

HOUSE No. 4094

The Commonwealth of Massachusetts

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

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

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

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

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

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

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

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

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

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

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

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

30 “Individual item”, 1 of an item.

31 “Item”, a specific and distinct product, good or commodity available for retail sale
32 differentiated from another item by having a different universal product code for items so coded,

33 and for items not so coded, an item having any distinguishing characteristics compared to
34 another item.

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

37 “Price accuracy rate”, the percentage of individual items for which the checkout price in
38 an automated checkout system is consistent with all other prices represented to the consumer
39 during an inspection conducted pursuant sections 184C to 184E, inclusive.

40 “Price list”, an easily referenced list maintained by the retailer that indicates the code, the
41 description and the current retail price of each item excluded under subsection (c) of section
42 184C.

43 “Retailer”, includes (i) every person engaged in the business of making sales at retail; (ii)
44 every person engaged in the making of retail sales at auction of tangible personal property
45 whether owned by such person or others; (iii) every person engaged in the business of making
46 sales for storage, use or other consumption, or in the business of making sales at auction of
47 tangible personal property whether owned by such person or others for storage, use or other
48 consumption; (iv) every salesman, representative, peddler or canvasser who, in the opinion of the
49 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent
50 of the dealer, distributor, supervisor or employer under whom he operates or from whom he
51 obtains the tangible personal property sold by him, in which case the commissioner may treat
52 and regard such agent as the retailer jointly responsible with his principal, employer or
53 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the

54 commonwealth, or any political subdivision thereof, or their respective agencies when such
55 entity is engaged in making sales at retail of a kind ordinarily made by private persons.

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

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

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

62 Section 184C. (a) The retail price of an item offered for sale by a retailer shall be
63 disclosed to consumers in a clear and conspicuous manner. The retailer may elect to disclose the
64 retail price using either an individual item pricing system or a consumer scanner pricing system;
65 provided, however, that an individual item pricing system shall have the retail price of an item
66 affixed to each individual item in a clear and conspicuous manner by means of a sticker, ticket,
67 tag, or other label; and provided further, that a consumer scanner pricing system shall have the
68 code of an item affixed to each individual item in a clear and conspicuous manner by means of a
69 sticker, ticket, tag or other label that can be read by a consumer scanner and automated checkout
70 system. The item’s code, its description and its price, with the price no smaller than one inch
71 high, shall be disclosed in a clear and conspicuous manner at the point of display.

72 (b) Each retail store using a consumer scanner pricing system shall have at least 1
73 operational consumer scanner at a fixed location. Each retail store with more than 5,000 square
74 feet of retail space shall have at least 1 operational consumer scanner every 5,000 square feet at a
75 fixed location. The fixed location of a consumer scanner shall be disclosed in a clear and

76 conspicuous manner. If a retailer provides handheld or cart-mounted scanners, they shall be in
77 addition to those required at fixed locations.

78 (c) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code,
79 its description and its retail price, with the price no smaller than one inch high, is posted where
80 these items are displayed; (ii) the cashier can readily discern the item's retail price, (iii) the
81 retailer maintains an itemized retail price list for all excluded items, and (iv) the retail price list is
82 available at each checkout and can be reviewed by a customer upon request, a retailer may
83 exclude the following classes of items from its individual item pricing system or its consumer
84 scanner pricing system: (1) produce, meat, fish, poultry, delicatessen, bakery items, and any
85 other items that are unpackaged and offered from a bulk display; provided, however, that any
86 such item weighed or wrapped to order by the food store or food department but paid for at a
87 place other than at the point of such weighing or wrapping shall have the correct retail price
88 marked on the item; (2) gallons and half gallons of milk; (3) eggs; (4) cigarettes, cigars, tobacco
89 and tobacco products; (5) individual items within a multi-item package, if the package is marked
90 with the correct retail price; (6) cakes, gum, candy, chips, nuts and other snack foods, if offered
91 for sale individually, and located at the checkout area; (7) individual greeting cards, if marked
92 with a price code readily understandable by the consumer; (8) individual containers of baby food
93 of the same brand and retail price where vegetable or fruit is the predominant ingredient other
94 than water, but not including juices; (9) soft drink bottles and cans; (10) frozen food products;
95 (11) items sold by length, area, weight or volume, including without limitation chain, rope,
96 flooring, lumber, fabric, stone or soil, that are unpackaged; (12) items that must be retrieved for
97 the consumer by store staff, including without limitation large electronics or appliances, display
98 or representative items or items displayed in a locked case or out of reach of consumers; (13)

99 packaged self-service items that are small in size and are offered for sale located at the checkout
100 area; (14) live animals; (15) items sold in a coin operated vending machine; (16) items offered
101 temporarily at an advertised discount; and (17) for a retail store using an individual item pricing
102 system, not more than 60 additional items that are accessible to the consumer in a free standing
103 or end-aisle display that has at least 50 individual items of the same item; provided, however,
104 that unless the deputy director determines otherwise, individual items that differ only by color,
105 flavor or scent shall be counted as the same item for the purpose of this clause if they are
106 identical in all other aspects, including retail price, size and brand; and (18) an additional 5 per
107 cent of items offered for sale.

