HOUSE DOCKET, NO. 931 FILED ON: 1/19/2011

HOUSE . . . . . No. 100

The Commonwealth of Massachusetts

PRESENTED BY:

Carlo Basile

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

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

An Act relative to clear and conspicuous price disclosures.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Carlo Basile	*1st Suffolk*

HOUSE DOCKET, NO. 931 FILED ON: 1/19/2011

HOUSE . . . . . No. 100

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

The Commonwealth of Massachusetts

An Act relative to clear and conspicuous price disclosures.

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

SECTION 1. Chapter 94 of the General Laws is hereby amended by striking out sections 184B to 184E, inclusive, as appearing in the 2006 Official Edition, and inserting in place thereof the following 4 sections:-

Section 184B. As used in this section and sections 184C to 184E, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Advertised price", the retail price of an item published or disclosed in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof.

"Automated checkout system", a cash register, computer terminal, or other device capable of determining the retail price of an item from the item's code after searching the electronic price database and printing an itemized sales receipt for a consumer.

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

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

"Code", a unique identifier of an item including without limitation symbols, letters, numbers, bars or combinations thereof.

"Consumer price scanner", an electronic scanner provided for consumer use that is capable of reading an item's code and displaying a description of the item and its correct price after searching the electronic price database.

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

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

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

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

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

40 “Food”, anything edible.

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

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

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

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

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

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

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

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

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

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

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

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

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

88 Section 184C. (a) The correct retail price of an item offered for sale by a food store or in
89 a retailer’s food department shall be disclosed to consumers in a clear and conspicuous manner.
90 The food store or retailer containing a food department may elect to disclose the retail price

using either an individual item pricing system or a consumer scanner pricing system; provided that the food store or retailer containing a food department has been granted permission by the Division of Standards; provided, further, that all prices represented to the consumer shall be consistent with each other and the correct price.

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

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

(d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code, its description and its retail price is posted where these items are displayed; (ii) the cashier can readily discern the item's retail price, (iii) the food store or retailer containing a food department maintains an itemized retail price list for all exempted items, and (iv) the retail price list is available at each checkout and can be reviewed by a customer upon request, a food store or retailer containing a food department may exempt the following classes of items from its individual item pricing system : (1) produce, meat, fish, poultry, delicatessen, bakery items, and any other items that are unpackaged and offered from a bulk display; provided, however, that any such item weighed or wrapped to order by the food store or a retailer containing a food department but paid for at a place other than at the point of such weighing or wrapping shall have the correct retail price marked on the item; (2) gallons and half gallons of milk; (3) eggs; (4) cigarettes, cigars, tobacco and tobacco products; (5) individual items within a multi-item package, if the package is marked with the correct retail price; (6) cakes, gum, candy, chips, nuts and other snack foods, if offered for sale individually, and located at the checkout area; (7) individual greeting cards, if marked with a price code readily understandable by the consumer; (8) individual containers of baby food of the same brand and retail price where vegetable or fruit is the predominant ingredient other than water, but not including juices; (9) soft drink bottles and cans; (10) frozen food products; (11) items sold by length, area, weight or volume, including without limitation chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged; (12) items that must be retrieved for the consumer by store staff, including without limitation large electronics or appliances, display or representative items or items displayed in a locked case or out of reach of consumers; (13) packaged self-service items that are small in size and are offered for sale located at the checkout area; (14) live animals; (15) items sold in a coin operated vending machine; and (16) for a food store or a retail store with a food department using an individual item pricing system, not more than 60 additional items that are accessible to the consumer in a free standing or end-aisle display that has at least 50 individual items of the same

130 item; provided, however, that unless the deputy director determines otherwise, individual items
131 that differ only by color, flavor or scent shall be counted as the same item for the purpose of this
132 clause if they are identical in all other aspects, including retail price, size and brand.

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

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

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

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

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

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

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

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

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

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

202 (c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines
203 shall be levied shall include, but not be limited to: having no price marked on any unit that is

204 required to be priced and is not exempted; having an incorrect price on any unit; having an
205 incorrect or missing sign; or overcharging on any unit. A unit shall be deemed to be overcharged
206 once it is rung up at a price higher than any represented price. Notwithstanding the method for
207 determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation
208 may be issued for up to $200 for each violation, up to a maximum of $2500 per inspection. If
209 an item is advertised either in the store or in a circular as "on sale" or discounted because of a
210 card price and the item registers at a higher price at the checkout counter than indicated by any
211 "sale", a civil citation will be issued for up to $300 for each violation, up to a maximum of
212 $2500 per inspection. The director of standards shall not issue a fine pursuant to this section
213 and said sections 184B through 184E, inclusive, and section 56D of chapter 98 for the same
214 violation.

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

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

228 (f) A consumer may submit a complaint to the office of the attorney general regarding
229 noncompliance with sections 184B through 184E. Each submitted complaint shall be
230 investigated. In the case of any verified consumer complaint, fines for overcharging shall be
231 limited to one violation per item. A fine shall be issued upon verification of any consumer
232 complaint alleging overcharging or improper price marking except for those units where the
233 seller honored the price accuracy guarantee discounts as described in Section 184C (i).

