

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Stephen J. Buoniconti**

*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 disclosures.

PETITION OF:

NAME:

Stephen J. Buoniconti

DISTRICT/ADDRESS:

Hampden

# The Commonwealth of Massachusetts

—————  
In the Year Two Thousand and Nine  
—————

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

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

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

4

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

7

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

11

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

15

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

18

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

21

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

24

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

28

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

32

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

35

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

38

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

40

41

42

43           “Individual item”, 1 of an item.

44

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

49

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

52

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

55

56           “Price list”, an easily referenced list maintained by the retailer that indicates the code, the  
57 description and the current retail price of each item excluded under subsection (d) of section  
58 184C.

59

60           “Retailer”, includes (i) every person engaged in the business of making sales at retail; (ii)  
61 every person engaged in the making of retail sales at auction of tangible personal property  
62 whether owned by such person or others; (iii) every person engaged in the business of making  
63 sales for storage, use or other consumption, or in the business of making sales at auction of  
64 tangible personal property whether owned by such person or others for storage, use or other  
65 consumption; (iv) every salesman, representative, peddler or canvasser who, in the opinion of the  
66 commissioner, it is necessary to regard for the efficient administration of this chapter as the agent  
67 of the dealer, distributor, supervisor or employer under whom he operates or from whom he  
68 obtains the tangible personal property sold by him, in which case the commissioner may treat  
69 and regard such agent as the retailer jointly responsible with his principal, employer or  
70 supervisor for the collection and payment of the tax imposed by this chapter; and (v) the

71 commonwealth, or any political subdivision thereof, or their respective agencies when such  
72 entity is engaged in making sales at retail of a kind ordinarily made by private persons.

73

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

75

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

79

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

82

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

91

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

98

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

113 by the consumer; (viii) individual containers of baby food of the same brand and retail price  
114 where vegetable or fruit is the predominant ingredient other than water, but not including  
115 juices;(ix) soft drink bottles and cans; (x) frozen food products; (xi) items sold by length, area,  
116 weight or volume, including without limitation chain, rope, flooring, lumber, fabric, stone or soil,  
117 that are unpackaged; (xii) items that must be retrieved for the consumer by store staff, including  
118 without limitation large electronics or appliances, display or representative items or items  
119 displayed in a locked case or out of reach of consumers; (xiv) packaged self-service items that  
120 are small in size and are offered for sale located at the checkout area; (xv) live animals and items  
121 sold in a coin operated vending machine; (xvi) items offered temporarily at an advertised  
122 discount; and(x) in addition to those classes of items otherwise exempted, not more than 60 items  
123 that are: (1) using an individual item pricing system; and (2) accessible to the consumer in a free  
124 standing or end-aisle display that has at least 50 individual items of the same item; provided,  
125 however, that unless the deputy director determines otherwise, individual items that differ only  
126 by color, flavor or scent shall be counted as the same item for the purpose of this clause if they  
127 are identical in all other aspects, including retail price, size and brand; and (xvii) not more than  
128 an additional 400 items offered for sale.

129

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

131

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

134



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

147

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

150

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

155

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

158

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

169

170 (k) Any retailer intending to transfer from an individual item pricing system to a  
171 consumer scanner pricing system and having a collective bargaining agreement with employees  
172 of which item pricing is any part of said employees job responsibilities, shall submit an affidavit  
173 to the deputy director prior to the implementation of the transfer stating that protections,  
174 including without limitation, a complaint process, are in place so that those employees will not  
175 suffer any wage or benefit loss due to said transfer. Said affidavit shall include, without  
176 limitation, the number of employees within the bargaining unit holding the collective bargaining  
177 unit and the wages and benefits of each employee. If an individual employee's wages or benefits

178 are reduced due to said transfer and not due to seasonal employment, the retailer shall disclose  
179 retail prices using an individual item pricing system and shall be subject to a fine of not more  
180 than \$5,000.

181

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

185 (m) The division may retain all registration fees and fines it collects not to exceed  
186 \$2,000,000 annually. The retained revenue collected may be used by the division to support its  
187 enforcement activities and for grants to approved agents to assist the division in the enforcement  
188 of the provisions of this law.

189

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

196

197 (b) The division shall collect an inspection fee from each retailer using a consumer  
198 scanner pricing system for each inspection. Said fee shall be \$250 if the retail space is less than

199 20,000 square feet and \$500 if the retail space is 20,000 square feet or more. Said fee shall be  
200 waived if the retailer provided income tax documentation that at the time of the inspection that if  
201 during the preceding tax year said retailer had cumulative annual sales revenue of less than  
202 5,000,000 .

203

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

208

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

214

215 Section 184E. (a) All retailers using an individual item pricing system shall be subject to  
216 inspection by the division; provided, however, that the division shall not cause any retailer using  
217 an individual item pricing system to be inspected more than once per week. The division shall  
218 not assess any fee upon a retailer using an individual item pricing system for an inspection

219 pursuant to this section; provided, however, that shall be subject to fees imposed pursuant to  
220 section 56 of chapter 98.

221

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

228

229 (c) A violation of subsection (b) shall be punishable by a fine of \$100 for the first  
230 offense, by a fine of \$250 for the second offense, and by a fine of \$500 for the third and  
231 subsequent offense. Multiple fines issued pursuant to the same inspection shall not exceed  
232 \$2,500 per inspection; provided, however, that the deputy director may reduce any fine imposed  
233 pursuant to this section consistent with section 29A of chapter 98.

234

235 **SECTION 2.** Notwithstanding any general or special law to the contrary, any retailer who, on  
236 December 31, 2008, would not subject to sections 184C to 184E, inclusive, of chapter 94 of the  
237 General Laws shall not be assessed an inspection fee for any inspections conducted under section  
238 184D of said chapter 94 until January 1, 2013.

239

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