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Testimony of Nate Cloutier

Before the Joint Standing Committee on Housing and Economic Development
May 12, 2025

In Opposition to LD 1597, “*An Act to Prohibit the Use of Dynamic Pricing for Certain Consumer Goods*”

Senator Curry, Representative Gere, and distinguished members of the Joint Standing Committee on Housing and Economic Development, my name is Nate Cloutier, and I am here today on behalf of HospitalityMaine (HM), representing Maine’s restaurant and lodging industries. I am also testifying on behalf of the Maine Tourism Association (MTA). MTA has been promoting Maine and supporting tourism-related businesses—from lodging and dining to camps, retail, guides, amusements, and historic attractions—for over 100 years. HM and MTA oppose LD 1597, “*An Act to Prohibit the Use of Dynamic Pricing for Certain Consumer Goods*.”

LD 1597 would prohibit restaurants and grocery stores from using “dynamic pricing” – meaning adjusting prices in real time based on demand, weather, consumer data, or similar factors, including AI tools. While it excludes discounts, happy hours, and market pricing for seafood, it still creates serious challenges for restaurant operators who rely on flexibility to stay competitive.

In conversations with restaurants across the state, this seems like a solution in search of a problem. There’s been no outcry from customers and no documented widespread abuse. Yet the bill introduces vague and confusing parameters that could make it harder for businesses to respond to day-to-day, real-world conditions and adjust prices accordingly.

It also opens the door to legal confusion. Take a simple example: it’s a slow Tuesday afternoon, and a restaurant decides to lower the price of appetizers to bring in some business. Is that a discount? A happy hour? Or is it illegal dynamic pricing because the decision responded to low demand? The bill says discounts are allowed, but it also says you can’t change prices based on demand or customer data. The line between the two can be blurry at best. Additionally, the bill’s definition refers to “... consumer data or other similar factors...” Does seeing empty tables count as consumer data? It’s unclear.

Beyond the legal risks, this bill could ban the kind of real-time pricing flexibility that’s often necessary

for restaurants to stay afloat. If a thunderstorm rolls in and cancels a full patio of reservations, a restaurant arguably can't legally lower prices later that day to attract foot traffic.

A one-size-fits-all pricing model doesn't reflect how the hospitality industry works in Maine. We're a tourism-driven, weather-sensitive state. Staffing changes by the hour. Deliveries get delayed. Customer traffic ebbs and flows. Restaurants need the ability to respond in real-time and often cannot wait until tomorrow.

This kind of flexibility isn't new either. It's not egregious surge pricing or bait-and-switch tactics. It's the same kind of pricing adjustments that have existed for decades – offering lunch specials, testing out a new dish, or responding to a quiet dining room.

Ultimately, this could lead to higher prices for customers. If restaurants can't adjust prices during peak times, they may have to raise all prices to preserve their margins. That means off-peak customers (who are usually the most price sensitive) could end up paying more.

Importantly, no other state regulates restaurant pricing like this, making Maine the first and only outlier. We understand the desire to protect customers, and we support transparency and fairness; however, this bill doesn't do that. Instead, it would have the unintended effect of punishing the businesses that are already doing their best to serve their communities, keep people employed, and stay afloat – often on razor thin margins of 3-5%.

The bill's blanket restriction isn't the right approach – especially as a slew of restaurant closures has dominated the news in recent months. Maine's restaurant industry, made up of small, independent, and family-run businesses, deserves the flexibility they've long relied on.

For these reasons, we urge you to vote LD 1597 ought not to pass. Thank you for your time and consideration. I would be happy to answer any questions.