

MDOD_SB0387_FAV_FIN_2026.2.13.pdf

Uploaded by: Anne Blackfield

Position: FAV

Carol A. Beatty, Secretary
Anne Blackfield, Deputy Secretary

Wes Moore, Governor
Aruna Miller, Lt. Governor



BILL: SB 387
POSITION: FAV - Favorable
COMMITTEE: Finance
DATE: February 13, 2026

SUBMITTED BY: Maryland Department of Disabilities
217 East Redwood Street, Suite 1300, Baltimore, MD 21202

Dear Chair Beidle,

On behalf of the Maryland Department of Disabilities (MDOD), I write to express our strong support for **SB 387, Protection From Predatory Pricing Act**. This important legislation addresses pricing practices in food retail that can have a disproportionate impact on consumers with limited or fixed incomes, including many Marylanders with disabilities.

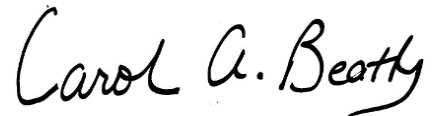
SB 387 prohibits certain food retailers from engaging in dynamic pricing practices that use consumer surveillance data or predictive analytics to set different prices for individual customers. Under the bill's provisions, retailers may not adjust the price of consumer goods or services based on data collected from consumers' purchasing habits, browsing histories, or other individualized surveillance sources. The bill also prohibits the use of protected class data to influence pricing, advertising, or sales of consumer goods and services, ensuring that pricing practices do not unfairly target or disadvantage protected communities.

People with disabilities are significantly more likely to live on limited or fixed incomes than individuals without disabilities. National data consistently show that disability is correlated with lower employment rates and greater reliance on Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), or other fixed public benefits. Because of these economic realities, even modest increases in the cost of essential goods — particularly food — pose real hardship to individuals and families striving to meet basic needs.

By prohibiting pricing practices that can charge different customers differently based on opaque algorithms or personal data, SB 387 will help ensure that essential food items remain affordably and fairly priced for all Marylanders. For consumers with disabilities, who often face higher costs associated with healthcare, transportation, and assistive equipment, protecting affordability and fairness in the food market is critical to maintaining health, independence, and community participation.

MDOD appreciates the General Assembly's attention to policies that promote economic equity and protect vulnerable residents. We respectfully urge **a favorable report on SB 387**.

Sincerely,

A handwritten signature in black ink that reads "Carol A. Beatty". The signature is written in a cursive, flowing style.

Carol Beatty
Secretary, Department of Disabilities

SB 387 - Protection From Predatory Pricing Act - F

Uploaded by: Anthony Trenkle

Position: FAV



One Park Place | Suite 475 | Annapolis, MD 21401-3475
1-866-542-8163 | Fax: 410-837-0269
aarp.org/md | md@aarp.org | twitter: @aarpm
facebook.com/aarpm

**SB 387 - Food Retailers –
Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements
(Protection From Predatory Pricing Act)
Senate Finance Committee
February 17, 2026
FAVORABLE**

Good afternoon, Chair Beidle, Vice Chair Hayes, and members of the Senate Finance Committee. Thank you for the opportunity to present testimony in support of Senate Bill 387 regarding predatory pricing. My name is Tony Trenkle. I am a member of the AARP Maryland Executive Council, an advocacy volunteer, and a resident of Howard County. Thank you to Senators Augustine, Brooks, Charles, Harris, Hettleman, Kagan, King, Lam, Lewis Young, Love, and Zucker for co-sponsoring this legislation.

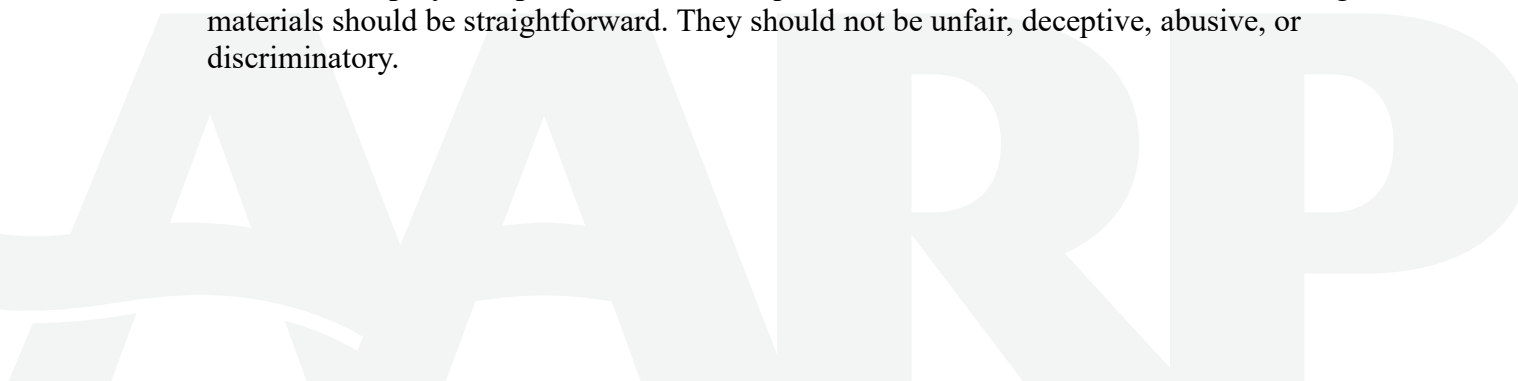
AARP Maryland is one of the largest membership-based organizations in the state, with approximately 850,000 members. We welcome this legislation because it targets a growing problem in the food retail area, the practice of dynamic pricing and using consumer surveillance data to set a price for consumer goods or services. The growing use of artificial intelligence (AI) can turn this practice from a sales strategy into one that creates an unlevel playing field for consumers.

AARP's own Jim Barrett recently wrote, "Data-driven discounts like loyalty programs and targeted promotions can genuinely help shoppers save money. But the rapid rise of artificial intelligence has blurred the line between helpful personalization and something more troubling – real-time predatory pricing based on individual circumstances and vulnerabilities."

Older adults and other vulnerable consumers face heightened risks from hidden, personalized pricing. Many seniors rely on online ordering or limited shopping hours and may not realize prices can change throughout the day, leaving them susceptible to higher charges due to factors such as limited mobility or urgent need. Their strong brand loyalty also makes them easy targets for manipulative loyalty-program pricing.

AARP is committed to consumer rights and fair practices. AARP Consumer Rights and Protection Principles include:

- **Promote fair play and practice**—business practices, consumer contracts, and marketing materials should be straightforward. They should not be unfair, deceptive, abusive, or discriminatory.



- **Foster transparency**—consumers should receive understandable and accurate information about goods and services, pricing, business practices, companies, service providers, risks, and their rights. This information should be in plain, easily understood language.
- **Safeguard privacy**—consumers have a right to personal privacy. They should have the ability to reject the sharing of their personal information. They also have a right to be protected from intrusive marketing practices, communications, and technology.
- **Promote equitable access**—all consumers have a right to basic and necessary goods and services that are affordable, safe, and reliable, regardless of such factors as their age, race, ethnicity, sex, gender identity, sexual orientation, ability level, and income.

Why AARP Maryland Supports SB 387

SB 387 clearly defines how dynamic pricing and the use of surveillance data can create adverse consequences for consumers. It also describes behavior by food retailers that is not acceptable and establishes penalties for violations.

The bill is clearly in line with the AARP Consumer Rights and Protection Principles described above and supports our goals for food security and fair pricing.

Conclusion

AI is advancing at a fast pace, and our laws must keep up with these developments. While there are many ways that AI can provide better shopping tools for consumers, it can also be used to create algorithms that can increase costs and violate privacy. For these reasons, AARP Maryland respectfully urges a **favorable report** on SB 387.

If you have any questions, please contact Sara Westrick at swestrick@aarp.org or by calling 410-310-0374.

MDOA Written FAV - SB 387 - 2.13.26.docx.pdf

Uploaded by: Carmel Roques

Position: FAV



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Date: February 13, 2026

Bill Number: SB 387

Bill Title: Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

Committee: Senate Finance Committee

Maryland Department of Aging Position: FAVORABLE

Madam Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to provide written testimony in support of Senate Bill 387 on behalf of the Maryland Department of Aging. This legislation addresses practices in food retail that may inadvertently place an unfair burden on Maryland consumers, including the State's growing population of older adults.

SB 387 would prohibit grocery retailers from engaging in "dynamic pricing" and from using consumer surveillance data to set or modify prices on essential food items. The bill also strengthens protections for employees, but my testimony will focus on the consumer protection and equity components that directly affect older Marylanders.

Maryland's population is rapidly aging. Maryland currently has more than 1.4 million residents aged 60 and older and this number is growing faster than the national average; so much so that by 2030 approximately 1 in 4 Marylanders will be 60 or older.

Many of these older adults live on fixed incomes, have tighter household budgets, and are especially vulnerable to food price volatility. With health care, prescription drug costs, housing, and transportation expenses rising, even small increases in the price of groceries can force older adults to choose between food and other basic needs.



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

Over 600,000 Marylanders, or more than 1 in 10 households, live in poverty and struggle against hunger. Lack of nutrition security means that children go to school with empty stomachs, that parents, grandparents, and other caregivers skip meals so that children can eat.

Food insecurity among older adults is a serious concern. Defined as a lack of reliable access to affordable, nutritious food, food insecurity is not just a challenge for working families and children; it affects significant numbers of older Marylanders as well. National studies show that older adults are more likely than the general population to experience food insecurity due to fixed income constraints and higher health care costs as they age.

In Maryland, older adults face barriers such as limited mobility, transportation challenges, and reduced access to food resources, all of which can contribute to food insecurity. Dynamic pricing practices can exacerbate food cost burdens.

