SENATE DOCKET, NO. 11 FILED ON: 1/7/2011

SENATE . . . . . No. 1844

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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

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

An Act relative to clear and conspicous price disclosure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael O. Moore	☐ *[District]* ☐
Michael R. Knapik	☐ *[District]* ☐
Carolyn C. Dykema	*8th Middlesex*
Sheila C. Harrington	*1st Middlesex*
Michael J. Rodrigues	☐ *[District]* ☐

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SENATE . . . . . No. 1844

By Mr. Moore, petition (accompanied by bill, Senate, No. 1844) of Harrington, Dykema, Knapik and other members of the General Court for legislation relative to clear and conspicous price disclosure [Joint Committee on Community Development and Small Businesses].

The Commonwealth of Massachusetts

An Act relative to clear and conspicous price disclosure.

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

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.

"Card price," the price a loyalty card holder will be charged if different from the non-card price.

"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.

22 “Consumer price scanner”, an electronic scanner provided for consumer use that is
23 capable of reading an item’s code and displaying a description of the item and its correct price
24 after searching the electronic price database.

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

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

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

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

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

42 “Dual pricing system”, a separate pricing system that allows for one correct price for
43 non-loyalty cardholders and one correct price for loyalty card holders.

44 “Food”, anything edible.

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

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

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

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

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

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

66 “Loyalty card,” a card or other device issued that confers certain benefits to cardholders,
67 including discount prices upon presentation of the card. This shall not include membership cards
68 issued by warehouse retailers.

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

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

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

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

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

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

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

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

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

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

119 (d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item’s code,
120 its description and its retail price is posted where these items are displayed; (ii) the cashier can
121 readily discern the item’s retail price, (iii) the food store or retailer containing a food department
122 maintains an itemized retail price list for all exempted items, and (iv) the retail price list is
123 available at each checkout and can be reviewed by a customer upon request, a food store or
124 retailer containing a food department may exempt the following classes of items from its
125 individual item pricing system : (1) produce, meat, fish, poultry, delicatessen, bakery items, and
126 any other items that are unpackaged and offered from a bulk display; provided, however, that
127 any such item weighed or wrapped to order by the food store or a retailer containing a food

128 department but paid for at a place other than at the point of such weighing or wrapping shall have
129 the correct retail price marked on the item; (2) gallons and half gallons of milk; (3) eggs; (4)
130 cigarettes, cigars, tobacco and tobacco products; (5) individual items within a multi-item
131 package, if the package is marked with the correct retail price; (6) cakes, gum, candy, chips, nuts
132 and other snack foods, if offered for sale individually, and located at the checkout area; (7)
133 individual greeting cards, if marked with a price code readily understandable by the consumer;
134 (8) individual containers of baby food of the same brand and retail price where vegetable or fruit
135 is the predominant ingredient other than water, but not including juices; (9) soft drink bottles and
136 cans; (10) frozen food products; (11) items sold by length, area, weight or volume, including
137 without limitation chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged; (12)
138 items that must be retrieved for the consumer by store staff, including without limitation large
139 electronics or appliances, display or representative items or items displayed in a locked case or
140 out of reach of consumers; (13) packaged self-service items that are small in size and are offered
141 for sale located at the checkout area; (14) live animals; (15) items sold in a coin operated
142 vending machine; and (16) for a food store or a retail store with a food department using an
143 individual item pricing system, not more than 60 additional items that are accessible to the
144 consumer in a free standing or end-aisle display that has at least 50 individual items of the same
145 item; provided, however, that unless the deputy director determines otherwise, individual items
146 that differ only by color, flavor or scent shall be counted as the same item for the purpose of this
147 clause if they are identical in all other aspects, including retail price, size and brand.

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

160 All additional exemptions allowed under subsection (e) will be granted provided that the
161 food store or a retailer containing a food department maintains an electronic pricing system
162 which has been determined to be at least 95 percent accurate during a price accuracy inspection
163 conducted by the division or their designee, and further provided that a food store or retailer
164 containing a food department maintains a dated, written list of the items it has chosen to exempt.
165 The list shall include a readily understandable description of each item and the code number
166 understood by the seller's automatic checkout system. Deletions may be made from the list at

167 any time, but no additions, substitutions, or changes may be made to the list except twice a year
168 in January and July. The exemption permitted by this section shall not apply to any item not on
169 that list and shall not apply unless such list has been established and is available upon request at
170 the food store or retailer containing a food department to any consumer or any representative
171 authorized by the director of standards and referenced easily by the person requesting it. No
172 seller may choose to exempt items required to be price marked by other laws or regulations
173 governing specific types of items, or may exempt more than two hundred items in any one
174 department except in the dry grocery department

