

HOUSE No. 4089

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to clear and conspicuous 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:

1 SECTION 1. Chapter 94 of the General Laws is hereby amended by striking out sections
2 184B to 184E, inclusive, as appearing in the 2010 Official Edition, and inserting in place thereof
3 the following 4 sections:-

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

6 “Advertised price”, the price of an item published or disclosed in any circular,
7 newspaper, magazine, television or radio commercial, or in any other medium, or any published
8 correction thereof.

9 “Automated checkout system”, a cash register, computer terminal, or other device
10 capable of determining the price of an item from the item’s code after searching the electronic
11 price database and printing an itemized sales receipt for a consumer.

12 “Card price”, the price a loyalty card holder will be charged if different from the non-card
13 price.

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

16 “Code”, an identifier of an item including, without limitation, symbols, letters, numbers,
17 bars or combinations thereof.

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

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

30 “Director or deputy director”, the deputy director of the division of standards established
31 pursuant to section 5 of chapter 24A, or the director’s designee including, an inspector, a sealer
32 or a deputy as defined in section 1 of chapter 98.

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

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

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

38 “Dual pricing system”, a separate pricing system that allows for 1 correct price for non-
39 loyalty cardholders and 1 correct price for loyalty card holders.

40 “Food”, anything edible.

41 “Food department”, any seller, other than a warehouse club or a food store, with any
42 grocery item section, area, or display and which sells 100 or more different food items for
43 consumption off the seller’s premises at least in part to individuals for their own personal,
44 family, or household use; provided, however, that any food section which is within a larger
45 business and is the functional equivalent of a food store with its own separate checkout, may be
46 deemed a food 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. A food store shall not include a warehouse club.

52 “Grocery item”, any food, pet food or supply, soap, household cleaner of any type,
53 laundry product, light bulbs, or disposable paper or plastic products.

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

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

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

60 “Loyalty card,” a card or other device issued that confers certain benefits to cardholders,
61 including discount prices upon presentation of the card. A loyalty card shall not include
62 membership cards issued by warehouse retailers.

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

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

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

69 “SKU”, the stock-keeping unit, number or code used to identify each unique product or
70 item for sale in a food store or food department.

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

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

75 Section 184C. (a) The correct price of an item offered for sale by a food store or a food
76 department shall be disclosed to consumers in a clear and conspicuous manner. A food store or
77 food department may elect to disclose the correct price using either an individual item pricing
78 system or a consumer price scanner system; provided, that the food store or food department has
79 been granted permission by the division to use a consumer price scanner system. All prices
80 represented to the consumer for the same item shall be consistent with each other and the correct
81 price.

82 (b) A food store or food department that implements an individual item pricing system
83 shall affix the correct price on each unit in a clear and conspicuous manner by means of a sticker
84 price; provided, that said food store or a food department attaches a correct display price not less
85 than 1 inch high for each separate SKU or separately-coded item. In the case of a food store or a
86 food department that utilizes loyalty cards or otherwise maintains a dual pricing system, the non-
87 card price shall be affixed to the item if it differs from the loyalty card price, provided that a
88 sign at the point of display shall include both the loyalty card price and the non-card price, so
89 labeled if they differ, as well as either the amount of savings per unit or the per cent of savings.

90 (c) A food store or food department that implements a consumer price scanner system
91 shall have the code of an item affixed to each individual unit by means of a sticker, ticket, tag or
92 other label that can be read by a consumer price scanner and automated checkout system to
93 display the correct price. The item's code, its unabbreviated description and its correct price shall
94 be disclosed in a clear and conspicuous manner by a correct display price not less than 1 inch
95 high. In the case of a food store or a food department that uses loyalty cards or otherwise
96 maintains a dual pricing system, the sign at the point of display shall include both the loyalty

97 card price and non-card price, so labeled if they differ, as well as either the amount of savings
98 per unit or the percent of savings.

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

120 and are offered for sale located at the checkout area; (14) live animals; (15) items sold in a coin
121 operated vending machine; and (16) not more than 60 additional items that are accessible to the
122 consumer in a free standing or end-aisle display that has at least 50 units of the same item;
123 provided, however, that unless the deputy director determines otherwise, individual items that
124 differ only by color, flavor or scent shall be counted as the same item for the purpose of this
125 clause if they are identical in all other aspects, including price, size and brand.