Without full transparency and consumer protections, such pricing could lead to unpredictable and higher grocery bills for consumers, particularly those least able to absorb price fluctuations, such as older adults on fixed incomes. Maryland's Protection From Predatory Pricing Act would require grocery prices to remain stable for at least one business day and prohibit the use of surveillance data to manipulate individual pricing.

For older Marylanders, price stability and predictability are especially important. Many are on limited budgets and cannot adapt to sudden, opaque increases in the cost of essential goods. This bill will help ensure that older adults can shop for groceries without fear that their age, buying patterns, or economic status could result in higher prices at checkout.

This bill supports broader state goals around nutrition and aging, as set out in Longevity Ready Maryland, our 10 year multi-sector plan, as well as in our nutrition security policy statement. The Maryland Department of Aging administers and supports nutrition programs (including home-delivered meals, congregate dining, and supplemental food services) that help reduce food insecurity among older adults. These programs work to address hunger, improve health outcomes, and reduce isolation.

In 2025, 37,492 Marylanders received support through MDOA's nutrition programs. Home delivered meals and congregate meals, totalling 2,888,640 meals were provided over the course



Wes Moore | Governor

Aruna Miller | Lt. Governor

Carmel Roques | Secretary

of the year and delivered through the Department's Area Agencies on Aging (AAAs) and other programs.

Public programs and services, however, can only do so much when structural market practices increase food costs for vulnerable consumers. Legislation like SB 387 complements nutrition service efforts by mitigating an emerging risk factor for cost-driven food insecurity.

The Maryland Department of Aging strongly supports Senate Bill 387 because it:

- Promotes fair and transparent pricing in food retail, which helps protect older adults who are highly sensitive to food cost fluctuations;
- Reinforces equity for consumers across Maryland's diverse population;
- Aligns with the Department's Longevity Ready Maryland Plan and the Governor's priorities to support Maryland's growing older adult population as they age with dignity and financial stability.

For all these reasons, we urge this Committee to issue a favorable report on SB 387.

Bespoke pricing -- MD SB387 -- 2-17-26 -- FINAL.pd

Uploaded by: George Slover

Position: FAV



Testimony of George Slover
Center for Democracy & Technology

SB 387 – Protection from Predatory Pricing Act

Maryland Senate Finance Committee

February 17, 2026

Chair Beidle and Members of the Committee –

I appreciate the opportunity to testify on behalf of the Center for Democracy & Technology regarding SB 387, the Protection from Predatory Pricing Act. I would like to focus my testimony on the bill’s prohibition against using surveillance data to set grocery prices.

CDT is a nonprofit, nonpartisan organization that works to advance civil rights and civil liberties in the digital age, for everyone. A key part of that mission, since our founding 30 years ago, when the internet was in its infancy, is working to protect consumers against invasion of their privacy, and misuse of their private personal information, to exploit them or discriminate against them.

The digital collection, sorting, processing, and selling of vast amounts of this private personal information – unbounded by any comprehensive data privacy law – has enabled businesses, and data brokers who serve them, to create intimate portraits of individual consumers, which can be used to “size them up” for their susceptibility to pay more – without their knowledge, let alone their consent.

Sellers can now access personal data including the consumer’s previous purchases and searches; income, assets, debts, and financial condition and history; personal and family life; employment, work life, and career history; political, social, and other activities the consumer and the consumer’s family members and friends have engaged in; web-browsing and social media history; and broadly, anything about the consumer recorded or tracked and fed into the big data maw.

This “surveillance pricing” – what we refer to as “bespoke pricing,” as the price is “tailor fitted” to the individual consumer, “made to measure”¹ – is a rank abandonment of the transparent “list price” approach that has served consumers well, and has justified free enterprise as best benefitting consumers and the economy. And it is a betrayal of the touted promise of the internet as a boon for shoppers. It exploits a stark information advantage that sellers using online technology can wield over consumers. It risks reducing what economists refer to as “consumer surplus” – the benefit received by consumers who would have been willing to pay more than the list price, but don’t have to – to zero. It’s Adam Smith’s “invisible hand” turned against consumers, picking their pocket.

Any claim that sellers would use bespoke pricing to benefit their consumers is simply not credible. They are in business to make a profit. Their incentives for obscuring a standard market price work in the direction of *increasing* the price for consumers identified as gullible, desperate, or otherwise susceptible to being overcharged. Because consumers will be kept in the dark, they are far more apt to be taken advantage of than to benefit.

The technology is readily available to sellers, and is becoming easier to use and more powerful with the advance of artificial intelligence. The temptation to use it will be irresistible. We need to rein it in before it becomes a widespread feature of online commerce, in grocery shopping and elsewhere. We appreciate the Committee taking action to do so.

¹ Slover, Bespoke Pricing – What Is the Invisible Hand Up To?, CDT, Sept. 24, 2024, <https://cdt.org/insights/bespoke-pricing-what-is-the-invisible-hand-up-to/>.

2026-02-13 Dynamic Pricing testimony.pdf

Uploaded by: Karen Drazin

Position: FAV

Dear Chair, Vice Chair, and Members of the Committee,

I participated in Consumer Report's Instacart price testing where we found out that several of us were charged different prices for the exact same item, sold in the same store, and at the same time.

I wondered, was this fair? After all, we do pay different prices for the same cars, houses, and many other typically expensive items, if we are willing to negotiate. Then I realized that in our culture we *know* the prices for these items are often negotiated (and not, I hope, based on any data collected about us). The big difference with groceries and other necessary items, is that we expect everyone to be charged the same price for the same item and don't even have a chance to negotiate. We don't even know this practice is going on. We don't know we are being cheated. No, of course, it is not fair.

2.13 SB 387 - Protection From Predatory Pricing Ac

Uploaded by: Lonia Muckle

Position: FAV



**SB 387 - Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements
(Protection From Predatory Pricing Act)**

Senate Finance Committee

February 17, 2026

SUPPORT

Chair Beidle, Vice-Chair, and members of the committee, thank you for the opportunity to submit testimony in support of Senate Bill 387. This bill will prohibit food retailers from adjusting prices according to access to consumer data.

The CASH Campaign of Maryland promotes economic advancement for low-to-moderate income individuals and families in Baltimore and across Maryland. CASH accomplishes its mission through operating a portfolio of direct service programs, building organizational and field capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH and its partners across the state achieve this by providing free tax preparation services through the IRS program 'VITA', offering free financial education and coaching, and engaging in policy research and advocacy. **Almost 4,000 of CASH's tax preparation clients earn less than \$10,000 annually. More than half earn less than \$20,000.**

Surveillance pricing is when companies use personal data to change prices for each consumer based on their browsing history, location history, or purchase history. Beyond a security risk, these practices are highly unethical and stand to only detrimentally affect those who can afford these adjustments the least. SB 387 will take an important step to protect all Maryland families and workers from facing predatory pricing practices in grocery stores.

Dynamic pricing can look like a grocery store determining that a parent consistently buys baby formula, relies on public transportation, or shops late at night after a shift job. The algorithms will quietly raise prices based on perceived "need" or limited alternatives. Dynamic pricing and surveillance data collection will provide food retailers with location data and browsing history to most effectively take advantage of low income and disadvantaged populations.

According to the most recent ALICE threshold data for Maryland, more than 1 in 3 households struggle to cover even their most basic needs. In addition to this, food deserts are a common problem in Maryland, affecting both urban and rural communities. These families are already forced to make impossible choices at checkout: put back milk, skip fresh produce, or stretch meals to make it through the week. Allowing AI-driven dynamic pricing in grocery stores would add another layer of instability and unpredictability to already tight budgets.

Food is not a luxury. It is a necessity that families should not delay due to possible changes in prices. When prices fluctuate throughout the day based on demand or consumer data, low-income households will be disproportionately harmed.

Thus, we encourage you to return a favorable report for SB 387.

Creating Assets, Savings and Hope

SB387 Surveillance Pricing -EconAction FAV.docx.pd

Uploaded by: Marceline White

Position: FAV



**SB387 Food Retailers-Dynamic Pricing, Surveillance Data, and Collective Bargaining
Agreements (Protection from Predatory Pricing Act)
Position: FAV**

February 17, 2026

The Honorable Pam Beidle, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401
cc: Members, Senate Finance

Chair Beidle and Members of the Committee,

Economic Action Maryland Fund is here in strong support of SB387.

Each year, our Securing Older Adult Resources (SOAR), Tenant Advocacy, and Fair Housing programs serve nearly 2000 older adults and renters who struggle to make ends meet.

The high cost of groceries came up as a point of stress for them again and again. In a recent survey we conducted of more than 500 Marylanders, 73% said that skyrocketing food prices had the greatest impact on their economic security.

Maryland families work hard to put food on the table. But this is becoming harder and harder to do. While there are many factors that contribute to the soaring cost of groceries that are outside of our control, technology is something that we can manage to ensure it does not contribute to rising prices.

Technology can be used to increase price transparency and competition but instead grocery store chains are collecting reams of personal data in order to charge people different prices for the same bag of groceries. Grocery stores are doing this through the use of dynamic pricing and surveillance pricing. Grocery stores are moving from traditional labels to electronic labels which can change prices at the flip of a switch-and that's part of the issue.

Dynamic pricing is the practice of changing prices in real-time based on competition, demand, and inventory to maximize profits. Examples of dynamic pricing include rideshares increasing prices (surge pricing) during a sudden thunderstorm, or increasing the price of ice cream on a hot day, or the price of turkey in the days leading up to Thanksgiving.

Dynamic pricing distorts the marketplace and creates an unfair marketplace where retailers exert enormous power to squeeze more profits from financially fragile households. Dynamic

Economic Action (formerly the Maryland Consumer Rights Coalition) champions economic rights and housing justice through advocacy, research, consumer education, and direct service. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.



pricing eliminates the idea of a public price—that is, a price that remains stable. Consumers, who are constantly told to shop around for the best deal, cannot do so if prices are constantly changing and consumers are not privy to why the price changed.

