

HOUSE No. 04089

By Mr. Dempsey of Haverhill, for the committee on Ways and Means, that the Bill relative to clear and conspicuous price disclosure (House, No. 3491) ought to pass with an amendment substituting a bill with the same title (House, No. 4089). May 14, 2012.

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 184B
2 to 184E, inclusive, as appearing in the 2010 Official Edition, and inserting in place thereof the
3 following 4 sections:-
- 4 Section 184B. As used in sections 184B to 184E, inclusive, the following words shall, unless the
5 context clearly requires otherwise, have the following meanings:
- 6 “Advertised price”, the price of an item published or disclosed in any circular, newspaper,
7 magazine, television or radio commercial, or in any other medium, or any published correction
8 thereof.
- 9 “Automated checkout system”, a cash register, computer terminal, or other device capable of
10 determining the price of an item from the item’s code after searching the electronic price
11 database and printing an itemized sales receipt for a consumer.

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

13 “Checkout price”, the price of an item to be charged to the consumer whether purchased or not as

14 listed on an automated checkout system display or on an itemized sales receipt.

15 “Code”, an identifier of an item including, without limitation, symbols, letters, numbers, bars or

16 combinations thereof.

17 “Consumer price scanner”, an electronic scanner provided for consumer use that is capable of

18 reading an item’s code and displaying a description of the item and its correct price after

19 searching the electronic price database.

20 “Correct price”, the advertised price in any circular, newspaper, magazine, television or radio

21 commercial, or in any other medium, or any published correction thereof. If an item is not

22 advertised, the correct price shall be the lowest display price indicated on any store sign for the

23 item, but not if the checkout price is lower. If an item has no display price, the correct price shall

24 be the price of the item on its unit price label, but not if such item is rung up at a lower price. If

25 no unit price label is displayed, the correct price shall be the price rung up by the food store’s or

26 a food department’s automated checkout system. If the foregoing provisions for establishing the

27 correct price are not determinative in a particular situation, the correct price shall be the price on

28 the seller’s current price list.

29 “Director or deputy director”, the deputy director of the division of standards established

30 pursuant to section 5 of chapter 24A, or the director’s designee including, an inspector, a sealer

31 or a deputy as defined in section 1 of chapter 98.

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

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

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

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

39 “Food”, anything edible.

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

46 “Food store”, any store, shop, supermarket, grocer, convenience store, or other seller, whose
47 primary business is selling either food for consumption off the seller’s premises alone or in
48 combination with grocery items or other nondurable items typically found in a supermarket, and
49 such items are sold at least in part to individuals for their own personal, family, or household use.
50 A food store shall not include a warehouse club.

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

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

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

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

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

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

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

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

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

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

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

73 Section 184C. (a) The correct price of an item offered for sale by a food store or a food
74 department shall be disclosed to consumers in a clear and conspicuous manner. A food store or
75 food department may elect to disclose the correct price using either an individual item pricing
76 system or a consumer price scanner system; provided, that the food store or food department has
77 been granted permission by the division to use a consumer price scanner system. All prices
78 represented to the consumer for the same item shall be consistent with each other and the correct
79 price.

80 (b) A food store or food department that implements an individual item pricing system shall affix
81 the correct price on each unit in a clear and conspicuous manner by means of a sticker price;
82 provided, that said food store or a food department attaches a correct display price not less than 1
83 inch high for each separate SKU or separately-coded item. In the case of a food store or a food
84 department that utilizes loyalty cards or otherwise maintains a dual pricing system, the non-card
85 price shall be affixed to the item if it differs from the loyalty card price, provided that a sign at
86 the point of display shall include both the loyalty card price and the non-card price, so labeled if
87 they differ, as well as either the amount of savings per unit or the per cent of savings.

