

HOUSE No. 3491

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 2008 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 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 price of an item from the item’s code after searching the electronic
12 price database and printing an itemized sales receipt for a consumer.

13 “Card price”, the price a loyalty card holder will be charged if different from the non-card
14 price.

15 “Checkout price”, the price of an item to be charged to the consumer whether purchased
16 or not as listed on an automated checkout system display or on an itemized sales receipt.

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

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

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

24 “Correct price”, the advertised price in any circular, newspaper, magazine, television or
25 radio commercial, or in any other medium, or any published correction thereof. If an item is not
26 advertised, the correct price shall be the lowest display price indicated on any store sign for the
27 item, but not if the checkout price is lower. If an item has no display price, the correct price shall
28 be the price of the item on its unit price label, but not if such item is rung up at a lower price. If
29 no unit price label is displayed, the correct price shall be the price rung up by the food store’s or
30 a food department’s automatic checkout system. If the foregoing provisions for establishing the
31 correct price are not determinative in a particular situation, the correct price shall be the price on
32 the seller’s current price list.

33 “Deputy director”, the deputy director of the division of standards established pursuant to
34 section 5 of chapter 24A, or his designee including but limited to an inspector, a sealer or a
35 deputy as defined in section 1 of chapter 98. Deputy director is to be used interchangeably with
36 director of standards and director.

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

39 “Display price”, the price on a sign or label affixed to a display, table, shelf, or other
40 upon which the unit is placed.

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

42 “Dual pricing system”, a separate pricing system that allows for 1 correct price for non-
43 loyalty cardholders and 1 correct price for loyalty card holders.

44 “Food”, anything edible.

45 “Food department”, any seller, other than a warehouse club or a food store, with any
46 grocery item section, area, or display and which sells 100 or more different food items for
47 consumption off the seller’s premises at least in part to individuals for their own personal,
48 family, or household use; provided, however, that any food section which is within a larger
49 business and is the functional equivalent of a supermarket with its own separate checkout, may
50 be deemed a food store by the director of standards.

51 “Food store”, any store, shop, supermarket, grocer, convenience store, or other seller,
52 whose primary business is selling either food for consumption off the seller’s premises alone or
53 in combination with grocery items or other nondurable items typically found in a supermarket,

54 and such items are sold at least in part to individuals for their own personal, family, or household
55 use. For the purposes of this section and sections 184C to 184E, a warehouse club shall not be
56 considered a food store.

57 “Grocery item”, any food, pet food or supply, soap, household cleaner of any type,
58 laundry product, light bulbs, or disposable paper or plastic products.

59 “Individual item”, one of an item, to be used interchangeably with “unit.”

60 “Item”, a specific and distinct product, good or commodity available for sale
61 differentiated from another item by having a different universal product code or SKU for items
62 so coded, and for items not so coded, an item having any distinguishing characteristics compared
63 to another item.

64 “Itemized sales receipt”, a printed and dated sales receipt listing, at a minimum, the price
65 charged to the consumer for each item and the quantity sold.

66 “Loyalty card,” a card or other device issued that confers certain benefits to cardholders,
67 including discount prices upon presentation of the card. This shall not include membership cards
68 issued by warehouse retailers.

69 “Price accuracy rate”, the percentage of individual items for which the checkout price in
70 an automated checkout system is consistent with the correct price during an inspection conducted
71 pursuant sections 184C to 184E, inclusive.

72 “Price list”, an easily referenced list that indicates the code, the description and the
73 current correct price of each item excluded under subsection (c) of section 184C.

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

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

78 “SKU”, the stock-keeping unit, number or code used to identify each unique product or
79 item for sale in a food store or food department.

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

82 “Warehouse club”, a retail store in which customers pay annual membership fees in order
83 to purchase items at member-only prices.

84 Section 184C. (a) The correct price of an item offered for sale by a food store or a food
85 department shall be disclosed to consumers in a clear and conspicuous manner. The food store or
86 food department may elect to disclose the correct price using either an individual item pricing
87 system or a consumer price scanner system; provided, that the food store or food department has
88 been granted permission by the division of standards; and provided, further, that all prices
89 represented to the consumer shall be consistent with each other and the correct price.

90 (b) An individual item pricing system shall affix the correct price on each unit in a clear
91 and conspicuous manner by means of a sticker price ; provided, that a food store or a food
92 department attaches a correct display price not less than 1 inch high for each separate SKU or
93 separately-coded item. In the case of a food store or a food department that utilizes loyalty cards
94 or otherwise maintains a dual pricing system, the non-card price shall be affixed to the item if it
95 differs from the loyalty card price, provided further that a sign at the point of display shall

96 include both the loyalty card price and the non-card price, so labeled if they differ, as well as
97 either the amount of savings per unit or the percent of savings.

