prices.

H. 993 – Eliminate Item Pricing in Stores Under 35,000 Sq. Feet

This bill would allow any supermarket or food department under 35,000 square feet to stop putting prices on products if their scanners are at least 98% accurate, and they install one in-aisle, do-it-yourself printing scanner every 5000 square feet.

As noted above, item pricing is an important consumer protection for shoppers and its value does not vary by the size of the store. Consumers who shop at smaller stores should be entitled to the same rights as those who shop at megamarkets.

These bills seek to exempt stores that are anything but small. A 35,000 square foot store is approximately 10 times the size of a CVS drugstore. Some full-size supermarkets would even qualify for exemption under this bill such as the Bread and Circus in Brighton (20,000 sq. ft.) and the Johnnie's Foodmaster in Charlestown (20,000 sq. ft.). These are not small mom & pop businesses with tiny stores that might need a break. They are part of large corporations, with many store locations.

To be exempt, the stores must install self-service price scanners. There is no requirement that signs be placed on the shelves of most items displaying the price, let alone in one-inch high numerals.

Over the years, supermarkets have evolved and now carry many lines of products, many of which are not grocery items. The consumer's desire for "one-stop shopping" has helped bring about this trend, as well as the promise of higher profits that supermarkets can achieve when selling non-grocery items.

Nonetheless, the typical shopper puts dozens of items, grocery and non-grocery, into his or her shopping cart, and has the same need to know the price of the items being selected for purchase irrespective of category. It is no less important for the consumer to know how much that the bag of sponges costs, as does the bag of potato chips. Particularly when so many items are being purchased at once, it is more difficult to remember prices of items in one's cart unless they are price marked individually. Further, without having prices on items, the customer will have no way to spot and challenge potential overcharges at the cash register, nor have the ability to compare one's sales receipt at home again the prices on the items.

All eight of these bills disserve the shopping public and I request that the committee vote each out unfavorably.

- *Shoppers like item pricing, and do not want to see it eliminated.*

There is a long history of consumers in Massachusetts finding value in and wanting to retain item pricing in stores. In 2008, WBZ Call for Action conducted a telephone study about item pricing for Consumer World which was released in the summer of 2009. They questioned over 200 consumers. (See attachment.)

In that study, two-thirds of respondents said that their preferred way to determine the price of an item was by looking at the price sticker or tag on the item, with 92% saying it helped them find the price easily.

About 70% of those questioned said that item pricing helped them compare prices in the store, and catch scanners errors when checking out or by checking the price on their sales receipt against the price on the item after they got home. Eighty-eight percent of respondents said that benefits like these were worth the extra two or three cents it might cost to individually price mark goods.

Bottom line, 95% of the respondents wanted to keep the current law on the books that require most items in supermarkets to be price marked.

A decade earlier, in 1997, the Massachusetts Consumers' Coalition conducted a massive survey of consumer attitudes on this subject with over 1600 consumers responding.

When asked the ultimate question of whether they wanted stores to continue to mark prices individually or to substitute electronic shelf labels for both paper unit pricing shelf labels and item pricing stickers, 81% of consumers chose to keep item pricing.

- *Consumers don't want to use self-service price check scanners.*

Most of these bills seek to eliminate prices on items and instead substitute in-aisle scanners where customers would bring their purchases in order to find out the price.

In that 2008 survey by WBZ Call for Action, when presented with the various technological alternatives to item pricing (self-service scanners and self-service scanners that print price stickers), between 92% and 96% of respondents rejected them as a substitute for price stickers. Presumably, some of those surveyed had experienced aisle scanners first hand at some of the retailers that were allowed to start using them in 2003 under the Attorney General's revised item pricing regulation. Confirming this theory, 95% of survey respondents said they would prefer that retail stores like Target, CVS, and Home Depot went back to putting prices on items.

In a similar 2003 survey conducted by Consumer World, when presented with the various technological alternatives to item pricing (self-service scanners, self-service scanners that print price stickers, and electronic shelf labels), consumers resoundingly rejected all of them by as much as a two-to-one margin, with self-service scanners being rejected the most.

In summary, shoppers find item pricing to be a valuable consumer tool and they have rejected all the technological alternatives.

failed inspections for proper signage. But according to them, that was an improvement because the prior year, nearly 40% had failed.

Without item pricing, and with spotty compliance with sign requirements, shoppers there, as well as here, will have difficulty even finding out the price, let alone whether it is correct or not. We should learn from other states' mistakes, and not duplicate them.

- *Too many categories of items are exempted from price marking.*

Some of these bills greatly expand the list of items that do not have to be priced in stores without aisle scanners. In some bills, this includes all sale items (where most scanning errors occur), end-aisle and freestanding displays of products (again where pricing mistakes can occur), and at least seven other categories of items.

- *The bills conflict with existing regulations of the Attorney General's Office.*

Many provisions conflict with the Attorney General's current item pricing regulation, such as:

- ◆ Different items are covered or not covered;
- ◆ Different sign requirements are included;
- ◆ Different types of self-service scanners are required; (For example, the AG's regulation requires that scanners be able to print price stickers for the consumer, while key bills before you only require that they display the price for a few seconds.)
- ◆ Different fines and penalties apply;
- ◆ In a letter a few years ago to one of the House's proponents of allowing supermarkets to install aisle scanners instead of price marking their goods, the Attorney General's Chief of the Public Protection Bureau wrote, "[our new regulations] apply only to non-grocery retail stores, and we recommend against merging the two item pricing schemes."

Consumers should not have to hunt for the price when they shop, nor lug a cartful of items around the store to get the price – as the average grocery shopper would be forced to do. Disclosing the price to customers right on the item is one of the most basic consumer protections available to shoppers. For all the foregoing reasons, these bills offer few consumer benefits and ought not to pass.

Conclusion

While there are now technological advances such as aisle scanners and electronic shelf labels, consumers and consumer advocates find it more beneficial to maintain price stickers on items. The old-fashioned sticker is the best way to identify the price of an item, compare prices in the store, and double-check the cash register scanner for overcharges. Stickers may be old fashioned, but they still work better than any high-tech alternative.



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FOR RELEASE:
July 23, 2009

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**SURVEY: SHOPPERS REJECT AISLE SCANNERS;
PREFER PRICES ON ITEMS**

On the eve of state house hearings on a dozen bills to allow supermarkets to stop marking prices on items, a new survey reveals that shoppers want more price disclosure, not less. Nine out of 10 say that other stores that already installed self-service price scanners in their aisles should go back to item pricing.

