

March 9, 2026

Senator Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

Senator Antonio Hayes
Vice Chair, Senate Finance Committee
223 James Senate Office Building
11 Bladen Street
Annapolis, Maryland 21401

Senator Clarence Lam
420 Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

RE: Letter in Opposition to Maryland SB 889

Dear Chair Beidle, Vice Chair Hayes, and Senator Lam:

On behalf of the advertising industry, we write to oppose Maryland SB 889.¹ We provide this letter to offer our non-exhaustive list of concerns about this bill. SB 889 would significantly limit Maryland consumers' access to discounts and special pricing, prohibit the use of third-parties to support pricing and rewards that benefit consumers, and establish a new private right of action. Accordingly, we ask you to decline to advance the bill as drafted out of the Senate Finance Committee ("Committee").

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,000 companies that power the commercial Internet, which accounted for nearly 20 percent of total U.S. gross domestic product ("GDP") in 2024.² By one estimate, approximately 17.0% of Maryland jobs in 2024 were related to the ad-subsidized Internet, a share projected to increase to 18.5% by 2029.³ Our group has more than a decade's worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with the Committee further on the points we discuss in this letter.

¹ Maryland SB 889 (2025-2026 Session), located [here](#) (hereinafter, "SB 889").

² S&P Global, THE ECONOMIC IMPACT OF ADVERTISING ON THE US ECONOMY, 2024-2029 at 4 (Aug. 2025), located at https://theadcoalition.com/wp-content/uploads/2025/08/TAC_SP-Global-Final-Report_August-2025.pdf.

³ *Id.* at 15-16.

I. SB 889 would limit access to discounts and special pricing offers that Maryland consumers rely on to manage everyday costs.

SB 889 would fail to adequately protect the everyday value that common pricing practices, such as discounts and personalized offers, provide to Maryland consumers, nor does it recognize that personalized pricing strategies can enhance consumer choice and satisfaction. In fact, it would penalize Maryland companies by prohibiting them from using these routine and expected practices to grow their businesses.

Under the bill, a business may not engage in “surveillance-based price pricing” or use a third party to engage in “surveillance-based price pricing” to customize the price of goods for individual consumers.⁴ In practice, these restrictions would likely prohibit consumer-friendly pricing practices that Marylanders encounter and value every day. For example, SB 889 would make it unclear whether it would be permissible for a grocery retailer to use location and purchase history to provide a consumer, who regularly purchases fresh produce, a targeted discount on a surplus of fruits. This type of personalized discount is expected and benefits consumers through lower prices, reduces food waste, and helps retailers manage inventory more efficiently, yet it may be swept into the bill’s broad prohibition if the grocery retailer relies on consumer data rather than uniform pricing to all consumers. While SB 889 does provide limited exceptions for customizing pricing when based on differences in cost to provide a good or service to different consumers or if the discount is offered to all consumers of a group, the bill could significantly curtail discounting and special pricing for the average consumer who may not, or may not yet, be enrolled in such programs.⁵ By prohibiting such commonplace practices, SB 889 dismisses the role that data-driven pricing plays in delivering value to a broader set of consumers.

II. SB 889 would establish a private right of action which is an inappropriate form of enforcement for the legislation.

As presently drafted, SB 889 would create a private right of action by adding Section 13-321 to the codified Maryland Consumer Protection Act.⁶ SB 889 should be updated to clarify that it does not create a private right of action under any law. We strongly believe a private right of action would be an inappropriate enforcement mechanism for this bill. Instead, enforcement should be vested with the Attorney General (“AG”) alone, because such an enforcement structure would lead to stronger outcomes for Maryland residents while better enabling businesses to allocate resources to developing processes, procedures, and plans to facilitate compliance with

⁴ SB 889 § 13-321(D).

⁵ SB 889 § 13-321(C)(2)).

⁶ SB 889 § 13-321. See Md. Comm. Law Code § 13-408 for the private right of action provision.

the bill's new requirements. AG enforcement, instead of a private right of action, is in the best interests of consumers and businesses alike.

The possibility of a private right of action in SB 889 would create a complex and flawed compliance system without tangible benefits for consumers. Allowing private actions will flood Maryland's courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm.⁷ Private right of action provisions are completely divorced from any connection to actual consumer harm and provide consumers little by way of protection from detrimental data practices.

Additionally, a private right of action would have a chilling effect on the State's economy by creating the threat of steep and unforeseeable costs for companies that are good actors but inadvertently fail to conform to technical provisions of law. Private litigant enforcement provisions do not effectively address consumer protection concerns or deter undesired business conduct. They expose businesses to extraordinary and potentially enterprise-threatening costs for technical violations of law rather than drive systemic and helpful changes to business practices. A private right of action would also encumber businesses' attempts to innovate by threatening companies with expensive litigation costs, especially if those companies are visionaries striving to develop transformative new technologies. The threat of an expensive lawsuit may force smaller companies to agree to settle claims against them, even if the claims are without merit.⁸

Beyond the staggering cost to Maryland businesses, the resulting snarl of litigation could create a chaotic and inconsistent enforcement framework with conflicting requirements based on differing court outcomes. Overall, the possibility of a private right of action would serve as a windfall to the plaintiff's bar without focusing on the business practices that actually harm

⁷ A select few attorneys benefit disproportionately from private right of action enforcement mechanisms in a way that dwarfs the benefits that accrue to the consumers who are the basis for the claims. For example, a study of 3,121 private actions under the Telephone Consumer Protection Act ("TCPA") showed that approximately 60 percent of TCPA lawsuits were brought by just forty-four law firms. Amounts paid out to consumers under such lawsuits proved to be insignificant, as only 4 to 8 percent of eligible claim members made themselves available for compensation from the settlement funds. U.S. Chamber Institute for Legal Reform, *TCPA Litigation Sprawl* at 2, 4, 11-15 (Aug. 2017), located [here](#).

⁸ For instance, in the early 2000s, private actions under California's Unfair Competition Law ("UCL") "launched an unending attack on businesses all over the state." American Tort Reform Foundation, *State Consumer Protection Laws Unhinged: It's Time to Restore Sanity to the Litigation* at 8 (2003), located [here](#). Consumers brought suits against homebuilders for abbreviating "APR" instead of spelling out "Annual Percentage Rate" in advertisements and sued travel agents for not posting their phone numbers on websites, in addition to initiating myriad other frivolous lawsuits. These lawsuits disproportionately impacted small businesses, ultimately resulting in citizens voting to pass Proposition 64 in 2004 to stem the abuse of the state's broad private right of action under the UCL. *Id.*



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consumers. We therefore encourage the Committee to clarify that SB 889 does not create a private right of action under any law and vests enforcement authority with the AG alone.

* * *

We respectfully ask the Committee not to advance SB 889, as its provisions would negatively affect both businesses and consumers alike. Rather than strengthening consumer protections, the bill risks higher prices, reduced choice, and fewer opportunities for consumers to benefit from discounts and incentives, while also limiting businesses' ability to use third party data to offer competitive pricing and promotions.

Thank you in advance for your consideration of this letter.

Sincerely,

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