98 (c) A consumer price scanner system shall have the code of an item affixed to each
99 individual unit by means of a sticker, ticket, tag or other label that can be read by a consumer
100 price scanner and automated checkout system to display the correct price. The item's code, its
101 unabbreviated description and its correct price shall be disclosed in a clear and conspicuous
102 manner by a correct display price not less than 1 inch high. In the case of a food store or a food
103 department that uses loyalty cards or otherwise maintains a dual pricing system, the sign at the
104 point of display shall include both the loyalty card price and non-card price, so labeled if they
105 differ, as well as either the amount of savings per unit or the percent of savings.

106 (d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code,
107 its description and its correct price is posted where these items are displayed; (ii) the cashier can
108 readily discern the item's correct price, (iii) the food store or food department maintains an
109 itemized price list for all exempted items, and (iv) the price list is available at each checkout and
110 can be reviewed by a customer upon request, a food store or a food department may exempt the
111 following classes of items from its individual item pricing system : (1) unpackaged: produce,
112 meat, fish, poultry, delicatessen, bakery items, and any other items that are unpackaged and
113 offered from a bulk display; provided, however, that any such item weighed or wrapped to order
114 by a food store or a food department but paid for at a place other than at the point of such
115 weighing or wrapping shall have the correct price marked on the item; (2) gallons and half
116 gallons of milk; (3) eggs; (4) cigarettes, cigars, tobacco and tobacco products; (5) individual
117 items within a multi-item package, if the package is marked with the correct price; (6) cakes,
118 gum, candy, chips, nuts and other snack foods, if offered for sale individually, and located at the

119 checkout area; (7) individual greeting cards, if marked with a price code readily understandable
120 by the consumer; (8) individual containers of baby food of the same brand and price where
121 vegetable or fruit is the predominant ingredient other than water, but not including juices; (9) soft
122 drink bottles and cans; (10) frozen food products; (11) items sold by length, area, weight or
123 volume, including without limitation chain, rope, flooring, lumber, fabric, stone or soil, that are
124 unpackaged; (12) items that must be retrieved for the consumer by store staff, including without
125 limitation large electronics or appliances, display or representative items or items displayed in a
126 locked case or out of reach of consumers; (13) packaged self-service items that are small in size
127 and are offered for sale located at the checkout area; (14) live animals; (15) items sold in a coin
128 operated vending machine; and (16) for a food store or food department using an individual item
129 pricing system, not more than 60 additional items that are accessible to the consumer in a free
130 standing or end-aisle display that has at least 50 individual items of the same item; provided,
131 however, that unless the deputy director determines otherwise, individual items that differ only
132 by color, flavor or scent shall be counted as the same item for the purpose of this clause if they
133 are identical in all other aspects, including price, size and brand.

134 (e) Food stores or food departments utilizing an individual item pricing system shall be
135 allowed to exempt a number of additional items, the exact number of which shall be based on the
136 number of operable, but not necessarily active, cash registers located at the main checkout
137 location. Food stores or food departments with 1 operable cash register shall be allowed to
138 exempt twenty additional items of their own choosing. Food stores or food departments with 2, 3
139 to 4, or 5 to 6 cash registers shall be allowed to exempt 50, 100 or 200 additional items
140 respectively. Food stores or food departments with 7 or more cash registers may exempt up to
141 400 additional items. In the case of a food department, the number obtained in the above

142 calculation shall be reduced by 75 percent. In no case shall the number of exemptions permitted
143 by this exception exceed 4 and one-half per cent of the number of packaged grocery items
144 carried by the seller.

145 All additional exemptions allowed under subsection (e) will be granted provided that the
146 food store or food department maintains an electronic pricing system which has been determined
147 to be at least 95 percent accurate during a price accuracy inspection conducted by the division or
148 their designee, and further provided that a food store or a food department maintains a dated,
149 written price list of the items it has chosen to exempt. The price list shall include a readily
150 understandable description of each item and the code number understood by the seller's
151 automatic checkout system. Deletions may be made from the list at any time, but no additions,
152 substitutions, or changes may be made to the list except twice a year in January and July. The
153 exemption permitted by this section shall not apply to any item not on that price list and shall not
154 apply unless such price list has been established and is available upon request at the food store or
155 food department to any consumer or any representative authorized by the deputy director and
156 referenced easily by the person requesting it. No seller may choose to exempt items required to
157 be price marked by other laws or regulations governing specific types of items, or may exempt
158 more than 200 items in any 1 department except in the dry grocery department.