In late 2003, revised item pricing regulations of the Attorney General's office allowed non-grocery retailers to stop price marking their merchandise if they posted small price signs on shelves and installed do-it-yourself price scanners in store aisles, one every 5000 square feet.

Shoppers never warmed up to the idea. According to Consumer World, consumer sentiment went from a 60-percent disapproval rate just before the change was implemented, to over 90-percent five years after stores like Home Depot, Target and CVS made the switch from price tags to aisle scanners.

"Shoppers have found it inconvenient to hunt down scanners several aisles away just to find out the price when it is not marked on the item and the shelf sign is missing or outdated," commented Edgar Dworsky, founder of ConsumerWorld.org, and author of the state's food store item pricing law.

The survey [attached], conducted for Consumer World by Call for Action, a nonprofit consumer hotline, questioned 208 respondents by telephone April 28 – June 17, 2008. The results of the survey were just released today to coincide with state house hearings next Monday on 13 bills that would further weaken the state item pricing law. Most of the bills would allow grocers (not just other types of retailers) to install aisle scanners instead pricing marking their goods. Some bills would also dramatically cut fines and severely limit inspections of stores.

Consumer World also today released the results of a test of 144 aisle scanners at 12 locations of six major retail chains, and found that 70% of them failed to function properly or otherwise comply with state regulations that have permitted them in non-grocery stores since 2003. [See separate release.]

---MORE---

Shopping Survey

208 respondents questioned by telephone April 28 – June 17, 2008
by WBZ Call for Action for Consumer World

1. When you are thinking about buying an item located on a shelf or rack in a self-service retail store or supermarket, what is your PREFERRED way to determine the price of that item? Do you prefer to check...

66% a The price sticker or tag on the item 30% b The label on the shelf 1% c A sign
1% d An advertisement 0% e A self-service price scanner 1% f I don't check the price ___ g Other_

2. In which of the following ways, if any, is having the price right on the item useful to you? Please say "yes" or "no" to each statement I read.

92% a. It helps me find out the price of the item easily.
69% b. It helps me compare the price of the item I select with other items in the store.
69% c. It helps me at the register to check that I am being charged the correct price.
74% d. It helps me compare items against my register receipt later to check for overcharges.
46% e. It helps me remember prices at home just by looking at the sticker on the item.
3% f. I don't find having the price on the item to be useful.

3. Let's say it costs stores a few cents per item to individually price-mark merchandise.
Are the benefits of having the price on the item worth the cost? 88% a YES 12% b NO
-

4. Some stores are considering installing self-service price check scanners around the store so shoppers can walk over to check prices of items. If stores do this, they want to **stop** marking individual prices on the item. **Under these circumstances...**

Do you 8% a APPROVE or 92% b DISAPPROVE of stores removing individual prices?

5. Some stores are considering installing self-service price check scanners around the store that print price stickers so shoppers can put prices on items themselves. If stores install this type of scanner, they want to **stop** marking individual prices on the item. **Under these circumstances...**

Do you 4% a APPROVE or 96% b DISAPPROVE of stores removing individual prices?

6. State law currently requires that most items in supermarkets be price-marked.
Do you support keeping this law on the books? 95% a YES 5% b NO
-

7. Some stores like Target, CVS, Home Depot, and others were allowed to stop putting prices on items because they installed self-service price check scanners in their stores. **Would you prefer that these types of stores went back to putting prices on items?** 95% a YES 5% b NO
-

8. For statistical purposes, can you tell me which bracket your age falls into?
3% a Under 18 18% b 18-35 36% c 36-49 28% d 50-65 15% e over 65
-

9. Indicate gender: 62% a Female 38% b Male

found in their Medford location (only one of which was fully compliant), none in their Peabody warehouse, and only one in their Stoneham store. Yet, the chain appeared to be taking full advantage of the law by not price marking most non-grocery items there.

At Home Depot, one out of five scanners didn't scan and nearly 30% did not print price labels. At Target, one out of three did not print prices, and only three machines out of a total of 36 were equipped with tape so customers could adhere printed price slips to products. Jammed or out-of-paper printers accounted for the printing failures.

The chain with the best overall record was Wal-mart, but even there, barely half of their aisle scanners fully complied with the law.

Additional findings:

- ◆ Overall, while 92% of scanners could display prices on their computer screens, one-quarter of all machines tested failed to print price stickers, one in five scanning stations were missing required signs, and only 30% of machines passed all tests: scanning, printing, displaying two signs, and providing some method to affix prices to goods ("complying scanning stations" on **attached chart**);
- ◆ Despite Target's poor overall score, they had the highest percentage of scanners that scanned properly in big box stores. Their scanners were also the most visible.

"The test results are disappointing," said Dworsky. "Continued lax enforcement of item pricing by the AG, and careless implementation and maintenance of aisle scanners by stores combine to leave shoppers less protected, less informed, and more inconvenienced. Pending legislation that would allow scanners like these to be installed in supermarkets is misguided at best."

Price stickers on items are an important tool for consumers. In a survey conducted by Consumer World last year, 95% of Massachusetts shoppers said they wanted stores like Target, CVS, and Home Depot to go back to putting prices on goods [see separate press release].

[chart attached]

###

Consumer World[®], launched in 1995, is a Boston-based, public service, non-commercial consumer resource guide with over 2000 links to everything "consumer" on the Internet. **Edgar Dworsky**, the founder and editor of ConsumerWorld.org and MousePrint.org, is a former Assistant Attorney General in the Consumer Protection and Anti-trust Division of the Massachusetts Attorney General's Office.

Fact Sheet – H. 987/S. 1844
Amending the Food Store Item Pricing Law to Allow
Removal of Price Stickers at Supermarkets; Exempting Warehouse Clubs

In short, these bills would allow supermarkets and grocery departments in other types of stores to stop putting price stickers on items ("item pricing") if they install self-service price scanners without printers in some store aisles (possibly in every other aisle only). The bills also provide:

- Stores with aisle scanners would only have to put up a small price label or sign on the shelf, and in other stores, the price does not even have to be one-inch high as in the current law.
- Only one scanner must be able to print price stickers for customer use, even in superstores.
- Existing scanners in grocery departments, like at Wal-mart, no longer have to print prices.
- Some small stores like drug stores and convenience stores could stop putting prices on grocery items and not even have to install a single scanner for customers to check prices.
- Warehouse clubs like BJ's would no longer be covered by this law, so state inspections of groceries would stop, thus missing/wrong price stickers or signs will not be directly fineable.
- In stores that still item price, sale prices using a store card will not be required on items nor on shelves; and thousands of additional items will no longer need to have price stickers.
- Accuracy standards for checkout scanners is reduced to allow 1 in 20 items to scan wrong.