88 (c) A food store or food department that implements a consumer price scanner system shall have
89 the code of an item affixed to each individual unit by means of a sticker, ticket, tag or other label
90 that can be read by a consumer price scanner and automated checkout system to display the
91 correct price. The item's code, its unabbreviated description and its correct price shall be
92 disclosed in a clear and conspicuous manner by a correct display price not less than 1 inch high.
93 In the case of a food store or a food department that uses loyalty cards or otherwise maintains a
94 dual pricing system, the sign at the point of display shall include both the loyalty card price and

95 non-card price, so labeled if they differ, as well as either the amount of savings per unit or the
96 percent of savings.

97 (d) Upon a determination by the division that: (i) a clear and conspicuous sign disclosing the
98 item's code, its description and its correct price is posted where these items are displayed; (ii) the
99 cashier can readily discern the item's correct price, (iii) the food store or food department
100 maintains an itemized list for all exempted items, and (iv) the list is available at each checkout
101 and can be reviewed by a customer upon request, a food store or a food department may exempt
102 the following classes of items from its individual item pricing system : (1) unpackaged: produce,
103 meat, fish, poultry, delicatessen, bakery items, and any other items that are unpackaged and
104 offered from a bulk display; provided, however, that any such item weighed or wrapped to order
105 by a food store or a food department but paid for at a place other than at the point of such
106 weighing or wrapping shall have the correct price marked on the item; (2) gallons and half
107 gallons of milk; (3) eggs; (4) cigarettes, cigars, tobacco and tobacco products; (5) individual
108 items within a multi-item package, if the package is marked with the correct price; (6) cakes,
109 gum, candy, chips, nuts and other snack foods, if offered for sale individually, and located at the
110 checkout area; (7) individual greeting cards, if marked with a price code readily understandable
111 by the consumer; (8) individual containers of baby food of the same brand and price where
112 vegetable or fruit is the predominant ingredient other than water, but not including juices; (9) soft
113 drink bottles and cans; (10) frozen food products; (11) items sold by length, area, weight or
114 volume, including, without limitation, chain, rope, flooring, lumber, fabric, stone or soil, that are
115 unpackaged; (12) items that must be retrieved for the consumer by store staff, including without
116 limitation large electronics or appliances, display or representative items or items displayed in a
117 locked case or out of reach of consumers; (13) packaged self-service items that are small in size

118 and are offered for sale located at the checkout area; (14) live animals; (15) items sold in a coin
119 operated vending machine; and (16) not more than 60 additional items that are accessible to the
120 consumer in a free standing or end-aisle display that has at least 50 units of the same item;
121 provided, however, that unless the deputy director determines otherwise, individual items that
122 differ only by color, flavor or scent shall be counted as the same item for the purpose of this
123 clause if they are identical in all other aspects, including price, size and brand.

124 (e) Food stores or food departments utilizing an individual item pricing system shall be allowed
125 to exempt additional items, the exact number of which shall be based on the number of operable
126 cash registers located at the main checkout location. Food stores or food departments with 1
127 operable cash register shall be allowed to exempt 20 additional items of their own choosing.
128 Food stores or food departments with 2, 3 to 4, or 5 to 6 operable cash registers shall be allowed
129 to exempt 50, 100 or 200 additional items respectively. Food stores or food departments with 7
130 or more operable cash registers may exempt up to 400 additional items. In the case of a food
131 department, the number obtained in the above calculation shall be reduced by 75 per cent. In no
132 case shall the number of exemptions permitted by this exception exceed 4.5 per cent of the
133 number of packaged grocery items carried by the seller.

134 All additional exemptions allowed under this subsection shall be granted provided that the food
135 store or food department maintains an automated checkout system which has been determined to
136 be at least 95 per cent accurate during a price accuracy inspection conducted by the division or
137 their designee and maintains a dated, written price list of the items it has chosen to exempt. The
138 price list shall include a readily understandable description of each item and the code number
139 understood by the seller's automated checkout system. Deletions may be made from the list at
140 any time, but no additions, substitutions, or changes may be made to the list except twice a year

141 in January and July. The exemption permitted by this section shall not apply to any item not on
142 that price list and shall not apply unless such price list has been established and is available upon
143 request at the food store or food department to any consumer or any representative authorized by
144 the deputy director. The list shall be maintained so that any item may be referenced easily by a
145 consumer. No seller may choose to exempt items required to be price marked by other laws or
146 regulations governing specific types of items nor may a seller exempt more than 200 items in any
147 1 department except in the grocery department.

