

**FROM:** Myles Hicks  
**RE:** Protection from Predatory Pricing Act One Pager

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## **Background**

Grocery stores are starting to transition to electronic shelf labels (ESLs) that display digital price tags that allow for instant price changes, which reduces the cost and labor of manually updating prices. [Walmart, Lidl, Kroger and Whole Foods Market](#) have already installed ESLs. Last year, U.S. Senator Warren and now former Sen. Casey wrote a letter to Kroger following their adoption and use of ESLs highlighting concerns of the chain's transition to dynamic pricing and exploitation of sensitive consumer data. According to Harvard Business School Online, "dynamic pricing" is achieved through the use of ESLs in which the price of basic household goods could surge based on the time of day, the weather, transitional events, or sensitive consumer data as determined by the grocery store.

Maryland has seen multiple iterations of dynamic pricing issues in transportation (tolls on some highways), sports tickets, and utilities sectors. The amount of granularity of data available has opened doors for businesses and retailers to target consumers at scale, and the speed at which prices can change the price of basic household goods based on the time of day, the weather, or other transitory events.

The Protection from Predatory Pricing Act sponsored by Governor Moore will specifically address concerns with the potential for dynamic pricing to harm consumers in grocery stores because consumers across the nation are voicing fears that prices could shift mid-shop. The two major focuses of Protection from Predatory Pricing Act are to prohibit:

1. dynamic pricing in grocery stores by requiring prices to be fixed for at least one business day
2. the use of "surveillance data" as part of an "automated decision system to inform" individualized prices.

## **Helpful Links**

[Maryland leaders seek to ban data-driven pricing for grocery items](#)

[Goodbye, Price Tags. Hello, Dynamic Pricing.](#)

[Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds](#)

[Welcome to the Grocery Store Where Prices Change 100 Times a Day](#)