HOUSE DOCKET, NO. 3665 FILED ON: 1/15/2009

HOUSE . . . . . No. 212

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relative to Pricing in Food Stores and Food Departments..

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

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

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

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

by consistently maintaining a ninety eight percent (98%) or higher accuracy rate on their electronic scanners, and provided further that the seller has obtained the written authorization of all collective bargaining units to which the seller is contractually bound to employ the use of electronic scanners as a means in which to identify the selling price of an item. Electronic scanners available for consumer use are capable of (1) identifying and displaying the item by name or other distinguishing characteristics; (2) displaying the price of the item; and (3) producing an individual pricing tag for that item, except that the Deputy Director may authorize the use of individual hand-held or cart attached scanners in lieu of producing an individual pricing tag. At each scanner location, the seller must also provide the consumer with a means by which such pricing tag may be easily affixed or appended to the item or its packaging (e.g. adhesive pricing tag.) Such scanners must also be in compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts Architectural Access Board Regulations 521 CMR 1.00 et seq.

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

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

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

(10) Items that are located in end-aisle or freestanding displays provided, however, that if offered for sale by a seller with an automatic checkout system they are coded, or if offered by a seller without such system they are on an easily referenced price list at each cash register, and provided, further, that such items are fully and accurately price marked at their regular shelf

location, and the seller maintains a list of such items as required by section one hundred and eighty-four D.

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

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

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

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

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

SECTION 6. Notwithstanding the limited number of exemptions provided in Chapter 94, sections 184B-184E, the Division of Standards is hereby authorized to conduct a six month item pricing removal pilot program commencing on or before October 1, 2009. The pilot program will examine the effects of removing individual price stickers and tags from grocery items and

the use and functionality of self-service price check scanners in retail stores selling food. Up to 50 retail stores selling food may be accepted into the pilot program.

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

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

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

Terms and Conditions of Participation for accepted stores:

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

granted an exemption from the requirement of item pricing for grocery and food items for the duration of the pilot;

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

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

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

Testing and compliance: For the purposes of this pilot program, the Division or its designees may inspect any store at any time and levy fines as provided in Chapter 98, Section 56D and Chapter 94, Section 184E. For the purposes of this pilot program, inspections and fines may include the following: an accuracy test for checkout scanners, a sign test for compliance

with the posting requirements, and a test of all printing self-service price check scanners in the store for functionality and compliance.

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

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

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

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

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

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

SECTION 7. There is hereby created a Retail Store Pricing Reform Study Commission comprised of the chairs and ranking minority members of the Joint Committee on Community Development and Small Business, and one representative from each of the following entities: the

Office of Consumer Affairs and Business Regulation, the Office of the Attorney General, the Retailers Association of Massachusetts, the Massachusetts Consumers Coalition, the United Food and Commercial Workers union local 1445, the United Food and Commercial Workers union local 791, the Massachusetts Food Association, and two Massachusetts based and owned retail companies appointed by the co-Chairs of the Committee on Community Development and Small Business. The Commission shall meet to review existing laws in Massachusetts and elsewhere pertaining to retail pricing accuracy and disclosure, and shall make recommendations on reform legislation to streamline duplicative pricing laws, while best protecting consumers for cost, service, disclosure and accuracy, and small businesses from unnecessary regulation and costs. The Commission shall report to the Joint Committee on Small Business and Community Development by April 30, 2010.