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

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

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

157 (i) Notwithstanding subsection (g) of section 184D, if there is a discrepancy between the
158 advertised price, the sticker price, the scanner price or the display price and the checkout price on
159 any grocery item, a food store or a food department shall charge a consumer the lowest price. If
160 the checkout price or scanner price is not the lowest price or does not reflect any qualifying
161 discount, the seller: (i) shall not charge the consumer for 1 unit of the grocery item, if the lowest
162 price is \$10 or less; (ii) shall charge the consumer the lowest price less \$10 for 1 unit of the

163 grocery item, if the lowest price is more than \$10; and (iii) shall charge the consumer the lowest
164 price for any additional units of the grocery item. This subsection shall not apply if (1) there is
165 evidence of willful tampering or (2) the discrepancy is a gross error, in that the lowest price is
166 less than half of the checkout price and the seller, in the previous 30 days, did not intend to sell
167 the grocery item at the lowest price. The provisions of this subsection shall be clearly and
168 conspicuously posted by all food stores or food departments which use a consumer price scanner
169 system at each register. For each register that fails to display appropriate signage, the food store
170 or food department shall be subject to a fine of \$200, up to a maximum of \$500 per inspection by
171 the deputy director. All food stores or food departments shall maintain data on price
172 discrepancies. This data shall be provided to the division upon request.

173 (k) The deputy director may require sellers to disclose a consumer's rights under sections 184C
174 to 184E, inclusive, by a writing provided by the division.

175 (l) The division shall promulgate regulations for the administration and enforcement of sections
176 184B to 184E, inclusive. Failure to comply with any of the provisions of sections 184B to 184E,
177 inclusive, may constitute a violation under chapter 93A.

178 Section 184D. (a) The deputy director or the deputy director's inspectors, and sealers of weights
179 and measures and their deputies, as defined in section 1 of chapter 98, shall inspect each food
180 store or food department for compliance with sections 184B to 184E, inclusive. The inspections
181 shall be conducted pursuant to the national industry standards adopted by the National
182 Conference on Weights and Measures of the National Institute of Standards and Technology or
183 any other rules or guidelines promulgated by the division pertaining to the implementation and
184 enforcement of sections 184B to 184E, inclusive. Nothing shall inhibit the oversampling of sale

185 items during inspections. A food store or food department shall provide the inspector with access
186 necessary to conduct an inspection. The deputy director shall notify the food store or food
187 department in writing of violations of this section and of any fines imposed pursuant to sections
188 184B to 184E, inclusive.

189 (b) Violations of the provisions of sections 184B to 184E, inclusive, for which fines shall be
190 levied shall include, but not be limited to: (1) having no price marked on a unit that is required to
191 be priced and is not exempted; (2) having an incorrect price on a unit; (3) having an incorrect or
192 missing sign; or (4) overcharging on a unit. A unit shall be deemed to be overcharged once it is
193 rung up at a price higher than any represented price. Notwithstanding the method for determining
194 the amount of civil fines pursuant to section 29A of chapter 98, a civil citation may be issued for
195 \$200 for each violation, up to a maximum of \$5,000 per inspection. If an item is advertised either
196 in a food store, food department or in a circular as “on sale” or discounted because of a loyalty
197 card price and the item registers at a higher price at the checkout counter than indicated by a
198 “sale” or loyalty card price, a civil citation will be issued for \$300 for each violation, up to a
199 maximum of \$5,000 per inspection. The deputy director shall not issue a fine pursuant to
200 sections 184B to 184E, inclusive, and section 56D of chapter 98 for the same violation.

201 (c) A fine imposed by the deputy director shall be paid within 21 days of issuance of the notice,
202 unless the seller appeals pursuant to the civil citation appeal process found in section 29A of
203 chapter 98. The food store or food department shall immediately correct any noncompliance with
204 sections 184B to 184E, inclusive, when notified by the inspector.

