

MARYLAND RETAILERS ALLIANCE

The Voice of Retailing in Maryland



SB 387 Food Retailers and Third-Party Food Delivery Service Providers - Dynamic Pricing and Personal Data (Protection From Predatory Pricing Act)

March 31, 2026

Position: Favorable with amendments

The Maryland Retailers Alliance represents thousands of retail establishments across the State, ranging from small, family-owned businesses to regional and national employers. These businesses operate on narrow margins and play a vital role in their communities. The ability to offer data-driven discounts is essential to maintaining competitiveness and ensuring consumers have access to affordable food. Accordingly, the Maryland Retailers Alliance respectfully urges the Committee to adopt the Senate version of SB 387, with the proposed amendments.

Industry stakeholders have invested significant time and effort working with the Senate and Governor's office to develop a thoughtful, balanced approach. The Senate bill reflects a workable framework that achieves the stated policy goal—prohibiting the use of consumer data to increase prices—while preserving the ability for retailers to offer discounts and promotions that benefit consumers.

Importantly, this legislation positions Maryland to be the first state in the nation to address this issue. It is therefore critical that the framework is clear, targeted, and operationally feasible.

We appreciate the Senate bill's compromise approach and request consideration of several clarifying and technical improvements found in red in the attached redline:

- **Neutral framing of “dynamic pricing”** to reflect that it is not inherently discriminatory, without altering the scope of the bill.
- **Clarification of exemptions** by adding “or time periods” to ensure that price differences based on supply, demand, location, or time are not unintentionally captured.
- **Definition of “protected class data,”** which is currently undefined and creates ambiguity.
- **Removal of “group of consumers”** in the prohibition language to align provisions and eliminate ambiguity.

We also support the revisions proposed by third-party delivery services, reflected in yellow, which clarify discounts for both new and existing customers, recognize pricing differences based on location and time periods, and appropriately narrow the bill's scope to food items only.

These targeted changes will improve clarity and ensure consistent application without changing the core policy.

The Senate framework strikes the appropriate balance: it addresses concerns about data-driven price increases while preserving competitive pricing practices and consumer discounts. A clear, workable standard is essential to avoid confusion for consumers and unintended consequences for Maryland businesses.

For these reasons, we respectfully request the Committee adopt the Senate version of HB 387 with the amendments we have outlined and attached.

Thank you for your consideration.

SENATE BILL 387

13, K3

~~EMERGENCY BILL~~

6lr0331

CF HB 895

By: **The President (By Request – Administration) and Senators Augustine, Brooks, Charles, Harris, Hettleman, Kagan, King, Lam, Lewis Young, Love, and Zucker Hester, Sydnor, and Zucker**

Introduced and read first time: January 27, 2026 Assigned to: Finance

Committee Report: Favorable with amendments Senate action: Adopted

Read second time: March 4, 2026

CHAPTER ___

AN ACT concerning

Food Retailers and Third-Party Food Delivery Service Providers – Dynamic Pricing, ~~Surveillance and Personal Data, and Collective Bargaining Agreements~~ (Protection From Predatory Pricing Act)

FOR the purpose of prohibiting a food retailer and a third-party food delivery service provider from engaging in the practice of dynamic pricing or using consumer ~~surveillance~~ personal data to set a price for consumer goods or services; prohibiting a food retailer and a third-party food delivery service provider from using protected class data to offer, advertise, or sell a consumer good or service under certain circumstances; ~~prohibiting 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 under certain circumstances;~~ making a certain violation of this Act an unfair, abusive, or deceptive trade practice that is subject to enforcement and penalties under the Maryland Consumer Protection Act; and generally relating to the regulation of food retailers and third-party food delivery service providers.

BY adding to

Article – Commercial Law

Section 13-321

Annotated Code of Maryland

(2025 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law. Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

CONSUMER BASED ON THE CONSUMER'S PERSONAL DATA, REGARDLESS OF WHETHER THE SELLER COLLECTED OR PURCHASED THE PERSONAL DATA.

(II) "DYNAMIC PRICING" DOES NOT INCLUDE ~~THE~~:

1. THE USE OF PROMOTIONAL PRICING OFFERS, LOYALTY PROGRAM BENEFITS, OR OTHER TEMPORARY DISCOUNTS OR CHANGES TO PRICING RELATED TO RETENTION OF EXISTING, LAPSED, OR NEW CUSTOMERS;

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 DIFFERENCE IN PRICE BASED ON THE STORE LOCATION SELECTED TO FULFILL A CONSUMER'S ONLINE ORDER OR COSTS, OR DIFFERENCES IN SUPPLY OR DEMAND ASSOCIATED WITH PROVIDING OR SELLING A GOOD OR SERVICE IN DIFFERENT LOCATIONS, GEOGRAPHIES, OR TIME PERIODS;