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

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

111 (f) If there is a discrepancy between the advertised price, the sticker price, the scanner
112 price or the display price and the checkout price, a retailer shall charge a consumer the lowest
113 price. If the checkout price is not the lowest price or does not reflect any qualifying discount, the
114 retailer: (i) shall not charge the consumer for 1 unit of the item, if the lowest price is \$10 or less;
115 (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the item, if the lowest price
116 is more than \$10; and (iii) shall charge the consumer the lowest price for any additional units of
117 the item. This subsection shall not apply if: (1) there is evidence of willful tampering or (2) the
118 discrepancy is a gross error, in that the lowest price is less than half of the checkout price and the
119 retailer, in the previous 30 days, did not intend to sell the item at the lowest price. All retailers
120 shall maintain data on price discrepancies. This data shall be provided to the division upon

121 request. The provisions of this subsection shall be clearly and conspicuously posted by all
122 retailers.

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

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

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

131 (j) The deputy director shall inspect each retail store for compliance with this section.
132 The inspection shall be conducted pursuant to the national industry standards adopted by the
133 National Conference on Weights and Measures of the National Institute of Standards and
134 Technology. The retailer shall provide the inspector with access necessary to conduct an
135 inspection. The deputy director shall notify the retailer in writing of violations of this section and
136 of any fines imposed pursuant to section 184D and section 184E. A fine imposed by the deputy
137 director shall be paid within 30 days of issuance of the notice, unless the retailer appeals to the
138 deputy director. If the grounds for appeal are determined to be without reasonable basis, the fine
139 shall be doubled. The retailer shall immediately correct any noncompliance with section 184C
140 when notified by the inspector.

141 (k) Any retailer intending to transfer from an individual item pricing system to a
142 consumer scanner pricing system and having a collective bargaining agreement with employees

143 of which item pricing is any part of said employees' job responsibilities, shall submit an affidavit
144 to the deputy director prior to the implementation of the transfer stating that protections,
145 including without limitation a complaint process, are in place so that those employees will not
146 suffer any wage or benefit loss due to said transfer. Said affidavit shall include, without
147 limitation, the number of employees within the bargaining unit holding the collective bargaining
148 unit and the wages and benefits of each employee. If an individual employee's wages or benefits
149 are reduced due to said transfer and not due to seasonal employment, the retailer shall disclose
150 retail prices using an individual item pricing system and shall be subject to a fine of not more
151 than \$5,000.

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

155 (m) The division may retain all registration fees and fines it collects not to exceed
156 \$2,000,000 annually. The retained revenue collected may be used by the division to support its
157 enforcement activities and for grants to approved agents to assist the division in the enforcement
158 of the provisions of this law.

159 Section 184D. (a) All retail stores using a consumer scanner pricing system shall be
160 subject to inspection by the division; provided, however, that the division shall not cause any
161 retail store using a consumer scanner pricing system to be inspected more than once per calendar
162 year; provided, however, the division may inspect any retail store using a consumer scanner
163 pricing system once every 72-hour period until the retail store is found to be in compliance with
164 subsection (c) if: (1) within the previous 30 days, there is a verified pattern of consumer

165 complaints; or (2) upon regular inspection the retail store is not in compliance with said
166 subsection (c).

167 (b) The division shall collect an inspection fee from each retailer using a consumer
168 scanner pricing system for each inspection. Said fee shall be \$250 if the retail space is less than
169 20,000 square feet and \$500 if the retail space is 20,000 square feet or more. Said fee shall be
170 waived if the retailer provided income tax documentation that at the time of the inspection that if
171 during the preceding tax year said retailer had cumulative annual sales revenue of less than
172 \$5,000,000.

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

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

182 Section 184E. (a) All retail stores using an individual item pricing system shall be subject
183 to inspection by the division; provided, however, that the division shall not cause any retail store
184 using an individual item pricing system to be inspected more than once per week.

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

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

194 (d) A violation of subsection (c) shall be punishable by a fine of \$100 for the first
195 offense, by a fine of \$250 for the second offense, and by a fine of \$500 for the third and
196 subsequent offense. Multiple fines issued pursuant to the same inspection shall not exceed
197 \$2,500 per inspection; provided, however, that the deputy director may reduce any fine imposed
198 pursuant to this section consistent with section 29A of chapter 98.

199 SECTION 2. Section 56D of chapter 98 is hereby repealed.

200 SECTION 3. Notwithstanding any general or special law to the contrary, any retailer
201 who, on December 31, 2008, would not subject to sections 184C to 184E, inclusive, of chapter
202 94 of the General Laws shall not be assessed an inspection fee for any inspections conducted
203 under section 184D of said chapter 94 until January 1, 2012.

204 SECTION 4. This act shall take effect on January 1, 2010.