ASSEMBLY, No. 5532

STATE OF NEW JERSEY

222nd LEGISLATURE

INTRODUCED SEPTEMBER 17, 2026

Sponsored by:
Assemblyman CHIGOZIE U. ONYEMA
District 28 (Essex and Union)

SYNOPSIS

"Grocery Retailer Opportunity to Compete Act"; regulates price discrimination.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning price discrimination in the grocery industry, supplementing Title 56 of the Revised Statutes, and amending P.L.1971, c.324.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) Sections 2 through 6 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be known and may be cited as the "Grocery Retailer Opportunity to Compete Act."

2. (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Consumer price index" means the consumer price index for all urban consumers as reported by the United States Department of Labor or any successor index.

"Dominant retailer" means a grocery retailer that earns 18 billion dollars or more per year, adjusted each year in accord with any percentage increase in the consumer price index, and has a minimum of one storefront or distribution center where groceries are sold in more than 20 states, one of which is New Jersey.

"Groceries" or "grocery product" means any edible product including, but not limited to, dairy products, meat and delicatessen products, produce products, seafood products, carbonated beverages, coffee and other beverages, snack foods, candy products, baked products, and frozen foods; paper products; household cleaning items; health and beauty products; and pet foods and supplies.

"Grocery retailer" means any person, or agent of that person, in the State where groceries are regularly and customarily sold in a bona fide manner to a consumer for off-premises consumption. The term shall not include an establishment that solely prepares food or beverages for immediate consumption on or off the premises; an establishment that solely sells pet food or supplies; or any agricultural or horticultural cooperative organization, or any individual member of the organization, organized under the laws of either this State or the United States.

"Grocery supplier" means any person, or agent of that person, that earns six billion dollars or more per year, adjusted each year in accord with any percentage increase in the consumer price index, by selling groceries produced or manufactured by the supplier to a grocery retailer or grocery wholesaler in the State. The term shall not include any agricultural or horticultural cooperative organization, or any individual member of the organization, organized under the laws of either this State or the United States.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

"Grocery wholesaler" means a person, or agent of that person, who sells groceries in the State for the purpose of resale to another grocery wholesaler, a grocery retailer, or both. The term shall not include any agricultural or horticultural cooperative organization, or any individual member of the organization, organized under the laws of either this State or the United States.

"Terms of sale" means any substantive term or condition of selling a grocery product that is commonly subject to negotiation and competition including, but not limited to, price; discount, rebate, and other promotional offers; and packaging, delivery, distribution, and payment terms.

3. (New section) a. A grocery supplier shall not:

(1) offer different terms of sale to a grocery retailer or grocery wholesaler who purchases, at approximately the same time, the same grocery product; or

(2) unless there is a reasonable commercial justification, refuse to sell to a grocery retailer, other than a dominant retailer, or a grocery wholesaler that:

(a) made, and completed payment for, a purchase of a grocery product from the grocery supplier within the last 12 months; and

(b) requested the same terms of sale as any grocery retailer or grocery wholesaler, regardless of whether the retailer or wholesaler reviewed the anonymized terms of a contract pursuant to the process set forth in subsection c. of this section.

b. A dominant retailer shall not:

(1) take any action that the dominant retailer intends, knows, or should know may coerce or induce a grocery supplier to violate this section; or

(2) request or demand terms of sale from a grocery supplier if the dominant retailer knows, or should reasonably know, that the terms may:

(a) provide the dominant retailer with a grocery product in excess of what the retailer can reasonably sell; and

(b) unreasonably diminish the availability of the grocery product to other grocery retailers or grocery wholesalers.

c. (1) A grocery retailer, other than a dominant retailer, or grocery wholesaler who receives an offer that includes the terms of sale for, or who purchased, a grocery product may request, in writing, that a grocery supplier provide the anonymized terms of sale for any contract the grocery supplier entered into with a dominant retailer for the sale of the same grocery product during the 180 days before the grocery retailer or grocery wholesaler received the offer or made the purchase.

(2) The grocery supplier shall provide the anonymized terms of any relevant contract to the grocery retailer or grocery wholesaler within 14 days of receipt of the request.

4. (New section) a. (1) The Attorney General shall investigate suspected violations of, and institute proceedings as provided for in, the provisions of P.L. , c. (C.) (pending before the Legislature as this bill). The Attorney General may direct the county prosecutor of any county in which the proceedings may be brought to aid and assist in the investigations and proceedings.

(2) Whenever the Attorney General, by the Attorney General's own inquiry or as the result of a complaint, suspects that a violation of P.L. , c. (C.) (pending before the Legislature as this bill) is occurring or has occurred, or whenever the Attorney General believes it to be in the public interest that an investigation be made, the Attorney General or a designee may, prior to the institution of a civil action, issue in writing and cause to be served upon any person who may have information relevant to the investigation a subpoena to appear and be examined under oath before the Attorney General, a designee, or a court of record; answer written interrogatories under oath; or produce documents or any other information or materials for inspection or copying. Service of the subpoena shall be by any method specified in the Rules of Court for service of a summons and complaint in a civil action.

b. The Attorney General or any person aggrieved by a violation of P.L. , c. (C.) (pending before the Legislature as this bill) shall have the authority to institute a civil action for injunctive relief, which a court of competent jurisdiction may issue, to remedy a violation and prohibit further violations of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill). In addition, a court of competent jurisdiction may grant a mandatory injunction reasonably necessary to restore and preserve competition in trade or commerce affected by the violation. The court shall award a prevailing plaintiff costs and reasonable attorney's fees. The Attorney General or aggrieved person shall establish the claim by a preponderance of the evidence.

c. (1) The Attorney General may bring a civil action for a violation of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). If the Attorney General establishes the claim by a preponderance of the evidence, the court shall award the Attorney General treble damages, costs, and reasonable attorney's fees.

