

HOUSE No. 200

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to consumer protection..

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, section 184B, as so appearing, is hereby amended by inserting
2 at the end thereof the following definition:

3 “Retail Store”, a store selling any item at retail including any businesses selling non-food
4 items under other applicable Massachusetts law and regulations. A store which is not open to the
5 general public but is reserved for use by its members shall come within the provisions of this
6 definition unless the members must pay a direct fee to the store to qualify for membership and
7 the store is not required to collect sales tax on transactions with members. Pursuant to this
8 section a retail store shall not include any store which engages primarily in the sale of food for
9 consumption on the premises or in a specialty trade.

10 Chapter 94, section 184C, as so appearing, is hereby amended by inserting the following
11 words “, retail store” after the word “store” in line 2.

12 Chapter 94, section 184C, as so appearing, is hereby amended by striking subsection (10)
13 in its entirety and replacing it with the following:

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

20 Chapter 94, section 184C, as so appearing, is hereby amended by inserting at the end
21 thereof the following sections:

22 (11) Unpackaged items sold by length or area, such as chain, rope, flooring,
23 lumber or fabric on a bolt, with a clear and conspicuous "price per" marked on the bolt or at the
24 point of display.

25 (12) Unpackaged items sold by weight or volume from a bulk container or
26 source, such as stone or soil, with a clear and conspicuous "price per" marked on the container or
27 at the point of display.

28 (13) Items that must be retrieved for the consumer by store staff, such as large
29 electronics or appliances, where the display or representative items or items displayed in a
30 locked case or out of reach of consumers.

31 (14) Packaged self-service items that are small in size and are offered for sale
32 within five feet of the cash register, with a clear and conspicuous "price per" marked on the
33 container or at the point of display.

34 (15) Unpackaged items which have a weight of not more than 3 ounces, and/or a
35 price of not more than 75 cents, with a clear and conspicuous "price per" marked on the
36 container or at the point of display.

37 (16) Live animals and items sold in a coin operated vending machine, with a
38 clear and conspicuous "price per" marked on the container or at the point of display.

39 (17) Items offered temporarily at an advertised reduced price.

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

50 Chapter 94, section 184D, as so appearing, is hereby amended by inserting the following
51 words "or retail stores" after the phrase "food stores or food departments" in lines 2, 43, and 49
52 in each instance.

53 Chapter 94, section 184D, as so appearing, is hereby amended by inserting the words "or
54 retail store" after the phrase "food store and food department" in line 26.

55 Chapter 94, section 184E, as so appearing, is hereby amended by inserting the words “or
56 retail store” after the phrase “food store and food department” in lines 3, 5, 23, 28, 33 and 51 in
57 each instance.

58 Chapter 94, section 184E, as so appearing, is hereby amended by inserting the words “or
59 retail stores” after the phrase “food stores and food departments” in line 49.

60 Chapter 94, section 184E, as so appearing, is hereby amended by inserting the words “,
61 retail stores” after the words “food stores” in line 60.

62 Chapter 94, section 184E, as so appearing, is hereby amended by striking the second
63 sentence of the first paragraph and replacing it with the following sentence:

64 “Notwithstanding the provision of any law or regulation to the contrary, violations of
65 section 184C shall be punished for the first offense by a fine of \$200, for the second offense by a
66 fine of \$500, and for a subsequent offense, by a fine of \$1,000.”

67 Chapter 94, section 184E, as so appearing, is hereby amended by striking the third
68 sentence of the first paragraph and replacing it with the following sentence:

69 “Notwithstanding the method for determining the amount of civil fines pursuant to
70 section 29A of said chapter 98 and notwithstanding the provision of any law or regulation to the
71 contrary, a civil citation may be issued for not less than \$100 and not more than \$200 for each
72 violation, up to a maximum of \$5,000 per inspection.”

73 Chapter 94, as so appearing, is hereby amended by inserting at the end thereof the
74 following sections:

75 Section 329A.

76 (a) "Deputy Director" shall mean the Deputy Director of the division of standards.

77 (b) "Person" shall mean an individual, firm, partnership, association or corporation.