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

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

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

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

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

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

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

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

220 (c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines
221 shall be levied shall include, but not be limited to: having no price marked on any unit that is
222 required to be priced and is not exempted; having an incorrect price on any unit; having an
223 incorrect or missing sign; or overcharging on any unit. A unit shall be deemed to be overcharged
224 once it is rung up at a price higher than any represented price. Notwithstanding the method for
225 determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation
226 may be issued for $200 for each violation, up to a maximum of $2500 per inspection. If an item
227 is advertised either in the store or in a circular as "on sale" or discounted because of a card price
228 and the item registers at a higher price at the checkout counter than indicated by any "sale" or
229 loyalty care price, a civil citation will be issued for $300 for each violation, up to a maximum of
230 $2500 per inspection. The director of standards shall not issue a fine pursuant to this section
231 and said sections 184B through 184E, inclusive, and section 56D of chapter 98 for the same
232 violation.

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

236 (e) Any representative authorized by the division may conduct inspections of any item
237 and shall issue notices of violation to any food store or retailer containing a food department for
238 any violation of this section and sections 184B through 184E, inclusive, provided, however, that
239 no food store or retailer containing a food department shall be inspected more than once a month,
240 unless such inspection is intended to verify the correction of violations found during a recent

241 inspection or to verify the validity of a specific consumer complaint made through the process
242 outlined in Section 184D subsection (f). For purposes of this section each occasion that an item
243 scans erroneously during an inspector's attempt to verify its correct price shall constitute a
244 separate civil violation. The seller shall immediately correct all violations including those where
245 a tolerance was granted.

246 (f) A consumer may submit a complaint to the office of the attorney general or to the
247 division regarding noncompliance with sections 184B through 184E. All food stores and retailers
248 containing a food department subject to sections 184B through 184E shall provide, upon request,
249 a complaint form for the consumer to complete and submit. Each submitted complaint shall be
250 investigated. In the case of any verified consumer complaint, fines for overcharging shall be
251 limited to one violation per item. A fine shall be issued upon verification of any consumer
252 complaint alleging overcharging or improper price marking except for those units where the
253 seller honored the price accuracy guarantee discounts as described in Section 184C (i).

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

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

277 (i) The division may retain all registration fees and fines it collects under sections 184B
278 through 184E of chapter 94and sections 56D and 56E of chapter 98 not to exceed $3.5 million

279 annually in order to support its enforcement activities; provided further that any excess fees and
280 fines up to $1 million in excess of this figure shall be used to fund the Division of Standards
281 municipal grant program for approved agents to assist the division in lieu of a legislative
282 appropriation. In the event that the division and the municipal grant program are fully funded,
283 all additional revenue shall be turned over to the General Fund.

284 Section 184E. (a) Any food store or a retailer containing a food department
285 wishing to convert from an individual item pricing system to a consumer scanner pricing system
286 must seek a waiver from the division. The waiver shall be granted by the division provided that
287 the food store or retailer containing a food department has no outstanding fines under sections
288 184B-D of chapter 94 or section 56D of chapter 98 and pays a $500 fee annually to the division
289 if the retail space is less than 15,000 sq. feet, $500 fee if the retail space 15,000 sq. feet up to
290 30,000 sq. feet, or a $1,000 fee if the retail space is 30,000 square feet or more.

291 (b) Any retailer that possesses an applicable collective bargaining unit and intends to
292 transfer from an individual item pricing system to a consumer scanner pricing system shall
293 submit an affidavit to the deputy director prior to the implementation of the transfer stating that
294 protections, including without limitation, a complaint process, are in place so that full and part
295 time employees will not suffer any wage or benefit loss due to said transfer. Said affidavit shall
296 include without limitation, the number of full and part time employees working for the food store
297 or retailer containing a food department on the date the administering agency head allows for the
298 transfer to a consumer scanner pricing system, the number of full or part time employees
299 working for the food store or retailer containing a food department on December 31 of each
300 calendar year that the food store or retailer containing a food department is utilizing a consumer
301 scanner pricing system and the average salary and benefits of such employees; If an employee or
302 applicable collective bargaining unit believes that the employee wages or benefits in any location
303 have been reduced due to said transfer and not due to seasonal employment, the employee or
304 collective bargaining unit may bring a complaint against the food store or retailer containing a
305 food department before the division after paying a nominal fee, which shall be established by the
306 division. If the division determines that the complaint is valid, the retailer shall disclose retail
307 prices using an individual item pricing system for a period of not less than 12 months. The wage
308 and employee data provided to the Division for the purposes of transfer from an individual item
309 pricing system to a consumer scanner pricing system is proprietary in nature and is not available
310 to the public.

