

HOUSE No. 202

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

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 bill:

An Act relative to clear and conspicuous price disclosure.

PETITION OF:

NAME:

Michael J. Rodrigues

DISTRICT/ADDRESS:

8th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4966 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 184B
2 to 184E, inclusive, as appearing in the 2006 Official Edition, and inserting in place thereof the following
3 4 sections:-

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

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

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

11 “Checkout price”, the retail price of an item charged to the consumer as listed on an automated
12 checkout system display or on an itemized sales receipt.

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

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

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

20 “Deputy director”, the deputy director of the division of standards established pursuant to section
21 5 of chapter 24A, or his designee including, but not limited to, an inspector, a sealer or a deputy as
22 defined in section 1 of chapter 98.

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

25 “Display price”, the retail price on a sign affixed to the display on which the unit is placed.

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

27 “Individual item”, 1 of an item.

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

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

33 “Price accuracy rate”, the percentage of inspected items for which the checkout price in an
34 automated checkout system is consistent with all other prices represented to the consumer.

35 “Price list”, an easily referenced list maintained by the retailer that indicates the code, the
36 description and the current retail price of each item excluded under subsection (d) of section 184C.

37 “Retailer”, includes (i) every person engaged in the business of making sales at retail; (ii) every
38 person engaged in the making of retail sales at auction of tangible personal property whether owned by
39 such person or others; (iii) every person engaged in the business of making sales for storage, use or other
40 consumption, or in the business of making sales at auction of tangible personal property whether owned
41 by such person or others for storage, use or other consumption; (iv) every salesman, representative,
42 peddler or canvasser who, in the opinion of the commissioner, it is necessary to regard for the efficient
43 administration of this chapter as the agent of the dealer, distributor, supervisor or employer under whom
44 he operates or from whom he obtains the tangible personal property sold by him, in which case the
45 commissioner may treat and regard such agent as the retailer jointly responsible with his principal,
46 employer or supervisor for the collection and payment of the tax imposed by this chapter; and (v) the
47 commonwealth, or any political subdivision thereof, or their respective agencies when such entity is
48 engaged in making sales at retail of a kind ordinarily made by private persons.

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

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

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

54 Section 184C. (a) The retail price of an item offered for sale by a retailer shall be disclosed to consumers
55 in a clear and conspicuous manner. The retailer may disclose the retail price using an individual item
56 pricing system or a consumer scanner pricing system; provided, however, that an individual item pricing
57 system shall have the retail price of an item affixed to each individual item in a clear and conspicuous
58 manner by means of a sticker, ticket, tag, or other label; and provided further, that a consumer scanner
59 pricing system shall have the code of an item affixed to each individual item in a clear and conspicuous
60 manner by means of a sticker, ticket, tag or other label that can be read by a consumer scanner and
61 automated checkout system.

62 (b) Each retailer using a consumer scanner pricing system shall have at least 1 operational
63 consumer scanner at a fixed location. Each retailer with more than 5,000 square feet of retail space shall
64 have at least 1 operational consumer scanner every 5,000 square feet at a fixed location. The fixed
65 location of a consumer scanner shall be disclosed in a clear and conspicuous manner. If a retailer provides
66 handheld or cart-mounted scanners, they shall be in addition to those required at fixed locations.