205 (d) The deputy director or any representative authorized by the division may conduct inspections
206 of any item and shall issue notices of violation to any food store or food department for any

207 violation of this section and sections 184B through 184E, inclusive, provided, however, that no
208 food store or food department shall be inspected more than once a month, unless such inspection
209 is intended to verify the correction of violations found during a recent inspection or to verify the
210 validity of a specific consumer complaint made through the process in subsection (e). For
211 purposes of this section each occasion that an item scans erroneously during an inspector's
212 attempt to verify its correct price shall constitute a separate civil violation. The seller shall
213 immediately correct all violations.

214 (e) A consumer may submit a complaint to the office of the attorney general or to the deputy
215 director regarding noncompliance with sections 184B to 184E, inclusive. All food stores or food
216 departments subject to sections 184B to 184E, inclusive, shall provide, upon request, a complaint
217 form for the consumer to complete and submit. Each submitted complaint shall be investigated.
218 In the case of any verified consumer complaint, fines for overcharging shall be limited to 1
219 violation per item. A fine shall be issued upon verification of any consumer complaint alleging
220 overcharging or improper price marking.

221 (f) If the deputy director determines that a food store or a food department is either intentionally
222 or through gross negligence violating any provisions of this section and sections 184B to 184E,
223 inclusive, the deputy director shall provide written notice of such determination to the food store
224 or food department and said food store or food department shall have 30 days to cure these
225 violations. If upon re-inspection, the deputy director determines that the food store or food
226 department still is not in substantial compliance with the provisions of this section and sections
227 184B to 184E, inclusive, all of the food store's or food department's exemptions shall be
228 rescinded for a period of 12 months and the matter shall be referred to the attorney general for
229 action against such food store or food department.

230 (g) Sections 184B through 184E, inclusive, shall only apply to food stores and to grocery items
231 in food departments. Said sections shall not diminish any obligations under other laws or
232 regulations regarding item pricing for sellers other than food stores or for items other than
233 grocery items in food departments. Where a seller is also subject to the item pricing regulations
234 or guidelines of another agency, in cases where a specified number of items is allowed to be
235 exempted under 2 similar exceptions to the requirement of item pricing, such similar provisions
236 shall not be additive. Compliance with another agency's regulations or guidelines which differ
237 from said sections or any regulations issued hereunder by the deputy director shall not be a
238 defense to a violation of said section or any regulations promulgated hereunder.

239 (h) The division may retain all registration fees and fines it collects under sections 184B through
240 184E, inclusive, sections 56D and 56E of chapter 98 not to exceed \$2.5 million annually in order
241 to support its enforcement activities; provided, however, that any excess fees and fines up to \$1
242 million in excess of this figure shall be used to fund the division of standards municipal grant
243 program for approved agents to assist the division in lieu of a legislative appropriation. In the
244 event that the division and the municipal grant program are fully funded, all additional revenue
245 shall be turned over to the General Fund.

246 Section 184E. (a) A food store or food department seeking to convert from an individual item
247 pricing system to a consumer price scanner system shall seek a waiver from the division. The
248 waiver shall be granted by the division provided that the food store or food department has no
249 outstanding fines under sections 184B to 184D, inclusive, or section 56D of chapter 98 and pays
250 a \$250 fee annually to the division if the retail space is less than 15,000 square feet, \$500 fee if
251 the retail space is 15,000 square feet up to 30,000 square feet, or a \$1,000 fee if the retail space is
252 30,000 square feet or more.

253 (b) Pursuant to the regulations promulgated under this chapter, the division shall require each
254 applicant to complete a “no job loss” affidavit which shall include, but not limited to, the
255 number of people employed at the time of the application process and the establishment of a
256 complaint process, so that full and part time employees will not suffer any wage or benefit loss
257 due to said transfer. After the filing of the affidavit, if there is any resulting job loss at the store
258 due to the implementation of the waiver, as determined by the division, not attributed to seasonal
259 employment or verifiable economic pressures, the store shall be required to use an individual
260 item pricing system for 1 year pursuant to sections 184B to 184E, inclusive, or other applicable
261 Massachusetts law or regulation promulgated hereunder, and be subject to a fine of not more
262 than \$5,000.

