

# HOUSE . . . . . No. 987

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Linda Dorcena Forry and Michael O. Moore*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

**An Act Relative to Clear and Conspicuous Price Disclosure..**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>	<i>1/20/2011</i>
<i>Michael O. Moore</i>		<i>2/4/2011</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/3/2011</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>	<i>2/3/2011</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>	<i>2/3/2011</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/3/2011</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/4/2011</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>2/4/2011</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>2/4/2011</i>

# HOUSE . . . . . No. 987

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By Representative Forry of Boston and Senator Moore, a joint petition (accompanied by bill, House, No. 987) of Linda Dorcena Forry and others relative to clear and conspicuous price disclosure. Community Development and Small Businesses.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4430 OF 2009-2010.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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.

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

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

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

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

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

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

“Correct price”, the advertised price in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof. If an item is not advertised, the correct price shall be the lowest display price indicated on any store sign for the item, but not if the checkout price is lower. If an item has no display price, the correct price shall be the price of the item on its unit price label, but not if such item is rung up at a lower price. If no unit price label is displayed, the correct price shall be the price rung up by the food store’s or

a retailer containing a food department's automatic checkout system. If the foregoing provisions for establishing the correct price are not determinative in a particular situation, the correct price shall be the price on the seller's current price list.

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

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

"Display price", the retail price on a sign or label affixed to a display, table, shelf, or other upon which the unit is placed.

"Division", the division of standards established pursuant to section 5 of chapter 24A.

"Dual pricing system", a separate pricing system that allows for one correct price for non-loyalty cardholders and one correct price for loyalty card holders.

"Food", anything edible.

"Food department", the grocery item section, area, or display of any seller other than a food store or warehouse club which sells 200 or more different food items for consumption off the seller's premises at least in part to individuals for their own personal, family, or household use; provided, however, that any food section which is within a larger business and is the functional equivalent of a supermarket with its own separate checkout, may be deemed a food store by the director of standards .

“Food store”, any store, shop, supermarket, grocer, convenience store, or other seller, whose primary business is selling either food for consumption off the seller’s premises alone or in combination with grocery items or other nondurable items typically found in a supermarket, and such items are sold at least in part to individuals for their own personal, family, or household use. For the purposes of this section and sections 184C to 184E, a warehouse club shall not be considered a food store.

“Grocery item”, any food, pet food or supply, soap, toiletries, household cleaner or laundry product.

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

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

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

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

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

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

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

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

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

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

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

Section 184C. (a) The correct retail price of an item offered for sale by a food store or in a retailer’s food department shall be disclosed to consumers in a clear and conspicuous manner. The food store or retailer containing a food department may elect to disclose the retail price using either an individual item pricing system or a consumer scanner pricing system; provided that the food store or retailer containing a food department has been granted permission by the Division of Standards; provided, further, that all prices represented to the consumer shall be consistent with each other and the correct price.

(b) An individual item pricing system shall affix the correct price on each unit in a clear and conspicuous manner by means of a price sticker, ticket, tag, ink stamp, pre-printing or other label; and provided further that a food store or a retailer containing a food department attaches a correct display price for each separate SKU or separately-coded item. In the case of a food store or a retailer containing a food department that utilizes loyalty cards or otherwise maintains a dual pricing system, the non-card price shall be affixed to the item if it differs from the club card price, provided further that a sign at the point of display shall include either the amount of savings per unit or the percent of savings.

(c) A consumer scanner pricing system shall have the code of an item affixed to each individual unit by means of a sticker, ticket, tag or other label that can be read by a consumer scanner and automated checkout system to display the correct price. The item’s code, its unabbreviated description and its correct price shall be disclosed in a clear and conspicuous manner by a correct display price not less than one inch high. In the case of a food store or a

115 retailer containing a food department that uses loyalty cards or otherwise maintains a dual  
116 pricing system, the sign at the point of display shall include both the card price and non-card  
117 price, so labeled if they differ, as well as the either the amount of savings per unit or the percent  
118 of savings.

119 (d) Upon a determination that: (i) a clear and conspicuous sign disclosing the item's code,  
120 its description and its retail price is posted where these items are displayed; (ii) the cashier can  
121 readily discern the item's retail price, (iii) the food store or retailer containing a food department  
122 maintains an itemized retail price list for all exempted items, and (iv) the retail price list is  
123 available at each checkout and can be reviewed by a customer upon request, a food store or  
124 retailer containing a food department may exempt the following classes of items from its  
125 individual item pricing system : (1) produce, meat, fish, poultry, delicatessen, bakery items, and  
126 any other items that are unpackaged and offered from a bulk display; provided, however, that  
127 any such item weighed or wrapped to order by the food store or a retailer containing a food  
128 department but paid for at a place other than at the point of such weighing or wrapping shall have  
129 the correct retail price marked on the item; (2) gallons and half gallons of milk; (3) eggs; (4)  
130 cigarettes, cigars, tobacco and tobacco products; (5) individual items within a multi-item  
131 package, if the package is marked with the correct retail price; (6) cakes, gum, candy, chips, nuts  
132 and other snack foods, if offered for sale individually, and located at the checkout area; (7)  
133 individual greeting cards, if marked with a price code readily understandable by the consumer;  
134 (8) individual containers of baby food of the same brand and retail price where vegetable or fruit  
135 is the predominant ingredient other than water, but not including juices; (9) soft drink bottles and  
136 cans; (10) frozen food products; (11) items sold by length, area, weight or volume, including  
137 without limitation chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged; (12)