126 (e) Food stores or food departments utilizing an individual item pricing system shall be
127 allowed to exempt additional items, the exact number of which shall be based on the number of
128 operable cash registers located at the main checkout location. Food stores or food departments
129 with 1 operable cash register shall be allowed to exempt 20 additional items of their own
130 choosing. Food stores or food departments with 2, 3 to 4, or 5 to 6 operable cash registers shall
131 be allowed to exempt 50, 100 or 200 additional items respectively. Food stores or food
132 departments with 7 or more operable cash registers may exempt up to 400 additional items. In
133 the case of a food department, the number obtained in the above calculation shall be reduced by
134 75 per cent. In no case shall the number of exemptions permitted by this exception exceed 4.5
135 per cent of the number of packaged grocery items carried by the seller.

136 All additional exemptions allowed under this subsection shall be granted provided that
137 the food store or food department maintains an automated checkout system which has been
138 determined to be at least 95 per cent accurate during a price accuracy inspection conducted by
139 the division or their designee and maintains a dated, written price list of the items it has chosen
140 to exempt. The price list shall include a readily understandable description of each item and the
141 code number understood by the seller's automated checkout system. Deletions may be made
142 from the list at any time, but no additions, substitutions, or changes may be made to the list

143 except twice a year in January and July. The exemption permitted by this section shall not apply
144 to any item not on that price list and shall not apply unless such price list has been established
145 and is available upon request at the food store or food department to any consumer or any
146 representative authorized by the deputy director. The list shall be maintained so that any item
147 may be referenced easily by a consumer. No seller may choose to exempt items required to be
148 price marked by other laws or regulations governing specific types of items nor may a seller
149 exempt more than 200 items in any 1 department except in the grocery department.

150 (f) A food store or a food department utilizing a consumer price scanner system may
151 exempt the following items from displaying the correct price at its consumer price scanners,
152 provided it complies with clauses (i) to (iv), inclusive, in subsection (d): (1) unpackaged and
153 uncoded items to which a price sticker cannot be reasonably affixed; and (2) loose produce with
154 SKU numbers.

155 (g) Items purchased at a food store or a food department shall appear on an itemized sales
156 receipt that shall be provided to all consumers.

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

160 (i) Notwithstanding subsection (g) of section 184D, if there is a discrepancy between the
161 advertised price, the sticker price, the scanner price or the display price and the checkout price on
162 any grocery item, a food store or a food department shall charge a consumer the lowest price. If
163 the checkout price or scanner price is not the lowest price or does not reflect any qualifying
164 discount, the seller: (i) shall not charge the consumer for 1 unit of the grocery item, if the lowest

165 price is \$10 or less; (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the
166 grocery item, if the lowest price is more than \$10; and (iii) shall charge the consumer the lowest
167 price for any additional units of the grocery item. This subsection shall not apply if (1) there is
168 evidence of willful tampering or (2) the discrepancy is a gross error, in that the lowest price is
169 less than half of the checkout price and the seller, in the previous 30 days, did not intend to sell
170 the grocery item at the lowest price. The provisions of this subsection shall be clearly and
171 conspicuously posted by all food stores or food departments which use a consumer price scanner
172 system at each register. For each register that fails to display appropriate signage, the food store
173 or food department shall be subject to a fine of \$200, up to a maximum of \$500 per inspection by
174 the deputy director. All food stores or food departments shall maintain data on price
175 discrepancies. This data shall be provided to the division upon request.

176 (k) The deputy director may require sellers to disclose a consumer's rights under sections
177 184C to 184E, inclusive, by a writing provided by the division.

178 (l) The division shall promulgate regulations for the administration and enforcement of
179 sections 184B to 184E, inclusive. Failure to comply with any of the provisions of sections 184B
180 to 184E, inclusive, may constitute a violation under chapter 93A.

181 Section 184D. (a) The deputy director or the deputy director's inspectors, and sealers of
182 weights and measures and their deputies, as defined in section 1 of chapter 98, shall inspect each
183 food store or food department for compliance with sections 184B to 184E, inclusive. The
184 inspections shall be conducted pursuant to the national industry standards adopted by the
185 National Conference on Weights and Measures of the National Institute of Standards and
186 Technology or any other rules or guidelines promulgated by the division pertaining to the

187 implementation and enforcement of sections 184B to 184E, inclusive. Nothing shall inhibit the
188 oversampling of sale items during inspections. A food store or food department shall provide the
189 inspector with access necessary to conduct an inspection. The deputy director shall notify the
190 food store or food department in writing of violations of this section and of any fines imposed
191 pursuant to sections 184B to 184E, inclusive.