263 (c) A food store or food department using a consumer price scanner system shall be subject to
264 inspection by the deputy director for compliance with this section. The deputy director shall not
265 cause any food store or food department using a consumer price scanner system to be inspected
266 more than once per calendar month. If, within the previous 30 days, there is a verified pattern of
267 consumer complaints or, upon regular inspection, the food store or food department is not in
268 compliance with this section, the division may inspect a food store or food department using a
269 consumer scanner pricing system once every week until the food store or food department is
270 found to be in compliance with this section.

271 (d) Each food store or food department with more than 5,000 square feet of retail space that
272 employs a consumer price scanner system shall have at least 1 fully operational consumer price
273 scanner for every 5,000 square feet of retail space or part thereof. The location of a consumer
274 price scanner shall be disclosed via 1 clear and conspicuous sign at eye-level and 1 clear and
275 conspicuous sign above eye level. Consumer price scanners shall be equally spaced throughout

276 the store in fixed locations. A food store or food department with more than 5,000 square feet
277 shall have at least 1 fully operational consumer price scanner capable of producing an individual
278 item pricing tag. At all such scanner locations, the food store or food department shall provide
279 the consumer with a means by which such pricing tag may be affixed or appended to the item or
280 its packaging, such as tape or an adhesive price tag. The deputy director may, by regulation,
281 authorize new technologies in lieu of required consumer price scanners which further the intent
282 of this section, including, but not limited to, hand held or shopping cart attached scanners which
283 retain in memory and itemize all scanned items. Such technologies may reduce the required
284 number of consumer scanners by no more than 50 per cent.

285 (e) Consumer price scanners shall be deemed fully operational if: (1) the consumer price scanner
286 clearly and conspicuously identifies and displays the item by name or other distinguishing
287 characteristics; and (2) the consumer price scanner displays the item's correct price when the
288 item is scanned and, in the case of a food store or food department that uses loyalty cards or
289 otherwise maintains a dual pricing system, the consumer price scanner displays both the loyalty
290 card price and the non-card price if they differ. A sign containing contact information for the
291 divisions shall be posted by each consumer price scanner so that consumers may report broken
292 consumer price scanners. Such consumer price scanners shall be in compliance with the
293 Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the
294 Massachusetts architectural access board regulations 521 CMR 1.00, et. seq. Any violation of
295 this subsection shall be considered in determining a consumer price scanner's pass or fail
296 designation as defined in subsection (i).

297 (f) Any food store or food department with more than 5,000 square feet of total space converting
298 from an individual item pricing system to a consumer price scanner pricing system shall within 3

299 months of such conversion hire or maintain not less than 2 employees whose responsibilities
300 shall include the maintenance of all consumer price scanners within said food store or food
301 department.

302 (g) An inspector may elect to test a food store or food department's consumer price scanner
303 system for accuracy. The inspector may choose the sample size for accuracy tests provided that
304 the size of sample is no less than 50 items and not more than 200 items. Any scanning that yields
305 an incorrect price that causes a food store or food department's consumer price scanner accuracy
306 rating to fall below 98 per cent shall constitute a separate violation. This subsection shall not be
307 used to impact a scanner's pass or fail grade as defined in subsection (i) but the cumulative
308 violations of this subsection in any particular store or department shall be used in contributing
309 toward the maximum fine imposed under the same subsection.

310 (h) Upon inspection, the deputy director shall notify the store manager, who shall provide the
311 inspector with a map of the food store or food department outlining the consumer price scanner
312 locations and the food store or food department's square footage of retail space. The food store
313 or food department's number of scanners shall be sufficient for the food store or food
314 department's size under subsection (d). Any violation of this subsection shall result in a fine of
315 \$1,000, which shall not count toward the maximum fine established under subsection (i);
316 provided, however, that the deputy director may reduce this fine consistent with section 29A of
317 chapter 98.