items that must be retrieved for the consumer by store staff, including without limitation large electronics or appliances, display or representative items or items displayed in a locked case or out of reach of consumers; (13) packaged self-service items that are small in size and are offered for sale located at the checkout area; (14) live animals; (15) items sold in a coin operated vending machine; and (16) for a food store or a retail store with a food department using an individual item pricing system, not more than 60 additional items that are accessible to the consumer in a free standing or end-aisle display that has at least 50 individual items of the same item; provided, however, that unless the deputy director determines otherwise, individual items that differ only by color, flavor or scent shall be counted as the same item for the purpose of this clause if they are identical in all other aspects, including retail price, size and brand.

(e) Food stores or retailers containing a food department utilizing an individual item pricing system shall be allowed to exempt a number of additional items, the exact number of which shall be based on the number of operable, but not necessarily active, cash registers located at the main checkout location. Food stores or retailers containing a food department with one operable cash register shall be allowed to exempt twenty additional items of their own choosing. Food stores or retailers containing a food department with two, three to four, or five to six cash registers shall be allowed to exempt fifty, one hundred or two hundred additional items respectively. Food stores or retailers containing a food department with seven or more cash registers may exempt up to four hundred additional items. In the case of a retailer containing a food department, the number obtained in the above calculation shall be reduced by 75 percent. In no case shall the number of exemptions permitted by this exception exceed four and one-half per cent of the number of packaged grocery items carried by the seller.

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

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

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

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

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

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

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

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

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

(c) Violations of the provisions of sections 184B through 184E, inclusive, for which fines shall be levied shall include, but not be limited to: having no price marked on any unit that is required to be priced and is not exempted; having an incorrect price on any unit; having an incorrect or missing sign; or overcharging on any unit. A unit shall be deemed to be overcharged once it is rung up at a price higher than any represented price. Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation

may be issued for \$200 for each violation, up to a maximum of \$2500 per inspection. If an item is advertised either in the store or in a circular as “on sale” or discounted because of a card price and the item registers at a higher price at the checkout counter than indicated by any “sale” or loyalty care price, a civil citation will be issued for \$300 for each violation, up to a maximum of \$2500 per inspection. The director of standards shall not issue a fine pursuant to this section and said sections 184B through 184E, inclusive, and section 56D of chapter 98 for the same violation.

(d) A fine imposed by the deputy director shall be paid within 30 days of issuance of the notice, unless the retailer appeals to the deputy director. The store or department shall immediately correct any noncompliance with section 184C when notified by the inspector.

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

(f) A consumer may submit a complaint to the office of the attorney general or to the division regarding noncompliance with sections 184B through 184E. All food stores and retailers

containing a food department subject to sections 184B through 184E shall provide, upon request, a complaint form for the consumer to complete and submit. Each submitted complaint shall be investigated. In the case of any verified consumer complaint, fines for overcharging shall be limited to one violation per item. A fine shall be issued upon verification of any consumer complaint alleging overcharging or improper price marking except for those units where the seller honored the price accuracy guarantee discounts as described in Section 184C (i).

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

(h) This section and sections 184B through 184E, inclusive, shall only apply to food stores and to grocery items in retailers containing a food department. Said sections shall not diminish any obligations under other laws or regulations regarding item pricing for sellers other than food stores or for items other than grocery items in retailers containing a food department.

Where a seller is also subject to the item pricing regulations or guidelines of another agency, in cases where a specified number of items is allowed to be exempted under two similar exceptions to the requirement of item pricing, such similar provisions shall not be additive. Compliance with another agency's regulations or guidelines which differ from said sections or any regulations issued hereunder by the director of standards shall not be a defense to a violation of said section or any regulations promulgated hereunder.

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

Section 184E. (a) Any food store or a retailer containing a food department wishing to convert from an individual item pricing system to a consumer scanner pricing system must seek a waiver from the division. The waiver shall be granted by the division provided that the food store or retailer containing a food department has no outstanding fines under sections 184B-D of chapter 94 or section 56D of chapter 98 and pays a \$500 fee annually to the division if the retail space is less than 15,000 sq. feet, \$500 fee if the retail space 15,000 sq. feet up to 30,000 sq. feet, or a \$1,000 fee if the retail space is 30,000 square feet or more.