Surveillance pricing is when grocery store chains collect reams of personal data on customers in order to charge people different prices for the same bag of groceries. Why should one customer be charged more for a loaf of bread than another based on personal data? This practice distorts the market, may be based on error-filled data, and skews the market by using these ‘black box’ models to set prices.

This predatory pricing model is often used online as well. It hits older adults hard since many rely on online shopping where it is more difficult for them to compare items between stores or see price differences. Similarly 36% of Baltimore City households do not have cars. These residents and those of people with mobility issues are uniquely vulnerable to these black box pricing models since they are more likely to either shop at the nearest store or rely on online retailers for their groceries.

SB387 simply protects hardworking Marylanders from predatory technology that eliminates the public price of a good and sets higher prices for certain individuals based on the time that they shop or personal characteristics. These tools distort the marketplace, create asymmetrical information, and enable large, national grocery chains to exploit technology to maximize profits by squeezing already struggling customers.

For all these reasons, we support SB387 and urge a favorable report.

Best,

Marceline White
Executive Director

Economic Action (formerly the Maryland Consumer Rights Coalition) champions economic rights and housing justice through advocacy, research, consumer education, and direct service. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

2209 Maryland Ave · Baltimore, MD 21218 | www.econaction.org
Marceline White · Marceline@EconAction.org | Jennifer Bevan-Dangel · Jennifer@EconAction.org

Protection from Predatory Pricing One Pager.pdf

Uploaded by: Myles Hicks

Position: FAV

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

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](#)

Testimony in support of SB0387 - Protection From P

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB0387_RichardKaplowitz_FAV

02/17/2026

Richard Keith Kaplowitz

Frederick, MD 21703

TESTIMONY ON SB#/0387- POSITION: FAVORABLE

Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

TO: Chair Beidle, Vice Chair Hayes, and members of the Finance Committee

FROM: Richard Keith Kaplowitz

My name is Richard Keith Kaplowitz. I am a resident of District 3, Frederick County. I am submitting this testimony in support of SB#/0387, **Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)**

This bill is a consumer and worker protection bill. As studied by Food & Water Watch *How AI Enables Higher Food Prices and Corporate Profits:*¹

With the power of digital technology, data collection, and AI, corporations can pursue new pricing strategies to squeeze even more profits from us. The [data centers powering the AI boom](#) aren't just raising our electricity bills, polluting our air, worsening climate change, and guzzling our water. They're also helping corporations drive prices as high as they can get away with.

The Economic Roundtable issued a report *Bullies At The Table*²

More than nine out of ten grocery store workers in the three states report price gouging at their stores and that their company is raising prices higher than production costs. ... The grocery labor force lives with extreme financial insecurity. More than four-fifths of workers are unable to pay basic living costs. The consequence of the poverty wages received by many grocery workers is that more than two-thirds do not have secure housing. This includes being rent burdened and living in overcrowded housing.

This bill thus will prohibit a food retailer from engaging in the practice of dynamic pricing or using consumer surveillance data to set a price for consumer goods or services; prohibiting a food retailer from using protected class data to offer, advertise, or sell a consumer good or service under certain circumstances; prohibiting a food retailer from diminishing or impairing any right or benefit guaranteed to employees of the food retailer under an existing collective bargaining agreement or memorandum of understanding; etc.

I respectfully urge this committee to return a favorable report on SB#/0387.

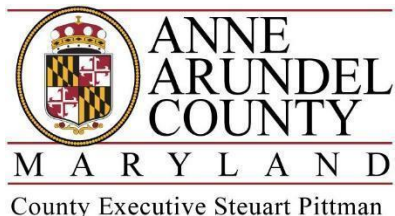
¹ <https://www.foodandwaterwatch.org/2026/01/29/ai-food-prices-corporate-profits/>

² https://economicrt.org/publication/bullies-at-the-table/?fbclid=IwY2xjawP4jhZleHRuA2F1bQIxMABicmlkETFSNEJaSDUyaktJemZKQmpSc3J0YwZhcHBfaWQQMjlyMDM5MTc4ODIwMDg5MgABHn-ILpU8cNwR43SpUinPfc2EMSv8c_58VW--SJ-UH017Xpvn1DJD753gLWq_aem_VvOqfQaSbc4FisZQc7EKFA

Anne Arundel County _FAV_SB387.pdf

Uploaded by: Tom Ni

Position: FAV



February 17, 2026

Senate Bill 387

Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

Senate Finance Committee

Position: FAVORABLE

Anne Arundel County **SUPPORTS** Senate Bill 387 – Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act).

This Bill will prohibit food retailers from engaging in the practice of dynamic pricing or using consumer surveillance data to set a price for consumer goods or services. It also protects consumers from protected class data being used by food retailers in circumstances that have the effect of withholding or denying from the consumers an accommodation, an advantage, or a privilege accorded to others. In addition, it prohibits a food retailer from diminishing or impairing any right or benefit guaranteed to employees of the food retailer under an existing collective bargaining agreement or memorandum of understanding.

As grocery stores transition to electronic shelf labels (ESLs) that display digital price tags to reduce cost and labor of manually updating price tags, the use of ESLs also enables retailers to achieve dynamic pricing and exploitation of sensitive consumer data to target consumers with instant price change during the day. Addressing affordability issues for our county residents is a top priority. Residents should not have to pay more than what they have already budgeted for halfway through their grocery trip just because the only time they can go shopping is at a high demand time. Furthermore, price surging disproportionately hurts our financially vulnerable residents the most as it has a compounding effect on their household expenditures. Although some US retailers said they have no plans to use ESLs for dynamic pricing, this Bill is necessary as a precautionary measure to protect consumers.

Senate Bill 387 takes a significant step towards protecting consumers. For those reasons, I respectfully ask for a **FAVORABLE** report on Senate Bill 387.

Steuart Pittman
County Executive

SB387_FWA.pdf

Uploaded by: Elizabeth Bobo

Position: FWA



MARYLAND STATE & D.C. AFL-CIO

Affiliated with the National AFL-CIO

Donna S. Edwards
President

Samuel Epps, IV
Secretary-Treasurer

📞 410.280.2233

📠 410.280.2956

📍 7 School Street
Annapolis, MD 21401-2096

SB 387 - Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

Senate Finance Committee

February 17, 2026

SUPPORT

Elizabeth Bobo

Legislative Director

Maryland State & DC AFL-CIO

Madame Chair and members of the Committee, thank you for the opportunity to submit testimony in support of SB 387 with amendments.

SB 387 prohibits food retailers from engaging in dynamic pricing while also barring retailers from using surveillance data, including sensors, cameras, and device tracking to set individualized prices for consumers. No one should pay more for groceries because an algorithm has studied their personal data to determine them as different from other consumers.

In the 19th century, a fixed-priced system was created because it was the belief that every customer should pay the same price for the same goods, regardless of their background or perceived value. Dynamic pricing undermines that foundation. Today, companies can analyze a range of data points from an individual's location and demographics, to their browsing patterns and shopping history. With this data, companies estimate what each individual is willing to pay. Two people standing in front of the same shelf at the same moment can be steered toward different prices, not because of discounts or cost differences, but because an algorithm has determined them to be different.

This is discrimination by algorithm. It erodes consumer trust, exploits personal information, and creates a shopping environment where consumers are left vulnerable to predatory pricing practices. SB 387 addresses this by prohibiting the use of protected-class data in ways that deny customers the opportunities offered to others, restoring transparency and fairness to shopping.



unions@mddclabor.org



www.mddclabor.org



facebook.com/mddcaflcio



instagram.com/md_dc_aflcio



MARYLAND STATE & D.C. AFL-CIO

Affiliated with the National AFL-CIO

Donna S. Edwards
President

Samuel Epps, IV
Secretary-Treasurer

📞 410.280.2233

📠 410.280.2956

📍 7 School Street
Annapolis, MD 21401-2096

Importantly, SB 387 protects workers. The legislation prevents food retailers from implementing operational or organizational changes that undermine rights given in existing collective bargaining agreements unless those changes are negotiated. This is especially important because the same technologies that bring dynamic pricing are the same that bring worker monitoring and new pressures to the workplace.

However, while we strongly support the substance of SB 387, we respectfully request an amendment to strengthen its protections: **the bill should include a ban on Electronic Shelf Labels (ESLs)**. Without a prohibition on ESLs, companies may implement dynamic based pricing at scale. To protect both workers and consumers from the predatory practices enabled by this technology, SB 387 must close this loophole.

For these reasons, we urge a favorable report on SB 387 with this amendment.



unions@mddclabor.org



www.mddclabor.org



facebook.com/mddcaflcio



instagram.com/md_dc_aflcio

CR SB 387 FWA Testimony.pdf

Uploaded by: Grace Gedye

Position: FWA



Feb 13, 2026

Maryland General Assembly
Senate Finance Committee
East Miller Senate Building, Room 3
Annapolis, MD

Re: Senate Bill 387: Protection from Predatory Pricing Act - Favorable with amendments

Dear Honorable Committee members,

SB 387 bill addresses an everyday affordability problem for consumers: surveillance pricing. Surveillance pricing, also sometimes referred to as “personalized” pricing, is when a company uses personal data that they’ve gathered about a consumer—like data about their online search history, or inferences about family structure, health conditions, or income—to set the price of a product or determine the discount offered to a consumer. Consumer Reports¹ has heard from our members, 27,000 of whom live in Maryland, about their frustrations with opaque pricing tactics.

We applaud Gov. Moore for tackling this critical issue at a time when affordability is front of mind for Marylanders. If enacted, this bill would make Maryland a leader on affordability, and would be an important starting point for prohibiting surveillance pricing in other sectors, including online retail more broadly. CR has some suggested changes that we believe would make the bill more workable for both consumers and retailers, and look forward to working with the Moore administration.

