

HOUSE No. 212

By Mr. Welch of West Springfield, a petition (accompanied by bill, House, No. 212) of James T. Welch relative to pricing in food stores and food departments. Community Development and Small Businesses.

The Commonwealth of Massachusetts

PRESENTED BY:

James T. Welch

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:

James T. Welch

DISTRICT/ADDRESS:

6th Hampden

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 SECTION 2. Section 184C of chapter 94 of the General Laws, as appearing in the 2006 Official
5 Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the
6 following: —
- 7 Except as hereinafter provided, every item in a food store and every grocery item in a food
8 department offered for sale, whether edible or not, shall have affixed to each unit the correct
9 selling price. This requirement shall not apply to any item in any food store or food department
10 of less than 35,000 square feet of food selling space which bears a Universal Product
11 Code (“UPC”) barcode, either on the item or the item packaging or on a pricing tag or sticker
12 appended to the item, provided that the seller has available in the store for consumer use at least
13 one electronic scanner for every 5,000 square feet of store selling space, with signs prominently
14 posted adjacent to each scanner at and above eye level, identifying for consumers the location of
15 the scanners, and seller remains in compliance with section 29 of chapter 98 of the General Laws
16 by consistently maintaining a ninety eight percent (98%) or higher accuracy rate on their
17 electronic scanners, and provided further that the seller has obtained the written authorization of
18 all collective bargaining units to which the seller is contractually bound to employ the use of
19 electronic scanners as a means in which to identify the selling price of an item. Electronic
20 scanners available for consumer use are capable of (1) identifying and displaying the item by
21 name or other distinguishing characteristics; (2) displaying the price of the item; and (3)
22 producing an individual pricing tag for that item, except that the Deputy Director may authorize
23 the use of individual hand-held or cart attached scanners in lieu of producing an individual
24 pricing tag. At each scanner location, the seller must also provide the consumer with a means by
25 which such pricing tag may be easily affixed or appended to the item or its packaging (e.g.
26 adhesive pricing tag.) Such scanners must also be in compliance with the Americans with
27 Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts
28 Architectural Access Board Regulations 521 CMR 1.00 et seq.

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

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

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

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

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

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

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

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

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

55 SECTION 6. Notwithstanding the limited number of exemptions provided in Chapter 94,
56 sections 184B-184E, the Division of Standards is hereby authorized to conduct a six month item
57 pricing removal pilot program commencing on or before October 1, 2009. The pilot program
58 will examine the effects of removing individual price stickers and tags from grocery items and
59 the use and functionality of self-service price check scanners in retail stores selling food. Up to
60 50 retail stores selling food may be accepted into the pilot program.

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

65 Each individual store location must apply for and be accepted into the pilot program. Written
66 authorization by any collective bargaining unit if applicable must be submitted to the Division with the
67 pilot application. Acceptance will be subject to the approval of the Division. The Division shall review
68 the applications of prospective participants and select a diverse sample of stores taking into account store
69 location, geographical distribution, primary business engaged in by the store, store size, food department
70 size, number of products carried, and other relevant factors. The Division may limit the number of
71 participating stores from any one chain.

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

75 Terms and Conditions of Participation for accepted stores:

76 An exemption from the item pricing requirement for grocery and food items is granted for the duration of
77 the test for all such items with either a UPC barcode or machine readable SKU. The Division shall
78 provide each participating store with a letter certifying that the store is granted an exemption from the
79 requirement of item pricing for grocery and food items for the duration of the pilot;

80 (1) Stores shall have one printing, self-service price check scanner for each 5,000 square feet of
81 selling space or fraction thereof based on total store size. Each scanner shall: (a) meet the criteria
82 outlined in 940 CMR 3.13(1)(b)(2) and (3); (b) print the current date on the price sticker or price
83 slip; and (c) place at least one such scanner within or in close proximity to the primary food area
84 of the store. Notwithstanding the printer requirement, the Division may at its discretion grant the
85 use of individual hand-held or cart attached scanners, capable of displaying the price, listing all
86 scanned items, and totaling all prices. In such case, all but one self-service price check scanners
87 located throughout the store may exclude a printing device.

