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March 27, 2026

The Honorable Kriselda Valderrama
Chair
230 House Office Building
Annapolis, MD 21401

Re: Senate Bill 387 - Food Retailers and Third-Party Food Delivery Service Providers - Dynamic Pricing and Personal Data (Protection From Predatory Pricing Act) (Letter of Concern)

Dear Chair Valderrama,

I write regarding Senate Bill 387 - Food Retailers and Third-Party Food Delivery Service Providers - Dynamic Pricing and Personal Data (Protection From Predatory Pricing Act). The Senate amendments to Senate Bill 387 would transform a consumer protection bill into a consumer protection failure. I support this bill and the Governor's priority of protecting Marylanders from dynamic pricing by food retailers and delivery services. But the right-to-cure provisions added in the Senate would render enforcement effectively impossible, and I cannot support the bill in its current form.

Marylanders are hurting. Rising food prices and the cost of living are real burdens for the families this legislation is meant to protect. The General Assembly has an opportunity to do more than signal its awareness of that burden. It can pass a law that actually addresses it. But a law without meaningful enforcement is not relief. It is a statement. Marylanders deserve more than a statement.

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The right-to-cure requirement would undermine the two core goals of any enforcement action: stopping practices that harm Maryland consumers and obtaining restitution for those already harmed. Some right-to-cure frameworks make sense, for technical violations, ambiguous requirements, or situations where a business might genuinely not know it is out of compliance. Dynamic pricing is none of those things. A retailer that adjusts prices based on data collected about individual consumers has made a deliberate business decision to do so. It has built or licensed the systems that make it possible. It knows exactly what it is doing. Treating that conduct as though it might be a misunderstanding, giving notice, waiting, and allowing the retailer to walk away without consequence, is not a measured enforcement framework. It is an unwillingness to hold bad actors accountable.

The right-to-cure requirement also reflects a misunderstanding of how enforcement actually works. My office does not send notices of violation casually. A notice to a retailer that it may have violated Maryland law is a serious matter. Before any such notice goes out, attorneys and investigators must first determine whether a violation has actually occurred. That is not a simple determination. Unlike a deceptive advertisement or a missing disclosure, a prohibited dynamic pricing practice is embedded in a retailer's data systems and pricing algorithms. Identifying it requires technical analysis, document review, and legal judgment, all before any formal action, all at real cost to the Office, and with no guarantee of recovery for the State or restitution for consumers who were harmed.

That matters in the current budget environment. The Consumer Protection Division has 13 attorneys and 5 investigators handling approximately 140 active matters at any given time. Every investigation is a choice about where to direct limited staff capacity. When my office receives a complaint, we first seek resolution through mediation. We pursue formal enforcement only when a business has engaged in a pattern or practice of violations affecting a significant number of consumers or causing serious harm. But those are precisely the cases the right-to-cure is most likely to obstruct. The more systematic the violation, the more the right-to-cure benefits the violator. The Office bears the full cost of the investigation, and the business avoids all accountability simply by agreeing to stop what it should never have done in the first place.

The elimination of the private right of action makes this worse. Businesses that violate the law would face no meaningful consequence: my office, operating with constrained resources, is unlikely to be able to pursue cases that yield no recovery, and consumers would have no independent recourse. The Senate amendments do not limit enforcement. They eliminate it.

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I urge the General Assembly to remove the right-to-cure language and restore the private right of action before this bill is enacted. This Governor made affordability a priority because Marylanders are counting on us to act. Let's give them a law that delivers.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown