



February 17, 2026

The Honorable Pamela Beidle  
Chair  
Senate Committee on Finance  
Miller Senate Office Building, Room 3E  
11 Bladen Street  
Annapolis, MD 21401-1991

**RE: Oppose SB 387 - "Food Retailers – Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements"**

Dear Chair Beidle and members of the committee:

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a society in which all people benefit from technological advances, I respectfully **urge you to oppose SB 387**, which would harm consumers in Maryland.

We share the General Assembly's concern about affordability. The cost of living is the top issue facing American families,<sup>1</sup> and we understand the impulse to ensure shoppers are getting a fair deal at the grocery store. But **SB 387 risks backfiring on the very families it aims to help**. Its sweeping ban on "surveillance data" pricing would jeopardize the digital coupons, loyalty rewards, and targeted deals that help Maryland families stretch their grocery budgets, and its restriction on varying prices within a business day could prevent grocers from marking down perishable goods approaching expiration, a practice that saves consumers money and reduces food waste.

**Personalized grocery pricing in practice: coupons, discounts, and savings that help Maryland shoppers**

The term "surveillance pricing" suggests that grocery stores are using personal data to charge individual shoppers higher prices. **But despite widespread speculation, there is very little evidence that this is actually happening**. What grocers overwhelmingly use consumer data for is the opposite: offering discounts, coupons, and targeted promotions that help families save money.

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<sup>1</sup> Erin Doherty. "New Poll Paints a Grim Picture of a Nation Under Financial Strain." *POLITICO*, Dec. 10, 2025. <https://www.politico.com/news/2025/12/10/poll-affordability-cost-of-living-00678076>

This should not be surprising. Grocery retail is an intensely competitive business. Across supermarkets, warehouse clubs, online delivery, and neighborhood markets, grocers compete vigorously for every sale. In a market where shoppers can compare prices with a few taps on their phone, using personal data to charge a customer more is a losing strategy – a competitor will simply offer a better price and win the sale.

Personalized pricing is already a familiar part of grocery shopping. In practice, data-driven grocery pricing looks like this:

- *Personalized coupons.* A grocery chain that uses a shopper's purchase history to offer a coupon on items they buy regularly – a parent who regularly buys children's cereal receiving a timely discount when a new brand hits the shelves.
- *Senior, military, and student discounts.* A grocer that verifies group membership and offers a percentage off to eligible customers, a practice that helps stretch fixed incomes and tight budgets.
- *New parent deals.* A grocery store that notices a customer has started buying diapers and formula and sends them targeted coupons on baby essentials, helping a family manage costs during an expensive transition.
- *Win-back promotions.* A grocery delivery service that notices a customer hasn't placed an order in several weeks and sends them a discount on their most frequently purchased items to win back their business.
- *Budget-stretch deals.* A grocer that identifies customers who consistently buy store-brand products and sale items and directs additional savings their way, targeting discounts to the shoppers who are stretching their budgets the hardest.
- *Inventory-based offers.* A grocery store that uses purchase data to offer targeted discounts on overstocked or near-expiration items to shoppers who have bought similar products before, reducing food waste while giving families a deal.

These are not examples of “predatory pricing.” Consumers have long shown their acceptance and expectation around personalized grocery deals. 70% of consumers say they value loyalty programs,<sup>2</sup> and about 1 in 4 consumers earning under \$40,000 choose their supermarket based on loyalty program membership.<sup>3</sup> A 2024 survey of more than 10,000 consumers found that 91% are willing to share personal data in exchange for value from brands, with discounts, loyalty points, and exclusive access cited as the top motivators.<sup>4</sup>

### **SB 387 would ban these practices and raise grocery costs for Maryland families**

**Under SB 387, every personalized practice described above would be prohibited or placed on uncertain legal ground.** The bill bans using “surveillance data” to set prices for individual

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<sup>2</sup> Bobby Stephens and Ramya Murali. *2024 Consumer Loyalty Survey*. Deloitte, Feb. 24, 2025.

<https://www.deloitte.com/us/en/services/consulting/articles/brand-loyalty-program-consumer-behavior.html>

<sup>3</sup> F. Watty. “Supermarket Choice Due to Membership in Its Loyalty Program in U.S. 2023 by Income.” *Statista*, Jan. 11, 2024.

<https://www.statista.com/statistics/1548425/supermarket-choice-due-to-loyalty-program-by-income-us/>

<sup>4</sup> Marigold. “2024 Global Consumer Trends Index.” *GlobeNewswire*, Jan. 16, 2024.

<https://www.globenewswire.com/en/news-release/2024/01/16/2809582/0/en/Annual-Marigold-Global-Consumer-Trends-Index-Reveals-Need-for-Brands-to-Deliver-on-Data-Privacy-and-Personalization-to-Win-Customer-Loyalty.html>

consumers, defining the term broadly enough to cover purchase history, shopping patterns, and other information collected through loyalty cards, apps, and digital tools. That means the personalized savings that Maryland families rely on would all be swept in. The bill includes an exemption for "loyalty program benefits" and "promotional pricing offers," but that exemption applies only to the definition of "dynamic pricing." The separate surveillance data ban contains no such carve-out.