What this means for the average shopper:

- It will be harder to find out and compare the price of items; and sale items may be harder to spot since in some item pricing stores, the sale price need not be affixed nor displayed.
- Shopping will take longer if you have to lug a cartful of items to a scanner several aisles over to verify prices. If you want to print stickers, you'll have to find the one machine that does it.
- Catching overcharges at the register will become nearly impossible without prices on items.
- If an aisle scanner is broken, or price signs are missing, the customer has no immediate recourse or rights.
- You will not be able to check your sales receipt at home for overcharges because the items will have no prices on them to compare to.
- Without stronger enforcement and higher fines, compliance will drop, meaning that aisle scanners may not function properly, and price signs could become outdated. (Similar aisle scanners have been shown to be unreliable in other stores with 70% failing to comply.)
- Price awareness will drop since you cannot see what you paid for items in your cupboard.
- In stores that still item price, thousands of new items will not be required to have prices.

**TESTIMONY IN FAVOR OF ITEM PRICING RELIEF (H987 & S1844)
JOINT COMMITTEE ON COMMUNITY AFFAIRS & SMALL BUSINESS**

MAY 4, 2011

**MASSACHUSETTS STATE HOUSE, ROOM B-2
BY CHRISTOPHER FLYNN, PRESIDENT, MFA**

FOR THE RECORD MY NAME IS CHRISTOPHER FLYNN AND I AM PRESIDENT OF THE MASSACHUSETTS FOOD ASSOCIATION REPRESENTING THE GROCERY AND SUPERMARKET INDUSTRY IN MASSACHUSETTS INCLUDING THE RETAILER (LARGE CHAINS TO CORNER STORE GROCERS), FOOD BROKERS, WHOLESALERS AND MANUFACTURERS.

I AM HERE TODAY TO TESTIFY IN SUPPORT OF H987 & S1844 "AN ACT RELATIVE TO CLEAR & CONSPICUOUS PRICE DISCLOSURE". THE FACT IS THAT PRICE ACCURACY AND INDIVIDUAL ITEM PRICING CANNOT GO TOGETHER. THE STICKERS ARE THE PROBLEM. AN AVERAGE SIZE GROCERY STORE HAS 40 TO 50 THOUSAND ITEMS AND EACH ITEM HAS MULTIPLE UNITS WHICH MAKE THE CHANCE OF HUMAN ERROR IN ITEM PRICING A FORGONE CONCLUSION. THE CURRENT ITEM PRICING LAW IS A SET UP FOR FAILURE. IF YOU WANT TO PUNISH RETAILERS AND SET-UP A "GOTCHA LAW" MENTALITY, THAT IS WHAT THE CURRENT LAW ACHIEVES.

THE PROPOSALS BEFORE YOU IN H987 & S1844 SET OUT A LEGISLATIVE AND REGULATORY SCHEME THAT PROMOTES PRICE ACCURACY WHILE SETTING REASONABLE CONSUMER AND LABOR PROTECTIONS UNDER THE DIRECTOR OF THE DIVISION OF STANDARDS. THESE BILLS ARE THE RESULT OF THIS COMMITTEE'S WORK OVER THE LAST SEVERAL SESSIONS AND INVOLVE A LOT OF COMPROMISE AND CONCESSIONS IN ORDER TO GET RELIEF FROM THE BURDENSOME INDIVIDUAL PRICING REQUIRMENTS. I WANT TO STRESS THE FOLLOWING:

1. THESE PROPOSALS DO NOT DO AWAY WITH ITEM PRICING. THE LAW IS STILL IN PLACE AND RETAILERS MUST APPLY (BY INDIVIDUAL STORE LOCATION) WITH THE DIVISION TO QUALIFY FOR AN EXEMPTION FROM THE INDIVIDUAL ITEM PRICING REQUIREMENTS. TO QUALIFY A RETAILER MUST:
 - A. HAVE SCANNARS THAT TEST 98% ACCURATE (THE NATIONAL STANDARD);
 - B. RETAILERS MUST PAY A FEE OF \$500-\$1,000 ANNUALLY TO TAKE ADAVANTAGE OF THE EXEMPTION OF WHICH UP TO 3.5 MILLION DOLLARS IS APPROPRIATED ANNUALLY TO THE DIVISION OF STANDARDS AND LOCAL WEIGHTS & MEASURES OFFICIALS FOR ENFORCEMENT;

THREE YEARS AGO WHEN THEY TESTIFIED IN OPPOSITION TO THE RELIEF BILLS IN NASSAU COUNTY. THEY INDICATE THAT THEIR FEARS OF JOB LOSS WERE UNWARRANTED AND IN FACT BETTER TECHNICAL POSITIONS BECAME AVAILABLE. THEY ALSO INDICATED THE CONCERN THAT THERE WOULD BE PRICE DISCREPENCIES WAS ALSO ERRRONIOUS AND THAT THE RELIEF LAW ACTUALLY RESULTED IN GREATER PRICE ACCURACY;

- E. ALL OF THE CONSUMER SURVEYS CONDUCTED BY THE CONSUMER GROUPS ARE MEANINGLESS BECAUSE THEY JUST ASK IF THE CONSUMER WANTS INDIVIDUAL ITEM PRICING AND DO NOT LAY OUT THE CONSUMER SAFEGUARDS AND PROTECTIONS IN THE PROPOSED BILL AND DO NOT CONSIDER THEREAL VALUE OF CONSUMER ACCURACY;
- F. FOOD STORES OPPERATE UNDER A SEPARATE LAW FROM NON-FOOD STORES AND ARE AT A COMPETITIVE DISADVANTAGE WITH MANY STORES WHO ARE SELLING THE EXACT SAME PRODUCT. MANY OF THESE STORES ARE EXEMPT FROM PRICING NON FOOD ITEMS UNDER AN ATTORNEY GENERAL REGULATION WHILE FOOD STORES UNDER CHAPTER 94 HAVE TO PRICE MARK ALL PRODUCTS UNLESS OTHERWISE EXEMPTED, AND;
- G. FINALLY, UNDERSTAND THAT ANY RETAILER WHO DOES NOT COMPLY WITH THE CONDITIONS OF THE PROPOSED LAW, IS SUBJECT TO LOSE THERE EXEMPTION OF THEIR ITEM PRICING RELIEF FOR UP TO ONE YEAR AT THE DISCRETION OF THE DIRECTOR OF THE DIVISION OF STANDARDS.

