



Dan Sayre

75 Summer Street

Kennebunk, ME 04043

Phone: (207) 613-6776

Daniel.Sayre@legislature.maine.gov

HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION

AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: MAINE RELAY 711

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Testimony of Representative Dan Sayre introducing

LD 1894, An Act to Address Consumer Grocery Pricing Fairness

Before the Joint Standing Committee on Housing and Economic Development

Senator Curry, Representative Gere and honorable members of the Joint Standing Committee on Housing and Economic Development, my name is Dan Sayre, and I represent House District 135, which includes part of Kennebunk. Thank you for the opportunity to present **LD 1894, An Act to Address Consumer Grocery Pricing Fairness**.

This bill creates the Consumer Grocery Pricing Fairness Act. It requires grocery suppliers to extend the same terms of sale for grocery items to all retailers and wholesalers. Doing so will level the playing field for small, independent grocers in Maine, protecting fair competition so that small retailers can survive and consumers have more choice as well as fair prices.

The inflation that followed the COVID-19 pandemic had multiple causes. Initially, the mix of disrupted supply chains and abundant stimulus money meant that, for a while, more dollars were chasing fewer goods, creating a sharp spike in prices. But even after the stimulus stopped and the flow of goods returned, prices did not come down – because other factors are at play. The endurance of higher grocery prices is also the result of the outsized influence of the largest actors in the industry. They can use their dominant size to set the terms of trade, get lower prices, preferential terms, exclusive offerings and receive priority access to high-demand products. Independent grocers find themselves unable to compete on a level playing field. And when independent retailers disappear, consumers are left with fewer choices and wind up paying more.

This bill aims to restore fair competition in the interest of consumers and small businesses by prohibiting several specific forms of anti-competitive behavior in the grocery supply chain¹:

- It prohibits covered suppliers from offering different terms of sale for identical grocery items to all retailers and wholesalers purchasing in similar quantities.
- It prohibits a covered supplier from not providing a retailer or wholesaler with anonymized data about the supplier's sales, upon request of the retailer or wholesaler.
- It prohibits suppliers from refusing to sell to a non-dominant retailer or wholesaler unless there is a commercially reasonable justification.

- It prohibits dominant covered retailers from requiring a covered supplier to comply with terms of sale when the dominant retailer is acquiring more grocery items than the dominant retailer can sell, and the acquisition would result in grocery items being unreasonably unavailable at a covered retailer.
- It prohibits a dominant covered retailer from coercing a covered supplier into violating this section.
- Finally, a supplier or dominant covered retailer is responsible for violations committed by any third party acting on its behalf.

To enforce these provisions, the bill allows the attorney general or a supplier or retailer who is injured by a violation of this act to file suit for an injunction and a civil penalty in an amount not greater than 1.5 times the actual damage or the pricing differential suffered by the retailer or wholesaler.

The bill carves out some specific defenses against action brought under this bill. First, entities accused of violating the law can avoid liability if they prove by a preponderance of the evidence that the difference in terms was due to genuine efficiencies, the retailer voluntarily accepted the terms of sale in exchange for commercially reasonable consideration, or the terms of sale apply to grocery items that were perishable, seasonal, part of a distress sale under court, or in the discontinuation of a business. Second, the bill also allows exemption from liability if a supplier was coerced by a dominant retailer to violate the law, the supplier would have suffered substantial harm if they did not meet the demands, and the supplier disclosed this information to the attorney general.

Maine families deserve more affordable groceries. This bill will help.

Thank you for your consideration, and I will endeavor to answer any questions you may have.

ⁱ Definitions of key terms in the bill:

- Covered Good – Any grocery item except gasoline, prescription drugs, tobacco, or alcohol.
- Covered Retailer – A business selling grocery items directly to consumers in Maine.
- Covered Supplier – A manufacturer or producer selling groceries, with annual sales exceeding \$6 billion.
- Covered Wholesaler – A business that buys groceries to distribute to retailers in Maine.
- Dominant Covered Retailer – A retailer with annual grocery sales exceeding \$18 billion and operations in at least 20 states, including Maine.
- Price Differential – Differences in pricing or terms of sale for the same product, affecting competitive fairness.
- Terms of Sale – The conditions under which goods are sold, including price, rebates, discounts and delivery terms.