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April 23, 2026

The Honorable Wes Moore
Governor of Maryland
State House, 100 State Circle
Annapolis, Maryland 21401

Re: House Bill 895, “Food Retailers and Third-Party Delivery Service Providers
Dynamic Pricing and Personal Data (Protection From Predatory Pricing Act)”

Dear Governor Moore,

We write to provide our assessment of the constitutionality and legal sufficiency of House Bill 895, “Food Retailers and Third-Party Delivery Service Providers - Dynamic Pricing and Personal Data (Protection From Predatory Pricing Act)” for your benefit as you consider whether to sign this bill. It is our view that House Bill 895 is constitutional and legally sufficient. Nevertheless, in the discussion that follows we point out that amendments added to the bill to require a right-to-cure requirement compromise effective enforcement against dynamic pricing.

The right-to-cure requirement would fundamentally weaken enforcement by preventing the State from stopping harmful conduct and blocking restitution for consumers already injured. While cure provisions can be appropriate for technical or inadvertent violations, they are unjustified for dynamic pricing, which is a deliberate, data-driven business strategy that cannot occur by accident. Allowing retailers to halt the practice only after receiving notice, without penalty or repayment, would effectively immunize them from accountability and erase any possibility of consumer recovery. It would shift the full cost of complex, resource-intensive investigations onto the State, leaving businesses no worse off than if the violation had never been pursued. A right-to-cure framework in this context would undermine enforcement altogether.

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The right-to-cure requirement here also reflects a misunderstanding of how enforcement works. Enforcement does not begin with a notice of violation. It begins long before, with the investigation that makes a notice legally defensible. Before any such notice goes out, attorneys and investigators must gather evidence, conduct technical analysis of a retailer's data systems and pricing algorithms, review documents, and apply legal judgment to determine whether a violation has occurred. Unlike a deceptive advertisement or a missing disclosure, a prohibited dynamic pricing practice is not visible on the surface. It is embedded in proprietary systems specifically not designed to be examined from the outside. That investigation takes time, resources, and expertise.

By the time notice issues, the State has already made a substantial investment. A right-to-cure provision allows a retailer to walk away at that point without penalty, without restitution to consumers, without any consequence beyond being told to stop. It thus shifts the entire cost of enforcement onto the State and the consumers it was trying to protect, while leaving the business no worse off than if the investigation had never happened.

Sincerely,

A handwritten signature in black ink, appearing to read "A.G. Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

cc: The Honorable Susan C. Lee
Jeremy Baker
Victoria L. Gruber