

SENATE BILL 387

I3, 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 _____

1 AN ACT concerning

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

5 FOR the purpose of prohibiting a food retailer and a third-party food delivery service
6 provider from engaging in the practice of dynamic pricing or using consumer
7 ~~surveillance personal~~ data to set a price for consumer goods or services; prohibiting
8 a food retailer and a third-party food delivery service provider from using protected
9 class data to offer, advertise, or sell a consumer good or service under certain
10 circumstances; ~~prohibiting a food retailer from diminishing or impairing any right~~
11 ~~or benefit guaranteed to employees of the food retailer under an existing collective~~
12 ~~bargaining agreement or memorandum of understanding under certain~~
13 ~~circumstances~~; making a certain violation of this Act an unfair, abusive, or deceptive
14 trade practice that is subject to enforcement and penalties under the Maryland
15 Consumer Protection Act; and generally relating to the regulation of food retailers
16 and third-party food delivery service providers.

17 BY adding to

18 Article – Commercial Law

19 Section 13–321

20 Annotated Code of Maryland

21 (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.

1 BY repealing and reenacting, with amendments,
2 Article – Commercial Law
3 Section ~~13–408~~ and 13–411
4 Annotated Code of Maryland
5 (2025 Replacement Volume)

6 BY repealing and reenacting, without amendments.
7 Article – Commercial Law
8 Section 14–4701(a) and (w)
9 Annotated Code of Maryland
10 (2025 Replacement Volume)

11 ~~BY adding to~~
12 ~~Article – Labor and Employment~~
13 ~~Section 4–406~~
14 ~~Annotated Code of Maryland~~
15 ~~(2025 Replacement Volume)~~

16 BY repealing and reenacting, without amendments,
17 Article – Tax – General
18 Section 11–206(c)
19 Annotated Code of Maryland
20 (2022 Replacement Volume and 2025 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Commercial Law**

24 **13–321.**

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

27 ~~(2) “ARTIFICIAL INTELLIGENCE” HAS THE MEANING STATED IN §~~
28 ~~3.5–801 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

29 (2) “CONSENT” HAS THE MEANING STATED IN § 14–4701 OF THIS
30 ARTICLE.

31 (3) (i) “DYNAMIC PRICING” MEANS ~~THE PRACTICE OF VARYING~~
32 ~~THE PRICES OF CONSUMER GOODS OR SERVICES WITHIN A BUSINESS DAY BASED ON~~
33 ~~DEMAND OR OTHER FACTORS, INCLUDING THROUGH THE USE OF ARTIFICIAL~~
34 ~~INTELLIGENCE OR MODELS THAT RETRAIN OR RECALIBRATE BASED ON RECEIVED~~
35 ~~INFORMATION IN NEAR REAL-TIME~~ DISCRIMINATORY PRACTICE OF OFFERING OR
36 SETTING A PERSONALIZED PRICE FOR A GOOD OR SERVICE THAT IS SPECIFIC TO A

Commented [A1]: Framing the definition in a more neutral fashion. Doesn't change the scope.

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

3 (II) “DYNAMIC PRICING” DOES NOT INCLUDE ~~THE~~:

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

7 2. A DIFFERENCE IN PRICE BASED ON OBJECTIVE COSTS
 8 ATTRIBUTABLE TO PROVIDING CONSUMER GOODS OR SERVICES TO DIFFERENT
 9 CONSUMERS, SUCH AS A DIFFERENCE IN PRICE CAUSED BY SHIPPING COSTS OR
 10 TAXES BASED ON A CONSUMER’S PHYSICAL LOCATION;

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

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

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

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

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

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

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

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

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

Commented [A2]: In the middle of the night is more expensive. Or there could be a premium price for speed.

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

3 ~~(5) “SURVEILLANCE DATA” MEANS CONSUMER INFORMATION~~
4 ~~COLLECTED AND TRACKED BY TECHNOLOGICAL METHODS, SYSTEMS, OR TOOLS,~~
5 ~~SUCH AS SENSORS, CAMERAS, DEVICE TRACKING, BIOMETRIC MONITORING, OR~~
6 ~~OTHER FORMS OF OBSERVATION OR DATA COLLECTION, THAT ARE CAPABLE OF~~
7 ~~GATHERING PERSONALLY IDENTIFIABLE INFORMATION ABOUT A CONSUMER’S~~
8 ~~BEHAVIOR, CHARACTERISTICS, LOCATION, OR OTHER PERSONAL ATTRIBUTES,~~
9 ~~WHETHER IN A PHYSICAL OR DIGITAL ENVIRONMENT.~~

10 (5) “PERSONAL DATA” HAS THE MEANING STATED IN § 14-4701 OF
11 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 [A3]: Adding a definition that's currently missing and ambiguous.

1412 (6) (I) “THIRD-PARTY FOOD DELIVERY SERVICE PROVIDER”
1413 MEANS A COMPANY MERCHANT THAT FACILITATES PROVIDES AS A CONSUMER’S
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.

1414 (II) “THIRD-PARTY FOOD DELIVERY SERVICE PROVIDER” DOES
1415 NOT INCLUDE A FOOD RETAILER.