234 (g) If the director of standards determines that a food store or a retailer containing a food
235 department is either intentionally or through gross negligence violating any provisions of this
236 section and sections 184B through 184E, inclusive, then the director shall provide written notice
237 of such determination to the food store or retailer containing a food department and said food
238 store or retailer shall have thirty days to cure these violations. If upon re-inspection, and
239 payment of a $200 re-inspection fee, the director of standards determines that the food store or
240 retailer's food department still is not in substantial compliance with the provisions of this section
241 and sections 184B through 184E, inclusive, then all the store's exemptions shall be rescinded for

242 a period of twelve months, and the matter shall be referred to the attorney general for action
243 against such food store or retailer containing a food department. Uncontested fines levied under
244 said sections shall be paid within thirty days of issuance of the notice of violation. Any aggrieved
245 seller may appeal any unjustified fines to the director of standards if such appeal is filed within
246 thirty days of issuance of the notice of violation.

247 (h) This section and sections 184B through 184E, inclusive, shall only apply to food
248 stores and to grocery items in retailers containing a food department. Said sections shall not
249 diminish any obligations under other laws or regulations regarding item pricing for sellers other
250 than food stores or for items other than grocery items in retailers containing a food department.
251 Where a seller is also subject to the item pricing regulations or guidelines of another agency, in
252 cases where a specified number of items is allowed to be exempted under two similar exceptions
253 to the requirement of item pricing, such similar provisions shall not be additive.

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

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

268 (b) Any food store or retailer containing a food department that possesses an applicable
269 collective bargaining unit and intends to transfer from an individual item pricing system to a
270 consumer scanner pricing system shall submit an affidavit to the deputy director prior to the
271 implementation of the transfer stating that protections, including without limitation, a complaint
272 process, are in place so that full and part time employees will not suffer any wage or benefit loss
273 due to said transfer. Said affidavit shall include without limitation, the number of full and part
274 time employees working for the food store or retailer containing a food department on the date
275 the administering agency head allows for the transfer to a consumer scanner pricing system, the
276 number of full or part time employees working for the food store or retailer containing a food
277 department on December 31 of each calendar year that the food store or retailer containing a
278 food department is utilizing a consumer scanner pricing system and the average salary and
279 benefits of such employees; If an employee or applicable collective bargaining unit believes that

280 the employee wages or benefits in any location have been reduced due to said transfer and not
281 due to seasonal employment, the employee or collective bargaining unit may bring a complaint
282 against the food store or retailer containing a food department before the division after paying a
283 nominal fee, which shall be established by the division. If the division determines that the
284 complaint is valid, the retailer shall disclose retail prices using an individual item pricing system
285 for a period of not less than 12 months. The wage and employee data provided to the Division
286 for the purposes of transfer from an individual item pricing system to a consumer scanner pricing
287 system is proprietary in nature and is not available to the public.

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

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

313 (e) Consumer scanners are to be deemed fully operational if: (1) the scanner clearly and
314 conspicuously identifies and displays the item by name or other distinguishing characteristics;
315 (2) the scanner displays the item's correct price when it is scanned. Each scanner must also
316 display contact information for the Division of Standards so that consumers may report broken
317 scanners. Such scanners must also be in compliance with the Americans with Disabilities Act
318 Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts Architectural

319 Access Board Regulations 521 CMR 1.00. Any violation of this subsection shall be considered
320 in determining a scanner's pass or fail designation as defined in subsection (h).

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

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

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

343 (i) Each scanner is to be graded on a pass or fail basis by inspectors, including missing
344 scanners or inadequate signage under subsection (d), which shall be considered to have failed.
345 Each scanner found to have failed the test shall constitute a separate violation of this section.
346 Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of
347 said chapter 98, a civil citation may be issued for up to $200 for each violation, up to a maximum
348 of $2500 per inspection; provided, however, that the deputy director may reduce any fine
349 imposed pursuant to this section consistent with section 29A of chapter 98.

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

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

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

368 (b) If such examination and test reveals that there is evidence of price misrepresentation,
369 or misleading or deception of the purchaser of items, or that consumer scanners do not meet the
370 operational standards set forth below, the owner, manager or the designee of said owner or
371 manager of a retail establishment using such automatic checkout system shall be punished for the
372 first failed inspection by a civil fine of up to $200, for the second failed inspection by a civil fine
373 of up to $500, and for any subsequent failed inspection, by a civil fine of up to $1000; provided,
374 however, that there shall be no punishment for any inoperable consumer scanner that is deployed
375 for reasons other than to obtain an exemption from any law or regulation of the Commonwealth
376 requiring the individual price-marking of items offered for sale or for any inoperable consumer
377 scanner for which a retailer is able to demonstrate to the satisfaction of the inspector that he has
378 communicated in writing with an authorized repair agent, prior to such examination and test,
379 requesting that the inoperable electronic scanner be repaired. For purposes of this section
380 consumer scanners are to be deemed fully operational if they operate in the following manner:
381 (1) the scanner clearly and conspicuously identifies and displays the item by name or other
382 distinguishing characteristics. Each scanner must also display contact information for the
383 Division of Standards so that they may report broken scanners. Such scanners must also be in
384 compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36,
385 Appendix A and the Massachusetts Architectural Access Board Regulations 521 CMR 1.00
386 Notwithstanding the method for determining the amount of civil fines pursuant to said section
387 29A, a civil citation may be issued for up to $200 for each violation, up to a maximum of $2500
388 per inspection. For purposes of this section each item which scans erroneously shall constitute a
389 separate civil violation.

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

392 (d) For the purposes of this section, an automated retail check out system shall mean a
393 cash register, computer, terminal, consumer scanner or other device capable of interpreting the

394 universal product code, or any other code which is on an item offered for sale to consumers used
395 to determine the price of the item being purchased, regardless of whether the code entry is
396 accomplished manually, or automatically by a machine.

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

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