

HB0895/643424/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 895
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, strike “EMERGENCY BILL”; strike beginning with “**Food**” in line 2 down through “**Agreements**” in line 3 and substitute “**Consumer Protection – Price Setting of Consumer Goods and Services and Use of Protected Class Data**”; in lines 5 and 7, in each instance, after “retailer” insert “and a third-party food delivery service provider”; in line 6, strike “surveillance” and substitute “personal”; strike beginning with “prohibiting” in line 8 down through “circumstances;” in line 11 and substitute “prohibiting a merchant from setting the price of consumer goods or services using certain dynamic pricing or personal data and issuing a certain communication in a certain manner unless the merchant includes a certain clear and conspicuous disclosure statement;”; in line 11, strike “a”; in line 12, strike “violation” and substitute “violations”; in line 14, strike “the regulation of food retailers” and substitute “consumer protections regarding the setting of prices for consumer goods and services and the use of protected class data”; in line 17, after “13-321” insert “and 13-322”; and in line 22, after “Section” insert “13-408 and”.

On page 2, after line 1, insert:

“BY repealing and reenacting, without amendments,

Article - Commercial Law

Section 14-4701(a) and (w)

Annotated Code of Maryland

(2025 Replacement Volume)”;

and strike in their entirety lines 2 through 6, inclusive.

AMENDMENT NO. 2

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On page 2, strike in their entirety lines 18 and 19; in lines 20 and 29, strike “(3)” and “(4)”, respectively, and substitute “(2)” and “(3)”, respectively; in line 21, strike “A” and substitute “THE SAME”; strike beginning with the comma in line 22 down through “REAL-TIME” in line 24; and in line 25, strike “THE” and substitute “:

1. THE;

and in line 28, after “CUSTOMERS” insert “;

2. A DIFFERENCE IN PRICE BASED ON OBJECTIVE COSTS ATTRIBUTABLE TO PROVIDING CONSUMER GOODS OR SERVICES TO DIFFERENT CONSUMERS, SUCH AS A DIFFERENCE IN PRICE CAUSED BY SHIPPING COSTS OR TAXES BASED ON A CONSUMER’S PHYSICAL LOCATION;

3. A DISCOUNTED PRICE OFFERED TO A CONSUMER THROUGH A CLEAR AND CONSPICUOUS DISCLOSURE ON A MERCHANT’S WEBSITE THAT LISTS ALL ELIGIBILITY CRITERIA, THE AVAILABLE DISCOUNT, AND ANY CONDITIONS FOR RECEIVING OR EARNING THE DISCOUNTED PRICE THAT IS:

A. BASED ON PUBLICLY DISCLOSED ELIGIBILITY CRITERIA THAT ANY CONSUMER COULD SATISFY, SUCH AS AN ELECTION TO RECEIVE PROMOTIONAL MATERIALS OR PARTICIPATE IN PROMOTIONAL EVENTS;

B. OFFERED TO MEMBERS OF A BROADLY DEFINED GROUP, INCLUDING TEACHERS, ACTIVE OR RETIRED SERVICE MEMBERS, SENIOR CITIZENS, STUDENTS, OR RESIDENTS OF A CERTAIN AREA BASED ON PUBLICLY DISCLOSED ELIGIBILITY CRITERIA; OR

C. OFFERED THROUGH A LOYALTY, MEMBERSHIP, OR REWARDS PROGRAM THAT IS PUBLICLY OFFERED TO ALL CONSUMERS WHO AFFIRMATIVELY CONSENT TO THE PROGRAM;

4. A PRICE CORRECTION RESULTING FROM A PRICING ERROR; OR

5. RESETTING A PRICE FOLLOWING A SYSTEM OR NETWORK OUTAGE”.

On page 3, in line 1, strike “(5)” and substitute “(4)”; in the same line, strike “SURVEILLANCE” and substitute “PERSONAL”; strike beginning with “MEANS” in line 1 down through “ENVIRONMENT” in line 7 and substitute “HAS THE MEANING STATED IN § 14-4701 OF THIS ARTICLE”; after line 7, insert:

“(5) (I) “THIRD-PARTY FOOD DELIVERY SERVICE PROVIDER” MEANS A MERCHANT THAT PROVIDES AS A CONSUMER SERVICE THE DELIVERY OF FOOD THAT IS EXEMPT FROM THE SALES AND USE TAX IN ACCORDANCE WITH § 11-206(C) OF THE TAX – GENERAL ARTICLE.

(II) “THIRD-PARTY FOOD DELIVERY SERVICE PROVIDER” DOES NOT INCLUDE A FOOD RETAILER.”;

in lines 8 and 11, in each instance, after “RETAILER” insert “OR THIRD-PARTY FOOD DELIVERY SERVICE PROVIDER”; in line 9, strike “SURVEILLANCE” and substitute “PERSONAL”; after line 15, insert:

“(D) (1) BEFORE INITIATING AN ENFORCEMENT ACTION UNDER SUBTITLE 4 OF THIS TITLE FOR A VIOLATION OF THIS SECTION, THE DIVISION SHALL ISSUE A NOTICE OF VIOLATION TO THE ALLEGED VIOLATOR.

