

**Department of Legislative Services**  
Maryland General Assembly  
2026 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 387  
Finance

(The President, *et al.*) (By Request - Administration)

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**Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining  
Agreements (Protection From Predatory Pricing Act)**

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This emergency Administration bill prohibits a “food retailer” from engaging in the practice of “dynamic pricing” or using consumer “surveillance data” to set a price for consumer goods or services for a single consumer or a group of consumers. A food retailer may not use protected class data to offer, advertise, or sell a consumer good or service to a consumer for whom the protected class data pertains if the use of such data has the effect of withholding or denying from the consumer an accommodation, an advantage, or a privilege provided to others. Violation of these provisions is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil penalty provisions. The bill also prohibits a food retailer from diminishing or impairing any right or benefit guaranteed to employees of the food retailer under an existing collective bargaining agreement or memorandum of understanding, unless a change has been negotiated and mutually agreed on with the exclusive representative of the employees.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase, at least minimally beginning as early as FY 2026, for the Office of the Attorney General (OAG), as discussed below. The bill’s imposition of existing penalty provisions is not anticipated to have a material impact on State revenues.

**Local Effect:** The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

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## Analysis

### Bill Summary:

#### *Definitions*

“Dynamic pricing” means the practice of varying the prices of consumer goods or services within a business day based on demand or other factors, including through the use of artificial intelligence (AI) or models that retrain or recalibrate based on received information in near real-time. It does *not* include promotional pricing offers, loyalty program benefits, or other temporary discounts or changes to pricing related to retention of existing customers.

“Food retailer” means a merchant that operates a business establishment that (1) has a minimum of 15,000 square feet and (2) sells food that is exempt from the sales and use tax in accordance with the Tax-General Article.

“Surveillance data” means consumer information collected and tracked by technological methods, systems, or tools, such as sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection, that are capable of gathering personally identifiable information about a consumer’s behavior, characteristics, location, or other personal attributes (whether in a physical or digital environment).

#### *Diminishment or Impairment of Rights of Food Retailer Employees*

A food retailer may not implement an administrative, operational, or organizational change that diminishes or impairs any right or benefit guaranteed to employees of the food retailer under an existing collective bargaining agreement or memorandum of understanding, unless the change is negotiated and mutually agreed on with the exclusive representative of the employees. A person may bring an action to recover for injury or loss sustained as a result of a violation of this requirement. A person who brings such an action and who is awarded damages may also seek and be awarded reasonable attorney’s fees. 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.

## **Current Law:**

### *Artificial Intelligence*

“AI” means a machine-based system that (1) can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments; (2) uses machine and human-based inputs to perceive real and virtual environments and abstracts those perceptions into models through analysis in an automated manner; and (3) uses model inference to formulate options for information or action.

For additional information on the status of AI in the State and nation, please see the **Appendix – Artificial Intelligence**.

### *Price Regulation*

State law generally does not regulate price setting in the manner specified by the bill. However, various provisions of State law address the practice of adjusting or advertising prices for consumer goods and services. For example, Chapters 630 and 631 of 2023 prohibit a person from selling a good or service designated as essential (including a repair or reconstruction service) for a price that exceeds a specified threshold during and, in some cases, after a state of emergency. Additionally, a seller is prohibited from increasing the layaway price of a consumer good that is sold under a layaway agreement.

### *Maryland Consumer Protection Act*

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person

who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

### *Sales and Use Tax – Exemption for Food*

Generally, the sales and use tax does not apply to a sale of food for consumption off the premises by a food vendor who operates a substantial grocery or market business at the same location where the food is sold. However, this exemption does not apply to (1) food that the vendor serves for consumption on the premises of the buyer or of a third party or (2) food for immediate consumption.

### *Collective Bargaining Agreements*

Maryland statute does not regulate collective bargaining for *private* employees. Private labor union agreements are generally enforced by the federal National Labor Relations Board.