The bill's undefined prohibition on "protected class data" creates additional risk. SB 387 bars grocers from using protected class data to offer goods if doing so has the *effect* of denying a consumer "an accommodation, an advantage, or a privilege accorded to others." Maryland's protected classes include age. Under an effects-based standard that requires no showing of discriminatory intent, common practices like senior discounts and student discounts could face legal challenge, since offering a price advantage to one age group necessarily withholds it from others. Whether or not the bill's authors intended this outcome, this ambiguity could have a chilling effect on beneficial, pro-consumer pricing practices.

The economic cost of eliminating these practices would be significant. Research shows that personalized pricing delivers lower prices for the majority of consumers.<sup>5</sup> Digital coupons alone save the average American household \$1,465 each year.<sup>6</sup> And low-income families, especially those with children, are among the most active coupon users and deal-seekers, meaning they would bear the heaviest burden.<sup>7</sup>

### **SB 387 does not do enough to protect intraday price reductions that benefit consumers**

SB 387's ban on varying prices within a business day threatens one of the most effective tools grocers have for reducing waste and saving consumers money: marking down perishable goods as they approach their sell-by dates. Dynamic pricing of perishables can reduce grocery food waste by up to 21%,<sup>8</sup> and U.S. grocers waste roughly 5 million tons of food each year.<sup>9</sup> The bill's exemptions for "promotional pricing offers" and "temporary discounts" may have been intended to preserve these markdowns, but the exemptions were designed around marketing promotions and customer retention, not inventory management.

A grocer marking down chicken at 4pm because it expires tomorrow fits the bill's definition of banned "dynamic pricing," and the exemptions do not clearly say otherwise. Where grocers use purchase data to send *targeted* markdowns to the shoppers most likely to buy expiring products, the surveillance data ban applies with no exemption at all. **The bill does not give grocers the legal clarity they need to adopt these practices with confidence, and**

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<sup>5</sup> Jean-Pierre Dube and Sanjog Misra. "Personalized Pricing and Consumer Welfare." *Journal of Political Economy* 131, no. 1 (2023): 131-189. <https://www.journals.uchicago.edu/doi/10.1086/720793>

<sup>6</sup> Elyssa Kirkham. "Study: Skipping Online Coupons Could Cost You \$1,465 Per Year." *CouponFollow*, May 19, 2021. <https://couponfollow.com/research/coupon-data-study>

<sup>7</sup> Stephanie M. Noble et al. "Coupon Clipping by Impoverished Consumers: Linking Demographics, Basket Size, and Coupon Redemption Rates." *International Journal of Research in Marketing* 34, no. 2 (2017): 553-571. <https://doi.org/10.1016/j.ijresmar.2016.08.010>

<sup>8</sup> Brian Maloney. "Digital Labels Can Help Grocers Waste Less Food." *McCombs News*, Dec. 17, 2024. <https://news.mcombs.utexas.edu/research/digital-labels-can-help-grocers-waste-less-food/>

<sup>9</sup> SOLUM. "New Retail Innovation May Eliminate Food Waste For Good." Dec. 8, 2020. <https://www.solumesl.com/en/insights/use-esl-to-reduce-retail-food-waste>

**risk-averse grocers will respond by pulling back, meaning more food wasted and higher shelf prices to absorb the losses.**

The technology that makes dynamic markdowns practical, electronic shelf labels, is already proving its value in the United States and Europe, where major retailers use ESLs to reduce food waste, improve price accuracy, and cut labor costs for price management by up to 80%.<sup>10</sup> Critics worry ESLs will be used to raise prices, but **the largest peer-reviewed study of ESLs in U.S. grocery stores found the opposite.** Researchers analyzed over 180 million product-level observations across 114 stores and found that surge pricing was "basically nonexistent" both before and after ESL adoption, while discounts were slightly more common afterward.<sup>11</sup> **If the General Assembly's goal is to protect consumers from price increases, SB 387 should explicitly protect price decreases.**

### **Surveillance pricing bans have repeatedly stalled and failed nationwide**

Similar algorithmic pricing bans have been introduced in legislatures across the country, and they have repeatedly stalled or failed to advance. The reason is straightforward: **there is no clean way to ban "surveillance pricing" without also banning the personalized savings that families depend on.** Broad bans on personalized pricing inevitably capture the very savings tools that consumers rely on, and legislators who examine these proposals closely reach the same conclusion. If enacted, **Maryland residents would face unique restrictions on grocery discounting practices that consumers in every other state continue to enjoy.**

SB 387 asks Maryland to ban a hypothetical, speculative harm while eliminating the real, documented savings that families depend on every day. Rather than protecting consumers, SB 387 would raise grocery costs, increase food waste, and put common practices on uncertain legal ground. For these reasons, **I respectfully urge you to oppose SB 387.** We are happy to be a resource as you continue working on this issue, and we welcome the opportunity to discuss narrowly tailored alternatives that address discriminatory pricing without restricting the pro-consumer practices Maryland families rely on.

Sincerely,



Brianna January  
Director of State & Local Government Relations, Northeast US

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<sup>10</sup> Jessica Vician. "Electronic Shelf Labels Deliver Flexibility & Eliminate Pricing Errors." *IGA Insights*, Jul. 19, 2023. <https://www.iga.com/insights/electronic-shelf-labels>

<sup>11</sup> Ioannis Stamatopoulos et al. "Electronic Shelf Labels Have Not Led to Surge Pricing in US Grocery Retail, Despite Regulator Concerns." *SSRN*, May 27, 2025. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5271491](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5271491)