192 (b) Violations of the provisions of sections 184B to 184E, inclusive, for which fines shall
193 be levied shall include, but not be limited to: (1) having no price marked on a unit that is required
194 to be priced and is not exempted; (2) having an incorrect price on a unit; (3) having an incorrect
195 or missing sign; or (4) overcharging on a unit. A unit shall be deemed to be overcharged once it
196 is rung up at a price higher than any represented price. Notwithstanding the method for
197 determining the amount of civil fines pursuant to section 29A of chapter 98, a civil citation may
198 be issued for \$200 for each violation, up to a maximum of \$5,000 per inspection. If an item is
199 advertised either in a food store, food department or in a circular as “on sale” or discounted
200 because of a loyalty card price and the item registers at a higher price at the checkout counter
201 than indicated by a “sale” or loyalty card price, a civil citation will be issued for \$300 for each
202 violation, up to a maximum of \$5,000 per inspection. The deputy director shall not issue a fine
203 pursuant to sections 184B to 184E, inclusive, and section 56D of chapter 98 for the same
204 violation.

205 (c) A fine imposed by the deputy director shall be paid within 21 days of issuance of the
206 notice, unless the seller appeals pursuant to the civil citation appeal process found in section 29A
207 of chapter 98. The food store or food department shall immediately correct any noncompliance
208 with sections 184B to 184E, inclusive, when notified by the inspector.

209 (d) The deputy director or any representative authorized by the division may conduct
210 inspections of any item and shall issue notices of violation to any food store or food department
211 for any violation of this section and sections 184B through 184E, inclusive, provided, however,
212 that no food store or food department shall be inspected more than once a month, unless such
213 inspection is intended to verify the correction of violations found during a recent inspection or to
214 verify the validity of a specific consumer complaint made through the process in subsection (e).
215 For purposes of this section each occasion that an item scans erroneously during an inspector's
216 attempt to verify its correct price shall constitute a separate civil violation. The seller shall
217 immediately correct all violations.

218 (e) A consumer may submit a complaint to the office of the attorney general or to the
219 deputy director regarding noncompliance with sections 184B to 184E, inclusive. All food stores
220 or food departments subject to sections 184B to 184E, inclusive, shall provide, upon request, a
221 complaint form for the consumer to complete and submit. Each submitted complaint shall be
222 investigated. In the case of any verified consumer complaint, fines for overcharging shall be
223 limited to 1 violation per item. A fine shall be issued upon verification of any consumer
224 complaint alleging overcharging or improper price marking.

225 (f) If the deputy director determines that a food store or a food department is either
226 intentionally or through gross negligence violating any provisions of this section and sections
227 184B to 184E, inclusive, the deputy director shall provide written notice of such determination to
228 the food store or food department and said food store or food department shall have 30 days to
229 cure these violations. If upon re-inspection, the deputy director determines that the food store or
230 food department still is not in substantial compliance with the provisions of this section and
231 sections 184B to 184E, inclusive, all of the food store's or food department's exemptions shall

232 be rescinded for a period of 12 months and the matter shall be referred to the attorney general for
233 action against such food store or food department.

234 (g) Sections 184B through 184E, inclusive, shall only apply to food stores and to grocery
235 items in food departments. Said sections shall not diminish any obligations under other laws or
236 regulations regarding item pricing for sellers other than food stores or for items other than
237 grocery items in food departments. Where a seller is also subject to the item pricing regulations
238 or guidelines of another agency, in cases where a specified number of items is allowed to be
239 exempted under 2 similar exceptions to the requirement of item pricing, such similar provisions
240 shall not be additive. Compliance with another agency's regulations or guidelines which differ
241 from said sections or any regulations issued hereunder by the deputy director shall not be a
242 defense to a violation of said section or any regulations promulgated hereunder.

243 (h) The division may retain all registration fees and fines it collects under sections 184B
244 through 184E, inclusive, sections 56D and 56E of chapter 98 not to exceed \$2.5 million annually
245 in order to support its enforcement activities; provided, however, that any excess fees and fines
246 up to \$1 million in excess of this figure shall be used to fund the division of standards municipal
247 grant program for approved agents to assist the division in lieu of a legislative appropriation. In
248 the event that the division and the municipal grant program are fully funded, all additional
249 revenue shall be turned over to the General Fund.

