HOUSE DOCKET, NO. 1467 FILED ON: 1/20/2011

HOUSE . . . . . No. 993

The Commonwealth of Massachusetts

PRESENTED BY:

Vincent A. Pedone

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 pricing in food stores and food departments

.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Vincent A. Pedone	*15th Worcester*

HOUSE DOCKET, NO. 1467 FILED ON: 1/20/2011

HOUSE . . . . . No. 993

By Mr. Pedone of Worcester, a petition (accompanied by bill, House, No. 993) of Vincent A. Pedone relative to pricing in food stores and food departments. Community Development and Small Businesses.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *212* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to pricing in food stores and food departments
.

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

1. Section 184B of chapter 94 is hereby amended in the definition of "food department" by striking the word "ten" and inserting in its place thereof the words: — "one hundred".

SECTION 2. Section 184C of chapter 94 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following: —

Except as hereinafter provided, every item in a food store and every grocery item in a food department offered for sale, whether edible or not, shall have affixed to each unit the correct selling price. This requirement shall not apply to any item in any food store or food department of less than 35,000 square feet of food selling space which bears a Universal Product Code("UPC") barcode, either on the item or the item packaging or on a pricing tag or sticker appended to the item, provided that the seller has available in the store for consumer use at least one electronic scanner for every 5,000 square feet of store selling space, with signs prominently posted adjacent to each scanner at and above eye level, identifying for consumers the location of the scanners, and seller remains in compliance with section 29 of chapter 98 of the General Laws by consistently maintaining a ninety eight percent (98%) or higher accuracy rate on their electronic scanners, and provided further that the seller has obtained the written authorization of all collective bargaining units to which the seller is contractually bound to employ the use of

18 electronic scanners as a means in which to identify the selling price of an item. Electronic
19 scanners available for consumer use are capable of (1) identifying and displaying the item by
20 name or other distinguishing characteristics; (2) displaying the price of the item; and (3)
21 producing an individual pricing tag for that item, except that the Deputy Director may authorize
22 the use of individual hand-held or cart attached scanners in lieu of producing an individual
23 pricing tag. At each scanner location, the seller must also provide the consumer with a means by
24 which such pricing tag may be easily affixed or appended to the item or its packaging (e.g.
25 adhesive pricing tag.) Such scanners must also be in compliance with the Americans with
26 Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts
27 Architectural Access Board Regulations 521 CMR 1.00 et seq.

28 SECTION 3. Section 184C of chapter 94 is hereby amended by striking out, in lines 29
29 and 30 the following words: —

30 “,weigh less than three ounces, cost seventy-five cents or less,”

31 SECTION 4. Section 184C of chapter 94 is hereby amended by deleting section (10) in
32 its entirety, and inserting in place thereof the following: —

33 (10) Items that are located in end-aisle or freestanding displays provided, however, that
34 if offered for sale by a seller with an automatic checkout system they are coded, or if offered by a
35 seller without such system they are on an easily referenced price list at each cash register, and
36 provided, further, that such items are fully and accurately price marked at their regular shelf
37 location, and the seller maintains a list of such items as required by section one hundred and
38 eighty-four D.

39 SECTION 5. Section 184C of chapter 94 is hereby amended by inserting at the end
40 thereof the following: —

41 (12) Items offered temporarily at an advertised reduced price.

42 (13) An additional 5% of items offered for sale, provided that a clear and conspicuous
43 separate sign or single sign in the case of similar items all priced the same, with the price no
44 smaller than three eighths of an inch high, is placed at the point of display of each exempted sale
45 item, identifying the item by its brand name and SKU or UPC number; and further provided that
46 the store maintains a current and accurate price list of all items exempted under this provision.
47 The seller may maintain such a list in any reasonable manner, provided that information
48 contained on the list can be referenced easily by the person requesting it.

49 (14) Food and grocery items sold in a fee-based, private membership wholesale club
50 provided that electronic scanners in compliance with this Section are available every 5,000
51 square feet of selling space.

52 (15) Non-grocery items sold in a food store provided that electronic scanners in
53 compliance with this Section are available every 5,000 square feet of non-grocery selling space.

54 SECTION 6. Notwithstanding the limited number of exemptions provided in Chapter 94,
55 sections 184B-184E, the Division of Standards is hereby authorized to conduct a six month item
56 pricing removal pilot program commencing on or before October 1, 2009. The pilot program
57 will examine the effects of removing individual price stickers and tags from grocery items and
58 the use and functionality of self-service price check scanners in retail stores selling food. Up to
59 50 retail stores selling food may be accepted into the pilot program.

60 The provisions of said sections 184B-184E shall apply, except that each participating
61 store shall be granted an exemption from the item pricing requirement for all grocery items for
62 the duration of the pilot, except those required to be price marked under other laws, such as meat.
63 Each participating store shall be inspected by the Division or its designee at least twice during
64 the test period.

65 Each individual store location must apply for and be accepted into the pilot program.
66 Written authorization by any collective bargaining unit if applicable must be submitted to the
67 Division with the pilot application. Acceptance will be subject to the approval of the Division.
68 The Division shall review the applications of prospective participants and select a diverse sample
69 of stores taking into account store location, geographical distribution, primary business engaged
70 in by the store, store size, food department size, number of products carried, and other relevant
71 factors. The Division may limit the number of participating stores from any one chain.

72 In their application, each store must certify that they meet all requirements of the pilot,
73 and agree to comply with the terms and conditions of participation below and any other
74 operational or administrative procedures or advisory opinions governing the pilot issued by the
75 Director.

