

SENATE No. 123

By Mr. Buoniconti, a petition (accompanied by bill, Senate, No. 123) of Susan C. Tucker and Anthony W. Petruccelli for legislation relative to clear and conspicuous price disclosures. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to clear and conspicuous price disclosures..

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 sections 184C to 184E, inclusive, the following words shall,
5 unless the context clearly requires otherwise, have the following meanings:

6 “Advertised price”, the retail 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 retail price of an item from the item’s code after searching the
11 retailer’s electronic database and printing an itemized sales receipt for a consumer.

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

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

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

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

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

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

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

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

29 “Individual item”, 1 of an item.

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

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

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

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

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

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

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

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

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

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

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

74 (c) Upon a determination that: (1) a clear and conspicuous sign disclosing the item’s
75 code, its description and its retail price is posted where these items are displayed; (2) the cashier

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

99 standing or end-aisle display that has at least 50 individual items of the same item; provided,
100 however, that unless the deputy director determines otherwise, individual items that differ only
101 by color, flavor or scent shall be counted as the same item for the purpose of this clause if they
102 are identical in all other aspects, including retail price, size and brand; and (xvii) not more than
103 an additional 400 items offered for sale.

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

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

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

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

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

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

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

137 (k) Any retailer intending to transfer from an individual item pricing system to a
138 consumer scanner pricing system and having a collective bargaining agreement with employees
139 of which item pricing is any part of said employees job responsibilities, shall submit an affidavit
140 to the deputy director prior to the implementation of the transfer stating that protections,
141 including without limitation, a complaint process, are in place so that those employees will not
142 suffer any wage or benefit loss due to said transfer. Said affidavit shall include, without

143 limitation, the number of employees within the bargaining unit holding the collective bargaining
144 unit and the wages and benefits of each employee. If an individual employee's wages or benefits
145 are reduced due to said transfer and not due to seasonal employment, the retailer shall disclose
146 retail prices using an individual item pricing system and shall be subject to a fine of not more
147 than \$5,000.

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

151 (m) The division may retain all registration fees and fines it collects not to exceed
152 \$2,000,000 annually. The retained revenue collected may be used by the division to support its
153 enforcement activities and for grants to approved agents to assist the division in the enforcement
154 of the provisions of this law.

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

162 (b) The division shall collect an inspection fee from each retailer using a consumer
163 scanner pricing system for each inspection. Said fee shall be \$250 if the retail space is less than
164 20,000 square feet and \$500 if the retail space is 20,000 square feet or more. Said fee shall be

165 waived if the retailer provided income tax documentation that at the time of the inspection that if
166 during the preceding tax year said retailer had cumulative annual sales revenue of less than
167 5,000,000 .

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

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

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

183 (b) A retailer using an individual item pricing system shall be in violation if during an
184 inspection: (i) there is no sticker price on an individual item and said item has not been excluded
185 under subsection (c) of section 184C; (ii) the retailer has excluded an item under said subsection
186 (c) of said section 184C, but has not meet the requirements of the subsection; or (iii) the retailer

187 scores less than a 98 per cent price accuracy rate. Multiple individual items from the same
188 display of an item which are found in violation of this section shall be considered 1 violation.

189 (c) A violation of subsection (b) shall be punishable by a fine of \$100 for the first
190 offense, by a fine of \$250 for the second offense, and by a fine of \$500 for the third and
191 subsequent offense. Multiple fines issued pursuant to the same inspection shall not exceed
192 \$2,500 per inspection; provided, however, that the deputy director may reduce any fine imposed
193 pursuant to this section consistent with section 29A of chapter 98.

194 SECTION 2. Notwithstanding any general or special law to the contrary, any retailer
195 who, on December 31, 2008, would not subject to sections 184C to 184E, inclusive, of chapter
196 94 of the General Laws shall not be assessed an inspection fee for any inspections conducted
197 under section 184D of said chapter 94 until January 1, 2013.

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