What is surveillance pricing?

Not long ago, before the rise of online shopping and mass data collection, consumers could shop anonymously, confident that the price tag they saw on the shelf wasn’t influenced by the store’s knowledge of their family, shopping habits, online browsing, ability to pay, or any particular situation that could increase their urgency to purchase. That is no longer the case.

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today’s consumers, and provides ad-free content and tools to 6 million members across the U.S.

Companies can gather data on consumers' purchase histories, speed of click through, history of clicks, search history, 'likes' on social media, geolocation, IP address, device type, and more, to create a detailed portrait of a consumer. They can use artificial intelligence to make detailed inferences about consumers based on this data. These detailed profiles, combined with technology that enables companies to display different prices to different consumers online—or send discounts on an individualized basis—means that companies have all the tools they need to implement surveillance pricing. Retailers can understand when a consumer might be desperate enough to tolerate a higher price or when a loyal customer will keep coming back even in the absence of discounts.

A recent investigation from Consumer Reports, More Perfect Union and Groundwork Collaborative, revealed that Instacart, enabled by the artificial intelligence pricing software Eversight, was running large-scale, hidden price experiments on unsuspecting customers.² The team of journalists and researchers analyzed live shopping data from more than 400 Instacart shoppers across four U.S. cities. The findings show many U.S. shoppers who order grocery pickup and delivery through Instacart were unknowingly enrolled in AI-enabled experiments that can charge up to 23% more for the same item ordered from the same store at the same time.

Nearly three-quarters of grocery items tested on Instacart showed different prices to different shoppers. Some items carried up to five different price points simultaneously. For example, people shopping at a Safeway in Washington, D.C., saw a dozen Lucerne eggs listed at five different prices — \$3.99, \$4.28, \$4.59, \$4.69, and \$4.79. The average price variations observed in the study could cost a household of four about \$1,200 per year. Instacart's algorithmic pricing experiments were found to be occurring through the platform at several of the nation's biggest grocery retailers, including Albertsons, Costco, Kroger, Safeway, Sprouts Farmers Market, and Target.

Other enterprising journalists have conducted investigations and discovered examples of apparent surveillance pricing:

- An investigative journalist writing for SFGate looked at the prices offered for a hotel room in Manhattan for a specific date, and varied his operating system, browser, cookies, and location (his computer's IP address).³ He found that when he changed his IP address from a Bay Area location to locations in Phoenix and Kansas City, the prices dropped by more than \$200 per night in one instance, and more than \$511 in another instance.

² Derek Kravitz, "Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds" *Consumer Reports*, Dec. 9, 2025, <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

³ Keith A. Spencer, "Hotel booking sites show higher prices to travelers from Bay Area," *SFGate*, Feb. 3, 2025. <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>

- ProPublica found that test-prep company Princeton Review was offering different prices for its tutoring services depending on a customer's zipcode.⁴ The result, they found, was that Asian customers were nearly twice as likely to receive a higher price.
- The Wall Street Journal reported that Orbitz, the travel aggregation company, determined that Mac users spent more per night on hotels than Windows users, and began steering Mac users towards pricier hotels.⁵
- A Minnesota local news site discovered that Target changed the prices displayed on its app for certain products based on whether the customer—and their device—was physically inside a Target store. When the reporters looked at the Target app while inside a store, they found that a Graco car seat was \$72 more expensive than when they had been sitting on the far side of the Target parking lot, and a Dyson vacuum was \$148 more expensive.⁶

Surveillance pricing can hurt consumers by offering different prices based on a protected status, such as race or gender. It can also hurt consumers by pushing them to pay the most they are individually willing to pay, or by taking advantage of them in moments of desperation, when their willingness to pay increases. One hypothetical example offered by former chair of the Federal Trade Commission, Lina Kahn, is airlines charging an individual more for a plane ticket if the airline infers—based on the individual's search history—that there was a death in the family and the consumer needs to attend a funeral.⁷

There's another downside for consumers beyond potentially paying higher prices. Personalized pricing, especially personalized discounts that are offered through membership programs or are contingent on the use of certain mobile apps, can make the experience of trying to discover a product's price and compare across vendors much more time intensive and frustrating. This difficulty will have broader effects in the market, because comparison shopping for the best price is one of the engines of market competition.

What SB 387 does

⁴ Julia Angwin, Surya Mattu and Jeff Larson, "The Tiger Mom Tax: Asians Are Nearly Twice as Likely to Get a Higher Price from Princeton Review," *ProPublica*, Sept. 1, 2015

<https://www.propublica.org/article/asians-nearly-twice-as-likely-to-get-higher-price-from-princeton-review>

⁵ Dana Mattioli, "On Orbitz, Mac Users Steered to Pricier Hotels," *Wall Street Journal*, Aug. 23, 2012

<https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

⁶ Chris Hrapsky, "The Target app price switch: What you need to know" *Kare 11*, Jan. 27, 2019

<https://www.kare11.com/article/money/consumer/the-target-app-price-switch-what-you-need-to-know/89-9ef4106a-895d-4522-8a00-c15cff0a0514>

⁷ Jaures Yip, "FTC chair Lina Khan warns that airlines might one day use AI to find out you're attending a funeral and charge more," *Business Insider*, September 23, 2024

<https://www.businessinsider.com/ftc-chair-lina-khan-warns-ai-pricing-discrimination-risks-2024-9>

SB 387 primarily applies to retailers that sell groceries and have large grocery stores in Maryland. We interpret this to apply to major retailers who sell groceries online, in addition to having at least one large store in the state. This is important, because surveillance pricing is more likely to occur online than in physical stores. At the same time, the bill exempts small grocery businesses that are unlikely to have the technological apparatus to enact surveillance pricing.

The bill would prohibit covered retailers from changing food prices more than once every 24 hours. This provision is aimed at preventing unpredictable and extreme surge pricing, a strategy retailers could employ to constantly increase or decrease prices throughout the day based on a variety of factors, including predicted demand.

The bill also prohibits surveillance pricing, which is using someone's personal information to customize the price that they see. As explained above, this might include using someone's realtime location, as in the Target example, or purchase history, or demographic information to alter the price or discount they see based on how much a retailer thinks they might be willing to pay.

Additionally, the bill prohibits the use of protected class data to offer, advertise, or sell a good or service to a consumer if using that data has the effect of withholding an advantage, such as a superior price.

Suggested changes

While CR strongly supports a policy of prohibiting surveillance pricing, there are some tweaks we suggest in order to ensure workability, while providing core consumer protections.

Use existing definition of "personal data" in Maryland law

This bill defines the term "surveillance data" to cover the universe of data that cannot be used to personalize a price. CR strongly encourages the legislature to consider instead using the existing definition of "personal data" already defined in Maryland law under the Maryland Online Data Privacy Act of 2024. That definition has several benefits. First, it covers everything the existing bill's definition of "surveillance data" covers. Second, it is similar to definitions in consumer data privacy laws across the country, which companies have built compliance practices around. Third, it covers "information that is linked or can reasonably be linked to an identified or identifiable consumer." This is important language that reflects the reality of how companies collect and store granular consumer information. Lastly, the current definition of "surveillance data" includes many undefined terms that could result in variable compliance (eg. "consumer information" is a key term in this definition but it is undefined).

Cover online food delivery platforms

As Consumer Reports and our partners found when we investigated Instacart, third-party food delivery platforms can employ opaque and complex pricing strategies. Given their entirely online nature, they are better positioned to roll out surveillance and dynamic pricing than brick and mortar grocery stores. CR recommends extending the prohibition to these platforms by adding a definition of “Third-party food delivery service”, which would mean a company, organization, person, or entity outside of the operation of the food retailer’s business, not wholly owned by the food retailer, that provides delivery services of food that is exempt from the sales and use tax in accordance with § 11–206(C) OF THE TAX – GENERAL ARTICLE to customers through a digital network.

This definition would need to be referenced later were the bill reads “A FOOD RETAILER [OR THIRD-PARTY FOOD DELIVERY SERVICE] MAY NOT ENGAGE IN DYNAMIC PRICING OR USE SURVEILLANCE DATA...” (Brackets indicate new language).

Add narrowly tailored exemptions for transparent and fair discounts, and cost-based price differentials

Pricing legislation should protect transparent and commonly understood discounts, while also ensuring that discounts do not become an avenue through which personalized pricing functionally occurs.

As currently written, this bill might inadvertently impact common discounts based on people’s personal data, such as senior discounts and veterans discounts, or volume-based discounts (e.g. buy four pints of ice cream and get the fifth free) that are based on purchase history, which is also personal data.

It is also necessary to exempt price differences that are based solely on differences in costs associated with providing the goods to different consumers. In the grocery context, for example, this might happen if delivery costs are higher because a consumer lives in a remote location.

On the other hand, if discounts are exempted writ large, it is possible that retailers will increase list prices, and then “personalize” discounts to narrow slices of their list based on their personal data and inferences about their willingness to pay.

Already, we know that retailers use fine-grained consumer data to determine who gets which discounts. When Consumer Reports investigated Kroger, the retailer said they primarily use

purchase data to inform discounts, but they also use demographic and online behavior data to inform which consumers receive which discounts.⁸

For this reason, we suggest that three categories of discounts be exempted, *if and only if* the retailer transparently posts current discounts and the terms and conditions for receiving the discounts on their website—and consumers who meet those terms and conditions uniformly receive the discount.

Given the issues raised by discounts and cost-based price differences, we suggest adding the following exemptions to the surveillance pricing prohibition:

a) Notwithstanding any other law, a food retailer or third-party food delivery service does not engage in surveillance pricing if either of the following apply:

(1) The difference in price is based solely on costs associated with providing the good to different consumers.

