

[What Retailers Want You to Believe are] Myths vs. Facts

The Eliminate Item Pricing Bill

H. 4858: An Act relative to Clear and Conspicuous Price Disclosure

The legislation aims to Since when do retailers push for consumer protection legislation? How does taking away a tool to catch overcharges at the register, and cutting fines for noncompliance by 90% help consumers?

- Increase price accuracy for all food and non-food retailers
- Create strong consumer protections and labor safeguards
- Create a level playing field and equal enforcement for all retailers

86% of shoppers want to keep the current law on the books, according to a consumer survey.

... legislation, to some common myths:

The bill proposes using technology that is not new – in fact it is at least 20 years old (just a plain old scanner, and not even one that prints). Tests by Consumer World and the state have repeatedly shown that retailers fail to maintain these machines in good working order.

1. MYTH: *Current pricing law works just fine so there's not need to change it*

FACT: Over time, the pricing laws in Massachusetts have become somewhat difficult for retailers to follow, consumers to understand and officials to enforce. This is due to the evolution of the retail market and the advances of technology. Today, if a retailer wants to do so, he or she can deposit a check, go grocery shopping, pick up a prescription, buy a new cell phone, pick up a gift card for a local restaurant, pick up a new shirt, and pick up a cup of coffee -- all in the same store. Today, technology provides computer systems that can promote efficiency and consistency, replace routine manual tasks and reduce errors. Over the years, Massachusetts law has adapted to allow for the use of systems that improve price accuracy--this benefits both the consumer and the retailer. The new law would do just that by allowing for retailers to choose either an individual item pricing system or a consumer scanner pricing system. Each retailer would make that choice based on the individual needs of that retailer and its consumers.

2. MYTH: *Shoppers will have to bring their entire cart of groceries to a scanner a few aisles away to determine the price of an item.*

FACT: Under the new law, prices "shall be disclosed to consumers in a clear and conspicuous manner."

Food stores can continue the current practice of individual item pricing. If a retailer chooses a consumer scanner pricing system similar to those currently used by consumers, the retailer must provide price information "in a clear and conspicuous manner at the point of sale and conspicuously displayed on the scanner screen."

Few stores will continue to item price because of strong financial incentives in the bill to abandon it.

Current law requires prices to be at least 1" high on signs or labels. "Clear & conspicuous" could allow smaller signs – providing even harder to find price disclosure for shoppers. Shelf price labels are also often outdated, missing, or not aligned with the item.

Under the new law, clear and conspicuous is defined as being "of such size and placement as to be readily noticed and understood by a reasonable person." The Massachusetts Division of Standards, through its regulations, will set the standards for clear and conspicuous pricing. Their regulations will be based on national standards. Just as the Division currently sets specific standards for the disclosure unit and item pricing through its regulations, so too will it be able to set specific pricing disclosure standards under the new law.

At a minimum, scanners for consumer use must be placed at least every 5,000 square feet. This requirement for scanners is in addition to the requirement for clear and conspicuous price disclosure at the point of display. Of course, any retailer may provide more than one scanner at a point of sale. These additional scanners may be hand-held, cart-mounted or floor-mounted.

That is the equivalent of one scanner every two or three aisles – a great inconvenience for busy shoppers trying to find out or compare prices.

No consumer group supports this bill.

3. MYTH: *Shoppers need more price disclosure and this bill is anti-consumer.*

FACT: This bill benefits consumers by increasing price accuracy. Through the consumer scanner pricing system eliminates the human error in price disclosure that causes consumer confusion under the price sticker system. With this new law, Massachusetts has one of the strictest item pricing statutes in the nation.

The accuracy standard is not tightened; shoppers lose the ability to easily catch overcharges at the register by merely comparing the price on the item to the price on the screen; inspections are reduced; and no self-audits of pricing accuracy are required.

4. MYTH: *Fines for retailers are reduced under this bill and enforcement is limited.*

FACT: The Division of Standards will have strong investigatory powers under this bill. Stores using an individual item pricing system may be inspected each week and the penalty structure is the same as for a consumer scanner pricing system. A consumer scanner pricing system may be routinely inspected each year or much more often if there are consumer complaints; currently these systems are supposed to be inspected every year if there are complaints.

On the contrary, inspections are a *maximum* of once a year, with no minimum number required. Only with a pattern of recent verified complaints or problems can a store be inspected more often.

Noncompliance is no longer an explicit violation of the Consumer Protection Act (Chapter 93A).

There are no fines for checkout scanner inaccuracy in stores with aisle scanners.

The new law would support increased enforcement because it will annually dedicate up to \$2 million from inspection fees and penalties. For those retailers choosing to use a consumer scanner pricing system, the new law will impose inspection fees and actually doubles fines for failure to comply with the law's requirements. For those retailers that continue to item price under the individual item pricing system, the new law will also increase enforcement.

