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THE VOICE OF AMERICAN INNOVATION

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February 27, 2026

The Honorable Kris Valderrama
Chair
House Economic Matters Committee
Maryland House of Delegates
231 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

RE: HB 895 (Speaker) - Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

Dear Chair Valderrama and Members of the Committee,

On behalf of TechNet, I'm writing to share comments on HB 895.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes 103 dynamic American businesses ranging from startups to the most iconic companies on the planet and represents five million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

TechNet recognizes that automated decision systems raise complex and evolving policy questions, and our member companies are committed to providing a positive customer experience that is transparent. We do not condone any targeting of consumers based on factors such as religion, race, sexuality, or political affiliation. States across the country have been carefully studying how to balance innovation with consumer protection. The difficulty of getting this right has been demonstrated in other states, where similar proposals were ultimately withdrawn or rejected on a bipartisan basis after months of deliberation.

Our members support fair pricing practices, but we believe that HB 895 is overly broad and will harm consumers through higher prices and reduced innovation. Data-driven pricing enables lower average prices, better inventory management, and reduced food waste. Our members have invested billions in pricing technology, inventory management, and customer experience systems that rely on data-driven pricing optimization, and have used the technology responsibly for years to improve the consumer experience, lower prices for customers, and enhance competition.

We believe that the bill could be improved in three areas – definitions, prohibitions, and enforcement - and have provided suggested edits below this letter.

Definitions

The bill creates multiple novel definitions, some of which conflict with the Maryland Online Data Privacy Act (MODPA). For instance, the definition of "surveillance data" differs from the existing definition of "personal data" from the MODPA. While the rhetoric around the bill implies applicability only to brick-and-mortar grocery stores, the definitions are broad enough to capture a much larger universe of retail. For example, our read of the bill is that the "Food Retailer" definition could capture a small business that sells packaged coffee beans online from its 15,000 square foot warehouse. The definition of "Surveillance Data" clearly applies to both a "physical or digital environment". Finally, the vague definition of "Dynamic Pricing" could capture routine, uncontroversial practices used to assess supply and demand across stores or markets, and prohibit standard retail activities such as adjusting prices based on inventory levels, expiration dates, or competitive positioning.

Prohibitions

We do not object to prohibiting personalized price increases for individual consumers, but the current language is much broader than that. For example, the prohibition, on the use of surveillance and dynamic pricing, as drafted, applies to setting prices for a "group of consumers," a vague term that could be read to include all consumers within a geographic area or store. Combined with the broad definition of "surveillance data," the prohibition on the use of "dynamic pricing" would restrict merchants' ability to adjust prices based on localized supply, demand, inventory, or costs—longstanding pricing practices that help manage costs and keep baseline prices lower.

Enforcement

Finally, the bill's current language is silent on violations and enforcement, but by placing the title within the Maryland Consumer Protection Act, the legislation would create a private right of action (PRA). In our view, PRAs lead to frivolous lawsuits and only benefit a subset of industry operating in the litigation space.

We believe that HB 895 will put Maryland at a competitive disadvantage by creating an uneven playing field. Other industries known to use customer data in pricing decisions are exempt while both online and brick and mortar retailers are targeted. Without the ability to optimize pricing dynamically, stores must price conservatively, leading to higher average prices. This bill will also reduce businesses' ability to offer targeted promotions and personalized discounts to price-sensitive customers, and will limits markdown capabilities on perishables, increasing food waste and costs passed to consumers.

For the reasons stated above, TechNet is respectfully opposed to HB 895 in its current form. Please don't hesitate to reach out with any questions.

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Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic

Page 1, line 2, strike **DYNAMIC** and insert **SURVEILLANCE**

Page 2, lines 20-28 strike language and insert:

(3) "SURVEILLANCE PRICING" MEANS THE PRACTICE OF USING ARTIFICIAL INTELLIGENCE TO OFFER OR DISPLAY AN INDIVIDUALIZED PRICE INCREASE FOR A SPECIFIC CONSUMER BASED ON SURVEILLANCE DATA OF SUCH CONSUMER.

(4) "BASELINE PRICE" MEANS, WITH RESPECT TO A GOOD OR SERVICE, THE THEN-CURRENT PRICE GENERALLY MADE AVAILABLE TO CONSUMERS IN A GIVEN REGION BY THE SUPPLIER, EXCLUDING LOYALTY OR CLUB MEMBER PRICING, PROMOTIONAL OFFERS, LIMITED TIME SALES, DISCOUNTS, OR ADDITIONAL FEES FOR PREMIUM OR ADDITIONAL FEATURES.

(5) (I) "INDIVIDUALIZED PRICE INCREASE" MEANS A PRICE FOR A GOOD OR SERVICE THAT IS ABOVE THE BASELINE PRICE AND IS SET FOR A CONSUMER BASED ON SURVEILLANCE DATA.

(II) "INDIVIDUALIZED PRICE INCREASE" DOES NOT INCLUDE PRICE DIFFERENCES BASED ON:

(I) COSTS ASSOCIATED WITH PROVIDING THE GOOD OR SERVICE TO DIFFERENT CONSUMERS, FOR EXAMPLE PRICE CHANGES ATTRIBUTABLE TO INVENTORY, SUPPLY CHAIN, ORDER FULFILLMENT, TAXES, SHIPPING, OR DELIVERY; OR

(II) NON-INDIVIDUALIZED FACTORS SUCH AS CURRENT MARKET DEMAND, PUBLIC COMPETITOR PRICING OR TIME-OF-DAY.

(6) "PERSONAL DATA" HAS THE MEANING STATED IN §13-4701 ONLINE DATA PRIVACY ACT.

(7) "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.

On page 3, lines 1-7, strike language.

Rationale:

TechNet's suggested language clearly defines surveillance pricing as limited to individualized price increases and provides a definition of "Individualized Price Increase" in relation to "Baseline Price". These changes also distinguish individualized price increases from price differences that may be associated with costs of providing the good to the customer, such as taxes or costs of delivery. Additionally, the suggested language removes the definition of "Dynamic Pricing", allowing retailers to offer time-of-day discounts, such as lowering the price of bakery goods or prepared foods at the end of the day to prevent food waste. Instead of creating a novel definition of "Surveillance Data", we suggest the definition of "Personal Data" in accordance with the Maryland Online Data Privacy Act:

> (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.

Finally, these changes clearly define "Protected Class Data".

Page 3, lines 8-10, strike and replace prohibition language with the following:

(B) A FOOD RETAILER MAY NOT ENGAGE IN SURVEILLANCE PRICING.

Rationale:

This language will clearly prohibit surveillance pricing as limited to individualized price increases, and aligns the prohibition with the definitions.

13.411. Enforcement
Page 3, lines 16-26 strike and insert:

(D) A VIOLATION OF THIS SECTION IS:
(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE;
(2) SUBJECT TO EXCLUSIVE ENFORCEMENT BY THE ATTORNEY GENERAL AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE EXCEPT FOR §13–408 AND §13-411 OF THIS ARTICLE; AND
(3) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED AS PROVIDING THE BASIS FOR, OR BE SUBJECT TO, A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS CHAPTER OR UNDER ANY OTHER LAW.

Rationale:

- This language sets out clear consequences for violating the surveillance pricing provision set out in the proposed Section 13-321 of the Consumer Protection Act. It also clarifies AG-only enforcement and no private right of action (13-408 does not apply). Finally, it eliminates criminal penalties, consistent with the original language (13-411 does not apply).