318 (i) Each consumer price scanner shall be graded on a pass or fail basis by inspectors. A failing
319 consumer price scanner shall include, but not be limited to, missing consumer price scanners or
320 inadequate signage under subsection (d). Each scanner found to have failed the test shall

321 constitute a separate violation of this section. Notwithstanding the method for determining the
322 amount of civil fines pursuant to section 29A of said chapter 98, a civil fine may be issued for
323 \$200 for each violation, up to a maximum of \$2,500 per inspection; provided, however, that the
324 deputy director may reduce any fine imposed pursuant to this section consistent with section 29A
325 of chapter 98.

326 SECTION 2. Chapter 98 of the General Laws is hereby amended by striking out section 56D, as
327 so appearing, and inserting in place thereof the following section:-

328 Section 56D. (a) The director or the director's inspectors, and sealers and inspectors of weights
329 and measures and their deputies, shall in every 24 month period, examine and test the operation
330 of all automated retail checkout systems, in all establishments with 3 or more cash registers, and
331 shall upon complaint to said officials examine and test the operation of any automated retail
332 checkout system to determine whether the price which an item is offered or advertised for sale,
333 including any advertised special price offered to a customer with a store-issued discount or
334 loyalty card, conforms to the unit or net prices displayed to the customer on the visual display
335 and conforms to the price for which a purchaser is charged by such automated retail checkout
336 system to determine whether the total price for items purchased is correctly represented, and may
337 issue notices of violations of this section, pursuant to section 29A and this section; provided,
338 however, that nothing herein shall prohibit the director or his inspectors and sealers and
339 inspectors of weights and measures and their deputies from examining and testing any system at
340 any time irrespective of the number of cash registers within the establishment.

341 (b) If such examination and test reveals that there is evidence of price misrepresentation, or
342 misleading or deception of the purchaser of items, or that consumer price scanners, as defined in

343 section 184B of chapter 94, do not meet the operational standards set forth below, the owner,
344 manager or the designee of said owner or manager of a retail establishment using such automated
345 checkout system shall be punished for the first failed inspection by a civil fine of \$200, for the
346 second failed inspection by a civil fine of \$500, and for any subsequent failed inspection, by a
347 civil fine of \$1,000; provided, however, that there shall be no punishment for any inoperable
348 consumer price scanner that is deployed for reasons other than to obtain an exemption from any
349 law or regulation of the commonwealth requiring the individual price-marking of items offered
350 for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate
351 to the satisfaction of the inspector that he has communicated in writing with an authorized repair
352 agent, prior to such examination and test, requesting that the inoperable electronic scanner be
353 repaired. For purposes of this section, consumer price scanners shall be deemed fully operational
354 if they operate in the following manner: (1) the consumer price scanner clearly and
355 conspicuously identifies and displays the item by name or other distinguishing characteristics;
356 and (2) the consumer price scanner displays the item's correct price when the item is scanned
357 and, in the case of a retail establishment that uses loyalty cards or otherwise maintains a dual
358 pricing system, the scanner displays both the loyalty card price and the non-card price if they
359 differ. Each consumer price scanner shall display contact information for the division of
360 standards to report broken scanners. Such consumer price scanners shall be in compliance with
361 the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and
362 the Massachusetts Architectural Access Board Regulations 521 CMR 1.00. Notwithstanding the
363 method for determining the amount of civil fines pursuant to said section 29A, a civil citation
364 may be issued for \$200 for each violation, up to a maximum of \$2,500 per inspection. For

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

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

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

374 SECTION 3. The division of standards, in consultation with the secretary of labor and workforce
375 development, shall annually file with the joint committee on community development and small
376 business, a report consisting of the impact of consumer price scanner implementation on pricing
377 accuracy and employee job loss or change of employment status, if any, resulting from the item
378 pricing waiver program. This report shall also contain recommendations for legislative changes,
379 if any, which the director of the division of standards deems necessary to affect the purposes of
380 the program. This report shall be filed annually on or before December 31.

381 SECTION 4. This act shall take effect on January 1, 2013.