

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Michael J. Rodrigues**

*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 passage of the accompanying bill:

An Act relative to clear and conspicuous price disclosure.

PETITION OF:

NAME:

Michael J. Rodrigues

DISTRICT/ADDRESS:

8th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4966 OF 2007-2008.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand and Nine  
\_\_\_\_\_

### AN ACT RELATIVE TO CLEAR AND CONSPICUOUS PRICE DISCLOSURE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           **SECTION 1.** Chapter 94 of the General Laws is hereby amended by striking out sections 184B to  
2 184E, inclusive, as appearing in the 2006 Official Edition, and inserting in place thereof the following 4  
3 sections:-

4

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

7

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

10

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

14

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

17

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

20

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

23

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

27

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

31

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

34

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

36

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

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41           “Individual item”, 1 of an item.

42

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

46

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

49

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

52

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

55

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

68

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

70

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

74

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

76

77 Section 184C. (a) The retail price of an item offered for sale by a retailer shall be disclosed to consumers  
78 in a clear and conspicuous manner. The retailer may disclose the retail price using an individual item  
79 pricing system or a consumer scanner pricing system; provided, however, that an individual item pricing  
80 system shall have the retail price of an item affixed to each individual item in a clear and conspicuous  
81 manner by means of a sticker, ticket, tag, or other label; and provided further, that a consumer scanner  
82 pricing system shall have the code of an item affixed to each individual item in a clear and conspicuous  
83 manner by means of a sticker, ticket, tag or other label that can be read by a consumer scanner and  
84 automated checkout system.

85

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

92

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

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

121

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

123

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

126

127 (f) If there is a discrepancy between the advertised retail price, the sticker price, the scanner  
128 price or the display price and the checkout price, a retailer shall charge a consumer the lowest price. If  
129 the checkout price is not the lowest price or does not reflect any qualifying discount, the retailer: (i) shall  
130 not charge the consumer for 1 unit of the item, if the lowest price is \$10 or less; (ii) shall charge the  
131 consumer the lowest price less \$10 for 1 unit of the item, if the lowest price is more than \$10; and (iii)  
132 shall charge the consumer the lowest price for any additional units of the item. This subsection shall not  
133 apply if: (1) there is evidence of willful tampering or (2) the discrepancy is a gross error, in that the  
134 lowest price is less than half of the checkout price and the retailer, in the previous 30 days, did not  
135 intend to sell the item at the lowest price. All retailers shall maintain data on price discrepancies. This  
136 data shall be provided to the division upon request. The provisions of this subsection shall be clearly and  
137 conspicuously posted by all retailers.

138

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

141

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

145

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

148

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

158

159 (k) Any retailer intending to transfer from an individual item pricing system to a consumer  
160 scanner pricing system and having a collective bargaining agreement with employees of which item  
161 pricing is any part of said employees job responsibilities, shall submit an affidavit to the deputy director  
162 prior to the implementation of the transfer stating that protections, including without limitation, a  
163 complaint process, are in place so that those employees will not suffer any wage or benefit loss due to  
164 said transfer. Said affidavit shall include, without limitation, the number of employees within the  
165 bargaining unit holding the collective bargaining unit and the wages and benefits of each employee. If an  
166 individual employee's wages or benefits are reduced due to said transfer and not due to seasonal  
167 employment, the retailer shall disclose retail prices using an individual item pricing system and shall be  
168 subject to a fine of not more than \$5,000.

169

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

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

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

183

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

189

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

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

200

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

206

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

213

214 (c) A violation of subsection (b) shall be punishable by a fine of \$100 for the first offense, by a  
215 fine of \$250 for the second offense, and by a fine of \$500 for the third and subsequent offense. Multiple  
216 fines issued pursuant to the same inspection shall not exceed \$2,500 per inspection; provided, however,  
217 that the deputy director may reduce any fine imposed pursuant to this section consistent with section  
218 29A of chapter 98.



219

220 **SECTION 2.** Notwithstanding any general or special law to the contrary, any retailer who, on December  
221 31, 2008, would not subject to sections 184C to 184E, inclusive, of chapter 94 of the General Laws shall  
222 not be assessed an inspection fee for any inspections conducted under section 184D of said chapter 94  
223 until January 1, 2013.

224

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