**Background:** According a [study](#) by the Federal Trade Commission (FTC), details such as a person’s location or browser history can frequently be used to target individual consumers with different prices for the same goods or services. More specifically, third-party intermediaries (*i.e.*, entities hired by retailers that can algorithmically tweak and target their prices) may set individualized prices for products and services based on a variety of factors – including demographics, browsing patterns, and shopping history. FTC staff found that consumer behaviors ranging from mouse movements on a webpage to the type of products that consumers leave unpurchased in an online shopping cart can be tracked and used by retailers to set unique pricing levels for individual consumers. Moreover, the FTC [found](#) that grocery stores were among the many types of consumer-facing businesses that utilized data from intermediaries.

**State Expenditures:** OAG advises that it requires additional staff to investigate and enforce the bill’s prohibition against dynamic pricing and the use of consumer surveillance data by food retailers. Specifically, OAG anticipates the need for one assistant Attorney General and one technologist, with estimated personnel expenditures of approximately \$325,000 on an annual basis.

DLS acknowledges that enforcement of the bill is likely to require specialized knowledge of the relevant industries. This analysis assumes, therefore, that OAG incurs at least minimal contractual costs to facilitate training and the development of technical expertise. Due to the bill’s emergency status, these expenditures may be incurred as early as fiscal 2026. However, DLS advises that without experience under the bill, it is unclear to what extent food retailers will be noncompliant and whether there will be a significant enough volume of related complaints to necessitate additional staff. To the extent OAG

receives a significant number of complaints from consumers under the bill that it is unable to handle with existing staff, OAG may request additional resources through the annual budget process.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 895 (The Speaker, *et al.*) (By Request - Administration) - Economic Matters.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Maryland Department of Labor; Federal Trade Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2026  
caw/jkb

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## Appendix – Artificial Intelligence

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### *Artificial Intelligence – Generally*

Artificial intelligence (AI) is a broad field of computer science that deals with the creation of “intelligent” systems that can reason, learn, and act autonomously. There are many different branches of AI, each with its own focus and set of techniques, such as machine learning, neural networks, robotics, expert systems, fuzzy logic, and natural language processing. AI research has been successful in developing algorithms for solving a wide range of problems, from game playing to conversation simulation.

AI use has expanded significantly in recent years. Many of the largest technology companies have each developed their own AI systems and have integrated the systems into their respective companies’ products and services. AI’s ability to quickly synthesize and summarize vast amounts of data and apply the results have made it a useful tool in modern society while also raising questions about its use. The following list briefly describes a few of the impacts of and issues surrounding AI.

- Related to education, AI may have potential benefits to help tutor or otherwise provide additional resources to assist students in their studies. However, some students use AI to cheat on their schoolwork;
- Related to energy use, the significant power draw necessary to run the data systems that host AI systems has contributed to localized energy shortages and increased energy costs;
- Regarding environmental issues, these data centers require a significant amount of water for cooling and increasingly have been using freshwater resources for this purpose;
- Related to criminal justice, AI image and video generation systems can be used to make “deep fake” pictures and videos that may be difficult or impossible to differentiate from actual events;
- AI’s reliance on information from the internet has raised concerns regarding the accuracy of AI-generated content as well as copyright infringement and data privacy.
- Related to health, AI is being used to assist doctors in developing medical diagnoses, but is also being used by insurance companies to screen requests for care and claims;
- Related to labor and employment, the expansion of AI has led to concerns about employees being replaced by AI systems as a means to save money on labor costs.

### *Governance at the State Level*

The State defines AI as a machine-based system that (1) can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments; (2) uses machine and human-based inputs to perceive real and virtual environments and abstracts those perceptions into models through analysis in an automated manner; and (3) uses model inference to formulate options for information or action. At the State level, AI is governed primarily by the Department of Information Technology (DoIT) and the Governor's AI Subcabinet. This governance structure was established by Chapter 496 of 2024 and, broadly speaking:

- requires DoIT to adopt policies and procedures, in consultation with the Governor's AI Subcabinet, concerning the development, procurement, deployment, use, and ongoing assessment of systems that employ high-risk AI by a unit of State government;
- prohibits units of State government from procuring or deploying a new system that employs AI unless the system complies with the policies and procedures adopted by DoIT;
- requires each unit of State government to conduct a data inventory to identify data that meets criteria established by the Chief Data Officer and that is (1) necessary for the operations of the unit or otherwise required to be collected as a condition to receive federal funds or by federal or State law and (2) in a form prescribed by the Chief Data Officer, including when the data is used in AI; and
- requires each unit of State government to conduct an inventory of systems that employ high-risk AI.

