

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Petruccelli

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 pricing in food stores and food departments.

PETITION OF:

NAME:

Mr. Petruccelli

DISTRICT/ADDRESS:

First Suffolk and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO PRICING IN FOOD STORES AND FOOD DEPARTMENTS.

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

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

4

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

8

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

15 one electronic scanner for every 5,000 square feet of store selling space, with signs prominently
16 posted adjacent to each scanner at and above eye level, identifying for consumers the location of
17 the scanners, and seller remains in compliance with section 29 of chapter 98 of the General Laws
18 by consistently maintaining a ninety eight percent (98%) or higher accuracy rate on their
19 electronic scanners, and provided further that the seller has obtained the written authorization of
20 all collective bargaining units to which the seller is contractually bound to employ the use of
21 electronic scanners as a means in which to identify the selling price of an item. Electronic
22 scanners available for consumer use are capable of (1) identifying and displaying the item by
23 name or other distinguishing characteristics; (2) displaying the price of the item; and (3)
24 producing an individual pricing tag for that item, except that the Deputy Director may authorize
25 the use of individual hand-held or cart attached scanners in lieu of producing an individual
26 pricing tag. At each scanner location, the seller must also provide the consumer with a means by
27 which such pricing tag may be easily affixed or appended to the item or its packaging (e.g.
28 adhesive pricing tag.) Such scanners must also be in compliance with the Americans with
29 Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts
30 Architectural Access Board Regulations 521 CMR 1.00 et seq.

31

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

34

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

36

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

39

40 (10) Items that are located in end-aisle or freestanding displays provided, however, that if
41 offered for sale by a seller with an automatic checkout system they are coded, or if offered by a
42 seller without such system they are on an easily referenced price list at each cash register, and
43 provided, further, that such items are fully and accurately price marked at their regular shelf
44 location, and the seller maintains a list of such items as required by section one hundred and
45 eighty-four D.

46

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

49

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

51

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

59

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

63

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

66

67 SECTION 6. Notwithstanding the limited number of exemptions provided in Chapter 94,
68 sections 184B-184E, the Division of Standards is hereby authorized to conduct a six month item
69 pricing removal pilot program commencing on or before October 1, 2009. The pilot program
70 will examine the effects of removing individual price stickers and tags from grocery items and
71 the use and functionality of self-service price check scanners in retail stores selling food. Up to
72 50 retail stores selling food may be accepted into the pilot program.

73

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

79

80 Each individual store location must apply for and be accepted into the pilot program. Written
81 authorization by any collective bargaining unit if applicable must be submitted to the Division

82 with the pilot application. Acceptance will be subject to the approval of the Division. The
83 Division shall review the applications of prospective participants and select a diverse sample of
84 stores taking into account store location, geographical distribution, primary business engaged in
85 by the store, store size, food department size, number of products carried, and other relevant
86 factors. The Division may limit the number of participating stores from any one chain.

87

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

91

92 Terms and Conditions of Participation for accepted stores:

93

94 (1) An exemption from the item pricing requirement for grocery and food items is granted
95 for the duration of the test for all such items with either a UPC barcode or machine
96 readable SKU. The Division shall provide each participating store with a letter certifying
97 that the store is granted an exemption from the requirement of item pricing for grocery
98 and food items for the duration of the pilot;

99

100 (2) Stores shall have one printing, self-service price check scanner for each 5,000 square feet
101 of selling space or fraction thereof based on total store size. Each scanner shall: (a) meet
102 the criteria outlined in 940 CMR 3.13(1)(b)(2) and (3); (b) print the current date on the

103 price sticker or price slip; and (c) place at least one such scanner within or in close
104 proximity to the primary food area of the store. Notwithstanding the printer requirement,
105 the Division may at its discretion grant the use of individual hand-held or cart attached
106 scanners, capable of displaying the price, listing all scanned items, and totaling all prices.
107 In such case, all but one self-service price check scanners located throughout the store
108 may exclude a printing device.