67 (c) Upon a determination that: (1) a clear and conspicuous sign disclosing the item's code, its
68 description and its retail price is posted where these items are displayed; (2) the cashier can readily
69 discern the item's retail price, (3) the retailer maintains an itemized retail price list for all excluded items,
70 and (4) the retail price list is available at each checkout and can be reviewed by a customer upon request a
71 retailer may exclude the following classes of items from its individual item pricing system or its
72 consumer scanner pricing system: (i) produce, meat, fish, poultry, delicatessen, bakery items, and any
73 other items that are unpackaged and offered from a bulk display; provided, however, that any such item
74 weighed or wrapped to order by the food store or food department but paid for at a place other than at the
75 point of such weighing or wrapping shall have the correct retail price marked on the item; (ii) gallons and
76 half gallons of milk; (iii) eggs; (iv) cigarettes, cigars, tobacco and tobacco products; (v) individual items
77 within a multi-item package, if the package is marked with the correct retail price; (vi) cakes, gum, candy,
78 chips, nuts and other snack foods, if offered for sale individually, and located at the checkout area; (vii)
79 individual greeting cards, if marked with a price code readily understandable by the consumer; (viii)
80 individual containers of baby food of the same brand and retail price where vegetable or fruit is the
81 predominant ingredient other than water, but not including juices;(ix) soft drink bottles and cans; (x)
82 frozen food products; (xi) items sold by length, area, weight or volume, including without limitation
83 chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged; (xii) items that must be retrieved
84 for the consumer by store staff, including without limitation large electronics or appliances, display or
85 representative items or items displayed in a locked case or out of reach of consumers; (xiv) packaged self-
86 service items that are small in size and are offered for sale located at the checkout area; (xv) live animals
87 and items sold in a coin operated vending machine; (xvi) items offered temporarily at an advertised
88 discount; and(x) in addition to those classes of items otherwise exempted, not more than 60 items that are:
89 (1) using an individual item pricing system; and (2) accessible to the consumer in a free standing or end-
90 aisle display that has at least 50 individual items of the same item; provided, however, that unless the
91 deputy director determines otherwise, individual items that differ only by color, flavor or scent shall be
92 counted as the same item for the purpose of this clause if they are identical in all other aspects, including
93 retail price, size and brand; and (xvii) not more than an additional 400 items offered for sale.

94 (d) A retailer shall provide an itemized sales receipt to all customers.

95 (e) If the consumer qualifies for a discount, the discount or the discounted retail price shall be
96 reflected in the checkout price and printed on the consumer's itemized sales receipt.

97 (f) If there is a discrepancy between the advertised retail price, the sticker price, the scanner price
98 or the display price and the checkout price, a retailer shall charge a consumer the lowest price. If the
99 checkout price is not the lowest price or does not reflect any qualifying discount, the retailer: (i) shall not
100 charge the consumer for 1 unit of the item, if the lowest price is \$10 or less; (ii) shall charge the consumer
101 the lowest price less \$10 for 1 unit of the item, if the lowest price is more than \$10; and (iii) shall charge
102 the consumer the lowest price for any additional units of the item. This subsection shall not apply if: (1)
103 there is evidence of willful tampering or (2) the discrepancy is a gross error, in that the lowest price is less
104 than half of the checkout price and the retailer, in the previous 30 days, did not intend to sell the item at
105 the lowest price. All retailers shall maintain data on price discrepancies. This data shall be provided to the
106 division upon request. The provisions of this subsection shall be clearly and conspicuously posted by all
107 retailers.

108 (g) A consumer may submit a complaint to the office of the attorney general or to the division
109 regarding compliance with this section.

110 (h) If the deputy director determines that a retailer is knowingly or through gross negligence
111 violating sections 184C to 184E, inclusive, the deputy director shall notify the attorney general and the
112 retailer shall be prohibited from using any exclusions under subsection (c) for 1 year.

113 (i) The deputy director may require retailers to disclose a consumer's rights under sections 184C
114 to 184E, inclusive.

115 (j) The deputy director shall inspect each retailer for compliance with this section. The inspection
116 shall be conducted pursuant to the national industry standards adopted by the National Conference on
117 Weights and Measures of the National Institute of Standards and Technology. The retailer shall provide
118 the inspector with access necessary to conduct an inspection. The deputy director shall notify the retailer
119 in writing of violations of this section and shall and any fines imposed pursuant to section 184D section
120 184E. A fine imposed by the deputy director shall be paid within 30 days of issuance of the notice, unless
121 the retailer appeals to the deputy director. If the grounds for appeal are determined to be without
122 reasonable basis, the fine shall be doubled. The retailer shall immediately correct any noncompliance with
123 section 184C when notified by the inspector.

