

Consumers Need a Price Check on Underground Slotting Fees By Senator Liz Figueroa

Retail grocery stores have shifted from playing a passive role in selecting products, formerly based on consumer demand, to a new system of backroom profiteering where shelf space is rented out to the highest bidder.

Slotting fees, or shelf placement fees, are payments that manufacturers and suppliers pay to retailers in order to strategically market their products on store shelves. Larger manufacturers and suppliers with more revenue and resources, now play the dominant role in decisions about what products will appear on store shelves and how those products will be marketed to the consumer. Fees are collected by retailers off-the-record and can range from free goods, to advertising agreements, to cash transfers with manufacturers and suppliers. The problem is that as long as everything is negotiated behind the scenes, nobody knows when the law is being broken.

The fees first appeared in grocery stores during the 1980s and are now common throughout the retail industry. Currently there is no monitoring body or impartial oversight into these practices. While the practice of manufacturers and suppliers offering slotting fees may not be illegal, a powerful retail store could demand slotting fees. This practice disadvantages smaller manufacturers and suppliers of products.

These backroom deals, often oral agreements, are limiting consumer options for products and foster an anti-competitive climate that ultimately drives California's smaller manufacturers and suppliers of food products out of business. This is the most disturbing aspect of slotting fees--that no records or physical documents can be used to protect the rights of smaller manufacturers or the consumers they supply.

As Chair of the Senate Business, Professions and Economic Development Committee, I am well aware that many wealthy manufacturers and suppliers can simply outbid their competitors and effectively buy up all the shelf space in the market. During a public hearing earlier this year, we heard testimony that some large manufacturers and suppliers will offer as much as two years revenue in order to gain exclusive access to the shelves in a store. Even a very profitable smaller supplier cannot weather being excluded from an important market for two years.

This year, I sponsored legislation to bring the fees out into the open. Senate Bill 582 requires retailers to tell qualified suppliers what slotting fees the other suppliers are paying. This disclosure will bring accountability to powerful retailers who demand slotting fees. Because these fees act as a private tax on manufacturers and suppliers, who may be forced to shift this cost onto the consumer, I have asked the State Attorney General to investigate whether slotting fees have clearly become anti-competitive practices. There is growing concern that many in the retail industry are disregarding existing state and federal laws on fair business practice.

The federal government has estimated manufacturers and suppliers spend \$16 billion a year on slotting fees nationwide and that 85 percent of grocery retailers are charging slotting fees.

When small food vendors are unable to reach California's store shelves, all Californians suffer from the decline in fair competition by paying higher prices. Many consumers are unable to find traditional ethnic foods in mainstream supermarkets. Furthermore, it is difficult for many small manufacturers and suppliers to bring suit because of the cost of litigation and fear that while litigation is ongoing, they will be entirely excluded from stores.

By requiring stores to be honest about their slotting fees, we create a more level playing field, preserving consumer choice and allowing smaller suppliers to know what they are up against before they are pushed off the shelf and out of business.