(2) (A) The food retailer or third-party food delivery service offers a discounted price that complies with the requirements of subparagraph (B) and any of the following apply:

- (i) A discounted price is offered based on publicly disclosed eligibility criteria that any consumer could potentially meet, including, but not limited to, signing up for a mailing list, registering for promotional communications, or participating in a promotional event.
- (ii) A discounted price is offered to members of a broadly defined group, including, but not limited to, teachers, active or retired military, senior citizens, students, or residents of a certain area based on publicly disclosed eligibility criteria.
- (iii) A discounted price is offered through a loyalty, membership, or rewards program that consumers affirmatively purchase or enroll in.

(B)

- (i) The current eligibility criteria, available discounts, and any conditions for receiving or earning the discounted price shall be clearly and conspicuously disclosed on the company's internet website.
- (ii) The discounted price shall be uniformly offered or made available to all consumers who meet the disclosed eligibility criteria.

We appreciate the committee's consideration, and the Governor's leadership on this pocketbook issue.

Sincerely,

⁸ Derek Kravitz, "Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors", *Consumer Reports*, May 21, 2025

Grace Gedye
Policy Analyst
Consumer Reports

SB 387 CPD Support with Am.pdf

Uploaded by: Hanna Abrams

Position: FWA

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Deputy Attorney General



**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION**

ANTHONY G. BROWN
Attorney General

WILLIAM D. GRUHN
Division Chief

PHILIP ZIPERMAN
Deputy Division Chief

PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief of Staff

HANNA ABRAMS
Assistant Attorney General

February 17, 2026

TO: The Honorable Pamela Beidle, Chair
Finance Committee

FROM: Hanna Abrams, Assistant Attorney General

RE: Senate Bill 387 – Food Retailers – Dynamic Pricing, Surveillance Data,
and Collective Bargaining Agreements (Protection from Predatory Pricing
Act) **SUPPORT WITH AMENDMENT**

The Consumer Protection Division of the Office of the Attorney General supports the dynamic pricing and surveillance data provisions of Senate Bill 387 (“SB 387”), sponsored by President Ferguson, and Senators Augustine, Brooks, Charles, Harris, Hettleman, Kagan, King, Lam, Lewis Young, Love, and Zucker, with amendments. Senate Bill 387 limits the number of times a price may be changed in a given day and restricts the types of data that may be used to personalize prices in food retail establishments, thereby protecting consumers from these harms by reducing discriminatory pricing, curbing excessive data collection, and improving transparency in pricing practices.¹

Specifically, SB 387 restricts food retailers’ use of “surveillance data” and “dynamic pricing” to personalize prices for consumers. Both of these practices use massive amounts of data collected 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. Companies exploit this trove of detailed personal data, or “surveillance data” – including, 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. And consumers are often unaware that their data is even being collected. Similarly, “dynamic pricing” once referred to broad price adjustments based on market demand. Advances in data collection and real-time analytics now allow companies to change prices continuously, charging different consumers

¹ The Division’s testimony is limited to the surveillance data and dynamic pricing provisions of SB 387.

different prices for the same product within minutes. When combined with electronic shelf labels, prices can be altered instantly based on time of day, weather, temporary events, or even inferred characteristics of the individual shopper.

“Dynamic pricing” and the use of “surveillance data” threaten consumer fairness by facilitating discriminatory pricing, encouraging invasive data collection, and obscuring prices, limiting consumers’ ability to make informed choice. These practices are especially harmful in food retailers because food is an essential good, leaving households with little bargaining power or ability to avoid individualized price increases. By leveraging personal and behavioral data that correlate with income and vulnerability, such pricing disproportionately raises costs for those least able to pay while eroding privacy, trust, and the expectation of a fair, uniform price for necessities.

CPD Amendments

The Division recommends three amendments to SB 387 to clarify the scope and intent of the bill.

- Replace the phrase “personally identifiable information” in the definition of “surveillance data” (page 2, line 31 – page 3, line 4), with “personal data and publicly available information,” cross-referencing the definition of “personal data” found in the Maryland Online Data Privacy Act (MODPA).² “Personally identifiable information” is not a term used in Maryland consumer protection law.³ While it is found in the State Government Article, there it refers to a very limited number of pieces of consumer information such as a person’s financial account number or driver’s license.⁴ In contrast, “personal data” encompasses the full scope of consumer personal data that is used in surveillance pricing.
- Replace the definition of “artificial intelligence”⁵ (page 2, lines 15-16), 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 restricting objectives to those that are “human-defined,” the

² Md. Code Ann., Com. Law, § 14-4701(w) (“Personal data” means any information that is linked or can be reasonably linked to an identified or identifiable consumer).

³ The Maryland Personal Information Protection Act uses the term “personal information” (Md. Code Ann., Com. Law, § 14-3501(e)), and the Maryland Online Data Privacy Act uses “personal data” (Md. Code Ann., Com. Law, § 14-4701(w)).

⁴ Md. Code Ann., State Gov’t, § 10-13A-01(f).

⁵ 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.

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.

- Limit the store loyalty program exemption. 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.⁶ 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.⁷ Rather than benefiting consumers, 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.⁸

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

Cc: Governor Wes Moore
President Bill Ferguson
Senator Malcolm Augustine
Senator Benjamin Brooks
Senator Nick Charles
Senator Kevin M. Harris
Senator Shelly Hettleman
Senator Cheryl C. Kagan
Senator Nancy J. King
Senator Clarence K. Lam
Senator Karen Lewis Young
Senator Sara Love
Senator Craig J. Zucker
Members, Finance Committee

⁶ 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).

⁷ 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/>

⁸ *Id.*

SB0387 - Favorable With Amendments.pdf

Uploaded by: Jane St Louis

Position: FWA

Good afternoon. My name is Jane St. Louis. I am a scan coordinator and have worked for Safeway for 33 years. I am also a proud member of the UFCW Local 400. Today I am speaking on behalf of grocery workers across Maryland and across this country.

I want to share what pricing looks like **from the worker's side**, because it is very different from how it is often described.

Customers assume that prices are the same for everyone, unless you use a coupon or discount card, in which case the discounts are the same for everyone. But with the introduction of retail apps, customers using the app may get a different discount than the person standing next to them buying the exact same product.

This happens even on advertised items. Customers don't understand why they are paying more. They feel frustrated and embarrassed, and they turn to employees for answers.

Workers are then put in the impossible position of trying to explain why **one customer qualifies for a price and another does not**. We are expected to explain technology, data collection, and pricing systems that we don't control. This confusion is happening in **almost every retail store today** where customers can use an app to receive lower prices.

These systems collect customer data—what people buy, how often they shop, and how they use the app—to decide who gets better deals. While retailers may call this personalized savings, from the worker's point of view, it creates **unequal pricing, confusion, and stress on the front line**.

Electronic shelf labels will make this problem even worse, because every customer in the store will be impacted, whether they use an app or not. Customers will have no way of knowing if they're getting a deal or if they're getting squeezed.

To be clear: this bill does nothing to stop retailers from offering discounts. This bill simply protects customers from their personal information—such as their race, gender, family status, or even whether or not they're pregnant—being used against them to individually charge them more for their purchases.

But this bill is not just about pricing. It is about **fairness, transparency, and protecting workers and consumers**.

As pricing becomes more automated and digital, **jobs are disappearing**. Electronic shelf labels and automated pricing systems are replacing work that trained employees once did. Across Safeway stores nationwide, scan coordinators who once worked **full-time—40 hours a week with benefits—are now being cut to just 8 to 10 hours a week**, causing workers to lose healthcare, financial stability, and dignity after decades of service.

I have given 33 years of my life to this company. Many of my coworkers have done the same. We are not data points or algorithms. We are people trying to support our families.

I urge you to support the Protection from Predatory Pricing Act and stand with grocery workers and the communities we serve.

Thank you for listening.

UFCW 400 Favorable with Amendments on SB0387 - Sur

Uploaded by: Kayla Mock

Position: FWA



Testimony for SB0387
Favorable With Amendments
Protection From Predatory Pricing Act
February 13, 2026

To: Honorable Chair Beidle, Vice Chair Hayes, and the members of the
Senate Finance Committee

From: Kayla Mock, Political & Legislative Director

United Food and Commercial Workers Union Local 400

Chair Beidle, Vice Chair Hayes, members of the Senate Finance Committee:

I appreciate the opportunity to share my testimony on behalf of our more than 10,000 members in Maryland, who work in grocery, retail, food distribution, cannabis, and health care. Our members are many of the hardworking men and women who keep Maryland's grocery stores running, ensuring families have access to fresh food and essential goods. Through collective bargaining, our members raise workplace standards for wages, benefits, safety, and retirement for all workers. Union members are critical to addressing inequality and uplifting the middle class.

Fixed pricing systems were introduced into retail out of a rational understanding that all customers, regardless of their wants, needs, perceived wealth, or bargaining skills, should pay the same price.

Surveillance pricing and electronic shelf labels undermine this equity, allowing companies to collect customer data points such as location, demographics, browsing patterns, shopping history, mouse movements, and personal information about a person's life in order to determine their price sensitivity.

Companies already admit to doing this, claiming that the data they collect and how they use it is solely to drive prices down through personalized pricing in apps, targeted coupons, and reward programs.

This bill does not aim to harm that practice; its goal is to stop the nefarious side of surveillance pricing: determining the maximum amount a customer would be willing to pay for a product based on their data collected.

Companies claim that maximizing prices based on data is not happening; however, several studies have shown this is a widespread practice online. Multiple studies, including one extensive study from Goundwork Collaborative in December 2025, found that “Instacart basket totals varied by an average of about 7% for the exact same items from the exact same locations, at the exact same time.” They go on to project that “based on the average of about 7% difference in basket totals and the amount that Instacart says the average household of four spends on groceries in the U.S., that could translate into **a cost swing of about \$1,200 per year.**”

Companies that are already deploying these targeted price modifications online are investing heavily in technology and AI systems to bring predatory price changes into brick-and-mortar stores. In a time when grocery prices in Maryland have risen more than 7% over the last year, according to Consumer Affairs (<https://www.consumeraffairs.com/finance/cost-of-groceries-by-state.html>), addressing this trend is enormously important for food affordability.