(b) Pursuant to the regulations promulgated under this chapter, the Division will require that each applicant complete a "no job loss" affidavit stating the number of people employed at

the time of the application process, including without limitation, establishment of a complaint process, so that full and part time employees will not suffer any wage or benefit loss due to said transfer.. After the filing of the affidavit, if there is any resulting job loss at the store due to the implementation of the waiver, not attributed to seasonal employment or verifiable economic pressures, the store will be required to item price for one year pursuant to sections 184B through 184E, inclusive, of chapter 94, or other applicable Massachusetts law or regulation promulgated hereunder, and be subject to a fine of not more than five thousand dollars.

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

(d) Each food store or a retailer containing a food department with more than 5,000 square feet of retail space that employs a consumer scanner pricing system shall have at least one fully operational consumer price scanner for every 5,000 square feet of retail space or part thereof. The location of a consumer scanner shall be disclosed via one clear and conspicuous sign at eye-level and one clear and conspicuous sign above eye level. Consumer scanners shall be located in convenient places, roughly equally spaced throughout the store, in fixed locations.



A food store or a retailer containing a food department with more than 5,000 square feet must have at least one fully operational consumer scanner price scanner capable of producing an individual item pricing tag. At this scanner location, the seller must also provide the consumer with a means by which such pricing tag may be affixed or appended to the item or its packaging, such as tape or an adhesive price tag. The Deputy Director may by regulation authorize new technologies in lieu of required consumer scanners which further the intent of this section, including, but not limited to hand held or shopping cart attached scanners which retain in memory and itemize all scanned items. Such technologies may reduce the required number of consumer scanners by no more than 50%.

(e) Consumer scanners are to be deemed fully operational if: (1) the scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics; (2) the scanner displays the item's correct price when the item is scanned at it and that, in the case of a food store or retailer containing a food department that uses loyalty cards or otherwise maintains a dual pricing system, the scanner displays both the card price and the non-card price if they differ. Each scanner must also display contact information for the Division of Standards so that consumers may report broken scanners. 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. Any violation of this subsection shall be considered in determining a scanner's pass or fail designation as defined in subsection (h).

(f) Any food store or retailer containing a food department with more than 5,000 square feet of total space wishing to convert from an individual item pricing system to a consumer scanner pricing system must within three months of such a conversion hire or maintain not less

than 2 employees who responsibilities must include the maintenance of all consumer price scanners within said food store or food department.

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

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

(i) Each scanner is to be graded on a pass or fail basis by inspectors, including missing scanners or inadequate signage under subsection (d), which shall be considered to have failed. Each scanner found to have failed the test shall constitute a separate violation of this section.

Notwithstanding the method for determining the amount of civil fines pursuant to section 29A of said chapter 98, a civil citation may be issued for \$200 for each violation, up to a maximum of \$2500 per inspection; provided, however, that the deputy director may reduce any fine imposed pursuant to this section consistent with section 29A of chapter 98.

(j) The division or its authorized inspectors shall not issue fines under this section if a store can document that it identified an error and made a good faith effort to remedy it expeditiously.

SECTION 2. Section 56D of chapter 98 is hereby amended by striking it in its entirety and inserting in place thereof the following section:-

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

(b) If such examination and test reveals that there is evidence of price misrepresentation, or misleading or deception of the purchaser of items, or that consumer scanners do not meet the operational standards set forth below, the owner, manager or the designee of said owner or manager of a retail establishment using such automatic checkout system shall be punished for the first failed inspection by a civil fine of \$200, for the second failed inspection by a civil fine of \$500, and for any subsequent failed inspection, by a civil fine of \$1000; provided, however, that there shall be no punishment for any inoperable consumer scanner that is deployed for reasons other than to obtain an exemption from any law or regulation of the Commonwealth requiring the individual price-marking of items offered for sale or for any inoperable consumer scanner for which a retailer is able to demonstrate to the satisfaction of the inspector that he has communicated in writing with an authorized repair agent, prior to such examination and test, requesting that the inoperable electronic scanner be repaired. For purposes of this section consumer scanners are to be deemed fully operational if they operate in the following manner:

(1) the scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics; (2) the scanner displays the item's correct price when the item is scanned at it and that, in the case of a retail establishment that uses loyalty cards or otherwise maintains a dual pricing system, the scanner displays both the card price and the non-card price if they differ. Each scanner must also display contact information for the Division of Standards so that they may report broken scanners. 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 Notwithstanding the method for determining the amount of civil fines pursuant to said section 29A, a civil citation may be issued for \$200 for each violation, up to a maximum of \$2500 per inspection. For

406 purposes of this section each item which scans erroneously shall constitute a separate civil  
407 violation.

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

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

415 SECTION 3. The Division of Standards, in conjunction with the Secretary of Labor and  
416 Workforce Development shall annually file with the Legislature's Joint Committee on  
417 Community Development and Small Business, a report consisting of the impact of scanner  
418 implementation on pricing accuracy and employee job loss or change of employment status, if  
419 any, resulting from the item pricing waiver program conducted under the jurisdiction of the  
420 Division of Standards. This report shall also contain recommendations for legislative changes, if  
421 any, which the Director deems necessary to affect the purposes of the program. This report shall  
422 be filed on or before December 31st of each calendar year.

423 SECTION 4. This act shall take effect on January 1, 2011.