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February 10, 2026

TO: The Honorable Kriselda Valderrama, Chair
Economic Matters Committee

FROM: Hanna Abrams, Assistant Attorney General

RE: House Bill 148 – Consumer Protection and Labor and Employment –
Surveillance–Based Price and Wage Setting – Prohibition
SUPPORT WITH AMENDMENT

The Consumer Protection Division of the Office of the Attorney General supports the surveillance pricing provisions of House Bill 148 (“HB 148”), sponsored by Delegate Vogel, with amendments. House Bill 148 prohibits businesses from using consumers’ personal data and artificial intelligence to personalize prices or wages.¹

House Bill 148 restricts businesses use of “surveillance pricing” to personalize prices for consumers. Surveillance pricing uses massive amounts of data 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. Advances in data collection and artificial intelligence allow companies to collect, purchase, and analyze your personal data on an unimaginable scale. Companies exploit this trove of detailed personal data – 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.

This harms consumers in a number of ways. First, consumers buying the same product or service at the same time from the same business may be offered different prices. These price differences can be discriminatory based on characteristics such as race, gender, age, income, or geographic location. Second, surveillance pricing incentivizes data brokers to collect vast amounts of data in order to predict individual consumer’s cost thresholds. And finally,

¹ The Division’s testimony is limited to the surveillance pricing provisions of HB 148.

surveillance pricing results in a lack of transparency around pricing practices and prevents consumers from making informed choices.

Store loyalty programs should not be exempted from this bill. On the surface, loyalty rewards programs entice consumers by offering free enrollment accompanied by discounts. In reality, loyalty programs function as “surveillance infrastructure”: consumers often unknowingly pay for this benefit with their personal data.² A Consumer Reports investigation revealed that Kroger collects such vast amounts of data to build profiles of its customers that one profile stretched across *62 pages* and included inferences about the consumer’s income, gender, household size, and education.³ Kroger has monetized this information, reportedly selling or sharing these loyalty profiles with more than 50 companies, from tobacco firms to data brokers to health tech companies, making more than 35% of the company’s net income in 2024 from leveraging this data.⁴

Amendments to the Definitions

The Division recommends two amendments to HB 148 to clarify the scope and intent of the bill. First, replace the phrase “personal or genetic information, behavior, or biometrics” in the definition of “surveillance data” (page 3, line 12), with a cross reference to the definition of “personal data” found in the Maryland Online Data Privacy Act (MODPA).⁵ The definition found in MODPA already incorporates genetic and biometric information. In the Commercial Law Article, the phrase “personal information” is used to refer to a very limited number of pieces of consumer information such as a person’s financial account number or driver’s license; “personal information” is too limited to incorporate the full scope of consumer personal data that is used in surveillance pricing.⁶

Second, the Division recommends replacing the definition of “artificial intelligence”⁷ (page 2, line 25-26), with a cross reference to the Insurance Code’s definition (MD Code Ann., Ins. Law, § 15-10B-05.1). As drafted, the definition fails to address two key aspects of artificial intelligence. By limiting its scope to “predictions, recommendations, or decisions” and omitting any reference to content, it may not clearly encompass systems whose primary function is content generation or other original outputs. Although content generation can be described technically as a form of prediction, that characterization is not apparent from the term’s ordinary

² Samuel A.A. Levine and Stephanie T. Nguyen, “The Loyalty Trap: How Loyalty Programs Hook Us with Deals, Hack Our Brains, and Hike Our Prices”, Vanderbilt Policy Accelerator (October 2025).

³ See Cyrus Rassool, “Consumer Reports Investigation Uncovers Kroger’s Widespread Data Collection of Loyalty Program Members to Create Secret Shopper Profiles,” CONSUMER REPORTS (May 21, 2025), <https://www.consumerreports.org/media-room/press-releases/2025/05/consumer-reports-investigation-uncovers-krogers-widespread-data-collection-of-loyalty-program-members-to-create-secret-shopper-profiles/>

⁴ *Id.*

⁵ Md. Code Ann., Com. Law, § 14-4701(w) (“Personal data” means any information that is linked or can be reasonably linked to an identified or identifiable consumer).

⁶ See Md. Code Ann., Com. Law, § 14-3501.

⁷ Md. Code Ann., State Fin. And Proc. § 3.5–801 reads: (c) “Artificial intelligence” means a machine–based system that: (1) can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments; (2) uses machine and human–based inputs to perceive real and virtual environments and abstracts those perceptions into models through analysis in an automated manner; and (3) uses model inference to formulate options for information or action.

meaning. In addition, by restricting objectives to those that are “human-defined,” the definition does not clearly encompass implicit objectives—goals not explicitly coded but learned from data or inferred from behavior. The definition found in the Insurance Code provides sufficient flexibility to accommodate both existing technology and future developments.

The Division asks the Economic Matters Committee to issue a favorable report with the amendments discussed.

Cc: Delegate Joe Vogel
Members, Economic Matters Committee