We appreciate Governor Moore and his team for their work on this bill and their support for adding the critical section that will transform this bill into effective public policy:

While we support SB0387, it is missing a critical piece to be truly successful in banning the predatory practice of surveillance pricing – the ban of electronic shelf labels.

Electronic shelf labels are a piece of surveillance technology that makes prices change remotely and without a human.

Companies use consumer profiles they already own, compiled, or purchased and store them in their proprietary AI systems. By integrating data profiles with AI, coupled with facial recognition cameras and customer tracking software, companies deploy electronic shelf labels to adjust prices based on who is shopping in the stores.

In 2024, two US Senators wrote a letter to Kroger concerned over its use of electronic shelf labels (<https://www.grocerydive.com/news/kroger-electronic-shelf-labels-instore-technology-senators-inflation/723939/>), seeking answers around “Kroger’s ESL device, called Enhanced Display for Grocery Environment (EDGE) Shelf, also threatens consumer privacy, according to the senators. In partnership with Microsoft, Kroger plans to place cameras on its EDGE Shelf displays and use facial recognition to determine information about its shoppers, including gender and age, to push personalized offers and advertisements.”

In January 2025, outgoing FTC Chair Khan released a study of surveillance pricing and the use of ESL’s (https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf) however, with the new administration, the study was ended.

Additionally, electronic shelf labels also impact workers' jobs. Grocery workers spend a significant amount of time changing shelf label prices in grocery stores. The widespread adoption of ESLs and surveillance pricing will result in lost hours and wages for these employees.

Lastly, ESL's bring customer confusion, frustration, and anger when prices change suddenly and without transparency. Employees are already experiencing this on the front lines: when customers see price changes in the app, in-store employees are confronted with explaining or mediating the situation.

Paper tags are the best protection for consumers, for store employees, for workers at the companies that make the paper, and are affordable.

We urge a favorable report on SB0387 with the inclusion of the ban on electronic shelf labels,

2025-MD-SB387-Surveillance-Pricing.pdf

Uploaded by: Mayu Tobin-Miyaji

Position: FWA

February 13, 2026

Senate Finance Committee
Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Dear Chair Beidle and Members of the Committee,

EPIC writes in support of S.B. 387, the Protection From Predatory Pricing Act, and to offer a few amendments to further protect Marylanders from these harmful practices. We commend Governor Moore and the Senate co-sponsors for prioritizing this legislation. Maryland has the opportunity to enact innovative policy that protects the rights, privacy, and financial security of Maryland residents and workers, just as Maryland did in 2024 with the passage of its landmark Maryland Online Data Privacy Act. At a time when policymakers are concerned about cost-of-living issues for their constituents, the impact of practices like surveillance pricing cannot be ignored.

The Electronic Privacy Information Center (EPIC) is an independent, nonpartisan, non-profit research organization in Washington, D.C., established in 1994 to protect privacy, freedom of expression, and democratic values in the information age.¹ EPIC has advocated for strong AI, privacy, and consumer protection laws at both the state and federal level for many years.²

In my testimony, I will discuss why it is so critical that Maryland take immediate action to place common-sense regulations on the practice of surveillance pricing, the reasons S.B. 387 is a good first step to address this practice, and how a few key amendments would ensure the bill would be an even more significant step toward protecting Maryland residents.

I. Surveillance pricing regulation is urgently needed, and Maryland should act now.

There is an urgent need for legislation like S.B. 387 to address the harms caused by companies using AI systems to set individualized prices for consumers. Maryland residents need protections from the privacy invasions and affordability harms that surveillance pricing causes.

¹ EPIC, *About EPIC*, <https://epic.org/about/>.

² See e.g., Protecting America's Consumers: Bipartisan Legislation to Strengthen Data Privacy and Security: Hearing before the Subcomm. on Consumer Protection & Comm. of the H. Comm. on Energy & Comm., 117th Cong. (2022) (testimony of Caitriona Fitzgerald, Deputy Director, EPIC), https://epic.org/wp-content/uploads/2022/06/Testimony_Fitzgerald_CPC_2022.06.14.pdf; *Governor Moore Signs Maryland Online Data Privacy Act*, EPIC (May 9, 2024), <https://epic.org/governor-moore-signs-maryland-online-data-privacy-act/>; *EPIC Testifies in Support of Maryland Bill on High-Risk AI*, EPIC (Feb. 27, 2025), <https://epic.org/epic-testifies-in-support-of-maryland-bill-on-high-risk-ai/>.

Retailers have long sought to charge individual consumers the highest amount they are willing to pay for a product or a service to maximize profit.³ Until recently, companies lacked the technological and logistical means to achieve this granular level of price discrimination.⁴ Today, the widespread availability of vast troves of personal data about consumers and advanced algorithms allows retailers to infer the prices individual consumers are willing to pay and make surveillance pricing a reality.⁵

Surveillance pricing can involve a disturbingly sensitive and varied collection of personal information. Retailers can access enormous amounts of data about consumers because they do not only collect data firsthand from their customers, but may also purchase data from data brokers.⁶ Data brokers gather data about consumers as they engage a wide range of activities in today’s economy—as they work, eat, shop, study, socialize, browse the internet, seek medical care, or simply move about the world.⁷ Then, data brokers’ profiling and segmentation tools categorize any profile individual consumers based on any variable, defined or inferred based on the personal data collected about them, including location, purchase history, economic status, mental and physical health conditions, or specific vulnerabilities.⁸ For example, consumers may be categorized as expectant

³ Katie J. Wells, Lindsay Owens, Angel Han & Alan Smith, Groundwork Collaborative & Consumer Reports, *Same Cart, Different Price: Instacart’s Price Experiments Cost Families at Checkout* 4–5 (2025), <http://groundworkcollaborative.org/wp-content/uploads/2025/12/Same-Cart-Different-Price.pdf>; Adrian Ma, *Businesses Can Use Your Online Data to Overcharge You. What Can Customers Do?*, NPR (Aug. 10, 2025), <https://www.npr.org/2025/08/10/nx-s1-5494712/businesses-can-use-your-online-data-to-overcharge-you-what-can-customers-do>.

⁴ “Price discrimination” is the practice of charging different customers different amounts for the same product or service. *Price Discrimination: Robinson-Patman Violations*, FTC (last accessed Feb. 12, 2026), <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/price-discrimination-robinson-patman-violations>. See Len Sherman, *Will Other Companies Follow Uber’s Lead Into The Black Hole of Opaque Algorithmic Pricing?*, Medium (Sept. 16, 2025), <https://len-sherman.medium.com/will-other-companies-follow-ubers-lead-into-the-black-hole-of-opaque-algorithmic-pricing-d79acd9cfe35>.

⁵ FTC, *FTC Surveillance Pricing 6(b) Study: Research Summaries, A Staff Perspective 5* (2025), https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf [hereinafter “FTC Study”].

⁶ Jon Keegan, *Forget Milk and Eggs: Supermarkets Are Having a Fire Sale on Data About You*, The Markup (Feb. 16, 2023), <https://themarkup.org/privacy/2023/02/16/forget-milk-and-eggs-supermarkets-are-having-a-fire-sale-on-data-about-you>; FTC Study at 8–9; Samuel A.A. Levine & Stephanie T. Nguyen, UC Berkeley Center for Consumer Law & Economic Justice & Vanderbilt Policy Accelerator, *The Loyalty Trap: How Loyalty Programs Hook Us with Deals, Hack our Brains, and Hike Our Prices* 4–6 (2025), <https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/10/17195957/The-Loyalty-Trap.pdf>.

⁷ FTC Study at 8–9; Mayu Tobin-Miyaji, EPIC, *Assessing the Assessments: Maximizing the Effectiveness of Algorithmic & Privacy Risk Assessments* 6–7 (2025), <https://epic.org/wp-content/uploads/2025/06/Assessing-the-Assessments-Report.pdf>; EPIC, *Comments on CFPB Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information*, 88 Fed. Reg. 16,951, 2–5 (July 14, 2023), <https://epic.org/wp-content/uploads/2023/07/EPIC-CFPB-data-brokers-RFI-comments-071423.pdf>.

⁸ FTC Study at 2 n. 10, 4; Jon Keegan & Joel Eastwood, *From “Heavy Purchasers” of Pregnancy Tests to the Depression-Prone: We Found 650,000 Ways Advertisers Label You*, The Markup (June 8, 2023), <https://themarkup.org/privacy/2023/06/08/from-heavy-purchasers-of-pregnancy-tests-to-the-depression->

mothers, older people struggling financially, people having symptoms of depression, or people interested in weight loss, among countless other intimate categories.⁹

Armed with detailed profiles of consumers, surveillance pricing algorithms can make real-time tweaks to prices.¹⁰ The major harm is that retailers can use surveillance pricing to take advantage of individual consumers' willingness to pay more while keeping them in the dark about lower prices offered to other consumers.¹¹ For example, a pharmacy could choose to exclude a routine customer from a special promotion for over-the-counter medications because the pharmacy inferred that the customer is likely to buy those products anyway, while targeting discount codes to an infrequent purchaser who may be "at risk" of deciding they are better off without the product.¹² Pricing algorithms can make minute-by-minute tweaks and continuously learn from customer responses in brick-and-mortar stores and online purchases.¹³ A major investigation of Instacart found that the platform was conducting surreptitious pricing experiments by varying grocery prices by tens of cents, making the changes difficult for consumers to detect but resulting in increased grocery costs of \$1,200 a year for an average consumer.¹⁴ Businesses can significantly increase revenue from implementing surveillance pricing to the detriment of everyday consumers.¹⁵

Surveillance pricing harms consumers by charging different prices for the same product because of who they are.¹⁶ Some examples include Target charging \$100 more for a TV on its app

prone-we-found-650000-ways-advertisers-label-you; Mayu Tobin-Miyaji, EPIC, *Assessing the assessments: Maximizing the Effectiveness of Algorithmic & Privacy Risk Assessments* 6–7 (2025), <https://epic.org/wp-content/uploads/2025/06/Assessing-the-Assessments-Report.pdf>.