WE RESPECTIVELY REQUEST YOUR FAVORABLE ACTION ON THESE BILLS --- WE NEED RELIEF NOW IN ORDER TO LEVEL THE PLAYING FIELD, GIVE AN OPPORTUNITY TO PROMOTE PRICE ACCURACY AND GET AWAY FROM THE SET-UP FOR FAILURE IN THE CURRENT LAW WHICH PROMOTES THE USE OF INDIVIDUAL STICKERS WHICH ARE THE PROBLEM. THANK YOU.

SUBMITTED TO: Chairman Sal N. DiDomenico and Chairwoman Linda Dorcena Forry, and members of the Joint Committee on Community Development and Small Businesses
SUBMITTED BY: Deirdre Cummings, Legislative Director
DATE: May 4, 2011

Testimony in Opposition to bills which would weaken or repeal the Food Store Item Pricing Law: S.77, S.1844, S.1848, H.987, H.993, H.994, H.995, and H.1869

My name is Deirdre Cummings, and I am the Legislative Director for the Massachusetts Public Interest Research Group (MASSPIRG). MASSPIRG is a non-partisan, non-profit member supported public interest advocacy organization. MASSPIRG strongly supports maintaining the current Food Store Item Pricing Law, and **opposes S.77, S.1844, S.1848, H.987, H.993, H.994, H.995, and H.1869** which would severely weaken or eliminate the popular item pricing requirement in supermarkets and food departments in other retail stores, and replace it with inferior pricing alternatives.

The food store item pricing law requires supermarkets to put price stickers on most items in supermarkets. It is a long-standing, efficacious, and overwhelmingly popular consumer protection. While MASSPIRG does not categorically oppose the adoption of new pricing technology, we do oppose legislation that would allow stores to substitute a pricing mechanism that offers **less** consumer benefit than what we have today. In considering any change to our current retail pricing system, it must first provide equal or better benefits to the consumer to be considered as a substitute. The eight proposals before you today do not provide equal or improved consumer benefits.

Background:

First, as a consumer advocate, I give special weight and importance to the basic premise that consumers have the "right to know." Information that is accurate, comparable, and meaningful is the tool that consumers use to exercise their "clout" in the marketplace. When basic consumer information is misleading, absent, random or not in a form which can be compared, the consumers' power in the market place is unfairly and needlessly compromised. When the consumer's power or "choice" is compromised, the industry (retailer, manufacturer, and advertiser) is then better able to take advantage of the consumer.

Basic, unadulterated price disclosure is more important today than it has ever been. Consumers are inundated with multi billion dollar marketing strategies to get us to buy their products – just take supermarkets for example. It is not by accident that the milk – one of the most common supermarket items is found in the furthest most spot in the store it is a plan to get us to buy more on the way out; the store brand or generics are on the top or bottom shelves, and the check out is loaded with items they hope we will throw in our carts. Stores offer all sorts of sales and plans to get "bargains": shopper saver cards, 10 for \$10, 3 for price of 2, earn 25 points to get free turkeys ect. We have 1 day sales, 3 day sales, special event sales, and end- aisle displays offering sales; advertising signs on the floor, on

the shelf, and hanging from ceiling. These may be good sales or may not – but in order for the consumer to wade through all these marketing strategies – we need to make sure they have access to the very basic, easy to-find and compare price information.

To help consumers navigate the market place and to empower them with information to be active participants in our market economy we adopted a set of basic price disclosure laws – with out which, the “free market” is compromised.

Consumers’ power in the market place is further compromised if we don’t get what we pay for or are overcharged. Price accuracy and the ability for consumers to have a check on what retailers charge us is also a fundamental consumer protection.

Unit Pricing

One important consumer protection today is the almost 30 year old practice of unit pricing (the practice of disclosing the cost of an item by a basic "unit"). Unit Pricing came into being when packages started appearing on the shelf in many different sizes and an increasing number of brands, which compromised the consumers' power to compare prices.

The concept is simple but extremely important to the consumer. This basic "right to know" principal allows the consumer to weed through the flashy advertising, packaging and placement of that item and easily and accurately use price as one of the factors in comparing products and deciding what product to purchase.

Item Pricing

Separate from the Unit Price Law is another consumer protection law which states that all items be marked with a price tag. These two requirements offer different consumer conveniences and consumer "tools". The item price tag gives consumers the ability to **double check what they are being charged** at the register to the price tag on the item. And is the only way they can check to see if they are being overcharged. CVS had been in the news a while back for overcharging consumers at the register and for continuing to overcharge days later despite being made aware of the error. The price tag is the only way the consumers can catch many types of overcharges.

The item price tag helps the consumer **locate the unit price tag on the shelf** (they match the retail price). The item price tag enables a consumer to **tally up the items in their cart** at any given time and allows them to double check their receipt.

The item price tag **helps us compare prices** – both on the shelves between brands but increasingly between what we may have already put in our shopping cart to the ever increasing end aisle sales.

Typically, shoppers will come upon a display of so called “sale” items, the price tag allows us to compare the price of a competing brand in our cart to the price of what is on sale at the display.

The item price tag **deepens consumer price sensitivity** - if every time I see a can of tuna and I also see the price, it is easier for me to associate the two. Over time, I may become more aware of even slight changes to price. To use a personal experience, the item price tag also allows me to easily know what I paid for something last week. For example, I saw coffee on sale this week and I wanted to know how it compared to a sale on that same item last week. I checked my can of coffee in the cupboard I bought last week and learned it was a "better" sale. Lastly, we know from surveys that consumers overwhelmingly like the individual price tags on their supermarket items.

Consumers want price stickers

The results of a survey released in 2009, conducted by WBZ Call for Action and Consumer Word, a public service and consumer education web site, last year, confirmed the public's support for the price sticker. The survey findings were similar to findings of the same survey in 2003. Findings of 2008 Call For Action phone survey:

- 66% of those surveyed said their preferred way to determine prices is the sticker
- When asked how or why the sticker is important – the findings were: find the price easily (92%); compare the prices of several items (69%); make sure the correct price is charged at the register (69%); and double-check the price on their sales receipt against the price on the item at home (74%).
- 88% said that even if it costs stores two or three cents per item to individually price-mark merchandise, the benefits of having the price on the item were worth the cost.
- 92% disapproved of substituting self service scanners around the store for individual prices on items.
- 96% of shoppers disapproved of substituting self-service price check scanners that print price stickers for the current system in which stores put on the price stickers themselves.
- 95% would prefer that stores like Target, CVS, Home Depot and others who have installed the scanners go back to putting prices on items.
- 95% would support keeping the law that requires most items in supermarkets be price marked.