124 (k) Any retailer intending to transfer from an individual item pricing system to a consumer
125 scanner pricing system and having a collective bargaining agreement with employees of which item
126 pricing is any part of said employees job responsibilities, shall submit an affidavit to the deputy director
127 prior to the implementation of the transfer stating that protections, including without limitation, a
128 complaint process, are in place so that those employees will not suffer any wage or benefit loss due to
129 said transfer. Said affidavit shall include, without limitation, the number of employees within the
130 bargaining unit holding the collective bargaining unit and the wages and benefits of each employee. If an
131 individual employee's wages or benefits are reduced due to said transfer and not due to seasonal
132 employment, the retailer shall disclose retail prices using an individual item pricing system and shall be
133 subject to a fine of not more than \$5,000.

134 (l) The division shall promulgate rules and regulations for the administration and enforcement of
135 sections 184B to 184E, inclusive, that are consistent with national industry standards.

136 (m) The division may retain all registration fees and fines it collects not to exceed \$2,000,000
137 annually. The retained revenue collected may be used by the division to support its enforcement activities
138 and for grants to approved agents to assist the division in the enforcement of the provisions of this law.

139 Section 184D. (a) All retailers using a consumer scanner pricing system shall be subject to inspection by
140 the division; provided, however, that the division shall not cause any retailer using a consumer scanner
141 pricing system to be inspected more than once per calendar year; provided, however, the division may
142 inspect any retailer using a consumer scanner pricing system on a more frequent basis if: (1) within the
143 previous 30 days, there is a verified pattern of consumer complaints; or (2) upon regular inspection the
144 retailer is not in compliance with subsection (c).

145 (b) The division shall collect an inspection fee from each retailer using a consumer scanner
146 pricing system for each inspection. Said fee shall be \$250 if the retail space is less than 20,000 square feet
147 and \$500 if the retail space is 20,000 square feet or more. Said fee shall be waived if the retailer provided
148 income tax documentation that at the time of the inspection that if during the preceding tax year said
149 retailer had cumulative annual sales revenue of less than 5,000,000 .

150 (c) A retailer using a consumer scanner pricing system shall be in violation if said retailer: (i) has
151 been found to be not in compliance with section 184C; (ii) has excluded an item under subsection (c) of
152 said section 184C, but has not meet the requirements of the subsection; or (iii) scores less than a 98 per
153 cent price accuracy rate.

154 (d) A violation of this section shall be punishable by a fine of \$250 for the first offense within a
155 calendar year, by a fine of \$500 for the second offense within a calendar year, and by a fine of \$1,000 for
156 the third and any subsequent offense within a calendar year, up to a maximum of \$5,000 per year;
157 provided, however, that the deputy director may reduce any fine imposed pursuant to this section
158 consistent with section 29A of chapter 98.

159 Section 184E. (a) All retailers using an individual item pricing system shall be subject to inspection by
160 the division; provided, however, that the division shall not cause any retailer using an individual item
161 pricing system to be inspected more than once per week. The division shall not assess any fee upon a
162 retailer using an individual item pricing system for an inspection pursuant to this section; provided,
163 however, that shall be subject to fees imposed pursuant to section 56 of chapter 98.

164 (b) A retailer using an individual item pricing system shall be in violation if during an inspection:
165 (i) there is no sticker price on an individual item and said item has not been excluded under subsection (c)
166 of section 184C; (ii) the retailer has excluded an item under said subsection (c) of said section 184C, but
167 has not meet the requirements of the subsection; or (iii) the retailer scores less than a 98 per cent price
168 accuracy rate. Multiple individual items from the same display of an item which are found in violation of
169 this section shall be considered 1 violation.

170 (c) A violation of subsection (b) shall be punishable by a fine of \$100 for the first offense, by a
171 fine of \$250 for the second offense, and by a fine of \$500 for the third and subsequent offense. Multiple

172 fines issued pursuant to the same inspection shall not exceed \$2,500 per inspection; provided, however,
173 that the deputy director may reduce any fine imposed pursuant to this section consistent with section 29A
174 of chapter 98.

175 **SECTION 2.** Notwithstanding any general or special law to the contrary, any retailer who, on December
176 31, 2008, would not subject to sections 184C to 184E, inclusive, of chapter 94 of the General Laws shall
177 not be assessed an inspection fee for any inspections conducted under section 184D of said chapter 94
178 until January 1, 2013.

179 **SECTION 3.** This act shall take effect on January 1, 2011.