⁹ Keegan & Eastwood, *supra* note 8.

¹⁰ FTC Study at 3–7; Justin Kloczko, Consumer Watchdog, *Surveillance Price Gouging* 1–2 (2024), <https://consumerwatchdog.org/wp-content/uploads/2024/12/Surveillance-Price-Gouging.pdf>; OECD Secretariat, *Personalised Pricing in the Digital Era: Background Note by the Secretariat*, DAF/COMP(2018)10–11 (Nov. 20, 2018), [https://one.oecd.org/document/DAF/COMP\(2018\)13/en/pdf](https://one.oecd.org/document/DAF/COMP(2018)13/en/pdf).

¹¹ Harlan Landes, *Individualized Coupons Aid Price Discrimination*, *Forbes* (Aug. 21, 2012), <https://www.forbes.com/sites/moneybuilder/2012/08/21/individualized-coupons-aid-price-discrimination/>.

¹² See FTC study at 3.

¹³ See FTC Study at 4.

¹⁴ Derek Kravitz, *Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds*, *Consumer Reports* (Dec. 9, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>. Instacart-owned Eversight, which sells pricing tools, admits that shoppers will see different prices but conveniently dismisses the price differences as "negligible." *Eversight by Instacart: AI-Powered Price Optimization*, Instacart Platform (last accessed Jan. 28, 2026), <https://www.instacart.com/company/retailer-platform/connected-stores/eversight>.

¹⁵ Mark Abraham, Javier Anta Callersten, Sebastian Bak & Roelant Kalthof, *The \$70 Billion Prize in Personalized Offers*, Boston Consulting Group (Sept. 14, 2021), <https://www.bcg.com/publications/2021/personalized-offers-have-a-potential-70-billion-dollar-growth-opportunity>.

¹⁶ See Paul Krugman, *Reckonings; What Price Fairness?*, *N.Y. Times* (Oct. 4, 2000), <https://www.nytimes.com/2000/10/04/opinion/reckonings-what-price-fairness.html>.

based on consumers' location relative to a Target store,¹⁷ Orbitz charging Mac users more when booking hotels,¹⁸ and online booking sites charging a difference of more than \$500 for the same hotel room based on the consumer's location.¹⁹ The price changes are divorced from the quality of the product or service and market competition, and some consumers will wind up paying more simply because the business inferred they might be willing to pay more.²⁰

Setting individualized prices based on personal data is unfair. Consumers expect and desire that goods or services sold to the general public in the same geographical area are sold at the same price.²¹ Consumers are in an asymmetrical power relationship with companies using surveillance pricing because they often do not know the practice is happening, meaning they don't know that their personal data is being used to take more money out of their wallets, and they are stripped of the opportunity to use that knowledge to take their business elsewhere. The betrayal of consumer expectations is clearly evidenced by the extremely negative backlash when consumers discover that businesses are engaged in surveillance pricing. When reporting revealed that Kroger may be engaged in surveillance pricing using facial recognition, the pushback from consumers and lawmakers was swift.²² Similarly, when Delta Airlines president told an investor conference that the company's technology can determine prices that individuals are willing to pay, negative backlash ensued, followed by backtracking by Delta Airlines.²³ The intense consumer backlash to surveillance pricing

¹⁷ Chris Hrapsky, *The Target App Price Switch: What You Need to Know*, KARE (Jan. 27, 2019), <https://www.kare11.com/article/money/consumer/the-target-app-price-switch-what-you-need-to-know/89-9ef4106a-895d-4522-8a00-c15cff0a0514>.

¹⁸ Dana Mattioli, *On Orbitz, Mac Users Steered to Pricier Hotels*, Wall Street Journal (Aug. 23, 2012), <https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>.

¹⁹ Keith A. Spencer, *Hotel Booking Sites Show Higher Prices to Travelers from Bay Area*, SFGate (last updated Feb. 3, 2025), <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>.

²⁰ AI Now Institute et al., *Prohibiting Surveillance Prices and Wages* 11–14 (2025), <http://www.economicliberties.us/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf>.

²¹ See Consumer Reports, *American Experiences Survey: A Nationally Representative Multi-Mode Survey*, 8 (Sept. 2025), https://article.images.consumerreports.org/image/upload/v1760040676/prod/content/dam/surveys/Consumer_Reports_AES_September_2025.pdf (A nationally representative CR survey of 2,240 U.S. adults conducted in September 2025 found that 72 percent of people who have used Instacart in the previous year did not want the company to charge different users different prices for any reason.); Kravitz, *supra* note 14 (One volunteer tester for the Instacart investigation remarked, “We just assumed that the listed price was the price for everyone. It's eye-opening . . . All prices should be the same for everybody, whether you're rich or poor. I do not accept that they should set prices like that...there needs to be regulation that all prices need to be universal.”).

²² Mayu Tobin-Miyaji, *Kroger's Surveillance Pricing Harms Consumers and Raises Prices, With or Without Facial Recognition*, EPIC (Feb. 14, 2025), <https://epic.org/krogers-surveillance-pricing-harms-consumers-and-raises-prices-with-or-without-facial-recognition/>.

²³ Jay Stanley, “*Surveillance Pricing*” Hurts Consumers, Incentivizes More Corporate Spying on Them, ACLU (Sept. 12, 2025), <https://www.aclu.org/news/privacy-technology/surveillance-pricing>; see also Annie Palmer, *Instacart Ends AI-driven Pricing Tests that Pushed up Costs for Some Shoppers*, CNBC (last updated Dec. 22, 2025), <https://www.cnbc.com/2025/12/22/instacart-ai-pricing-tests-increased-costs.html>.

underscores the strong consumer expectation that a price offered to them is the same as that offered to other consumers.

On top of the privacy harms and undermining consumer autonomy, surveillance pricing can unfairly exploit lower-income consumers into paying more.²⁴ One investigation into prices on Staples' and Home Depot's websites found that people living in lower-income areas received worse deals compared to those from higher-income areas.²⁵ Surveillance pricing can take advantage consumers with lesser means, such as by inferring that a consumer has less time to compare prices because they juggle multiple jobs or small children and charging higher prices for products.²⁶ ***In a time of rising cost of living and more individuals living paycheck-to-paycheck, surveillance pricing can target people who can least afford the increased cost.***

II. S.B. 387 takes important steps to protect Marylanders from the harms of surveillance pricing.

S.B. 387 takes the important step of banning surveillance pricing in grocery stores. This is an essential step because surveillance pricing is extremely difficult for consumers to detect and avoid. The opacity of this practice is by design: companies know surveillance pricing is wildly unpopular with consumers. Algorithmic price adjustments also occur surreptitiously and quickly, making them difficult to detect.²⁷ A ban on surveillance pricing in grocery stores is necessary to protect consumers from this harmful and unfair practice in the place where they buy their everyday necessities.

III. With amendments, S.B. 387 could give Maryland residents more meaningful protections.

With a few key amendments, S.B. 387 could provide Marylanders with stronger protections from surveillance pricing for groceries and expand those protections in other contexts that also greatly affect affordability.

²⁴ Julian Cardillo, Buyer beware: *Does AI-powered Personalized Pricing Actually Help Consumers?* *Brandeis Economist Weighs in.*, Brandeis Stories (Aug. 12, 2025), <https://www.brandeis.edu/stories/2025/august/shiller-ai-pricing.html>; Seth Frotman & Tara Mikkilineni, *The Trump Administration Wants to Reboot Redlining*, Jolt Digest (July 7, 2025), <https://jolt.law.harvard.edu/digest/the-trump-administration-wants-to-reboot-redlining>.

²⁵ Jay Stanley, “*Surveillance Pricing*” *Hurts Consumers, Incentivizes More Corporate Spying on Them*, ACLU (Sept. 12, 2025), <https://www.aclu.org/news/privacy-technology/surveillance-pricing>.

²⁶ See Keegan, *supra* note 6.

²⁷ Jay Stanley, *Digital Driver’s Licenses Could Make “Surveillance Pricing” Much Easier for Companies*, ACLU (Sept. 15, 2025), <https://www.aclu.org/news/privacy-technology/surveillance-pricing-and-ids>; Jennifer Valentino-DeVries, Jeremy Singer-Vine & Ashkan Soltani, *Websites Vary Prices, Deals Based on Users’ Information*, Wall Street Journal (last updated Dec. 12, 2012), <https://www.wsj.com/articles/SB10001424127887323777204578189391813881534>; Kravitz, *supra* note 14.

A. S.B. 387's focus on privacy and affordability could be strengthened by expanding beyond the grocery context.

While S.B. 387's focus on grocery stores addresses an important way that surveillance pricing impacts Maryland consumers' wallets, its protection of privacy and affordability can be strengthened by expanding the scope beyond the grocery context. The types of businesses engaging in surveillance pricing affect the prices of everyday goods beyond grocery stores—they include online retailers, department stores, health and beauty retailers, home goods and furnishing stores, airlines, hotel booking sites, rental car companies, and many more types of retailers.²⁸ A focus on grocery store prices will miss the ways in which surveillance pricing harms privacy and affordability for Maryland consumers more broadly. We hope that S.B. 387's scope can be widened, or that this bill is one of many steps forward that Maryland will take to protect its consumers against surveillance pricing across the economy.

B. S.B. 387's protections could be strengthened and harmonized with other state laws by relying on the definition of "personal data" that already exists in Maryland law rather than defining a new "surveillance data" term.