Over time, the item pricing laws has been amended to accommodate the retailers – we have exemptions for frozen food, candy bars, loose goods, and 400 “pick your own items” at each store’s discretion, for example. Even with these modifications the item pricing laws are a critical consumer tool which empowers consumers in the market place and must be protected.

How these bill would impact consumers:

- It will be harder to find out the price of items; and sale items may not have the sale price displayed on the shelf, nor scan the sale price or “card price” at aisle scanners.
- Shopping will take longer if you have to lug a cartful of items to a scanner several aisles over to verify prices.
- Catching overcharges at the register will be harder with no prices on items.
- If a scanner is broken, or price signs are missing or incorrect, the customer has no immediate recourse or rights.
- Shoppers will not be able to check your sales receipt at home for overcharges because the items will have no prices on them to compare to.
- Without stronger enforcement and higher fines, compliance will drop, meaning that aisle scanners may not function properly, and price signs could become outdated. (Similar aisle scanners have been shown to be unreliable in other stores with 70% failing to comply.)
- Shoppers will become less price aware without the ability to see what you paid for items in your cupboard.
- In stores that still item price, 1000s of new items will not be required to have prices.

The 8 item pricing bills being heard today undermine, roll back or eliminate a vital consumer protection and consumer empowerment tool. We urge you to oppose them.

H. 987/S. 1844 – Item Pricing Elimination via Fee Waiver and Installation of Aisle Scanners

These item pricing bills would allow any food store or retailer with a food department to pay a waiver fee of as little as \$500 (and only up to \$1000) to the state to buy their way out of the item pricing requirement of the state food store law. They then have to install self-service price scanners one every 5000 sq. feet, they would no longer have to put price stickers on items. This aisle scanner technology is disfavored by shoppers and has proven very unreliable in tests. (7.23.2009, Consumer World, Survey: Shoppers reject aisle scanners; prefer prices on items)

Specific provisions of these bills will adversely affect shoppers:

The bills would take away a longstanding consumer right – to have the price right on the item – which two out of three shoppers say is the way they prefer to learn what something costs. The approach these bills use to take away that right sets a bad public policy precedent. Put simply, **the waiver provision of these bills says to retailers if you pay the state some money, you no longer will have to comply with that law.** Consumer rights should not be auctioned off like surplus state property. What's next, having two sets of public health regulations based on how much money businesses and or retailers can pay for licensing fees? Or the Do Not Call list applying to only those telemarketers who cannot pay the state a high “registration” fee?

With only one aisle scanner every 5000 sq. feet, **shoppers will have to walk two or three aisles over just to verify a price.** Five thousand square feet is twice the size of the average larger home. Imagine having to walk through all that space just to find the price checking machine. Last session's version of the bill called for aisle scanners every 2500 square feet – still not in every aisle, but at least more conveniently located.

The aisle scanners prescribed in these bills are not required to print price stickers. This is in conflict with the Attorney General's regulation that requires all such machines to print them. These bills only require that one machine in the entire store have that capability. That means shoppers will have to comb the entire store to find that one machine. This is an unreasonable provision that will only inconvenience shoppers. The whole point of allowing scanners to substitute for price stickers is that they be able to print stickers so shoppers can affix them to products themselves if they so desire. The momentary display of a price on an aisle scanner doesn't help the shopper recall the price of each item while shopping, at the cash register to catch overcharges, and once they get home to check against their receipt.

The inspections and \$200 fines that apply to aisle scanners in the grocery department of stores like Wal-mart, CVS, and Target do not apply to any of the other aisle scanners in other parts of those stores, so there is less incentive to have those other scanners operating properly, though they are no less important.

The bills provide that stores 5000 square feet or less do not have to install any aisle scanners in order to stop putting prices on items. Shoppers in these stores may not find prices since shelf labels are often outdated, or not under the right item. Shoppers are being asked to give up an

important tool – item pricing – and to get nothing in return as a substitute. That simply is not a fair deal. Not having even a single scanner in stores 5000 square feet or less means shoppers will have a harder time finding out the price in stores like CVS, Walgreens, Store 24, Cumberland Farms, and small grocery stores. Any store, irrespective of size, that wants to stop item pricing should be required to have a least one printing aisle scanner.

Stores that continue item pricing would **no longer** have to put up a small price shelf label or sign with the price big and bold, at least 1 inch high, for any items that are exempt, making prices harder to read and to find for shoppers.

Stores that continue to item price would not have to put the sale/card price either on the item or on the shelf. How is a shopper to know the sale price then?

Stores that continue item pricing **would be allowed to stop price marking thousands of new items because definitional changes, and additional exemptions or loosened exemption criteria in these bills.** For example, new exemptions include: all snack foods regardless of price or size sold near the checkout, and all meat, fish, produce, deli, and bakery items. [The latter group erroneously was missing the word “unpackaged” before them.] Disposable paper and plastics products and light bulbs would also be exempt in food departments.

The bills completely **exempt warehouse clubs like BJ’s from any price marking requirements, inspections, or oversight of grocery items.** That means shoppers could find no prices on items or on shelves, and would have no recourse. That means shoppers could find wrong prices on items or on shelves, and have no recourse. That means shoppers would not even have access to aisle scanners in the grocery department because they are not required. That means shoppers would not even be entitled to an itemized sales receipt because no part of the food store law, including the section on receipts, would apply to warehouse clubs. Warehouse clubs as a class account are among the biggest offenders of the current pricing law. In one two year period, BJ’s racked up 2800 violations and nearly \$150,000 in fines. They are the last category of store that should be granted special treatment. Consumers who shop at warehouse clubs are entitled to the same protections they would have at conventional stores. To not require similar types of price disclosure at warehouse clubs, puts all other retailers at a competitive disadvantage.

The bills completely **exempt grocery items found in other stores like Home Depot and Staples** because they redefine a food department as a store with at least 200 food items (instead of the current 10).

The checkout scanner **accuracy standard was reduced from 98% to 95%** erroneously, offering consumers less protection than historically provided.

Inspections of stores are reduced from no more than once a week to no more than once a month.

The maximum inspection fine of \$2500 has not been increased in a quarter of century. For many stores, the current fine is viewed as a cost of doing business, and many gladly pay it rather than comply with the price disclosure law. **Increasing the individual fine from \$100 to**

\$200 accomplishes nothing in the way of deterrence unless the cap on fines is also raised substantially. Without high penalties and strong enforcement, compliance will be low. It is also unclear if fines for aisle scanners are included or excluded from the general inspection cap.