159 (f) A food store or a food department utilizing a consumer price scanner system, may
160 exempt the following items from displaying the correct price at its consumer price scanners,
161 provided it complies with the criteria (i)-(iv) in subsection (d): (1) unpackaged and uncoded
162 items to which a price sticker cannot be reasonably affixed; (2) loose produce with SKU
163 numbers.

164 (g) Items purchased at a food store or a food department shall appear on an itemized sales
165 receipt that shall be provided to all consumers.

166 (h) If the consumer purchases a sale item or qualifies for a discount, including discounts
167 granted for displaying a loyalty card, the amount saved shall be reflected in the checkout price
168 and printed on the consumer's itemized sales receipt.

169 (i) Notwithstanding subsection (h) of section 184D if there is a discrepancy between the
170 advertised price, the sticker price, the scanner price or the display price and the checkout price on
171 any item, a food store or a food department shall charge a consumer the lowest price. If the
172 checkout price or scanner price is not the lowest price or does not reflect any qualifying discount,
173 the seller: (i) shall not charge the consumer for 1 unit of the item, if the lowest price is \$10 or
174 less; (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the item, if the lowest
175 price is more than \$10; and (iii) shall charge the consumer the lowest price for any additional
176 units of the item. This subsection shall not apply if: (1) there is evidence of willful tampering or
177 (2) the discrepancy is a gross error, in that the lowest price is less than half of the checkout price
178 and the seller, in the previous 30 days, did not intend to sell the item at the lowest price. All food
179 stores and food departments, which use a consumer price scanner system, must post signage at
180 each register detailing this law. For each register that fails to display appropriate signage, the
181 food store or food department shall be subject to a fine of \$200, up to a maximum of \$500 per
182 inspection by the deputy director. All food stores and food departments shall maintain data on
183 price discrepancies. This data shall be provided to the division upon request. The provisions of
184 this subsection shall be clearly and conspicuously posted by all affected sellers.

185 (j) A consumer may submit a complaint to the office of the attorney general or to the
186 deputy director regarding compliance with this section.

187 (k) The deputy director may require sellers to disclose a consumer's rights under sections
188 184C to 184E, inclusive.

189 Section 184D. (a) The deputy director or his inspectors, and sealers of weights and
190 measures and their deputies, as defined in section 1 of chapter 98, shall inspect each food store
191 and food department for compliance with sections 184B through 184E of chapter 94. The
192 inspections shall be conducted pursuant to the national industry standards adopted by the
193 National Conference on Weights and Measures of the National Institute of Standards and
194 Technology or any other rules or guidelines promulgated by the division pertaining to the
195 implementation and enforcement of those sections; provided, that nothing shall inhibit the
196 oversampling of sale items during inspections. The food stores and food departments shall
197 provide the inspector with access necessary to conduct an inspection. The deputy director shall
198 notify the food stores and food departments in writing of violations of this section and of any
199 fines imposed pursuant to sections 184B through 184E of chapter 94.

200 (b) The division shall not assess any fee upon a a seller that is not a food store or food
201 department using an individual item pricing system for an inspection pursuant to this section;
202 provided, however, that the seller shall be subject to fees imposed pursuant to section 56 of
203 chapter 98.

204 (c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines
205 shall be levied shall include, but not be limited to: (1) having no price marked on any unit that is
206 required to be priced and is not exempted; (2) having an incorrect price on any unit; (3) having

207 an incorrect or missing sign; or (4) overcharging on any unit. A unit shall be deemed to be
208 overcharged once it is rung up at a price higher than any represented price. Notwithstanding the
209 method for determining the amount of civil fines pursuant to section 29A of chapter 98, a civil
210 citation may be issued for \$200 for each violation, up to a maximum of \$5,000 per inspection.
211 If an item is advertised either in the food store, food department or in a circular as “on sale” or
212 discounted because of a loyalty card price and the item registers at a higher price at the checkout
213 counter than indicated by any “sale” or loyalty card price, a civil citation will be issued for \$300
214 for each violation, up to a maximum of \$5,000 per inspection. The deputy director shall not
215 issue a fine pursuant to this section and said sections 184B through 184E, inclusive, and section
216 56D of chapter 98 for the same violation.