78 (c) "Division" shall mean the division of standards.

79 (d) "Computer-assisted check out system" shall mean any electronic device, computer
80 system or machine which determines the selling price of any item interpreting its universal
81 product code, any other code, or by any other use of a price look-up function.

82 (e) "Inspector" shall mean the Deputy Director or authorized agent to enforce the
83 provisions of this chapter.

84 (f) "Item price" shall mean the lowest indicated price on a shelf tag, sign or
85 advertisement.

86 (g) "Price look-up function" shall mean the capability of any checkout system to
87 determine the retail price of an item electronically or by way of the manual entry into the system
88 of a code number assigned to that particular unit by the retail store or by way of the checkout
89 operator's consultation of a file maintained at the point of sale.

90 (h) "Retail store" shall mean a store selling any item at retail including food and non-
91 food items. A store which is not open to the general public but is reserved for use by its members
92 shall come within the provisions of this definition unless the members must pay a direct fee to
93 the store to qualify for membership and the store is not required to collect sales tax on
94 transactions with members. Pursuant to this section a retail store shall not include any store
95 which engages primarily in the sale of food for consumption on the premises or in a specialty

96 trade, which the Deputy Director determines, by regulation, would be inappropriate for item
97 pricing.

98 (i) "Item" shall mean a specific and distinct product, good or commodity. One item is
99 differentiated from another by having a different universal product code for items so coded, and
100 for items not so coded, the item has any distinguishing characteristics compared to another item.

101 (j) "Electronic product coding" shall mean any system of coding which entails
102 electronic pricing.

103 (k) "Self-service price check scanner" shall mean a device to be utilized by
104 shoppers which reads the electronic or universal product code on a product, retrieves the correct
105 price from the seller's automatic checkout system or computer, displays the correct price on a
106 readout panel, and has either a grease pencil attached to the device for shoppers to use in
107 marking the price on an item or an alternative method by which a shopper may record the price
108 of an item. Such alternative method shall be subject to the approval of the Deputy Director.

109 (l) "Self-service price check scanner with printing capabilities" shall mean a
110 device to be utilized by shoppers which reads the electronic or universal product code on a
111 product, retrieves the correct price from the seller's automatic checkout system or computer,
112 displays the correct price on a readout panel, and is capable of printing an adhesive price sticker
113 with the correct price and product description.

114 Section 329B.

115 (a) No retail store shall charge a price for any item, which exceeds the lowest of
116 any item, shelf, scanned, sale or advertised price of such item. In the event that the price charged

117 exceeds the lowest price a store is permitted to charge for the item, the store will be subject to a
118 penalty as described in this chapter and other applicable law at the discretion of the Deputy
119 Director.

120 (b) In a store utilizing computerized laser scanning or other electronic assisted
121 checkout system, the inspector shall be permitted to compare the item, shelf, sale, or advertised
122 price of any item sold in the store with the programmed price.

123 (c) The Deputy Director shall establish a randomized store inspection
124 procedure designed to eliminate any bias in selecting stores to be inspected for price auditing
125 purposes. However, any retail store may be inspected at any time upon complaint or if the
126 Deputy Director has sufficient cause to audit a particular store or stores to ensure pricing
127 accuracy.

128 Section 329C.

129 (a) Every person, store, firm, partnership, corporation, or association which
130 uses a computer-assisted checkout system and which would otherwise be required to item price
131 as provided in sections 184B through 184E, inclusive, of chapter 94, or other applicable
132 Massachusetts law or regulation promulgated hereunder, may make an application in writing to
133 the Deputy Director for a waiver of said item pricing requirement. A separate application shall
134 be required for each store. An annual registration fee must be submitted with the initial
135 application and subsequent renewal. The Deputy Director shall approve or reject the application
136 within sixty days from the date of receiving the application. If the application is rejected, the
137 application fee shall be returned. Pursuant to the regulations promulgated under this chapter, the
138 Division will require that each applicant complete a "no job loss" affidavit stating the number of

139 people employed at the time of the application process. After the filing of the affidavit, if there is
140 any resulting job loss at the store due to the implementation of the waiver, not attributed to
141 seasonal employment or verifiable economic pressures, the store will be required to item price
142 pursuant to sections 184B through 184E, inclusive, of chapter 94, or other applicable
143 Massachusetts law or regulation promulgated hereunder, and be subject to a fine of not more
144 than five thousand dollars.

