MEMO OF OPPOSITION
A.9212 Lasher /S.8563 Cleare

We write in strong opposition to the "Consumer Grocery Price Fairness Act" (A.9212 Lasher /S.8563 Cleare), which would require covered suppliers to offer equivalent pricing, packaging, delivery terms, promotional funding, and other material terms of sale to small and independent food retailers that they offer to larger "dominant covered retailers". While proponents frame this legislation as a consumer protection measure, its likely effect is precisely the opposite: **higher grocery prices for all New Yorkers, regardless of where they shop.**

The central flaw of this legislation is its disregard for well-established economies of scale. When large national retailers purchase goods in bulk, they provide suppliers with predictable, high-volume ordering cycles, reduced credit risk, lower per-unit transportation costs through consolidated delivery, and administrative efficiencies that substantially reduce the cost of doing business. These savings are real, and suppliers pass them along in the form of lower prices—ultimately benefiting the consumers who shop at those stores. Mandating that suppliers extend the same terms to smaller retailers—regardless of volume, logistics, or commercial relationship—does not eliminate these cost differences; it simply prohibits suppliers from reflecting them in their pricing. The inevitable result is that suppliers will be forced to raise the baseline price offered to all retailers to remain economically whole, effectively penalizing the large-format retailers and their customers who benefit from legitimate, cost-justified discounts.

The bill's drafting also raises significant technical concerns that would complicate enforcement and create substantial compliance burdens for both suppliers and retailers.

- The definition of *"covered supplier"* captures only those who produce and sell grocery products in New York (Section 350-j (5)). This will further harm and disadvantage New York based companies. It also reinforces the sentiment that New York is closed for business, thus driving manufacturing from the state and along with it, the revenue and jobs it creates and invests in our communities.

- The definition of *"pricing differential"* (Section 350-j(9)(b)) does not adequately address how to calculate price equivalence adjusted for the time value of money when payment terms differ between buyers—a technically complex determination that will certainly generate litigation.
- Section 350-k(1) appears to require that covered suppliers extend the same promotional funding, advertising spend, and marketing dollars to smaller covered retailers as they provide to dominant ones—without accounting for the fact that promotional investments are often driven by factors entirely unrelated to market power, such as a retailer's banner diversity (allowing suppliers to reach different consumer segments), participation in loyalty programs that enable targeted digital promotions, or national reach that makes large-scale promotional execution possible. Smaller retailers may simply lack the operational infrastructure to execute the marketing commitments that justify higher promotional investment, and the proposed law does not contemplate this reality.
- The *"commercially reasonable justification"* exception in Section 350-k(4)(d) is so broadly worded that its scope is entirely unclear—it is uncertain whether it would absorb most legitimate business decisions or serve as a narrow carve-out, and that ambiguity alone will generate compliance uncertainty and litigation risk.
- The provisions governing purchase intervals under Section 350-k(5)(a) fail to account for seasonal grocery items—turkey, for example, experiences massive demand spikes around Thanksgiving that bear no resemblance to regular purchasing patterns, and a rigid interval-based analysis would produce commercially nonsensical results.
- Section 350-k(6) imposes liability on covered retailers who "should know" that their conduct would coerce a supplier to violate the Act, an unreasonably broad standard that asks retailers to speculate about a supplier's internal compliance posture.
- The agency liability provision (Section 350-l) should at minimum be tempered by a knowledge qualifier—intentional direction of a third party or knowing instructs a third party—rather than applying strict liability to all downstream conduct.
- Lastly, authorization of injunctive relief (Section 350-o) would expose suppliers and retailers to costly emergency proceedings on disputed commercial terms that are better resolved through normal business negotiation, and would further contribute to increased costs for suppliers, retailers, and consumers.

New Yorkers are grappling with grocery affordability every day. But the path to lower prices runs through supply chain efficiency, competition, and investment—not through price-parity mandates that penalize cost-justified commercial arrangements and force suppliers to recalibrate their entire pricing structures upward.

Despite its title, this bill would do the opposite of what it promises — driving up grocery prices for all New Yorkers.

For these reasons, we strongly oppose the "Consumer Grocery Price Fairness Act" (A.9212 Lasher /S.8563 Cleare) and respectfully urge the Legislature to reject its adoption.