217 (d) A fine imposed by the deputy director shall be paid within 21 days of issuance of the
218 notice, unless the seller appeals pursuant to the civil citation appeal process found in section 29A
219 of chapter 98. The food store or food department shall immediately correct any noncompliance
220 with section 184C when notified by the inspector.

221 (e) The deputy director or any representative authorized by the division may conduct
222 inspections of any item and shall issue notices of violation to any food store or food department
223 for any violation of this section and sections 184B through 184E, inclusive, provided, however,
224 that no food store or food department shall be inspected more than once a month, unless such
225 inspection is intended to verify the correction of violations found during a recent inspection or to
226 verify the validity of a specific consumer complaint made through the process in subsection (f)
227 of section 184D. For purposes of this section each occasion that an item scans erroneously
228 during an inspector’s attempt to verify its correct price shall constitute a separate civil violation.
229 The seller shall immediately correct all violations including those where a tolerance was granted.

230 (f) A consumer may submit a complaint to the office of the attorney general or to the
231 deputy director regarding noncompliance with sections 184B through 184E. All food stores and
232 food departments subject to sections 184B through 184E shall provide, upon request, a complaint
233 form for the consumer to complete and submit. Each submitted complaint shall be investigated.
234 In the case of any verified consumer complaint, fines for overcharging shall be limited to 1
235 violation per item. A fine shall be issued upon verification of any consumer complaint alleging
236 overcharging or improper price marking except for those units where the seller honored the price
237 accuracy guarantee discounts as described in subsection (i) of section 184C.

238 (g) If the deputy director determines that a food store or a food department is either
239 intentionally or through gross negligence violating any provisions of this section and sections
240 184B through 184E, inclusive, then the deputy director shall provide written notice of such
241 determination to the food store or food department and said food store or food department shall
242 have 30 days to cure these violations. If upon re-inspection, and payment of a \$200 re-inspection
243 fee, the deputy director determines that the food store or food department still is not in
244 substantial compliance with the provisions of this section and sections 184B through 184E,
245 inclusive, then all the food store's or food department's exemptions shall be rescinded for a
246 period of 12 months, and the matter shall be referred to the attorney general for action against
247 such food store or food department. Uncontested fines levied under said sections shall be paid
248 within 21 days of issuance of the notice of violation. Any aggrieved seller may appeal any
249 unjustified fines to the director of standards if such appeal is filed within 30 days of issuance of
250 the notice of violation.

251 (h) This section and sections 184B through 184E, inclusive, shall only apply to food
252 stores and to grocery items in food departments. Said sections shall not diminish any obligations

253 under other laws or regulations regarding item pricing for sellers other than food stores or for
254 items other than grocery items in food departments. Where a seller is also subject to the item
255 pricing regulations or guidelines of another agency, in cases where a specified number of items is
256 allowed to be exempted under 2 similar exceptions to the requirement of item pricing, such
257 similar provisions shall not be additive. Compliance with another agency's regulations or
258 guidelines which differ from said sections or any regulations issued hereunder by the deputy
259 director shall not be a defense to a violation of said section or any regulations promulgated
260 hereunder.

261 (i) The division may retain all registration fees and fines it collects under sections 184B
262 through 184E of chapter 94 and sections 56D and 56E of chapter 98 not to exceed \$3.5 million
263 annually in order to support its enforcement activities; provided, however, that any excess fees
264 and fines up to \$1 million in excess of this figure shall be used to fund the division of standards
265 municipal grant program for approved agents to assist the division in lieu of a legislative
266 appropriation. In the event that the division and the municipal grant program are fully funded,
267 all additional revenue shall be turned over to the General Fund.

268 Section 184E. (a) Any food store or food department wishing to convert from an
269 individual item pricing system to a consumer price scanner system must seek a waiver from the
270 division. The waiver shall be granted by the division provided that the food store or food
271 department has no outstanding fines under sections 184B to 184D, inclusive, or section 56D of
272 chapter 98 and pays a \$500 fee annually to the division if the retail space is less than 15,000
273 square feet, \$500 fee if the retail space is 15,000 square feet up to 30,000 square feet, or a \$1,000
274 fee if the retail space is 30,000 square feet or more.