250 Section 184E. (a) A food store or food department seeking to convert from an individual
251 item pricing system to a consumer price scanner system shall seek a waiver from the division.
252 The waiver shall be granted by the division provided that the food store or food department has
253 no outstanding fines under sections 184B to 184D, inclusive, or section 56D of chapter 98 and

254 pays a \$250 fee annually to the division if the retail space is less than 15,000 square feet, \$500
255 fee if the retail space is 15,000 square feet up to 30,000 square feet, or a \$1,000 fee if the retail
256 space is 30,000 square feet or more.

257 (b) Pursuant to the regulations promulgated under this chapter, the division shall require
258 each applicant to complete a “no job loss” affidavit which shall include, but not limited to, the
259 number of people employed at the time of the application process and the establishment of a
260 complaint process, so that full and part time employees will not suffer any wage or benefit loss
261 due to said transfer. After the filing of the affidavit, if there is any resulting job loss at the store
262 due to the implementation of the waiver, as determined by the division, not attributed to seasonal
263 employment or verifiable economic pressures, the store shall be required to use an individual
264 item pricing system for 1 year pursuant to sections 184B to 184E, inclusive, or other applicable
265 Massachusetts law or regulation promulgated hereunder, and be subject to a fine of not more
266 than \$5,000.

267 (c) A food store or food department using a consumer price scanner system shall be
268 subject to inspection by the deputy director for compliance with this section. The deputy director
269 shall not cause any food store or food department using a consumer price scanner system to be
270 inspected more than once per calendar month. If, within the previous 30 days, there is a verified
271 pattern of consumer complaints or, upon regular inspection, the food store or food department is
272 not in compliance with this section, the division may inspect a food store or food department
273 using a consumer scanner pricing system once every week until the food store or food
274 department is found to be in compliance with this section.

275 (d) Each food store or food department with more than 5,000 square feet of retail space
276 that employs a consumer price scanner system shall have at least 1 fully operational consumer
277 price scanner for every 5,000 square feet of retail space or part thereof. The location of a
278 consumer price scanner shall be disclosed via 1 clear and conspicuous sign at eye-level and 1
279 clear and conspicuous sign above eye level. Consumer price scanners shall be equally spaced
280 throughout the store in fixed locations. A food store or food department with more than 5,000
281 square feet shall have at least 1 fully operational consumer price scanner capable of producing an
282 individual item pricing tag. At all such scanner locations, the food store or food department shall
283 provide the consumer with a means by which such pricing tag may be affixed or appended to the
284 item or its packaging, such as tape or an adhesive price tag. The deputy director may, by
285 regulation, authorize new technologies in lieu of required consumer price scanners which further
286 the intent of this section, including, but not limited to, hand held or shopping cart attached
287 scanners which retain in memory and itemize all scanned items. Such technologies may reduce
288 the required number of consumer scanners by no more than 50 per cent.

289 (e) Consumer price scanners shall be deemed fully operational if: (1) the consumer price
290 scanner clearly and conspicuously identifies and displays the item by name or other
291 distinguishing characteristics; and (2) the consumer price scanner displays the item's correct
292 price when the item is scanned and, in the case of a food store or food department that uses
293 loyalty cards or otherwise maintains a dual pricing system, the consumer price scanner displays
294 both the loyalty card price and the non-card price if they differ. A sign containing contact
295 information for the division shall be posted by each consumer price scanner so that consumers
296 may report broken consumer price scanners. Such consumer price scanners shall be in
297 compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36,

298 Appendix A and the Massachusetts architectural access board regulations 521 CMR 1.00, et. seq.
299 Any violation of this subsection shall be considered in determining a consumer price scanner's
300 pass or fail designation as defined in subsection (i).

301 (f) Any food store or food department with more than 5,000 square feet of total space
302 converting from an individual item pricing system to a consumer price scanner pricing system
303 shall within 3 months of such conversion hire or maintain not less than 2 employees whose
304 responsibilities shall include the maintenance of all consumer price scanners within said food
305 store or food department.

306 (g) An inspector may elect to test a food store or food department's consumer price
307 scanner system for accuracy. The inspector may choose the sample size for accuracy tests
308 provided that the size of sample is no less than 50 items and not more than 200 items. Any
309 scanning that yields an incorrect price that causes a food store or food department's consumer
310 price scanner accuracy rating to fall below 98 per cent shall constitute a separate violation. This
311 subsection shall not be used to impact a scanner's pass or fail grade as defined in subsection (i)
312 but the cumulative violations of this subsection in any particular store or department shall be
313 used in contributing toward the maximum fine imposed under the same subsection.