76 Terms and Conditions of Participation for accepted stores:

77 An exemption from the item pricing requirement for grocery and food items is granted
78 for the duration of the test for all such items with either a UPC barcode or machine readable
79 SKU. The Division shall provide each participating store with a letter certifying that the store is
80 granted an exemption from the requirement of item pricing for grocery and food items for the
81 duration of the pilot;

82 Stores shall have one printing, self-service price check scanner for each 5,000 square feet
83 of selling space or fraction thereof based on total store size. Each scanner shall: (a) meet the
84 criteria outlined in 940 CMR 3.13(1)(b)(2) and (3); (b) print the current date on the price sticker
85 or price slip; and (c) place at least one such scanner within or in close proximity to the primary
86 food area of the store. Notwithstanding the printer requirement, the Division may at its
87 discretion grant the use of individual hand-held or cart attached scanners, capable of displaying

88 the price, listing all scanned items, and totaling all prices. In such case, all but one self-service
89 price check scanners located throughout the store may exclude a printing device.

90 At the point of display of every exempt item, the store shall post a price sign in
91 accordance with Chapter 94, section 184C; provided further that stores which discount items for
92 customers with a store loyalty card shall display the "card price" using that term or one of similar
93 import along with the non-card price both at least one inch high. For items required to display a
94 unit price, both a card unit price and non-card unit price shall be displayed and so labeled;

95 Each store shall utilize an automated checkout system as defined in section 184B of
96 Chapter 94 with aisle scanners;

97 Testing and compliance: For the purposes of this pilot program, the Division or its
98 designees may inspect any store at any time and levy fines as provided in Chapter 98, Section
99 56D and Chapter 94, Section 184E. For the purposes of this pilot program, inspections and fines
100 may include the following: an accuracy test for checkout scanners, a sign test for compliance
101 with the posting requirements, and a test of all printing self-service price check scanners in the
102 store for functionality and compliance.

103 Each store must maintain at least a 98% rate of accuracy for its automated checkout
104 scanners based on standardized testing methodology, a 95% compliance rate for proper signage
105 on exempt items, and a "pass" grade for the functionality and compliance of each of its printing
106 self-service price check scanners in the store. Any such self service scanner which fails to print
107 or fails to scan or scan accurately shall be deemed to have failed the test. A tolerance for one
108 error of one missing scanner sign or one missing supply of tape shall be allowed for every ten
109 scanners in the store per inspection. Stores with ten or more scanners shall have a tolerance for
110 error of one failing scanner.

111 Fines may be issued for items that scan incorrectly; for missing, misplaced or incorrect
112 signs; for overcharging; and for failure to test, maintain, or have fully functioning and complying
113 printing self-service price check scanners;

114 Self-audits and maintenance check: Each participating store shall maintain a separate
115 record book for each self-service price check scanner in the store. At least once a day, it shall
116 test each aisle scanner by scanning a different advertised sale item (food or not) at each machine,
117 print the price label for that item, and affix it in the record book for the relevant scanner in
118 chronological order. The store shall retain a copy of every advertisement and circular issued
119 during the test period, circling each item used in daily self-audits. If there are no advertised
120 items on a particular day, any randomly selected item may be used for the test. In cases where a
121 scanner cannot be made to print a correct price label, the store shall note the failure in the book
122 and record the action taken to correct the problem;

123 Consumer education: Each participating store shall post a sign at each store entrance
124 noting their participation in the pilot program, and shall make available at each checkout register
125 and at a customer service desk an informative brochure approved by the Division with the advice
126 and counsel of the Retail Store Pricing Reform Study Commission describing the pilot program,
127 alerting shoppers to any new signage, explaining the use of printing self-service price check
128 scanners, and providing full contact information for the Division to receive feedback and
129 complaints about the pilot;

130 The Retailers Association of Massachusetts shall conduct and pay for, directly or
131 indirectly, a professional market research survey of consumer attitudes about item pricing, the
132 removal of price stickers, and the use of printing, self-service price check scanners both before
133 and after the pilot among shoppers at a scientific sampling of test stores. Such surveys shall be
134 conducted in accordance with accepted survey standards and techniques. A final report of both
135 surveys prepared by the professional market research company shall be submitted to the Joint
136 Committee on Community Development and Small Business and the Retail Store Pricing
137 Reform Study Commission; and

138 The Director shall submit a report on said pilot program within 45 days after the
139 conclusion of the test and the surveys to the Joint Committee on Community Development and
140 Small Business, the House Committee on Ways and Means, the Senate Committee on Ways and
141 Means and the Retail Store Pricing Reform Study Commission.

142 SECTION 7. There is hereby created a Retail Store Pricing Reform Study Commission
143 comprised of the chairs and ranking minority members of the Joint Committee on Community
144 Development and Small Business, and one representative from each of the following entities: the
145 Office of Consumer Affairs and Business Regulation, the Office of the Attorney General, the
146 Retailers Association of Massachusetts, the Massachusetts Consumers Coalition, the United
147 Food and Commercial Workers union local 1445, the United Food and Commercial Workers
148 union local 791, the Massachusetts Food Association, and two Massachusetts based and owned
149 retail companies appointed by the co-Chairs of the Committee on Community Development and
150 Small Business. The Commission shall meet to review existing laws in Massachusetts and
151 elsewhere pertaining to retail pricing accuracy and disclosure, and shall make recommendations
152 on reform legislation to streamline duplicative pricing laws, while best protecting consumers for
153 cost, service, disclosure and accuracy, and small businesses from unnecessary regulation and
154 costs. The Commission shall report to the Joint Committee on Small Business and Community
155 Development by April 30, 2010.