275 (b) Pursuant to the regulations promulgated under this chapter, the division will require
276 that each applicant complete a “no job loss” affidavit stating the number of people employed at
277 the time of the application process, including without limitation, establishment of a complaint
278 process, so that full and part time employees will not suffer any wage or benefit loss due to said
279 transfer. After the filing of the affidavit, if there is any resulting job loss at the store due to the
280 implementation of the waiver, not attributed to seasonal employment or verifiable economic
281 pressures, the store will be required to item price for one year pursuant to sections 184B through
282 184E, inclusive, or other applicable Massachusetts law or regulation promulgated hereunder, and
283 be subject to a fine of not more than \$5,000.

284 (c) All food stores or food departments using a consumer price scanner system shall be
285 subject to inspection by the deputy director for compliance with the provisions outlined in this
286 section; provided, however, that the deputy director shall not cause any food store or food
287 department using a consumer price scanner system to be inspected more than once per calendar
288 month; provided, however, the division may inspect any food store food department using a
289 consumer scanner pricing system once every week until the food store or food department is
290 found to be in compliance with this section if: (1) within the previous 30 days, there is a verified
291 pattern of consumer complaints; or (2) upon regular inspection the food store or food department
292 is not in compliance with this section.

293 (d) Each food store or food department with more than 5,000 square feet of retail space
294 that employs a consumer price scanner system shall have at least 1 fully operational consumer
295 price scanner for every 2,500 square feet of retail space or part thereof. The location of a
296 consumer price scanner shall be disclosed via 1 clear and conspicuous sign at eye-level and 1
297 clear and conspicuous sign above eye level. Consumer price scanners shall be located in

298 convenient places, roughly equally spaced throughout the store, in fixed locations. A food store
299 or food department with more than 5,000 square feet shall have at least 1 fully operational
300 consumer price scanner capable of producing an individual item pricing tag. At all such scanner
301 locations, the seller must also provide the consumer with a means by which such pricing tag may
302 be affixed or appended to the item or its packaging, such as tape or an adhesive price tag. The
303 deputy director may, by regulation, authorize new technologies in lieu of required consumer
304 price scanners which further the intent of this section, including, but not limited to hand held or
305 shopping cart attached scanners which retain in memory and itemize all scanned items. Such
306 technologies may reduce the required number of consumer scanners by no more than 50 per cent.

307 (e) Consumer price scanners are to be deemed fully operational if: (1) the consumer price
308 scanner clearly and conspicuously identifies and displays the item by name or other
309 distinguishing characteristics; (2) the consumer price scanner displays the item's correct price
310 when the item is scanned at it and that, in the case of a food store or food department that uses
311 loyalty cards or otherwise maintains a dual pricing system, the consumer price scanner displays
312 both the loyalty card price and the non-card price if they differ. Each consumer price scanner
313 must also display contact information for the deputy director so that consumers may report
314 broken consumer price scanners. Such consumer price scanners shall be in compliance with the
315 Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the
316 Massachusetts architectural access board regulations 521 CMR 1.00, et. seq. Any violation of
317 this subsection shall be considered in determining a consumer price scanner's pass or fail
318 designation as defined in subsection (h).

319 (f) Any food store or food department with more than 5,000 square feet of total space
320 wishing to convert from an individual item pricing system to a consumer price scanner pricing

321 system must within 3 months of such a conversion hire or maintain not less than 2 employees
322 whose responsibilities must include the maintenance of all consumer price scanners within said
323 food store or food department.

324 (g) An inspector may also elect to test a food store or food department's consumer price
325 scanner system for accuracy. The inspector may choose the sample size for accuracy tests
326 provided that the size of sample is no less than 50 items and does not exceed 200 items. Any
327 scanning that yields an incorrect price that also causes a food store or food department's
328 consumer price scanner accuracy rating to fall below 98 per cent shall constitute a separate
329 violation. This subsection shall not be used to impact a scanner's pass or fail grade as defined in
330 subsection (h) but the cumulative violations of this subsection in any particular store or
331 department shall be used in contributing toward the maximum fine imposed under the same
332 subsection.

333 (h) Upon inspection, the deputy director shall notify the store manager, who shall provide
334 the inspector with a map of the food store or food department outlining the consumer price
335 scanner locations and the food store or food department's square footage of retail space. The
336 food store or food department's number of scanners shall be sufficient for the food store or food
337 department's size as outlined in subsection (d). Any violation of this subsection shall result in a
338 fine of \$1,000, which shall not count toward the maximum fine established under subsection (i);
339 provided, however, that the deputy director may reduce this fine consistent with section 29A of
340 chapter 98.

