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No. 1894

H.P. 1265

House of Representatives, May 5, 2025

An Act to Address Consumer Grocery Pricing Fairness

Received by the Clerk of the House on May 1, 2025. Referred to the Committee on Housing and Economic Development pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink, reading "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SAYRE of Kennebunk.
Cosponsored by Senator TALBOT ROSS of Cumberland and
Representatives: CLOUTIER of Lewiston, CROCKETT of Portland, Speaker FECTION of
Biddeford, MATLACK of St. George, MOONEN of Portland, Senators: BENNETT of Oxford,
GROHOSKI of Hancock, NANGLE of Cumberland.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 10 MRSA c. 239 is enacted to read:

3 CHAPTER 239

4 CONSUMER GROCERY PRICING FAIRNESS

5 §1500-W. Consumer Grocery Pricing Fairness

6 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Channels of trade" means the pathways through which covered goods are
9 marketed, distributed and sold to consumers, including, but not limited to,
10 supermarkets, hypermarkets, discount stores, convenience stores, online or electronic
11 commerce retailers, specialty food stores, mass merchandisers, wholesale clubs and
12 any other retail establishments, platforms or entities that compete for consumer grocery
13 dollars and that engage in the sale of covered goods, either primarily or as a segment
14 of their broader retail offering.

15 B. "Covered good" means a grocery item or packaged good, including, but not limited
16 to:

17 (1) Any food or food product intended for human consumption, except for
18 alcoholic beverages, tobacco and hot foods and hot food products prepared for
19 immediate consumption and any deposit fee required to purchase any food or food
20 product contained in a returnable bottle, can or other container, regardless of
21 whether the fee is included in the shelf price posted for the food or food product;
22 and

23 (2) Seeds and plants to grow food for personal consumption.

24 "Covered good" does not include gasoline or prescription drugs.

25 C. "Covered retailer" means an entity that sells, or an entity that oversees another entity
26 that sells, covered goods at retail to consumers at one or more physical locations in the
27 State.

28 D. "Covered supplier" means an entity that produces and sells, or an entity that oversees
29 another entity that produces and sells, covered goods in the State to covered retailers
30 or covered wholesalers, whether directly or indirectly, through a purchasing agent or
31 3rd-party entity, in an aggregate amount exceeding \$6,000,000,000 annually.

32 E. "Covered wholesaler" means an entity that purchases, or an entity that oversees
33 another entity that purchases, covered goods for the purposes of reselling or
34 distributing the covered goods to covered retailers in the State.

35 F. "Dominant covered retailer" means a covered retailer that has one or more store
36 locations or distribution centers in this State and in at least 20 other states, with retail
37 sales of covered goods in an aggregate amount exceeding \$18,000,000,000 annually.

1 G. "Pricing differential" means, with respect to the volume unit basis of a covered good
2 purchased by a covered retailer or covered wholesaler compared to the volume unit
3 basis of the same covered good purchased by a dominant covered retailer:

4 (1) The difference in price of the covered good multiplied by the quantity sold; or

5 (2) The difference in the price equivalent of the terms of sale of the covered good,
6 adjusted by the time value of money to account for any difference in payment
7 terms, multiplied by the quantity sold.

8 H. "Purchasing agent" means a 3rd-party entity contracted by a dominant covered
9 retailer to purchase covered goods on behalf of the dominant covered retailer.

10 I. "Same covered goods" means, with respect to 2 different covered goods, a covered
11 good and any other covered good sold under the same brand that differs only in quantity
12 or packaging.

13 J. "Same terms of sale" means, with respect to 2 different sales agreements or contracts,
14 terms of sale that are identical on a per-unit basis, excluding any variation in shipping
15 and delivery costs.

16 K. "Terms of sale" means all substantive terms and conditions of a sale commonly
17 subject to negotiation and competition, including, but not limited to, price, discounts,
18 rebates, delivery terms, payment terms, package size, promotional allowances,
19 marketing devices, merchandising arrangements, terms of distribution and any other
20 similar terms or conditions.

21 L. "Volume unit basis" means the base unit of measurement, not exceeding a truckload,
22 by which purchase quantities are measured in purchase agreements between a covered
23 supplier and a covered retailer or covered wholesaler.