The consumer's right to sue a store for violations under Chapter 93A has been eliminated. If inspectors are only required to test stores once every two years, empowering the customer to seek meaningful redress is all the more necessary.

Multiple consumer protections that could have been added to these bills were omitted, such as requiring daily testing of aisle scanners, including a scanner functionality guarantee, requiring self-audits of sale prices before a sale begins to ensure that prices have been accurately entered into the checkout system, etc.

The bills fail to merge all item pricing regulations into one comprehensive state law, treating all sellers equally, and putting them all on a level playing field.

H. 993 – Eliminate Item Pricing in Stores Under 35,000 Sq. Feet

This bill would allow any supermarket or food department under 35,000 square feet to stop putting prices on products if their scanners are at least 98% accurate, and they install one in-aisle, do-it-yourself printing scanner every 5000 square feet.

As noted above, item pricing is an important consumer protection for shoppers and its value does not vary by the size of the store. **Consumers who shop at smaller stores should be entitled to the same rights as those who shop at megamarkets.**

These bills seek to **exempt stores that are anything but small.** A 35,000 square foot store is approximately 10 times the size of a CVS drugstore. Some full-size supermarkets would even qualify for exemption under this bill such as the Bread and Circus in Brighton (20,000 sq. ft.) and the Johnnie's Foodmaster in Charlestown (20,000 sq. ft.). These are not small mom & pop businesses with tiny stores that might need a break. They are part of large corporations, with many store locations.

To be exempt, the stores must install self-service price scanners. There is no requirement that signs be placed on the shelves of most items displaying the price, let alone in one-inch high numerals. Consumers would be forced to cart their goods over to aisle scanners just to learn the price. And, there is no requirement that the card price as well as the non-card price be displayed by these scanners.

The number of items exempt from item pricing if the store wants to continue marking prices is also substantially increased by: eliminating the need to put prices on sale items (a category where many overcharges occur), taking size and price limits off the candy exemption, increasing from 60 to unlimited the number of end-aisle/freestanding displays that are exempt, increasing from 400 to up to 2500 the number of "pick your own" exemptions, exempting all food and groceries in warehouse clubs, and all non-grocery items in aisle scanner stores. The fewer items with prices, the more difficult it is for shoppers.

The bill also sets up a study committee and a pilot test for item pricing removal in as many as 50 stores. Over the course of the summer of 2007, a similar committee met repeatedly to discuss such a test, and the pilot ballooned from 15 stores to 150 stores. Ultimately the group could not agree on how such a test should be carried out.

S. 1848/H. 994/H. 995 – Exempt More Food Departments, No 93A Enforcement

These bills **raise the threshold for requiring a food department to price mark groceries from stores having at least 10 food items to only those with 200 or more items.** That means that fewer stores will be covered by the law and grocery items in many stores currently required to be price marked, no longer will be.

S. 1848 also requires printing aisle scanners, but **give shoppers no price information at all on the shelf, thus requiring all items to be checked at a scanner several aisles away just to determine the price.** For stores that continue to item price, **thousands of additional exemptions are added,** including all end-aisle displays and all sale items. Since there tends to be a greater number of sale items that don't ring up properly at the checkout than regularly priced items, catching instances of overcharging on sale items will be nearly impossible without having price stickers on those items.

H. 995 **eliminates the requirement of the store having to keep a price list,** thus if there is a question about a scanned price, no reference will be available to determine the correct price. It also eliminates the consumer's rights under Chapter 93A to enforce violations of the law.

H. 1869 – Repeals Item Pricing

This bill simply repeals item pricing in food stores and food departments and offers no alternatives for price disclosure for shoppers. Such a bill is completely contrary to the tradition in Massachusetts that sellers are required to disclose information to buyers and prospective buyers so they can make informed buying decisions.

S. 77 – Narrows Item Pricing to Only Include Grocery Items

This bill would water-down the supermarket item pricing law to only require stores to put prices on grocery items, rather than on all items in their stores.

Over the years, supermarkets have evolved and now carry many lines of products, many of which are not grocery items. The consumer's desire for "one-stop shopping" has helped bring about this trend, as well as the promise of higher profits that supermarkets can achieve when selling non-grocery items.

Nonetheless, the typical shopper puts dozens of items, grocery and non-grocery, into his or her shopping cart, and has the same need to know the price of the items being selected for purchase irrespective of category. It is no less important for the consumer to know how much that the bag of sponges costs, as does the bag of potato chips. Particularly when so many items are being

purchased at once, it is more difficult to remember prices of items in one's cart unless they are price marked individually. Further, without having prices on items, the customer will have no way to spot and challenge potential overcharges at the cash register, nor have the ability to compare one's sales receipt at home against the prices on the items.

No proposed Pricing alternative provides all the benefits that item pricing provides:

- It is shoppers' primary and preferred way to find out the price of goods.
- It helps identify advertised goods by having a reduced price/sale sticker on the item.
- It allows shoppers to compare prices in the store away from the shelf where the item was located without having to go back to the original shelf location.
- It helps a shopper add up the approximate cost of goods in his/her basket.
- It is the surest way to spot an overcharge at the checkout merely by comparing the price on the item itself with the price on the scanner display.
- It helps shoppers spot overcharges when they get home by comparing the price charged on their sales receipt with the price marked on the item.
- It helps shoppers remember prices by merely checking the item in their cupboard before shopping (to help spot price increases or decreases at the store)
- It helps keep prices more competitive as consumers are able to easily use price as a factor in purchasing decisions. The market then interprets those purchasing decisions keeping some pressure on overall price inflation.

As stated in previous sections – Item Pricing is all about letting the free market work properly. When basic consumer information is misleading, absent or not in a form which can be used, consumer choice is impaired. When consumers cannot make meaningful choices, sellers – retailers, manufacturers, advertisers – gain an unfair advantage that allows them to warp the marketplace and take advantage of the consumer.

For these reasons stated throughout this testimony – I urge you to oppose these measures which undermine consumers' clout in the market place. Now, more than ever, as we are barraged with more and more sophisticated marketing strategies we should be focused on measures to enhance consumer information – and not diminish it.

TESTIMONY IN FAVOR OF ITEM PRICING RELIEF (H987 & S1844)
JOINT COMMITTEE ON COMMUNITY AFFAIRS & SMALL BUSINESS
MAY 4, 2011
MASSACHUSETTS STATE HOUSE, ROOM B-2
BY Jeff Dinneen, Roche Bros. Supermarkets

For the record my name is Jeff Dinneen and I am with Roche Bros. Supermarkets.

