

**SENATE . . . . . No. 98**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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 1. Section 184B of chapter 94 is hereby amended in the definition of “food  
2 department” by striking the word “ten” and inserting in its place thereof the words: — “one  
3 hundred”.

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

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

15 the scanners, and seller remains in compliance with section 29 of chapter 98 of the General Laws  
16 by consistently maintaining a ninety eight percent (98%) or higher accuracy rate on their  
17 electronic scanners, and provided further that the seller has obtained the written authorization of  
18 all collective bargaining units to which the seller is contractually bound to employ the use of  
19 electronic scanners as a means in which to identify the selling price of an item. Electronic  
20 scanners available for consumer use are capable of (1) identifying and displaying the item by  
21 name or other distinguishing characteristics; (2) displaying the price of the item; and (3)  
22 producing an individual pricing tag for that item, except that the Deputy Director may authorize  
23 the use of individual hand-held or cart attached scanners in lieu of producing an individual  
24 pricing tag. At each scanner location, the seller must also provide the consumer with a means by  
25 which such pricing tag may be easily affixed or appended to the item or its packaging (e.g.  
26 adhesive pricing tag.) Such scanners must also be in compliance with the Americans with  
27 Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts  
28 Architectural Access Board Regulations 521 CMR 1.00 et seq.

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

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

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

34 (10) Items that are located in end-aisle or freestanding displays provided, however, that  
35 if offered for sale by a seller with an automatic checkout system they are coded, or if offered by a  
36 seller without such system they are on an easily referenced price list at each cash register, and

37 provided, further, that such items are fully and accurately price marked at their regular shelf  
38 location, and the seller maintains a list of such items as required by section one hundred and  
39 eighty-four D.

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

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

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

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

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

55 SECTION 6. Notwithstanding the limited number of exemptions provided in Chapter 94,  
56 sections 184B-184E, the Division of Standards is hereby authorized to conduct a six month item  
57 pricing removal pilot program commencing on or before October 1, 2009. The pilot program

58 will examine the effects of removing individual price stickers and tags from grocery items and  
59 the use and functionality of self-service price check scanners in retail stores selling food. Up to  
60 50 retail stores selling food may be accepted into the pilot program.

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

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

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

77 Terms and Conditions of Participation for accepted stores:

78 An exemption from the item pricing requirement for grocery and food items is granted  
79 for the duration of the test for all such items with either a UPC barcode or machine readable

80 SKU. The Division shall provide each participating store with a letter certifying that the store is  
81 granted an exemption from the requirement of item pricing for grocery and food items for the  
82 duration of the pilot;

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

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

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

98 Testing and compliance: For the purposes of this pilot program, the Division or its  
99 designees may inspect any store at any time and levy fines as provided in Chapter 98, Section  
100 56D and Chapter 94, Section 184E. For the purposes of this pilot program, inspections and fines  
101 may include the following: an accuracy test for checkout scanners, a sign test for compliance

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

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

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

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

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

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

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

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

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