24 **2. Unfair pricing practices; covered suppliers.** A covered supplier engages in unfair
25 pricing practices in violation of this subsection if the covered supplier:

26 A. Fails to extend the same terms of sale of a covered good to all covered retailers and
27 covered wholesalers that purchase the covered good on the same volume unit basis in
28 reasonably contemporaneous sales;

29 B. Fails to provide, within 14 days of a written request from a covered retailer or
30 covered wholesaler that has purchased a covered good or received an offer, including
31 terms of sale, for a covered good from the covered supplier, the anonymized terms of
32 sale from all contracts with dominant covered retailers that purchased the same covered
33 good on the same volume unit basis during the 180-day period prior to which the
34 purchase or offer, including terms of sale, was made;

35 C. Refuses the sale of a covered good to a covered retailer or covered wholesaler on
36 the basis of a distinction in channels of trade, or other similar basis, if the effect is to
37 facilitate a difference in terms of sale in violation of paragraph A; or

38 D. Refuses the sale of a covered good to a covered retailer or a covered wholesaler if:

39 (1) The covered retailer is not a dominant covered retailer;

40 (2) The covered retailer or the covered wholesaler has made and completed
41 payment for purchases from the covered supplier within the previous 12 months;

(3) The covered retailer or the covered wholesaler has made a request for the covered supplier to provide to such covered retailer or covered wholesaler the same terms of sale provided to other covered retailers or covered wholesalers, consistent with the terms of this subsection; and

(4) The covered retailer or covered wholesaler has no commercially reasonable justification.

For the purposes of this subsection, a covered supplier is liable for any violation of this subsection committed by the covered supplier's purchasing agent or contracted 3rd-party entity.

3. Unfair pricing practices; dominant covered retailers. A dominant covered retailer engages in unfair pricing practices in violation of this subsection if the dominant covered retailer:

A. Imposes on or requires of a covered supplier terms of sale with respect to a covered good if the dominant covered retailer knows or reasonably should know that:

(1) The dominant covered retailer or its purchasing agent will acquire more of the covered good than another dominant covered retailer; and

(2) Purchases by the dominant covered retailer or its purchasing agent under the terms of sale are likely to result in unreasonably diminished availability of the covered good to another covered retailer; or

B. Takes any action that the dominant covered retailer, its purchasing agent or a contracted 3rd-party entity intends, knows or has reason to know will coerce or induce a covered supplier to violate this subsection.

For the purposes of this subsection, a dominant covered retailer is liable for any violation of this subsection committed by the dominant covered retailer's purchasing agent or other contracted 3rd-party entity.

4. Penalties and remedies. An entity that violates this section commits a civil violation for which a civil penalty, recoverable in a civil action, may be adjudged of not more than the greater of:

A. One and 1/2 actual damages incurred by entities as a result of the violation; or

B. The pricing differential suffered by a covered retailer or a covered wholesaler.

Whenever the Attorney General has reason to believe that a covered supplier or dominant covered retailer is in violation of or intends to violate this section, the Attorney General may bring a civil action seeking civil penalties in the name of the State against the covered supplier or dominant covered retailer to restrain such violation by temporary or permanent injunction.

5. Affirmative defense. An entity alleged to have committed a violation of this section is not subject to penalties under subsection 4 if the entity establishes by a preponderance of evidence that:

A. Any difference in the terms of sale was predominantly attributable to a covered retailer engaging in self-distribution of the covered good at issue or otherwise lowering the overall costs of the covered supplier through genuine efficiencies, such as economies in distribution or manufacturing;

B. A covered retailer voluntarily accepted terms of sale relating to a covered good that were not the same terms of sale as the terms of sale of another covered retailer in exchange for commercially reasonable consideration, as long as the acceptance of the terms of sale was not pretextual, coerced or made under duress; or

C. The terms of sale applied only to cases in which there was an actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process or sales in good faith in discontinuance of the goods concerned.

6. Covered supplier immunity. A covered supplier is immune from liability for a violation of this section if the covered supplier establishes by a preponderance of evidence that:

A. The violation was imposed on or required of the covered supplier by a dominant covered retailer;

B. The covered supplier would have suffered substantial harm to the covered supplier's business were it to refuse the demand of the dominant covered retailer that led to or constituted the violation; and

C. The covered supplier made a good faith effort to disclose the dominant covered retailer's conduct to the Attorney General.

This subsection does not apply to conduct by a covered supplier that constitutes collusion in violation of federal or state antitrust law.

7. Construction. Except as otherwise specifically provided, this chapter may not be construed to limit, impair or supersede any antitrust laws or require an entity to do business with any other entity unless refusal to do so would violate a provision of this section.

SUMMARY

This bill establishes laws prohibiting large grocery suppliers and retailers from engaging in price discrimination or imposing discriminatory terms of sale and extracting unfair and anticompetitive concessions from wholesalers and suppliers. The bill provides the Attorney General authority to enforce those provisions.