

SUPPORT HB-1373 INDEPENDENT LIQUOR STORE & ALCOHOL SAFETY BILL

Require big-box, grocery and c-stores to display alcohol in a centralized location on the retail floor for better inventory control, less theft and so minors and customers can avoid being constantly exposed to alcohol displays and promotions.



Ensure big-box, grocery and c-stores only sell beer & wine.



Require the removal of alcohol products from checkout registers and store entrances and exits which have raised serious safety, theft, youth access and alcohol abuse concerns.



(OVER →)



(Above: Safeway Self-Checkout Registers completely surrounded by displays of “Twisted Tea” and “Truly” – two of the most popular alcohol beverages for underage drinkers. **Note:** All retailers now have a “No Chase” policy for shoplifters.



(Above: Teenager walks past Safeway Self-Checkout Register Display of “BuzzBalls” Highlighting that they are 30-Proof or 15% Alcohol by Volume)

A good article to share with legislators. This type of discrimination in distribution continues to happen in Colorado. The national chains wield enormous influence over the wholesalers:

FTC Says Retailers Used Pandemic To Boost Profits, Power

Source: <https://www.law360.com/>
March 25, 2024

The Federal Trade Commission said Thursday that some grocery retailers appear to have used their market power to avoid supply disruptions during the COVID-19 pandemic and that grocery prices remain high because companies used rising costs as an opportunity to boost profits.

The FTC issued a report on pandemic-induced disruptions to the grocery supply chain, finding the problems disproportionately affected smaller companies. In comparison, larger companies exacerbated the issues by wielding their market power.

Enforcers also found that retail grocery profits rose during the pandemic and remain elevated, raising questions about the need for the price increases in the first place.

The report came after information demands issued by the agency in 2021 to Walmart Inc., Amazon.com Inc. and Kroger Co., as well as major grocery wholesalers and suppliers including Tyson Foods Inc. and Kraft Heinz Co.

FTC Chair Lina Khan said during the commission's open meeting on Thursday the pandemic was a reminder that a singular event can have an outside impact when supply chains are concentrated, similar to the agency's findings in a recent study of the infant formula market.

But she said the pandemic also showed how large companies can pressure suppliers to privilege them over smaller competitors, as big box and chain stores could stock their shelves while smaller independent retailers could not.

"That was bad for these independent grocers, but it was also devastating for the communities that were dependent on these local retailers to get access to daily goods," Khan said. "Small and independent firms may be losing out to bigger firms, not because they're less efficient, but just because they are not able to use muscle in similar ways."

The report found that some large purchasers enforced strict delivery requirements on suppliers during the height of the pandemic, threatening them with fines for not complying, giving them a competitive

advantage over smaller retailers at a time when having products in stock was "critical" for attracting customers.

Khan noted these practices could raise concerns under the Robinson-Patman Act, a 1936 statute barring price discrimination that the commission has been teeing up for revitalization in recent years. The FTC mostly abandoned enforcement of the law in the 1980s over concerns that it was causing consumer prices to go up. Still, current commission leadership has said those concerns are not grounded in empirical research.

"If we end up finding that these types of practices violate any of the antitrust laws, including the Robinson-Patman Act, I know I'll be very interested in making sure we take swift action," Khan said Thursday.

The report also showed that grocery prices remain elevated today, Khan said, even as the underlying supply chain disruptions have loosened, "casting doubt" on assertions that prices are tracking retailer costs and revealing underlying competition issues in the industry.

"We've seen research over the last couple of years suggesting that dominant firms are able to use an environment of elevated prices as cover to further hike or maintain inflated prices," Khan said.

The report showed that revenues increased to 6% over cost for food and beverage retailers on the whole in 2021 and that revenues reached 7% over cost in the first three-quarters of 2023, higher than a 2015 peak at 5.6%.

President Joe Biden announced a Strike Force on Unfair and Illegal Pricing earlier this month to look for "anti-competitive, unfair, deceptive and fraudulent business practices" that keep prices high on a range of products and services, including groceries, prescription drugs, healthcare, housing and financial services.

Biden said one reason the strike force is needed is because some companies are refusing to lower the prices they raised during the COVID-19 pandemic due to supply chain disruptions, even though the costs have since gone down.