I am here today to testify in support of H987 & S1844.

Roche Bros. has made a significant investment in technology to comply with Massachusetts Item pricing laws. We used technology that enabled us to use a portable hand-held to check for price accuracy on all items in the aisles. This hand held technology was developed so that the hand held was another lane in our system.

We also used scanners in stores for Customers to check the price of an item in the aisles before deciding to purchase a product.

The technology investment was successful. The issues we have are when we have to add a price sticker to all products. It is in this area that we find the majority of errors.

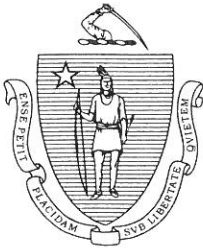
Adding price stickers to individual products, sets up numerous areas of failure.

- Associate puts wrong price on product – over 50 Associates have ability to price products in store.
- Price changes – this is the biggest failure point. We can have over 1,000 items per week changing in price. The process for a price change is to do the following:
 - a. take a cart to the first item to be changed
 - b. take all product off the shelf
 - c. take old price label off the product
 - d. put new price label on product
 - e. rotate product
 - f. put product back on shelf
 - g. put up new Unit Price Label
- This process is followed for all 1,000 items. Some areas of concern here:
 - a. Tucked product – when a person is assigned to put up a case of product, many times there are more items in the case to put up than there are spaces left on shelf, the Associates are trained to tuck the product behind another product. When an Associate does a price change it may not know that product is tucked. When spaces clear up and the tucked product is put in correct space, it has a different price on it than all the others.
 - b. When a product comes in by the case and is to be put up on shelf, the whole case is price marked, the remaining goes out back to be put up at a later time. When it is time for this overstock to be put on shelf, Associate may not check price and puts items on shelf with wrong price.

- c. We have many items that a Customer has picked up in one part of the store and latter in shopping experience, decided not to purchase. Instead of returning to original location, they may leave on a display or another aisle in store. When these items are returned to correct location, the price change may have already taken place and we have an item with a wrong price on it.
- d. Customer returns – returns item to Courtesy Booth, latter in day all saleable returned items are brought back to shelf, again price change may have occurred, so chance are product goes on shelf with wrong price.
 - Outside Vendor puts wrong price on product – he may have just left one of our Competitors and puts their price on product instead of ours.
 - Outside Vendor may have shipped in pre-priced or bullet priced items to store, this may not be the price that it is being sold for this week.
 - In the year 2001 – Roche Bros. implemented a price verification team. This consisted of 3 Associates that would go store to store to check every item in store for pricing accuracy. Currently it takes this team 4 to 6 weeks to do a whole store depending on size of store. If stickers were taken off items, this process could be done in 7 to 10 days.
 - Roche Bros. wants all prices to be accurate. Customers are very good at bringing products back to us that they feel they have been over charged. We do not get back many products where a Customer tells us we under charged them.
 - Roche Bros. wants Customers to be comfortable with our pricing, if a Customer gets and under priced item, many times they will think, “I got under charged for this item, but how many items did I get over charged for”
 -

Thank you for allowing me to testify today. If additional information is needed I can be reached at:

Roche Bros. Supermarkets
70 Hastings St.
Wellesley Hills, Ma. 02481
Attn: Jeff Dinneen
781-694-5432
jdinneen@rochebros.com



COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE

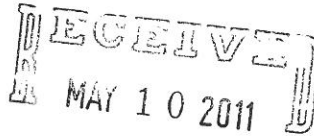
STATE HOUSE, BOSTON 02133-1053

SENATOR MICHAEL O. MOORE
2ND WORCESTER DISTRICT

ROOM 518, STATE HOUSE
TEL (617) 722-1485
FAX (617) 722-1066

COMMITTEES:

Community Development & Small Business - Chair
Elder Affairs - Vice-Chair
Environment, Natural Resources & Agriculture
Post Audit and Oversight
Bonding, Capital Expenditures and State Assets



BY: _____

May 2, 2011

The Honorable Linda Dorcena Forry
Joint Committee on Community Development and Small Business
State House, Room 26
Boston, MA 02133

Dear Chairwoman Forry,

I am writing to express my support for S.1844, An Act Relative to Clear and Conspicuous Disclosure.

During these very tough fiscal times when retailers are suffering from a decrease in sales, I believe we must enact policies that work to reduce the cost of doing business in our state. In this technological age, it makes sense to update our pricing laws that currently requires food stores to place a sticker on essentially every item they sell. By updating our pricing laws, we can help our local employers remain competitive and work to lower costs for our consumers.

As you know, in 2003, the Attorney General updated the regulations to allow non-food stores to not individually price items if they used "clear and conspicuous" display pricing along with scanners with printers for every 5,000 square feet of selling space. These stores also have to comply with the 98% accuracy standard established by the Consumer and Merchant Protection Act of 1998. I understand that the reaction of consumers to this change remains positive and pricing accuracy has increased. With the success of the pricing regulations for "non-food retailers" that allows for the use of scanning technology, we can use this as a model to apply to all food stores and food departments.

The legislation I filed amends our existing law to allow food stores and retailers with food departments to either (1) continue to item price the way that they presently do or (2) annually apply for a waiver from the pricing requirements by using pricing scanner technology as non-food stores are currently allowed to do. The stores that decide to apply for an item pricing waiver would be required to pay a fee depending on the size of the store and meet requirements that are mandated in the proposal and regulated by the Division of Standards.

As with non-food retailers, stores that are granted the waiver must have at least a consumer scanner for every 2,500 square feet of retail space with one scanner that produces a tag with the

scanned price. The stores with collective bargaining units must also submit a "no job loss" affidavit and outline the complaint procedure for employees so they will not suffer from wage, hourly or benefit losses due to the use of the scanners.

In order to ensure price accuracy, stores using this system may be inspected once a month or more if a consumer complaint is made. Scanner systems must also be inspected at least once in every 24 month period for scanner accuracy. In addition to fines for failing scanner inspections, the legislation also increases fines ranging from \$200 for each offense, up to a maximum of \$2500 per inspection, for violations including incorrect pricing, signage, overcharging.

Legislation to update our food item pricing has been filed for several sessions. It is time for the Legislature to act on these bills in order to relieve an unnecessary burden on our retailers and provide better pricing accuracy for our consumers.

I greatly appreciate your attention to this legislation of great importance to retailers and consumers across the Commonwealth.