4. A DIFFERENCE IN PRICE BASED ON COSTS ASSOCIATED WITH THE AVAILABILITY OR SUPPLY OF THE GOOD OR SERVICE;

5. A PRICE OFFERED TO A CONSUMER THROUGH A LOYALTY, MEMBERSHIP, OR REWARDS PROGRAM IN WHICH ANY CONSUMER MAY VOLUNTARILY ENROLL OR CONSENT TO PARTICIPATE;

6. A PRICE OFFERED TO A CONSUMER IN CONNECTION WITH A SUBSCRIPTION-BASED CONTRACT OR AGREEMENT;

7. A PRICE OFFERED TO A CONSUMER WHO CONSENTS TO PROVIDING PERSONAL DATA OR OTHER INFORMATION IN EXCHANGE FOR OBTAINING THE PRICE;

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

9. RESETTING A PRICE FOLLOWING A SYSTEM OR NETWORK OUTAGE.

(4) "FOOD RETAILER" MEANS A MERCHANT THAT OPERATES A BUSINESS ESTABLISHMENT THAT:

(1) HAS A MINIMUM OF 15,000 SQUARE FEET; AND

Commented [A1]: In the middle of the night is more expensive. Or there could be a premium price for speed.

(II) SELLS FOOD THAT IS EXEMPT FROM THE SALES AND USE TAX IN ACCORDANCE WITH § 11-206(C) OF THE TAX – GENERAL ARTICLE.

~~(5) “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.~~

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

~~“PROTECTED CLASS DATA” MEANS INFORMATION ABOUT AN INDIVIDUAL PERSON OR GROUPS OF PEOPLE THAT DIRECTLY, IN COMBINATION, OR BY IMPLICATION IDENTIFIES A CHARACTERISTIC THAT IS LEGALLY PROTECTED FROM DISCRIMINATION UNDER THE LAWS OF THIS STATE OR UNDER FEDERAL LAW.~~

Commented [A2]: Adding a definition that’s currently missing and ambiguous.

(6) (I) “THIRD-PARTY **FOOD** DELIVERY SERVICE PROVIDER” MEANS A **COMPANY MERCHANT** THAT **FACILITATES PROVIDES AS** A CONSUMER **IS ONLINE ORDER 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.

(B) A FOOD RETAILER OR THIRD-PARTY **FOOD** DELIVERY SERVICE PROVIDER MAY NOT:

(1) ENGAGE IN DYNAMIC PRICING TO INCREASE A PRICE FOR **CONSUMER GOODS OR SERVICES FOOD THAT IS EXEMPT FROM THE SALES AND USE TAX IN ACCORDANCE WITH § 11-206(C) OF THE TAX – GENERAL ARTICLE** FOR A SPECIFIC CONSUMER; OR USE

(2) USE ~~SURVEILLANCE~~ PERSONAL DATA TO ~~SET~~ INCREASE A PRICE FOR **CONSUMER GOODS OR SERVICES FOOD THAT IS EXEMPT FROM THE SALES AND USE TAX IN ACCORDANCE WITH § 11-206(C) OF THE TAX – GENERAL ARTICLE** FOR A SPECIFIC CONSUMER.

Commented [A3]: Aligning with the clause above. The “group of consumers” has been giving compliance teams heartburn.

(C) A FOOD RETAILER OR THIRD-PARTY **FOOD** DELIVERY SERVICE PROVIDER 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 THE PROTECTED CLASS DATA HAS THE EFFECT OF WITHHOLDING OR DENYING FROM THE CONSUMER AN ACCOMMODATION, AN ADVANTAGE, OR A PRIVILEGE ACCORDED TO OTHERS.

Commented [A4]: Deleting “food” consistent with new definitions

(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.

(E) THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE A PRIVATE RIGHT OF ACTION UNDER THIS SECTION OR ANY OTHER LAW.

13-408.

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

[(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.

13-411.

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

[(a)] (B) Except as provided in subsection **[(b)] (C)** of this section, any person who violates any provision of this title is guilty of a misdemeanor and, unless another criminal penalty is specifically provided elsewhere, on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding one year or both, in addition to any civil penalties.

[(b)] (C) A person may not be imprisoned for violation of any provision of an order of the Attorney General or an agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article.

11 ~~Article – Labor and Employment~~

12 ~~4-406.~~

~~(A) IN THIS SECTION, “FOOD RETAILER” HAS THE MEANING STATED IN § 13-321 OF THE COMMERCIAL LAW ARTICLE.~~

~~(B) 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.~~

(c) A person may bring an action to recover for injury or loss ~~SUSTAINED AS A RESULT OF A VIOLATION OF THIS SECTION.~~

(d) A 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.~~

(e) 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.~~

Article – Tax – General

1 11-206.

(c) (1) Except as provided in paragraph (2) of this subsection, 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.

(2) The exemption under paragraph (1) of this subsection does not apply to:

(i) food that the vendor serves for consumption on the premises of the buyer or of a third party; or

(ii) food for immediate consumption.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted shall take effect October 1, 2026.~~

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.