145 (b) The registration fee is based upon the number of cash registers in each store
146 as set according to the following schedule and exemption:

147 i. Waiver Fee Cash Register Schedule:

148 One to four cash registers \$2,500

149 Five or more cash registers \$5,000

150 ii. An applicant shall be exempt from submitting the annual waiver fee if shown at
151 the time of each application to be a retail store with an annual sales revenue equal to or less than
152 \$5,000,000 of in-store sales, as verified by its most recent Massachusetts tax return. For a retail
153 store with more than one location engaged in a unitary business, such sales volume shall be
154 reported as the aggregate of all sales reported by all locations.

155 (c) Waiver applications and the required fee or acceptable proof of fee
156 exemption must be received at the division by October 1, 2005, and annually thereafter. Stores
157 that fail to comply with the required registration, do not renew an application, or fail to pay the
158 annual renewal fee will be subject to the item pricing requirements and violations pursuant to
159 sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law.

160 (d) A waiver from item pricing shall be valid for a period of one year from the
161 date of issuance. Stores must reapply annually for renewal of waiver at the rates and procedures
162 established in section 329C(b).

163 (e) Systems approved by the Deputy Director must have means to provide an
164 audit trail regarding item price changes that can be accessed by state enforcement agents upon
165 request. All food and grocery item prices once entered into the store's electronic pricing system
166 shall remain unchanged for a minimum of seventy-two hours, unless the price is to be reduced or
167 is the result of a gross pricing error as defined in chapter 94, section 184B.

168 (f) Any registered retail store that fails to meet the stated price accuracy
169 standard of 98 per cent, not including any under charges, based on the price accuracy inspection
170 procedure adopted by the Division shall be re-inspected after thirty days of the failed inspection.
171 If the store fails upon re- inspection to meet the price accuracy standard, the registration of such
172 store may be suspended for a period of six months. During the suspension period, the store will
173 be required to individually item price every item offered for sale pursuant to sections 184B
174 through 184E, inclusive, of chapter 94, or other applicable Massachusetts law. After payment of
175 fifty percent of the original application fee as provided for in section 329C(b), the store can
176 request the Division in writing to be re-inspected. If the store after re-inspection meets the price
177 accuracy standard, the registration may be re-instated.

178 (g) As a condition of the waiver from item pricing pursuant to this section, each
179 retail store which accepts a waiver must agree to meet the following requirements:

180 i. The store shall designate and make available self-service price check scanners to
181 enable consumers to confirm the price of an item. Stores that are arranged in an aisle format

182 shall have one self-service price check scanner located on one end of every other aisle in those
183 areas exempted under the waiver. Stores that are arranged in a format other than in aisles shall
184 have one self-service price check scanner per five thousand square feet in those areas exempted
185 under the waiver. Stores that are arranged in a combination of aisles and other formats shall
186 have a number of self-service price check scanners that is within the discretion of the Deputy
187 Director. All stores shall have at least two self-service price check scanners. At least one of the
188 self-service price check scanners shall have printing capabilities. These self-service price check
189 scanners shall be strategically located in locations convenient to consumers with signs of
190 sufficient sized lettering identifying these units to consumers. Stores will submit their proposed
191 sign and device locations in a schematic diagram to the Deputy Director for approval with the
192 waiver application.

193 ii. The store shall place a clear and conspicuous separate sign, shelf tag or unit price
194 tag for the item, or a single sign in the case of similar items all priced the same, with the price no
195 smaller than three eighths of an inch high, at the point of display of each such item, disclosing
196 the price or discount of such item and information sufficient to identify the item which may
197 include the brand name, model number if applicable, or electronic product code.