Khan said on Thursday that concentrated markets have also historically shown themselves to be susceptible to coordination and collusion. While not a focus of the report, Khan said that will remain a continued area of interest, given the current environment.

The FTC's information demands also targeted grocery wholesalers C&S Wholesale Grocers Inc., Associated Wholesale Grocers Inc. and McLane Co., as well as the consumer products giant Procter & Gamble Co.

The commission is trying to block a merger that would further consolidate the grocery retail landscape, Kroger's planned \$24.6 billion purchase of Albertsons. The FTC moved to block the transaction last month with a contingent of nine state-level enforcers, contending the deal would result in higher prices for groceries and other essential household items for millions of Americans, while also reducing worker wages.

The attorneys general of Washington and Colorado are also challenging the deal in their own suits.

HB-1373

Independent Liquor Store & Alcohol Safety Bill

Helping CO's Liquor Stores & CO's Craft Alcohol Industry Survive

*Rep. Amabile, Rep. Ricks, Speaker McCluskie, Rep. Clifford, Rep. Snyder, Rep. Mabrey,
Rep. Mauro, Rep. McLachlan & Sen. Roberts & Sen. Will*

HB24-1373: This is a bipartisan bill that seeks to provide clarity in the marketplace for consumers and ensuring that Colorado's Mom & Pop, independent liquor stores can compete fairly with large national chain stores and continue to be a viable, and often the only sales channel for Colorado's craft alcohol industry. HB-1373 updates Colorado liquor law to reflect the new reality of the alcohol marketplace since voters narrowly passed Prop. 125 (allowing wine in grocery stores) and overwhelmingly rejected Prop. 124 (allowing chain liquor stores) in 2022.

Brief Background on Liquor Licensed Drug Stores (LLDS):

After being threatened with a \$30M ballot measure by the out-of-state big-box and grocery chains in 2016, Colorado's 1600+ liquor stores negotiated and agreed to a legislative solution (the "Grand Compromise" SB16-197), the majority of grocery store chains supported. The agreement allowed grocery & convenience stores to sell full-strength beer in 2019 and for grocery stores to begin selling beer, wine & hard-alcohol through a phased-in expansion of "Liquor Licensed Drug Store" licenses (LLDS).

Unfortunately, in 2022 the national grocery chains decided to abandon this legislative compromise around LLDS licenses and spent over \$20M to pass Prop. 125, that won with 51% of the vote. Prop. 125 immediately allowed all grocery & convenient stores to sell beer & wine. In addition, Prop. 124 in 2022 was overwhelmingly opposed & defeated by 62% of the voters, which would have allowed "large chain liquor stores" in Colorado.

HB-1373 Converts (28) LLDS licenses to the same "Beer & Wine Licenses" approved in Prop. 125:

The bill simply removes "hard alcohol" from the (28) chain LLDS's and converts those licenses to "beer & wine licenses" so that all grocery stores and convenience stores in CO will sell beer & wine. Removing hard alcohol from the (28) chain LLDS's is necessary for the following reasons:

- 1) The national chain grocery stores chose to abandon the legislative compromise that allowed them to phase into selling all alcohol (beer/wine/spirits) via LLDS's.
- 2) If the national grocery chains wanted to also sell "hard alcohol" in addition to beer & wine, they could have easily included the ability to sell spirits in Prop. 125, but they chose not to.
- 3) Colorado voters rejected Prop. 124 (62% opposed) which would have allowed "large chain liquor stores" in CO, which is exactly what LLDS's are – LLDS's are large national chain liquor stores owned/operated by large national chain grocery stores.

HB-1373 Helps Local Restaurants & Liquor Stores While Maintaining the "3-Tier System":

"Purchase Caps" put into law 30+ years ago prevent restaurants & taverns from purchasing more than \$2,000 of alcohol **annually** from their local liquor store which hurts both local businesses. Due to the limited staffing, supply-chain issues, bad weather and other wholesale distribution problems, many Colorado restaurants and bars are forced to wait 2-3 weeks for a wholesaler to deliver certain alcohol products. In addition, restaurants accidentally break bottles or periodically sell out of certain products that need to be replaced quickly.