341 (i) Each consumer price scanner shall be graded on a pass or fail basis by inspectors,
342 including missing consumer price scanners or inadequate signage under subsection (d), which

343 shall be considered to have failed. Each scanner found to have failed the test shall constitute a
344 separate violation of this section. Notwithstanding the method for determining the amount of
345 civil fines pursuant to section 29A of said chapter 98, a civil citation may be issued for \$200 for
346 each violation, up to a maximum of \$2,500 per inspection; provided, however, that the deputy
347 director may reduce any fine imposed pursuant to this section consistent with section 29A of
348 chapter 98.

349 SECTION 2. Chapter 98, of the General Laws is hereby amended by striking out section
350 56D, as appearing in the 2008 Official Edition, and inserting in place thereof the following
351 section:-

352 Section 56D. (a) The director or his inspectors, and sealers and inspectors of weights and
353 measures and their deputies, shall in every 24 month period, examine and test the operation of all
354 automated retail checkout systems, in all establishments with 3 or more cash registers, and shall
355 upon complaint to said officials examine and test the operation of any automated retail checkout
356 system to determine whether the price which an item is offered or advertised for sale, including
357 any advertised special price offered to a customer with a store-issued discount or loyalty card,
358 conforms to the unit and/or net prices displayed to the customer on the visual display and
359 conforms to the price for which a purchaser is charged by such automated retail checkout system
360 to determine whether the total price for items purchased is correctly represented, and may issue
361 notices of violations of this section, pursuant to section 29A and this section; provided, however,
362 that nothing herein shall prohibit the director or his inspectors and sealers and inspectors of
363 weights and measures and their deputies from examining and testing any system at any time
364 irrespective of the number of cash registers within the establishment.

365 (b) If such examination and test reveals that there is evidence of price misrepresentation,
366 or misleading or deception of the purchaser of items, or that consumer price scanners, as defined
367 in section 184B of chapter 94, do not meet the operational standards set forth below, the owner,
368 manager or the designee of said owner or manager of a retail establishment using such automatic
369 checkout system shall be punished for the first failed inspection by a civil fine of \$200, for the
370 second failed inspection by a civil fine of \$500, and for any subsequent failed inspection, by a
371 civil fine of \$1,000; provided, however, that there shall be no punishment for any inoperable
372 consumer price scanner that is deployed for reasons other than to obtain an exemption from any
373 law or regulation of the commonwealth requiring the individual price-marking of items offered
374 for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate
375 to the satisfaction of the inspector that he has communicated in writing with an authorized repair
376 agent, prior to such examination and test, requesting that the inoperable electronic scanner be
377 repaired. For purposes of this section consumer price scanners are to be deemed fully
378 operational if they operate in the following manner: (1) the consumer price scanner clearly and
379 conspicuously identifies and displays the item by name or other distinguishing characteristics;
380 (2) the consumer price scanner displays the item's correct price when the item is scanned at it
381 and that, in the case of a retail establishment that uses loyalty cards or otherwise maintains a dual
382 pricing system, the scanner displays both the loyalty card price and the non-card price if they
383 differ. Each consumer price scanner must also display contact information for the division of
384 standards so that they may report broken scanners. Such consumer price scanners must also be in
385 compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36,
386 Appendix A and the Massachusetts Architectural Access Board Regulations 521 CMR 1.00.
387 Notwithstanding the method for determining the amount of civil fines pursuant to said section

388 29A, a civil citation may be issued for \$200 for each violation, up to a maximum of \$2,500 per
389 inspection. For purposes of this section each item which scans erroneously shall constitute a
390 separate civil violation.

391 (c) The director shall promulgate and shall enforce regulations based on national
392 industry standards and other criteria necessary to carry out the provisions of this section.

393 (d) For the purposes of this section, an automated check out system shall mean a cash
394 register, computer, terminal, consumer price scanner or other device capable of interpreting the
395 universal product code, or any other code which is on an item offered for sale to consumers used
396 to determine the price of the item being purchased, regardless of whether the code entry is
397 accomplished manually, or automatically by a machine.

398 SECTION 3. The division of standards, in conjunction with the secretary of labor and
399 workforce development shall annually file with the general court's's joint committee on
400 community development and small business, a report consisting of the impact of consumer price
401 scanner implementation on pricing accuracy and employee job loss or change of employment
402 status, if any, resulting from the item pricing waiver program conducted under the jurisdiction of
403 the division of standards. This report shall also contain recommendations for legislative
404 changes, if any, which the director of the division of standards deems necessary to affect the
405 purposes of the program. This report shall be filed annually on or before December 31st.

406 SECTION 4. This act shall take effect on January 1, 2012.