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March 12, 2026

**TO:** The Honorable Pamela Beidle, Chair  
Finance Committee

**FROM:** Hanna Abrams, Assistant Attorney General  
Consumer Protection Division

**RE:** Senate Bill 889– Consumer Protection and Labor and Employment –  
Electronic Shelving Labels and Surveillance–Based Price and Wage  
Setting – Prohibitions (SUPPORT WITH AMENDMENTS)

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The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 889 (“SB 889”) sponsored by Senator Lam, with amendments. Senate Bill 889 restricts businesses’ use of consumers’ personal data to personalize prices or wages and prohibits the use of electronic shelving labels.

Senate Bill 889 protects consumers by restricting the use of “surveillance-based price setting.” Surveillance-based 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 and without consumer knowledge. 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.

“Surveillance-based price setting” harms consumers by offering the same product or service at the same time from the same business at different prices to different consumers. 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 an individual consumer’s cost thresholds. And finally, surveillance pricing results in a lack of transparency around pricing practices and prevents consumers from making informed choices. Moreover, because surveillance-based pricing allows businesses to identify an individual consumer’s reservation price (the maximum price a

consumer is willing to pay for a good), it allows a store to charge that consumer more than it would have otherwise.

In addition, although the Division takes no position on the outright ban of electronic shelving labels proposed by SB 889, the Division supports limitations on the use of electronic shelving labels, such as prohibiting retailers from using electronic shelving labels to alter prices for individual consumers or using electronic shelving labels in a way that undermines a consumer's ability to comparison shop, including using them to change prices more frequently. These protections are particularly important in the context of food, an essential good.

Based on testimony in the General Assembly, the Division understands that retailers contend that loyalty programs should be exempted. 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

### **CPD Amendments**

The Division recommends two amendments to SB 889 to clarify the scope and intent of the bill.

- Replace the citation in the definition of “automated decision system” to the State Finance and Procurement Article<sup>4</sup> (page 5, lines 24-25), 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 meaning. In addition, by

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<sup>1</sup> 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).

<sup>2</sup> 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/>

<sup>3</sup> *Id.*

<sup>4</sup> 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.

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 enforcement mechanism on page 6, line 25, should be the Commissioner, rather than the Attorney General.

The Division asks the Senate Finance Committee to issue a favorable report with the amendments discussed.

Cc: Senator Clarence K. Lam  
Members, Finance Committee