HB-1373 will:

- Remove the outdated \$2k purchase cap so, when necessary, CO restaurants, bars & taverns may periodically purchase alcohol products from their local retail liquor store while **still maintaining CO's "3-Tier System"** (manufacturers, wholesalers, retailers). **All** alcohol products will continue to be delivered to **ALL** CO restaurants and liquor stores by licensed wholesalers.

Additional Aspects of HB-1373:

Preventing Unfair Competition Against Colorado's Local, Family-Owned Liquor Stores:

To prevent anti-competitive behavior & avoid irresponsible alcohol sales, Colorado law prohibits retailers from selling alcohol "below the cost," that it's purchased from a wholesaler. Big-box stores & grocery chains, and national wholesalers have been subverting this law & deploying other anti-competitive practices to gain significant unfair advantages over CO's local, independent liquor stores.

HB-1373 will:

- Provide stronger, definitive language prohibiting "below cost" sales, and other discriminatory allocation and pricing practices.
- Prevent wholesalers and national alcohol manufacturers from discriminating against CO's independent liquor stores by offering unearned volume discounts and national pricing to big-box & national grocery stores.
- Ensure that all "manufacturer coupons" are available to all CO alcohol retailers and their customers.
- Prohibit big-box & grocery chains from artificially lowering their labor & operational costs by requiring "free labor" from alcohol distributors & ensure alcohol is handled/stocked/displayed by employees of the licensee.
- Allow LED to recover its costs for violation investigation and enforcement.

Responsible Sales of Beer & Wine and Preventing Youth Access to Hard-Alcohol:

Since the passage of Prop. 125, big-box retailers, grocery & convenience stores have been subverting local government agreements on where alcohol products may be displayed, by using "temporary displays" of alcohol products storewide - in nearly every aisle, on most endcaps, at checkout registers and even stacked in pallets at the store's entrance. These types of displays have raised serious safety, theft, youth access and alcohol abuse concerns.

HB-1373 will:

- Require that both permanent and temporary displays of alcohol at grocery and convenience stores comply with whatever the Local Liquor Licensing Authority approves – local control.
- Ensure grocery & convenience stores only sell beer & wine & not high-alcohol "malt-based spirits" (Fireball, BuzzShots, Southern Comfort 42-proof, etc.) – that are popular with underage drinkers & often stolen.

Help CO's Independent Liquor Stores & Craft Industry Survive:

Colorado's 1600+ Mom & Pop liquor stores, CO's local restaurants, hundreds of CO's craft breweries, and craft distillers, have all been devastated by the passage of Prop. 125. CO's independent liquor stores often serve as **the only sales channel** for Colorado's craft beer and craft spirits manufacturers. Unfortunately, the national grocery & convenience store chains carry very few, if any Colorado craft beers and the (28) LLDS's that sell spirits, chose to sell very few if any, CO craft spirits. Large national grocery chains tend to only sell large national alcohol brands.

Due to the negative impact that Prop. 125, **40%-50% of CO's Mom & Pop liquor stores are now in jeopardy of failing within the next year.** This tragedy in turn will devastate CO's craft alcohol industry, resulting in a negative impact on local economies, commercial real estate, and communities -- ultimately leaving Coloradans with little choice other to buy national brand alcohol, from large national retailers.

**** PLEASE SUPPORT HB-1373 ***

Supporters of HB24-1373 include but are not limited to:

- CO's 1600+ Independent Liquor Stores
- CO Craft Brewers (430 craft breweries)
- Restaurants from Across CO
- Associated Governments of NW Colorado
- Local Chambers of Commerce: Steamboat, Durango, Summit, Rocky Mtn Chambers, Glennwood Springs
- CO Ethiopian and Eritrean Liquor Assoc.
- Numerous CO craft distilleries
- Numerous CO banks with SBA portfolios

For more information contact:

CO Liquor Store Coalition: Scott Chase (303-324-1121) & Travis Berry (720) 560-2628, Tanya Kelly-Bowry (303) 653-1648 & Heather Retzko (303) 818-2519

CO Craft Brewers Guild: Laura Long (719) 310-2167 & Jeff Weist (303) 884-0727