



February 24, 2026

Delegate Joseline A. Peña-Melnyk  
Speaker, House of Delegates  
State House, H-101  
State Circle  
Annapolis, Maryland 21401

Delegate Kriselda Valderrama  
Chair, Economic Matters Committee  
231 Taylor House Office Building  
6 Bladen Street  
Annapolis, Maryland 21401

Delegate Lorig Charkoudian  
Vice Chair, Economic Matters Committee  
231 Taylor House Office Building  
6 Bladen Street  
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Delegate Gabriel Acevero  
415 Lowe House Office Building  
6 Bladen Street  
Annapolis, MD 21401

**RE: Letter in Opposition to Maryland HB 895**

Dear Speaker Peña-Melnyk, Chair Valderrama, Vice Chair Charkoudian, and Delegate Acevero:

On behalf of the advertising industry, we write to oppose Maryland HB 895.<sup>1</sup> We provide this letter to offer our non-exhaustive list of concerns about this bill. HB 895 would significantly limit Maryland consumers’ access to discounts and special pricing by banning the practice of “dynamic pricing,” banning the use of “surveillance data,” and creating a private right of action by tying enforcement to the Maryland Consumer Protection Act. Accordingly, we ask you to decline to advance the bill as drafted out of the House Economic Matters Committee (“Committee”).

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,000 companies that power the commercial Internet, which accounted for nearly 20 percent of total U.S. gross domestic product (“GDP”) in 2024.<sup>2</sup> By one estimate, approximately 17.0% of Maryland jobs in 2024 were related to the ad-subsidized Internet, a share projected to increase to 18.5% by 2029.<sup>3</sup> Our group has more than a decade’s worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with the Committee further on the points we discuss in this letter.

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<sup>1</sup> Maryland HB 895 (2026 Session), located [here](#) (hereinafter, “HB 895”).

<sup>2</sup> S&P Global, THE ECONOMIC IMPACT OF ADVERTISING ON THE US ECONOMY, 2024-2029 at 4 (Aug. 2025), located at [https://theadcoalition.com/wp-content/uploads/2025/08/TAC\\_SP-Global-Final-Report\\_August-2025.pdf](https://theadcoalition.com/wp-content/uploads/2025/08/TAC_SP-Global-Final-Report_August-2025.pdf).

<sup>3</sup> *Id.* at 15-16.

**I. HB 895 would limit access to discounts and special pricing offers that Maryland consumers rely on to manage everyday costs.**

HB 895, unfortunately, would not preserve the value of discounts to Marylanders, resulting in higher prices for consumers. Under the bill, a business would be prohibited from engaging in “dynamic pricing” or using “surveillance data” to set a price for consumer goods or services.<sup>4</sup> In practice, these restrictions would prohibit consumer-friendly pricing practices that Marylanders encounter and value every day. For example, HB 895 would make it unclear whether it would be permissible for a grocery retailer to use zip code-based location data and purchase history to offer a consumer who regularly purchases fresh produce a targeted discount on surplus fruits nearing their sell-by date. Under the bill, these types of information may be classified as “consumer information” collected through “technological methods, systems, or tools” and thus be treated as “surveillance data.”<sup>5</sup> Although this type of personalized discount benefits consumers through lower prices, reduces food waste, and helps retailers manage inventory more efficiently, it may be swept into the bill’s broad prohibition simply because it relies on consumer information that may be deemed “surveillance data.”

Further, although HB 895 excludes certain activities from its definition of “dynamic pricing,” including promotional pricing offers, loyalty program benefits, or other temporary discounts or pricing changes intended to retain existing customers, those exclusions do not meaningfully resolve the problem.<sup>6</sup> First, the bill would still significantly restrict the availability of discounts and special pricing for ordinary consumers who are *not* enrolled in a loyalty program and for whom the business is not specifically seeking to encourage continued patronage. Second, and more importantly, those exclusions do not apply to use of “surveillance data,” which is separately defined and also flatly prohibited under the bill. As a result, promotional pricing, loyalty program benefits, and temporary discounts that are expressly excluded when categorized as “dynamic pricing” may nonetheless be prohibited when the same conduct is categorized as use of “surveillance data.” This internal inconsistency creates substantial uncertainty for retailers and risks chilling consumer-friendly pricing practices that HB 895 does not appear intended to ban.