88 (2) At the point of display of every exempt item, the store shall post a price sign in accordance with
89 Chapter 94, section 184C; provided further that stores which discount items for customers with a
90 store loyalty card shall display the "card price" using that term or one of similar import along
91 with the non-card price both at least one inch high. For items required to display a unit price, both
92 a card unit price and non-card unit price shall be displayed and so labeled;

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

95 (4) Testing and compliance: For the purposes of this pilot program, the Division or its designees may
96 inspect any store at any time and levy fines as provided in Chapter 98, Section 56D and Chapter
97 94, Section 184E. For the purposes of this pilot program, inspections and fines may include the
98 following: an accuracy test for checkout scanners, a sign test for compliance with the posting
99 requirements, and a test of all printing self-service price check scanners in the store for
100 functionality and compliance.

101 Each store must maintain at least a 98% rate of accuracy for its automated checkout scanners
102 based on standardized testing methodology, a 95% compliance rate for proper signage on exempt
103 items, and a "pass" grade for the functionality and compliance of each of its printing self-service
104 price check scanners in the store. Any such self service scanner which fails to print or fails to
105 scan or scan accurately shall be deemed to have failed the test. A tolerance for one error of one
106 missing scanner sign or one missing supply of tape shall be allowed for every ten scanners in the
107 store per inspection. Stores with ten or more scanners shall have a tolerance for error of one
108 failing scanner.

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

112 (5) Self-audits and maintenance check: Each participating store shall maintain a separate record book
113 for each self-service price check scanner in the store. At least once a day, it shall test each aisle
114 scanner by scanning a different advertised sale item (food or not) at each machine, print the price
115 label for that item, and affix it in the record book for the relevant scanner in chronological order.

- 116 The store shall retain a copy of every advertisement and circular issued during the test period,
117 circling each item used in daily self-audits. If there are no advertised items on a particular day,
118 any randomly selected item may be used for the test. In cases where a scanner cannot be made to
119 print a correct price label, the store shall note the failure in the book and record the action taken
120 to correct the problem;
- 121 (6) Consumer education: Each participating store shall post a sign at each store entrance noting their
122 participation in the pilot program, and shall make available at each checkout register and at a
123 customer service desk an informative brochure approved by the Division with the advice and
124 counsel of the Retail Store Pricing Reform Study Commission describing the pilot program,
125 alerting shoppers to any new signage, explaining the use of printing self-service price check
126 scanners, and providing full contact information for the Division to receive feedback and
127 complaints about the pilot;
- 128 (7) The Retailers Association of Massachusetts shall conduct and pay for, directly or indirectly, a
129 professional market research survey of consumer attitudes about item pricing, the removal of
130 price stickers, and the use of printing, self-service price check scanners both before and after the
131 pilot among shoppers at a scientific sampling of test stores. Such surveys shall be conducted in
132 accordance with accepted survey standards and techniques. A final report of both surveys
133 prepared by the professional market research company shall be submitted to the Joint Committee
134 on Community Development and Small Business and the Retail Store Pricing Reform Study
135 Commission; and
- 136 (8) The Director shall submit a report on said pilot program within 45 days after the conclusion of
137 the test and the surveys to the Joint Committee on Community Development and Small Business,
138 the House Committee on Ways and Means, the Senate Committee on Ways and Means and the
139 Retail Store Pricing Reform Study Commission.

140 SECTION 7. There is hereby created a Retail Store Pricing Reform Study Commission comprised of the
141 chairs and ranking minority members of the Joint Committee on Community Development and Small
142 Business, and one representative from each of the following entities: the Office of Consumer Affairs and
143 Business Regulation, the Office of the Attorney General, the Retailers Association of Massachusetts, the
144 Massachusetts Consumers Coalition, the United Food and Commercial Workers union local 1445, the
145 United Food and Commercial Workers union local 791, the Massachusetts Food Association, and two
146 Massachusetts based and owned retail companies appointed by the co-Chairs of the Committee on
147 Community Development and Small Business. The Commission shall meet to review existing laws in
148 Massachusetts and elsewhere pertaining to retail pricing accuracy and disclosure, and shall make
149 recommendations on reform legislation to streamline duplicative pricing laws, while best protecting
150 consumers for cost, service, disclosure and accuracy, and small businesses from unnecessary regulation
151 and costs. The Commission shall report to the Joint Committee on Small Business and Community
152 Development by April 30, 2010.