Currently, supermarkets are subject to **weekly** fines of up to \$2500 issued like parking tickets. This bill imposes a mere \$250 criminal fine *per annual inspection* – 90% less – and it requires a time consuming court action to be assessed. With only a maximum of one inspection a year typically, and a fine of only \$250 for that inspection, there is no incentive to comply with the law and enforcement will be severely hampered.

In addition, the new law will mandate that all items be priced consistently.

5. MYTH: *Advertised sale prices would not be marked on items nor show up on aisle scanners.*

FACT: As stated in the legislation, "All prices represented to the consumer for an item shall be consistent with the price for all items that are the same and shall be consistent with each other and with the checkout price." This would apply to sale items as well as regular items. The bill explicitly exempts stores with aisle scanners from having to display advertised sale prices or the price of 16 categories of 1000s of other items on their aisle scanners. With no sale prices on items AND no sale prices at the scanner, what is a shopper to do? [See sec. 184C(d) "(16): items offered temporarily at an advertised discount."]

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6. MYTH: *The law governing inspections of checkout scanners would be abolished.*

FACT: The new law would require regular inspections to insure retailers' compliance with clear and conspicuous and consistent pricing, which by necessity includes an inspection of the automated checkout system (cash registers, etc.). The repeal of the existing MGL 98:56D is necessary to remove what would be redundant, and potentially confusing, legal authorization.

Inspections of checkout scanners are only provided for by inference in the bill, not explicitly, with no minimum number required annually (and a maximum of one generally). The existing scanner law is abolished. Local sealers of weights and measures are explicitly cut out of the inspection process as drafted. There is no fine for overcharging or inaccurate checkout scanners in stores that utilize aisle scanners. Inspections without strict, and easily assessable fines are meaningless.

7. MYTH: *Wholesale clubs would be exempt from all price disclosure requirements.*

FACT: Any retailer required to collect sales tax would be a retailer required to comply with the new pricing law. That, of course, would include wholesale clubs.

By using the term "retailer" instead of "seller", warehouse clubs like BJ's will likely argue, as they successfully have done in the past, that since they are a private *wholesale* club, not open to the public, they fall outside the definition of stores required to comply with item pricing regulations.

When shoppers have to lug their groceries two aisles over to verify the price, that is not “easy”. When the scanners are not required to show the “card price” or advertised sale price, that is not “accurate”. Prices on items provide instant price disclosure.

8. MYTH: *Although price stickers are old-fashioned, no technology has been developed that provides the same benefits of helping shoppers easily find prices.*

FACT: The price sticker is old-fashioned and the latest scanner technology has been developed to help shoppers find the price easily and more accurately because price stickers is eliminated. This assures price accuracy price (as read by the scanner) and the checkout price.

Aisle scanners only guarantee consistency, but not accuracy. If stores input incorrect prices into their computer, they will be wrong both at the aisle and the checkout. Stores are not required to verify that sale prices are properly entered.

9. MYTH: *The public has historically rejected aisle scanners as a substitute for item pricing.*

FACT: In 2006, Connecticut approved a law similar to this proposal. To date, not one consumer complaint has been registered with the state due to the implementation of the scanner system

Lack of complaints is never a measure of acceptance. In a professional market research survey of Massachusetts shoppers, nearly two-thirds rejected aisle scanners as an adequate substitute for putting prices on items.

10. MYTH: *This legislation would result in the substantial loss of good retail jobs.*

FACT: The bill provides protections for employees and requires labor-organized companies who use the scanner technology to file an affidavit stating that those employees who currently item price will suffer no wage or benefit loss because of the switch to the consumer scanner pricing system. In addition, the legislation provides for a complaint process if any employee believes that has happened. Most stores are reporting that they cannot find enough employees to fill available jobs, and a retailer’s decision to switch from individual item pricing to a consumer scanner system would allow employees to dedicate more time to helping customers and reducing lines at the checkout. Again, there has been no type of job loss in Connecticut due to the implementation of the scanner system.

Retailers are pushing for the removal of price stickers to lower their labor costs, period. It is disingenuous of retailers to claim on the one hand that no one will lose their job, while at the same time saying that the savings gained from item pricing removal will be result in lower prices. If they are not firing anyone, where are the savings coming from? It certainly is not from the fraction of a cent that those little paper stickers cost.

Any savings derived from the elimination of item pricing will most likely to go directly to the retailers’ bottom line, and not into shoppers’ pockets.

Annotations by:

MASSPIRG
Consumer World
Massachusetts Consumers’ Coalition

For more information visit:
<http://www.tinyurl.com/itempricing>

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