(Over)

(2) THE DIVISION SHALL PROVIDE THE ALLEGED VIOLATOR 45 DAYS AFTER THE NOTICE OF VIOLATION IS RECEIVED TO CURE THE VIOLATION.

(3) IF THE ALLEGED VIOLATOR CURES THE VIOLATION WITHIN THE TIME PERIOD SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE DIVISION MAY NOT INITIATE AN ENFORCEMENT ACTION FOR A VIOLATION OF THIS SECTION.

13-322.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "CLEAR AND CONSPICUOUS DISCLOSURE" MEANS DISCLOSURE:

(i) IN THE SAME MEDIUM AS, AND PROVIDED ON, AT, OR NEAR AND CONTEMPORANEOUS WITH, EACH COMMUNICATION OF A PRICE FOR WHICH NOTICE IS REQUIRED; AND

(ii) USING LETTERING AND WORDING THAT IS EASILY VISIBLE AND UNDERSTANDABLE TO A CONSUMER.

(3) "COMMUNICATION" MEANS A DISPLAY, AN IMAGE, AN OFFER, OR AN ANNOUNCEMENT.

(4) "DYNAMIC PRICING" HAS THE MEANING STATED IN § 13-321 OF THIS SUBTITLE.

(5) “PERSONAL DATA” HAS THE MEANING STATED IN § 14-4701 OF THIS ARTICLE.

(B) THIS SECTION DOES NOT APPLY TO:

(1) CONDUCT OF A MERCHANT THAT IS REGULATED UNDER THE INSURANCE ARTICLE;

(2) CONDUCT OF A FOOD RETAILER OR THIRD-PARTY FOOD DELIVERY SERVICE PROVIDER SUBJECT TO § 13-321 OF THIS SUBTITLE;

(3) (I) A FINANCIAL INSTITUTION, AS DEFINED IN § 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE; OR

(II) A FINANCIAL INSTITUTION OR AN AFFILIATE OF A FINANCIAL INSTITUTION THAT IS SUBJECT TO TITLE V OF THE GRAMM-LEACH-BLILEY ACT; OR

(4) A LOWER PRICE THAT IS OFFERED TO A CONSUMER WHO IS AN EMPLOYEE OF THE MERCHANT.

(C) A MERCHANT MAY NOT SET THE PRICE OF A CONSUMER GOOD OR SERVICE USING DYNAMIC PRICING OR PERSONAL DATA AND DIRECTLY OR INDIRECTLY ADVERTISE OR PROMOTE, INCLUDE ON A LABEL, OR PUBLISH ANY OTHER COMMUNICATION CONTAINING THE PRICE, UNLESS THE MERCHANT INCLUDES WITH THE ADVERTISEMENT, PROMOTION, LABEL, OR OTHER COMMUNICATION A CLEAR AND CONSPICUOUS DISCLOSURE WITH THE FOLLOWING STATEMENT:

(Over)

“THIS PRICE WAS SET BY AN ALGORITHM OR BY USING YOUR PERSONAL DATA”.

(D) (1) BEFORE INITIATING AN ENFORCEMENT ACTION UNDER SUBTITLE 4 OF THIS TITLE FOR A VIOLATION OF THIS SECTION, THE DIVISION SHALL ISSUE A NOTICE OF VIOLATION TO THE ALLEGED VIOLATOR.

(2) THE DIVISION SHALL PROVIDE THE ALLEGED VIOLATOR 45 DAYS AFTER THE NOTICE OF VIOLATION IS RECEIVED TO CURE THE VIOLATION.

(3) IF THE ALLEGED VIOLATOR CURES THE VIOLATION WITHIN THE TIME PERIOD SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE DIVISION MAY NOT INITIATE AN ENFORCEMENT ACTION FOR A VIOLATION OF THIS SECTION.

13-408.

(a) THIS SECTION DOES NOT APPLY TO A VIOLATION OF § 13-321 OR § 13-322 OF THIS TITLE.

(B) In addition to any action by the Division or Attorney General authorized by this title and any other action otherwise authorized by law, any person may bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by this title.

[(b)] (C) Any person who brings an action to recover for injury or loss under this section and who is awarded damages may also seek, and the court may award, reasonable attorney’s fees.

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[(c)] (D) If it appears to the satisfaction of the court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney's fees.

[(d)] (E) Notwithstanding any other provision of this section, a person may not bring an action under this section to recover for injuries sustained as a result of the professional services provided by a health care provider, as defined in § 3-2A-01 of the Courts Article.”;

in line 17, after “**13-321**” insert “**OR § 13-322**”; and after line 26, insert:

“14-4701.

(a) In this subtitle the following words have the meanings indicated.

(w) (1) “Personal data” means any information that is linked or can be reasonably linked to an identified or identifiable consumer.

(2) “Personal data” does not include:

(i) De-identified data; or

(ii) Publicly available information.”.

On pages 3 and 4, strike in their entirety the lines beginning with line 27 on page 3 through line 12 on page 4, inclusive.

On page 4, strike beginning with “is” in line 23 down through “enacted” in line 27 and substitute “shall take effect October 1, 2026”.