109

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

116

117 (4) Each store shall utilize an automated checkout system as defined in section 184B of
118 Chapter 94 with aisle scanners;

119

120 (5) Testing and compliance: For the purposes of this pilot program, the Division or its
121 designees may inspect any store at any time and levy fines as provided in Chapter 98,
122 Section 56D and Chapter 94, Section 184E. For the purposes of this pilot program,
123 inspections and fines may include the following: an accuracy test for checkout scanners,

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

126
127 Each store must maintain at least a 98% rate of accuracy for its automated checkout
128 scanners based on standardized testing methodology, a 95% compliance rate for proper
129 signage on exempt items, and a “pass” grade for the functionality and compliance of each
130 of its printing self-service price check scanners in the store. Any such self service
131 scanner which fails to print or fails to scan or scan accurately shall be deemed to have
132 failed the test. A tolerance for one error of one missing scanner sign or one missing
133 supply of tape shall be allowed for every ten scanners in the store per inspection. Stores
134 with ten or more scanners shall have a tolerance for error of one failing scanner.

135
136 Fines may be issued for items that scan incorrectly; for missing, misplaced or incorrect
137 signs; for overcharging; and for failure to test, maintain, or have fully functioning and
138 complying printing self-service price check scanners;

139
140 (6) Self-audits and maintenance check: Each participating store shall maintain a separate
141 record book for each self-service price check scanner in the store. At least once a day, it
142 shall test each aisle scanner by scanning a different advertised sale item (food or not) at
143 each machine, print the price label for that item, and affix it in the record book for the
144 relevant scanner in chronological order. The store shall retain a copy of every
145 advertisement and circular issued during the test period, circling each item used in daily

146 self-audits. If there are no advertised items on a particular day, any randomly selected
147 item may be used for the test. In cases where a scanner cannot be made to print a correct
148 price label, the store shall note the failure in the book and record the action taken to
149 correct the problem;

150

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

158

159 (8) The Retailers Association of Massachusetts shall conduct and pay for, directly or
160 indirectly, a professional market research survey of consumer attitudes about item
161 pricing, the removal of price stickers, and the use of printing, self-service price check
162 scanners both before and after the pilot among shoppers at a scientific sampling of test
163 stores. Such surveys shall be conducted in accordance with accepted survey standards
164 and techniques. A final report of both surveys prepared by the professional market
165 research company shall be submitted to the Joint Committee on Community
166 Development and Small Business and the Retail Store Pricing Reform Study
167 Commission; and

168

169 (9) The Director shall submit a report on said pilot program within 45 days after the
170 conclusion of the test and the surveys to the Joint Committee on Community
171 Development and Small Business, the House Committee on Ways and Means, the Senate
172 Committee on Ways and Means and the Retail Store Pricing Reform Study Commission.

173
174 SECTION 7. There is hereby created a Retail Store Pricing Reform Study Commission
175 comprised of the chairs and ranking minority members of the Joint Committee on Community
176 Development and Small Business, and one representative from each of the following entities: the
177 Office of Consumer Affairs and Business Regulation, the Office of the Attorney General, the
178 Retailers Association of Massachusetts, the Massachusetts Consumers Coalition, the United
179 Food and Commercial Workers union local 1445, the United Food and Commercial Workers
180 union local 791, the Massachusetts Food Association, and two Massachusetts based and owned
181 retail companies appointed by the co-Chairs of the Committee on Community Development and
182 Small Business. The Commission shall meet to review existing laws in Massachusetts and
183 elsewhere pertaining to retail pricing accuracy and disclosure, and shall make recommendations
184 on reform legislation to streamline duplicative pricing laws, while best protecting consumers for
185 cost, service, disclosure and accuracy, and small businesses from unnecessary regulation and
186 costs. The Commission shall report to the Joint Committee on Small Business and Community
187 Development by April 30, 2010.

188