**II. HB 895 should not tie enforcement to the Maryland Consumer Protection Act or allow for a private right of action.**

HB 895 would amend the Maryland Consumer Protection Act (“MCPA”) by adding § 13-421.<sup>7</sup> Effectively, enforcement of this new section would be able to proceed not just through government action but through private lawsuits under the MCPA’s private right of action.<sup>8</sup> As a

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<sup>4</sup> HB 895 § 13-321(B).

<sup>5</sup> HB 895 § 13-321(A)(5).

<sup>6</sup> HB 895 § 13-321(A)(3)(II).

<sup>7</sup> HB 895 § 13-321 (“By adding to Article – Commercial Law Section 13-321 Annotated Code of Maryland”).

<sup>8</sup> Md. Code Ann., Com. Law § 13-401.

result, a business offering cost-reducing coupons could be subject to a private right of action if such activity is deemed an impermissible use of “surveillance data.” We strongly believe a private right of action would be an inappropriate enforcement mechanism for this bill. Instead, enforcement should be vested with the Attorney General (“AG”) alone, because such an enforcement structure would lead to stronger outcomes for Maryland residents while better enabling businesses to allocate resources to developing processes, procedures, and plans to facilitate compliance with the bill’s new requirements. AG enforcement, instead of a private right of action, is in the best interests of consumers and businesses alike.

The possibility of a private right of action in HB 895 would create a complex and flawed compliance system without tangible benefits for consumers. Allowing private actions will flood Maryland’s courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm.<sup>9</sup> Private right of action provisions are completely divorced from any connection to actual consumer harm and provide consumers little by way of protection from detrimental data practices.

Additionally, a private right of action would have a chilling effect on the Commonwealth’s economy by creating the threat of steep and unforeseeable costs for companies that are good actors but inadvertently fail to conform to technical provisions of law. Private litigant enforcement provisions do not effectively address consumer protection concerns or deter undesired business conduct. They expose businesses to extraordinary and potentially enterprise-threatening costs for technical violations of law rather than drive systemic and helpful changes to business practices. A private right of action would also encumber businesses’ attempts to innovate by threatening companies with expensive litigation costs, especially if those companies are visionaries striving to develop transformative new technologies. The threat of an expensive lawsuit may force smaller companies to agree to settle claims against them, even if they are convinced they are without merit.<sup>10</sup>

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<sup>9</sup> A select few attorneys benefit disproportionately from private right of action enforcement mechanisms in a way that dwarfs the benefits that accrue to the consumers who are the basis for the claims. For example, a study of 3,121 private actions under the Telephone Consumer Protection Act (“TCPA”) showed that approximately 60 percent of TCPA lawsuits were brought by just forty-four law firms. Amounts paid out to consumers under such lawsuits proved to be insignificant, as only 4 to 8 percent of eligible claim members made themselves available for compensation from the settlement funds. U.S. Chamber Institute for Legal Reform, *TCPA Litigation Sprawl* at 2, 4, 11-15 (Aug. 2017), located [here](#).

<sup>10</sup> For instance, in the early 2000s, private actions under California’s Unfair Competition Law (“UCL”) “launched an unending attack on businesses all over the state.” American Tort Reform Foundation, *State Consumer Protection Laws Unhinged: It’s Time to Restore Sanity to the Litigation* at 8 (2003), located [here](#). Consumers brought suits against homebuilders for abbreviating “APR” instead of spelling out “Annual Percentage Rate” in advertisements and sued travel agents for not posting their phone numbers on websites, in addition to initiating myriad other frivolous lawsuits. These lawsuits disproportionately impacted small businesses, ultimately resulting in citizens voting to pass Proposition 64 in 2004 to stem the abuse of the state’s broad private right of action under the UCL. *Id.*



Beyond the staggering cost to Maryland businesses, the resulting snarl of litigation could create a chaotic and inconsistent enforcement framework with conflicting requirements based on differing court outcomes. Overall, the possibility of a private right of action would serve as a windfall to the plaintiff's bar without focusing on the business practices that actually harm consumers. We therefore encourage the Committee to clarify that HB 895 does not create a private right of action under any law and vests enforcement authority with the AG alone.

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We respectfully ask the Committee not to advance HB 895. Rather than strengthening consumer protections, the bill risks higher prices, reduced choice, and fewer opportunities for consumers to benefit from discounts and incentives.

Thank you in advance for your consideration of this letter.

Sincerely,

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CC: Members of the Maryland House Economic Matters Committee

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