Sincerely,

A handwritten signature in black ink that reads "Michael O. Moore". The signature is written in a cursive, flowing style.

Michael O. Moore
State Senator
Second Worcester District



Stop&Shop®

Testimony before the Massachusetts Joint Committee on Community Affairs and Small
Business
May 4, 2011

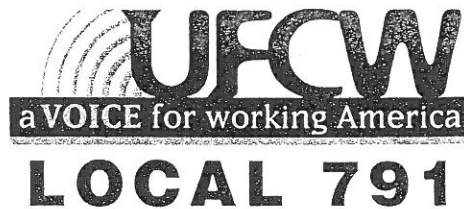
Chairperson DiDeminco and Chairperson Forry and members of the Joint Committee on
Community Affairs and Small Business:

My name is Joe Alicandro. I speak to you today on behalf of Stop & Shop Supermarket Company, and as the Regional Vice President of Store Operations for 72 Stop & Shop stores in Ma. Stop & Shop operates a total of 130 supermarkets and we employ more than 20,850 full and part-time union associates in this state. By way of background, I began my career 31 years ago with Stop & Shop. I was born Cambridge and currently reside in Arlington, MA. Today I am asking that you support Senate Bill 1844 and House Bill 987, An Act Relative to Clear and Conspicuous Price Disclosure.

The proposal would allow retailers to apply for an annual waiver from the manual item pricing requirements that food stores and food departments presently have to follow under the state's item pricing statute. The proposal does not do away with the state's individual item pricing statute for food stores and food departments. It gives food retailers the option of utilizing modern technology. It requires food stores to install consumer scanner pricing system for customers to check the price of items throughout the stores. Each food retailer is required to have one scanner every 5,000 square feet at a fixed location. Stores have to maintain a pricing accuracy rate of at least 98% to retain the waiver for the year. The systems will be tested by the Deputy Director of the Division of Standards. As a company we have our scan price accuracy program that we guarantee that customers receive the item free of charge if it scans higher than the marked price, sign or circular advertisement.

We are a proud union company and we continue work with our three local union representatives on issues that will mutually benefit their members and our associates. The proposed legislation does have a provision requiring any retailer who intends to transfer from an individual item pricing system to a consumer scanner pricing system to submit an affidavit to the deputy director prior to the implementation of the transfer stating that protections, including without limitation, a complaint process, are in place so that full and part time employees will not suffer any wage or benefit loss due to the installation and use of this price scanning system. Our general duty clerks who currently item price perform many functions through out the store when they are not price marking; they are providing customer service, stocking shelves and rotating products during their work shift. We have a file maintenance clerk who's responsible for making sure that the file system is charging consumers the right price. We are committed to offering outstanding customer service, great value and quality products to our customers. We respectfully ask the committee to support this pro-consumer proposal. Thank you.

United Food and
Commercial Workers Union
55 Norfolk Avenue
South Easton, MA 02375
www.ufcw791.org



Russell Regan, President
Phone (774) 568-0791
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(800) 535-2752

Testimony
Joint Committee on Community Development and Small Businesses
May 4, 2011

Good morning Madame Chair, Mr. Chairman, and members of the Committee. My name is Peter Derouen, Political Director and I am here today speaking on behalf of the United Food and Commercial Workers Union Local 791. Local 791 represents approximately 5,000 supermarket and warehouse workers in Massachusetts, Rhode Island, and Maine.

I am here to testify in opposition to bills: **H987**: An Act relative to clear and conspicuous price disclosure, **H993**: An Act relative to pricing in food stores and food departments, **H994**: An Act Relative to the Pricing Of Grocery And Retail Items, **H995**: An Act Relative to the Pricing Of Grocery And Retail Items, and **H1869**: An Act relative to price marking of food and grocery items, **S77**: An Act Relative to Consumer Product Pricing, **S1844**: An Act Relative to Clear and Conspicuous Price Disclosure, and **S1848**: An Act Relative to Pricing in Food Stores and Food Departments.

In one way or another, all of these bills drastically alter the current item pricing law that will have an adverse affect on consumers as well as threaten full time jobs and reduce the hours of part time workers that are employed in a majority of food retailers in the Commonwealth of Massachusetts.

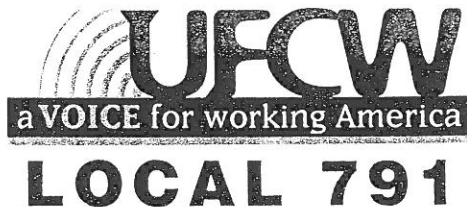
Some supporters of bills that would eliminate the current item pricing law have claimed that there would be negligible impact on workers because they would be moved to other departments in the store, etc.

However, Shaw's Supermarket's currently has a number of full time workers out on lay-off as well as a number of workers that have been involuntarily moved from full-time to part-time. Unless there is protective language agreed upon by both the Union and a particular employer, eliminating item pricing will result in some form of job loss for many food retailers at a time when Massachusetts can't afford to lose any good jobs.

Once these full-time jobs, with benefits, are eliminated they will never return. Current employees "might" be absorbed into the workforce, but that will slow/stop the amount of part-time employees hired, as well as, affect current part-time employees' ability to maintain health-care and pension benefits.

For the record, **UFCW Local 791 is opposed** to the provisions in many of these bills regarding the protection of jobs, wages and benefits for workers covered under a collective bargaining agreement. These so called "job protection, no loss of wage and benefit provisions" will be difficult, if not impossible, to manage, track, and adequately enforce. Furthermore, workers not covered under a union contract are not covered. If this "job protection" provision had any teeth to it, the two retail operators that are union would never agree to include them in the legislation. Most retail supermarkets today have approximately 80% of their work force as part-time and only 20% as full time. There is already a very limited amount of existing full time job opportunities, and there are few, if any, newly created full time jobs.

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Proponents of particular bills that gut the current item pricing law are basically looking to save money by cutting labor costs and avoid the regulation altogether. There is simply no other savings to be gained.

Item pricing is 98% accurate and is a solid proven system that is beneficial to the consumers of Massachusetts. Item pricing was proposed and enacted into law to benefit the Consumers of Massachusetts. Recent surveys that have been conducted have concluded that the vast majority of shoppers said they use and prefer item pricing and disapprove of the proposed alternative -- aisle scanners.

Workers and consumers have everything to lose and nothing to gain with the passage of any of the aforementioned bills. Please consider all these points and oppose any legislation that eliminates item pricing in the Commonwealth of Massachusetts.

Thank You

Peter Derouen
Director
Political & Legislative Affairs
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