1416 (B) A FOOD RETAILER OR THIRD-PARTY FOOD DELIVERY SERVICE
1417 PROVIDER MAY NOT:

1418 (1) ENGAGE IN DYNAMIC PRICING TO INCREASE A PRICE FOR
1419 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~~

1420 (2) USE ~~SURVEILLANCE~~ PERSONAL DATA TO ~~SET~~ INCREASE A PRICE
1421 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
SINGLE SPECIFIC CONSUMER OR A GROUP OF CONSUMERS.

Commented [A4]: Aligning with the clause above. The “group of consumers” has been giving compliance teams heartburn.

1422 (C) A FOOD RETAILER OR THIRD-PARTY FOOD DELIVERY SERVICE
1423 PROVIDER MAY NOT USE PROTECTED CLASS DATA TO OFFER, ADVERTISE, OR SELL
1424 A CONSUMER GOOD OR SERVICE TO A CONSUMER FOR WHOM THE PROTECTED CLASS
1425 DATA PERTAINS IF THE USE OF THE PROTECTED CLASS DATA HAS THE EFFECT OF

Commented [A5]: Deleting “food” consistent with new definitions

~~2526~~ WITHHOLDING OR DENYING FROM THE CONSUMER AN ACCOMMODATION, AN
~~2627~~ ADVANTAGE, OR A PRIVILEGE ACCORDED TO OTHERS.

~~2728~~ (D) (1) BEFORE INITIATING AN ENFORCEMENT ACTION UNDER SUBTITLE
~~2829~~ 4 OF THIS TITLE FOR A VIOLATION OF THIS SECTION, THE DIVISION SHALL ISSUE A
~~2930~~ NOTICE OF VIOLATION TO THE ALLEGED VIOLATOR.

1 **(2) THE DIVISION SHALL PROVIDE THE ALLEGED VIOLATOR 45 DAYS**
2 **AFTER THE NOTICE OF VIOLATION IS RECEIVED TO CURE THE VIOLATION.**

3 **(3) IF THE ALLEGED VIOLATOR CURES THE VIOLATION WITHIN THE**
4 **TIME PERIOD SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE**
5 **DIVISION MAY NOT INITIATE AN ENFORCEMENT ACTION FOR A VIOLATION OF THIS**
6 **SECTION.**

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

9 13-408.

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

12 **(B) In addition to any action by the Division or Attorney General authorized by**
13 **this title and any other action otherwise authorized by law, any person may bring an action**
14 **to recover for injury or loss sustained by him as the result of a practice prohibited by this**
15 **title.**

16 **[(b)] (C) Any person who brings an action to recover for injury or loss under this**
17 **section and who is awarded damages may also seek, and the court may award, reasonable**
18 **attorney's fees.**

19 **[(c)] (D) If it appears to the satisfaction of the court, at any time, that an action**
20 **is brought in bad faith or is of a frivolous nature, the court may order the offending party**
21 **to pay to the other party reasonable attorney's fees.**

22 **[(d)] (E) Notwithstanding any other provision of this section, a person may not**
23 **bring an action under this section to recover for injuries sustained as a result of the**
24 **professional services provided by a health care provider, as defined in § 3-2A-01 of the**
25 **Courts Article.**

26 13-411.

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

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

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

11 ~~Article - Labor and Employment~~

12 ~~4-406.~~

13 ~~(A) IN THIS SECTION, "FOOD RETAILER" HAS THE MEANING STATED IN §~~
14 ~~13-321 OF THE COMMERCIAL LAW ARTICLE.~~

15 ~~(B) A FOOD RETAILER MAY NOT IMPLEMENT AN ADMINISTRATIVE,~~
16 ~~OPERATIONAL, OR ORGANIZATIONAL CHANGE THAT DIMINISHES OR IMPAIRS ANY~~
17 ~~RIGHT OR BENEFIT GUARANTEED TO EMPLOYEES OF THE FOOD RETAILER UNDER~~
18 ~~AN EXISTING COLLECTIVE BARGAINING AGREEMENT OR MEMORANDUM OF~~
19 ~~UNDERSTANDING UNLESS THE CHANGE IS NEGOTIATED AND MUTUALLY AGREED ON~~
20 ~~WITH THE EXCLUSIVE REPRESENTATIVE OF THE EMPLOYEES.~~

21 ~~(C) A PERSON MAY BRING AN ACTION TO RECOVER FOR INJURY OR LOSS~~
22 ~~SUSTAINED AS A RESULT OF A VIOLATION OF THIS SECTION.~~

23 ~~(D) A PERSON WHO BRINGS AN ACTION TO RECOVER FOR INJURY OR LOSS~~
24 ~~UNDER THIS SECTION AND WHO IS AWARDED DAMAGES MAY ALSO SEEK, AND THE~~
25 ~~COURT MAY AWARD, REASONABLE ATTORNEY'S FEES.~~

26 ~~(E) IF IT APPEARS TO THE SATISFACTION OF THE COURT, AT ANY TIME,~~
27 ~~THAT AN ACTION IS BROUGHT IN BAD FAITH OR IS OF A FRIVOLOUS NATURE, THE~~
28 ~~COURT MAY ORDER THE OFFENDING PARTY TO PAY TO THE OTHER PARTY~~
29 ~~REASONABLE ATTORNEY'S FEES.~~

30 Article - Tax - General

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1 11-206.

2 (c) (1) Except as provided in paragraph (2) of this subsection, the sales and
3 use tax does not apply to a sale of food for consumption off the premises by a food vendor
4 who operates a substantial grocery or market business at the same location where the food
5 is sold.

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

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

9 (ii) food for immediate consumption.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.