314 (h) Upon inspection, the deputy director shall notify the store manager, who shall provide
315 the inspector with a map of the food store or food department outlining the consumer price
316 scanner locations and the food store or food department's square footage of retail space. The
317 food store or food department's number of scanners shall be sufficient for the food store or food
318 department's size under subsection (d). Any violation of this subsection shall result in a fine of
319 \$1,000, which shall not count toward the maximum fine established under subsection (i);

320 provided, however, that the deputy director may reduce this fine consistent with section 29A of
321 chapter 98.

322 (i) Each consumer price scanner shall be graded on a pass or fail basis by inspectors. A
323 failing consumer price scanner shall include, but not be limited to, missing consumer price
324 scanners or inadequate signage under subsection (d). Each scanner found to have failed the test
325 shall constitute a separate violation of this section. Notwithstanding the method for determining
326 the amount of civil fines pursuant to section 29A of said chapter 98, a civil fine may be issued
327 for \$200 for each violation, up to a maximum of \$2,500 per inspection; provided, however, that
328 the deputy director may reduce any fine imposed pursuant to this section consistent with section
329 29A of chapter 98.

330 SECTION 2. Chapter 98 of the General Laws is hereby amended by striking out section
331 56D, as so appearing, and inserting in place thereof the following section:-

332 Section 56D. (a) The director or the director's inspectors, and sealers and inspectors of
333 weights and measures and their deputies, shall in every 24 month period, examine and test the
334 operation of all automated retail checkout systems, in all establishments with 3 or more cash
335 registers, and shall upon complaint to said officials examine and test the operation of any
336 automated retail checkout system to determine whether the price which an item is offered or
337 advertised for sale, including any advertised special price offered to a customer with a store-
338 issued discount or loyalty card, conforms to the unit or net prices displayed to the customer on
339 the visual display and conforms to the price for which a purchaser is charged by such automated
340 retail checkout system to determine whether the total price for items purchased is correctly
341 represented, and may issue notices of violations of this section, pursuant to section 29A and this

342 section; provided, however, that nothing herein shall prohibit the director or his inspectors and
343 sealers and inspectors of weights and measures and their deputies from examining and testing
344 any system at any time irrespective of the number of cash registers within the establishment.

345 (b) If such examination and test reveals that there is evidence of price misrepresentation,
346 or misleading or deception of the purchaser of items, or that consumer price scanners, as defined
347 in section 184B of chapter 94, do not meet the operational standards set forth below, the owner,
348 manager or the designee of said owner or manager of a retail establishment using such automated
349 checkout system shall be punished for the first failed inspection by a civil fine of \$200, for the
350 second failed inspection by a civil fine of \$500, and for any subsequent failed inspection, by a
351 civil fine of \$1,000; provided, however, that there shall be no punishment for any inoperable
352 consumer price scanner that is deployed for reasons other than to obtain an exemption from any
353 law or regulation of the commonwealth requiring the individual price-marking of items offered
354 for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate
355 to the satisfaction of the inspector that he has communicated in writing with an authorized repair
356 agent, prior to such examination and test, requesting that the inoperable electronic scanner be
357 repaired. For purposes of this section, consumer price scanners shall be deemed fully operational
358 if they operate in the following manner: (1) the consumer price scanner clearly and
359 conspicuously identifies and displays the item by name or other distinguishing characteristics;
360 and (2) the consumer price scanner displays the item's correct price when the item is scanned
361 and, in the case of a retail establishment that uses loyalty cards or otherwise maintains a dual
362 pricing system, the scanner displays both the loyalty card price and the non-card price if they
363 differ. Each consumer price scanner shall display contact information for the division of
364 standards to report broken scanners. Such consumer price scanners shall be in compliance with

365 the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and
366 the Massachusetts Architectural Access Board Regulations 521 CMR 1.00. Notwithstanding the
367 method for determining the amount of civil fines pursuant to said section 29A, a civil citation
368 may be issued for \$200 for each violation, up to a maximum of \$2,500 per inspection. For
369 purposes of this section each item which scans erroneously shall constitute a separate civil
370 violation.

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

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

378 SECTION 3. The division of standards, in consultation with the secretary of labor and
379 workforce development, shall annually file with the joint committee on community development
380 and small business, a report consisting of the impact of consumer price scanner implementation
381 on pricing accuracy and employee job loss or change of employment status, if any, resulting
382 from the item pricing waiver program. This report shall also contain recommendations for
383 legislative changes, if any, which the director of the division of standards deems necessary to
384 affect the purposes of the program. This report shall be filed annually on or before December 31.

385 SECTION 4. This act shall take effect on January 1, 2013.