(2) Any person aggrieved by a violation of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) may bring a civil action in a court of competent jurisdiction. The court shall award a plaintiff who establishes the claim by a preponderance of the evidence treble damages, costs, and reasonable attorney's fees.

5. (New section) a. It shall be an affirmative defense to a violation of section 3 of P.L. , c. (C.) (pending before the

Legislature as this bill) if, by a preponderance of the evidence, a grocery supplier or dominant retailer shows:

(1) any difference in the terms of sale offered to a grocery retailer or grocery wholesaler is predominantly due to the dominant retailer's internal distribution, or distribution to a subsidiary, of a grocery product;

(2) any difference in the terms of sale is predominantly due to the grocery supplier attempting to lower the supplier's overall costs by increasing economic efficiency;

(3) provided the agreement was not a pretext, coerced, or accepted under duress, that a grocery retailer or grocery wholesaler voluntarily accepted any terms of sale that were different from the terms offered to another grocery retailer or wholesaler in exchange for consideration; or

(4) any difference in the terms of sale only applied to grocery products that are perishable and at risk of actual or imminent deterioration; seasonal goods at risk of becoming obsolete; sold through a court process or at the direction of the court; or sold upon the final liquidation of the business.

b. It shall be an affirmative defense to a violation of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) if, by a preponderance of the evidence, a grocery supplier shows:

(1) a dominant retailer requested or demanded the grocery supplier commit the violation;

(2) the grocery supplier would have likely suffered substantial financial harm to its business if the supplier refused the dominant retailer's request or demand; and

(3) the grocery supplier made a good faith effort to disclose the dominant retailer's conduct to the Attorney General.

6. (New section) No provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall be construed to place any limitations on the claims that may be brought pursuant to the "New Jersey Antitrust Act," P.L.1970, c.73 (C.56:9-1 et seq.).

7. Section 18 of P.L.1971, c.324 (C.4:13-50) is amended to read as follows:

a. **[**No**]** An association complying with the terms hereof shall not be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; **[**or be deemed to**]** have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its producers, or any agreements authorized in this act, be construed as an unlawful restraint of trade, or as a part of a conspiracy or combination to accomplish an improper or illegal purpose or act; or to violate section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. An association may acquire, exchange, interpret and disseminate past, present and prospective crop, market, statistical, economic and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

c. An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus of agricultural products.

(cf: P.L.1971, c.324, s.18)

8. (New section) The Attorney General may issue guidelines or directives as necessary to implement P.L. , c. (C.) (pending before the Legislature as this bill).

9. This act shall take effect on the first day of the 13th month next following the date of enactment.

STATEMENT

This bill regulates price discrimination in the grocery industry and supply chain.

Under the bill, a "grocery supplier" means any person, or agent of that person, that earns six billion dollars or more per year by selling groceries produced or manufactured by the supplier to a grocery retailer or grocery wholesaler in the State. The bill prohibits grocery suppliers from: 1) offering different terms of sale to grocery retailers or wholesalers who, around the same time, purchase the same grocery product; or 2) retaliating against, by refusing to sell to, a grocery retailer or wholesaler who demanded the same terms of sale as another retailer or wholesaler.

Under the bill, a "dominant retailer" means a grocery retailer that earns 18 billion dollars or more per year and has a minimum of one storefront or distribution center where groceries and foodstuffs are sold in more than 20 states, one of which is New Jersey. The bill prohibits a dominant retailer from: 1) requesting or demanding terms of sale from a grocery supplier if the retailer knows, or reasonably should know, that the terms may provide the dominant retailer with more product than they can sell and diminish the availability of the grocery product to other retailers; or 2) taking any other action the retailer intends, knows, or should know may coerce or induce a grocery supplier into violating this bill.

A grocery retailer, other than a dominant retailer, or grocery wholesaler may request and inspect the anonymized terms of sale between a grocery supplier and a dominant retailer for sales, or offers to sell, the same grocery product during the 180 days prior to the supplier making an offer to the grocery retailer or wholesaler requesting the records.

The Attorney General may investigate suspected violations of this bill and may bring a civil suit requesting injunctive relief or treble damages. Any person aggrieved by a violation of this bill may also bring a civil suit requesting injunctive relief or treble damages. A court may issue injunctive relief to remedy a violation of this bill or as necessary to restore and preserve competition in trade or commerce if impacted by the violation of the bill. The bill establishes certain affirmative defenses that a grocery supplier or dominant retailer may establish, by a preponderance of the evidence, to avoid liability for a violation.

Additionally, the bill clarifies that it does not regulate any agricultural or horticultural organizations, or any individual member of an organization, organized under the laws of this State, including R.S.4:13-1 et seq., or the United States.