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CONSUMER PROTECTION DIVISION**

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March 31, 2026

**TO:** The Honorable Kriselda Valderrama, Chair  
Economic Matters

**FROM:** Hanna Abrams, Assistant Attorney General

**RE:** Senate Bill 387 – Food Retailers and Third Party Food Delivery Service  
Providers– Dynamic Pricing and Personal Data (Protection from Predatory  
Pricing Act) **SUPPORT IN CONCEPT**

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The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 387 (“SB 387”) in concept, sponsored by President Ferguson on behalf of the Governor, and Senators Augustine, Brooks, Charles, Harris, Hettleman, Kagan, King, Lam, Lewis Young, Love, Hester, Sydnor, and Zucker.<sup>1</sup> Senate Bill 387 aims to limit the use of personal data to personalize prices in food retail establishments and by food delivery services, and thus tries to protect consumers by reducing discriminatory pricing, curbing excessive data collection, and improving transparency in pricing practices.

Specifically, SB 387 restricts food retailers’ and delivery services’ use of personal data and “dynamic pricing” to personalize prices for consumers. Both of these practices use massive amounts of data collected about an individual consumer to charge the highest price and extract the maximum profit that the consumer would be willing to pay for a given product or service. Companies exploit this trove of detailed personal data, or “surveillance data” – including, demographics, browsing history, location data, keystroke data, purchasing behavior, inferential data, and other data – to set the prices of goods and services on an individual basis. And consumers are often unaware that their data is even being collected. Similarly, “dynamic pricing” once referred to broad price adjustments based on market demand. Advances in data collection and real-time analytics now allow companies to change prices continuously, charging different consumers different prices for the same product within minutes.

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<sup>1</sup> Concerns about the enforcement provisions of SB 387 are addressed in separate testimony filed by Attorney General Brown.

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“Dynamic pricing” and the use of “surveillance data” threaten consumer fairness by facilitating discriminatory pricing, encouraging invasive data collection, and obscuring prices, limiting consumers’ ability to make informed choices. These practices are especially harmful in food retailers because food is an essential good, leaving households with little bargaining power or ability to avoid individualized price increases. By leveraging personal and behavioral data that correlate with income and vulnerability, such pricing disproportionately raises costs for those least able to pay while eroding privacy, trust, and the expectation of a fair, uniform price for necessities.

In order to properly protect consumers from these ills, however, the definition of “dynamic pricing” must be amended. The Division recommends removing the term “discriminatory” from the definition because it improperly implies that dynamic pricing only targets protected classes. The risks of dynamic pricing extend beyond discriminatory practices. Consumers may face higher prices, reduced transparency, and diminished market fairness regardless of whether protected characteristics are implicated. As a result, limiting the definition to those practices that are discriminatory overlooks the wider range of consumer harms. To ensure that the definition encompasses all types of surveillance pricing, the Division recommends using the following definition of dynamic pricing (page 2, line 31 – page 3, line 2):

Dynamic pricing means the practice of offering or setting a personalized price for a good or service that is specific to a consumer or group of consumers, based in whole or in part, on the consumer’s personal data, regardless of whether the seller collected or purchased the personal data.

The Division is also concerned about the breadth of the loyalty rewards program exemption to “dynamic pricing” in SB 387. If the intent of the exemptions is to permit discounts that benefit consumers, the Division recommends the following revisions:

- Page 3, lines 5-6: Delete “or changes to pricing related to” as the language implies that prices can be increased based on personal data in order to retain existing customers. The only price adjustment that should be permitted to retain customers is a discount which is already reflected in the existing language.
- Page 3, lines 16-18: In line 16, replace the word “price” with “discount” to reflect the intention that a consumer’s participation in loyalty rewards programs should only benefit the consumer and not allow price increases. At the end of line 18, add the following language to conform the loyalty rewards exemption to that in the Maryland Online Data Privacy Act (Md. Ann. Code, Com. Law § 14-4707(c)(2)): “provided that the selling of personal data is not a condition of participation in the program.”
- Delete page 3, lines 26-27. The exemptions already authorize the adjustment of pricing for loyalty rewards members. Outside of these programs, pricing should not be based on personal data, regardless of whether there has been a system outage.

The Division also recommends adding a definition of “protected class data.” In addition, the Division recommends prohibiting the use of “sensitive data” as defined in the Maryland Online Data Privacy Act from being used to set the price of food. Sensitive data includes highly personal data such as person’s genetic data, religious beliefs, or health data.<sup>2</sup> To that end, the Division asks that the following language be added on page 3, line 31:

(d) A food retailer or third party food delivery service may not use sensitive data as defined in Section 14-4701 of this Article, to set prices for a consumer or group of consumers.

Finally, SB 387 should require food retailers to post a “public price” that is visible to everyone and reflects the price that most consumers actually pay. Such a requirement would increase price transparency and ensure that consumers are not charged a price higher than the publicly advertised price for the same good or service under a loyalty rewards exception.

In addition to the concerns raised by the Attorney General, the Division asks the Economic Matters Committee to consider these comments when discussing SB 387.

cc: Governor Wes Moore  
President Bill Ferguson, *et al.*  
Members, Economic Matters Committee

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<sup>2</sup> Sensitive data is defined as: “Data revealing: (i) Racial or ethnic origin; (ii) Religious beliefs; (iii) Consumer health data; (iv) Sex life; (v) Sexual orientation; (vi) Status as transgender or nonbinary; (vii) National origin; or (viii) Citizenship or immigration status; (2) Genetic data or biometric data; (3) Personal data of a consumer that the controller knows or has reason to know is a child; or (4) Precise geolocation data.”