311 (c) All food stores or retailers containing a food department using a consumer
312 scanner pricing system shall be subject to inspection by the division for compliance with the
313 provisions outlined in this section; provided, however, that the division shall not cause any food
314 store or a retailer containing a food department using a consumer scanner pricing system to be
315 inspected more than once per calendar month; provided, however, the division may inspect any
316 food store or retailer containing a food department using a consumer scanner pricing system once
317 every week until the food store or retailer containing a food department is found to be in

318 compliance with this section if: (1) within the previous 30 days, there is a verified pattern of
319 consumer complaints; or (2) upon regular inspection the food store or retailer containing a food
320 department is not in compliance with this section.

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

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

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

352 (g) An inspector may also elect to test a food store or a retailer containing a food
353 department's consumer price scanning system for accuracy. The inspector may choose the
354 sample size for accuracy tests provided that the size of sample is no less than fifty items and does
355 not exceed two hundred items. Any scanning that yields an incorrect price that also causes a

356 food store or a retailer containing a food department's consumer price scanner accuracy rating to
357 fall below 98% shall constitute a separate violation. This subsection shall not be used to impact
358 a scanner's pass or fail grade as defined in subsection (h) but the cumulative violations of this
359 subsection in any particular store or department shall be used in contributing toward the
360 maximum fine imposed under the same subsection.

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

369 (i) Each scanner is to be graded on a pass or fail basis by inspectors, including missing
370 scanners or inadequate signage under subsection (d), which shall be considered to have failed.
371 Each scanner found to have failed the test shall constitute a separate violation of this section.
372 Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of
373 said chapter 98, a civil citation may be issued for $200 for each violation, up to a maximum of
374 $2500 per inspection; provided, however, that the deputy director may reduce any fine imposed
375 pursuant to this section consistent with section 29A of chapter 98.

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

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

381 Section 56D. (a) The director or his inspectors, and sealers and inspectors of weights and
382 measures and their deputies, shall in every 24 -month period, examine and test the operation of
383 all automated retail checkout systems, in all establishments with three or more cash registers, and
384 shall upon complaint to said officials examine and test the operation of any automated retail
385 checkout system to determine whether the price which an item is offered or advertised for sale,
386 including any advertised special price offered to a customer with a store-issued discount card,
387 conforms to the unit and/or net prices displayed to the customer on the visual display and
388 conforms to the price for which a purchaser is charged by such automated retail checkout system
389 to determine whether the total price for items purchased is correctly represented, and may issue
390 notices of violations of this section, pursuant to section 29A and this section; provided, however,
391 that nothing herein shall prohibit the director or his inspectors and sealers and inspectors of

392 weights and measures and their deputies from examining and testing any system at any time
393 irrespective of the number of cash registers within the establishment.

394 (b) If such examination and test reveals that there is evidence of price misrepresentation,
395 or misleading or deception of the purchaser of items, or that consumer scanners do not meet the
396 operational standards set forth below, the owner, manager or the designee of said owner or
397 manager of a retail establishment using such automatic checkout system shall be punished for the
398 first failed inspection by a civil fine of $200, for the second failed inspection by a civil fine of
399 $500, and for any subsequent failed inspection, by a civil fine of $1000; provided, however, that
400 there shall be no punishment for any inoperable consumer scanner that is deployed for reasons
401 other than to obtain an exemption from any law or regulation of the Commonwealth requiring
402 the individual price-marking of items offered for sale or for any inoperable consumer scanner
403 for which a retailer is able to demonstrate to the satisfaction of the inspector that he has
404 communicated in writing with an authorized repair agent, prior to such examination and test,
405 requesting that the inoperable electronic scanner be repaired. For purposes of this section
406 consumer scanners are to be deemed fully operational if they operate in the following manner:
407 (1) the scanner clearly and conspicuously identifies and displays the item by name or other
408 distinguishing characteristics; (2) the scanner displays the item's correct price when the item is
409 scanned at it and that, in the case of a retail establishment that uses loyalty cards or otherwise
410 maintains a dual pricing system, the scanner displays both the card price and the non-card price
411 if they differ. Each scanner must also display contact information for the Division of Standards
412 so that they may report broken scanners. Such scanners must also be in compliance with the
413 Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the
414 Massachusetts Architectural Access Board Regulations 521 CMR 1.00 Notwithstanding the
415 method for determining the amount of civil fines pursuant to said section 29A, a civil citation
416 may be issued for $200 for each violation, up to a maximum of $2500 per inspection. For
417 purposes of this section each item which scans erroneously shall constitute a separate civil
418 violation.

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

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

426 SECTION 3. The Division of Standards, in conjunction with the Secretary of Labor and
427 Workforce Development shall annually file with the Legislature's Joint Committee on
428 Community Development and Small Business, a report consisting of the impact of scanner
429 implementation on pricing accuracy and employee job loss or change of employment status, if

430 any, resulting from the item pricing waiver program conducted under the jurisdiction of the
431 Division of Standards. This report shall also contain recommendations for legislative changes, if
432 any, which the Director deems necessary to affect the purposes of the program. This report shall
433 be filed on or before December 31st of each calendar year.

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