198 iii. Each registrant shall verify the accuracy of all sale prices in the store's electronic
199 processing system prior to the start of any sale. Each registrant shall either assign an employee
200 to check all sale prices in the store's electronic pricing system prior to the start of any sale and
201 maintain a sale price log including the following: name of the store employee, date the employee
202 performed the pre-sale price accuracy audit, and the signature of the employee; or establish a
203 reasonable process to verify the accuracy of all sale prices prior to the start of any sale subject to
204 guidelines established by the Deputy Director. Failure to establish such a process or make that

205 process available upon request by any authorized agent of the Deputy Director may be cause for
206 registration suspension.

207 iv. The store shall not charge any customer a price for any item, which exceeds the
208 item, shelf, sale or advertised price.

209 v. The store shall make prompt payment to consumers who have been overcharged
210 and shall correct all pricing errors identified by consumers, guaranteeing the consumer the item
211 free if it costs less than \$10 or \$10 off the item if the item costs more than \$10. The price
212 accuracy guarantee must be conspicuously posted at each cash register and at each self-service
213 price check scanner.

214 vi. If an item rings up higher than the lowest advertised price, the store will be subject
215 to a fine of no more than \$200.

216 vii. If a store fails to post the required item price sign at the point of display, the store
217 will be subject to a fine of not more than \$100 per item. However, if the item, which was a result
218 of the failure to post a required item price sign at the point of display, rings up at a price higher
219 than the lowest price charged for that item during the previous thirty days, the fine will be
220 increased to no more than \$200.

221 viii. For items that cannot easily be carried to an electronic scanner because of their
222 size or weight, the seller must provide a scannable card or other device at the point of display of
223 the item, so that a consumer can take the card or device to the self-service price check scanner.

224 ix. Each registrant shall make available to customers written information explaining
225 the item pricing waiver and use of self-service price check scanners. Stores shall submit their
226 proposed written information to the Deputy Director for approval with the waiver application.

227 (h) In no event shall a single act or violation of sections 329A through D
228 inclusive, or 184B through E inclusive or section 56D of Chapter 98 result in the imposition of
229 multiple fines or penalties.

230 (i) The Deputy Director, in his discretion, may revoke a waiver from item
231 pricing for cause including but not limited to any of the following reasons:

232 i. Failure to comply with any provisions of this chapter;

233 ii. Deliberate overcharging of any consumer; or

234 iii. Material misrepresentation in the application for a waiver.

235 Section 329D.

236 (a) The provisions of this chapter shall be enforced by the division. Upon representation
237 of appropriate credentials, the division's inspectors and agents shall have the right to enter upon
238 the premises of any retail store to make an inspection and to determine compliance with the
239 provisions of this chapter.

240 (b) For the purpose of determining a store's compliance with the requirement to
241 disclose the item price to the consumer, an inspection shall be conducted of a sample of no less
242 than twenty-five items.

243 (c) No item shall be cited more than once in a forty-eight hour period for not
244 disclosing the item price to the consumer.

245 (d) For any inspection under section 329B, the store representative shall afford the
246 inspector access to the test mode of the checkout system in use at that store or to a comparable
247 function of said system and to the retail price information contained in a price look-up function.

248 (e) The inspector shall have the authority to issue a stop sale order with respect to any
249 item being used, handled, or offered for sale in violation of section 329B and for not disclosing
250 the item price to the consumer. Any such order shall be in writing and direct that the item shall
251 be removed for sale pending price correction.

252 (f) The division shall retain up to ten percent of all registration fees and fines collected
253 not to exceed \$2,000,000 annually. The retained revenue collected may be used by the division
254 to support its enforcement activities and for grants to approved agents to assist the division in the
255 enforcement of the provisions of this law. Any revenue generated on an annual basis over this
256 amount shall revert to the General Fund.

257 (g) A hearing may be requested in writing on any fineable violation or registration
258 suspension issued by the division. The division's designated hearing officer will conduct the
259 hearing. The division's designated hearing officer shall make a written determination. Such
260 determination may be appealed to the Deputy Director who, after due deliberation, shall issue an
261 order accepting, modifying, or rejecting the hearing officer's determination. If the grounds for
262 appeal are determined to be without reasonable basis, the fine shall be doubled.