Most recently, DoIT and the subcabinet have released the [2025 Maryland AI Enablement Strategy & AI Study Roadmap](#), which includes plans for studying opportunities, risks, and next steps associated with the use of AI in State services. Additionally, in November 2025, the Governor's Office announced a [State partnership](#) with two AI companies to integrate certain AI systems into a portion of the State's workforce.

### *Other Recent State Laws and Policies*

In addition to the direct governance effectuated by Chapter 496, various other laws and policies address some of the issues posed by AI.

Chapter 105 of 2025 established the Workgroup on AI Implementation to monitor issues and make recommendations related to AI, including (1) the regulation of AI used in decisions that significantly impact the livelihood and life opportunities of individuals in the State; (2) deployer and developer obligations related to labor and employment and

protection of individual privacy rights; (3) protection of consumer rights; (4) current private sector use of AI; (5) general AI disclosures for all consumers; (6) enforcement authority for the Office of the Attorney General’s Consumer Protection Division; and (7) the impact of the use of AI in the determination of government benefits. The first report from the workgroup is due July 1, 2026.

Chapter 747 of 2025 requires a carrier (*i.e.*, insurance company or another organization that provides health benefit plans), pharmacy benefits manager, or a private review agent that uses AI, algorithms, or other software tools for utilization review (including working through an entity that uses such tools) to ensure that such tools are used in a specified manner. Notably, the Act specifies that an AI, algorithm, or other software tool may not deny, delay, or modify health care services and that carriers must submit in their quarterly appeals and grievance reports whether an AI, algorithm, or other software tool was used in making an adverse decision.

Chapter 17 of the 2025 special session established an AI Evidence Clinic Pilot Program in the Administrative Office of the Courts to provide expertise in AI to the circuit courts and the District Court in the form of expert testimony on the authenticity of electronic evidence that a court determines may have been created or altered using AI.

Regarding education, the Maryland State Department of Education has begun an [AI initiative](#) to develop policies and procedures for AI use by students and teachers. Additionally, Chapter 237 of 2025 specifies that, for school years 2025-2026 through 2027-2028, certain requirements for the procurement and use of digital tools to assure equivalent access to technology for students with disabilities do not apply to digital tools that use AI.

### *Federal Action*

The National Artificial Intelligence Initiative Act of 2020 became law on January 1, 2021. The aim of the Act is to promote U.S. leadership in AI research and development with the goal of accelerating the nation’s economic prosperity and national security through the development and use of trustworthy AI in the public and private sectors and preparation of the workforce for the inevitable integration of AI systems. This multi-agency initiative has included work by the U.S. Department of Energy, in consultation with the National Institute of Standards and Technology, to develop the AI Risk Management Playbook as a reference guide to support responsible and trustworthy AI use and development. Though not a binding document, the playbook addresses common AI risks and steps that AI leaders, practitioners, and procurement teams can take to manage data privacy and bias risks.

Other Executive Orders guiding and governing AI use of the federal level signed during the previous administration were revoked under the current administration. Moreover, an

[Executive Order signed in December 2025](#) generally expresses the federal government's attempt to preempt State AI laws and regulations, directs certain federal agencies to penalize states that are found to not be in compliance with the preemption, and directs certain federal entities to prepare a legislative recommendation establishing a uniform federal policy framework for AI that preempts state AI laws.

## **ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**TITLE OF BILL:** Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

**BILL NUMBER:** SB 387

**PREPARED BY:** Governor's Legislative Office

### **PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

  **X**   WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

       WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### **PART B. ECONOMIC IMPACT ANALYSIS**