The Maryland legislature need not reinvent the wheel by creating a new definition for "surveillance data," risking unpredictable and inconsistent enforcement and confusion for businesses trying to comply with multiple state laws related to privacy. The Maryland Online Data Privacy Act of 2024 already contains a definition of "personal data" that should be substituted for the definition of "surveillance data" in S.B. 387. First, this definition of personal data is one that businesses in Maryland are already familiar with, allowing for predictability and consistency in compliance with the law. Second, the definition of "personal data" is one that is the same or similar to other state laws, allowing for consistency between states. Third, the definition of "personal data" is more robust, covering any information that is "linked or can be reasonably linked," and is not limited by the means of collection, in contrast to the definition of "surveillance data" in S.B. 387. Fourth, the amendment would not weaken protections because "personal data" as already defined in Maryland is the raw material for surveillance pricing. Lastly, the definition of "surveillance data" contains terms that are undefined, such as "consumer information," which unnecessarily creates ambiguity when a robust definition for personal data already exists in Maryland law.

²⁸ FTC, FTC Surveillance Pricing 6(b) Study: Research Summaries, A Staff Perspective 7 (2025), https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf; AI Now Institute et al., Prohibiting Surveillance Prices and Wages 5 (2025), <http://www.economicliberties.us/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf>; Justin Kloczko, Consumer Watchdog, Surveillance Price Gouging 1–2 (2024), <https://consumerwatchdog.org/wp-content/uploads/2024/12/Surveillance-Price-Gouging.pdf>.

- C. *S.B. 387's current exception for discounts in the definition of "dynamic pricing" is unnecessary and risks creating a large loophole, so this exception should be struck or significantly narrowed.*

Surveillance pricing techniques are not necessary to provide discounts to users, and the “discounts” enabled by surveillance pricing often are not discounts at all. S.B. 387 should be amended to remove the exception for discounts in the definition for “dynamic pricing” because surveillance pricing is not necessary to offer discounts.

“Discounts” and “savings” offered through surveillance pricing are meaningfully different from traditional discounts in ways that make them worse for consumers.²⁹ A business can offer meaningless surveillance-pricing “discounts” when the business sets the list price higher than what any given consumer is likely to pay, then offers each customer a personalized “discount” that results in the maximum price that specific customer would be willing to pay.³⁰ For example, if the list price of a box of cereal traditionally sold for \$5 is raised to \$9, each customer could receive an individualized “discount,” many of which result in a price paid of far more than \$5. A consumer would perceive they are getting a discount without realizing that they are not actually getting a good deal. This practice can also be used to induce purchases by appealing to consumers’ desire to jump on a “good deal.” For example, the investigation of Instacart found that while Instacart shoppers at the same grocery location saw the same sale price for a bottle of ketchup, they saw different original list prices, potentially intimating the consumer is viewing a steep, time-limited discount and inducing more purchases.³¹ Even if consumers end up paying the same price for a product, surveillance pricing can artificially improve the consumer’s perception that they received a discount, misleading consumers about how much they saved.³²

This is far different and worse for consumers than traditional discounts where customers know the list price for a product or service, the discount amount, the reason for the discount, and whether other consumers are receiving the same discount or not. These factors help a customer determine whether they are receiving a good deal. Businesses often offer discounts when they have excess inventory and lower demand, to compete with other sellers, to offer holiday sales, or for many other reasons that should be clearly communicated to consumers. Consumers are familiar with Black Friday sales, end-of-season sales, and happy hour prices for that reason. This practice helps consumers determine whether a discount is actually a good deal. By contrast, businesses use

²⁹ Ma, *supra* note 3.

³⁰ Stephanie T. Nguyen, *The Next Frontier of Surveillance: Investigating Pricing Systems*, Yale Journal on Regulation (Sept. 21, 2025), <https://www.yalejreg.com/nc/the-next-frontier-of-surveillance-investigating-pricing-systems-by-stephanie-t-nguyen/>.

³¹ *Id.*

³² Katie J. Wells, Lindsay Owens, Angel Han & Alan Smith, Groundwork Collaborative & Consumer Reports, *Same Cart, Different Price: Instacart's Price Experiments Cost Families at Checkout* 12 (2025), <http://groundworkcollaborative.org/wp-content/uploads/2025/12/Same-Cart-Different-Price.pdf>.

surveillance pricing to set different list and discount prices for different consumers based on inferences about what each consumer is willing to pay, without explaining the basis for the prices.³³

Business executives' own descriptions of the practice undercut discounts as a meaningful way to reduce costs for consumers.³⁴ Using surveillance pricing to allow every consumer to save money would undermine corporations' profit-making mandate, making such a contention illogical. Further, the consultants and executives discuss surveillance pricing strategies as revenue-increasing, rather than cost-cutting.³⁵ For instance, a Delta Airlines executive told investors that using surveillance pricing would yield higher revenue, before the backlash.³⁶ Even modern loyalty programs, which businesses tout as a way to benefit consumers, are often used to gather even more personal data to extract and sell, target hyper-personalized offers and discounts, and degrade consumer benefits over time.³⁷ Today, the sale and abuse of customer data can generate more profit for companies than their actual business does.³⁸

Businesses can offer discounts transparently without algorithmically setting prices using personal data. Historically, businesses have offered discounts and benefits based on certain personal characteristics that customers voluntarily share with businesses, such as student discounts, senior discounts, teacher and educator discounts, or government employee and veteran discounts.³⁹ Some businesses offer membership programs that set out the benefits that members can expect so that consumers can assess the cost versus the benefit, and customers are not required to participate in

³³ Katie J. Wells, Lindsay Owens, Angel Han & Alan Smith, Groundwork Collaborative & Consumer Reports, *Same Cart, Different Price: Instacart's Price Experiments Cost Families at Checkout 5* (2025), <http://groundworkcollaborative.org/wp-content/uploads/2025/12/Same-Cart-Different-Price.pdf>.

³⁴ *Retail tech firm Eagle Eye debuts AI-driven Personalized Promotions*, Supermarket News (Jan. 13, 2026), <https://www.supermarketnews.com/grocery-technology/retail-tech-firm-eagle-eye-debuts-ai-driven-personalized-promotions> (“According to estimates from Boston Consulting Group, large retailers could generate more than \$100 million in additional revenue by scaling personalized promotional execution.”); Mark Abraham, Javier Anta Callersten, Sebastian Bak & Roelant Kalthof, *The \$70 Billion Prize in Personalized Offers*, Boston Consulting Group (Sept. 14, 2021), <https://www.bcg.com/publications/2021/personalized-offers-have-a-potential-70-billion-dollar-growth-opportunity>.

³⁵ FTC Study at 10; Kravitz, *supra* note 14; Ma, *supra* note 3. See also *Instacart Welcomes Oversight!*, Instacart (Sept. 2, 2022), <https://www.instacart.com/company/updates/instacart-welcomes-oversight>.

³⁶ Kelly McCarthy, *How Delta Is Using AI for Ticket Pricing and What It Means for air travel*, ABC News (Aug. 5, 2025), <https://abcnews.go.com/GMA/Travel/delta-ai-ticket-pricing-means-air-travel/story?id=124343088>. See also Len Sherman, *How Uber Became A Cash-Generating Machine*, Medium (June 23, 2025), <https://len-sherman.medium.com/how-uber-became-a-cash-generating-machine-ef78e7a97230> (discussing how Uber only became profitable since implementing an algorithmic fare calculation system).

³⁷ See Levine & Nguyen, *supra* note 6, at 6; *How AI Loyalty Programs Are Powering Customer Engagement*, SNIPP (June 30, 2025), <https://www.snipp.com/blog/ai-loyalty-programs>.

³⁸ See Levine & Nguyen, *supra* note 6, at 6; *How Loyalty Programmes Are Keeping America's Airlines Aloft*, The Economist (Aug. 6, 2025), <https://www.economist.com/business/2025/08/06/how-loyalty-programmes-are-keeping-americas-airlines-aloft>.

³⁹ See Sherman, *supra* note 4.

these discount programs if they do not wish to share the relevant information with a particular business.⁴⁰ These discounts differ from surveillance pricing in other important ways: retailers clearly communicate the basis for these discounts, these programs are difficult to game, and these discount programs reflect broadly accepted societal views about the abilities of certain groups to pay or circumstances that warrant lower prices.⁴¹ Surveillance pricing, on the other hand, sets different prices for individuals surreptitiously, based on criteria unknown to the consumer, and consumers have no way to refuse participation given the vast troves of personal data about every person that is available for retailers to purchase and compile.

We recommend that Section 13–321(A)(3)(II) be removed from the definition of “dynamic pricing.” There is no consumer benefit to including a wholesale exclusion of discounts, promotional offers, or loyalty program benefits from the definition of dynamic pricing. Discount programs that are not based on surveillance pricing, like those discussed above, do not result in varying prices within a business day, meaning they would not fall under this prohibition on surveillance pricing in the first place. Using a promotional offer to set lower prices in a certain time of day—which this exception in the “dynamic pricing” definition currently allows—is simply engaging in harmful surveillance pricing by another name.

We also recommend the prohibition in Section 13–321(B) be amended to read, “A FOOD RETAILER MAY NOT ENGAGE IN DYNAMIC PRICING OR USE SURVEILLANCE DATA TO SET A PRICE OR OFFER A DISCOUNTED PRICE FOR CONSUMER GOODS OR SERVICES FOR A SINGLE CONSUMER OR A GROUP OF CONSUMERS.” This change will make clear that personal data cannot be used to set individualized or group-based discounts algorithmically.

Lastly, we recommend that a definition for “discounted price” be added to read, “Discounted price means a price that is verifiably lower than the widely available and publicly disclosed bona fide market price” to address the issue of showing artificially high list prices and offering targeted, personalized discounts. This will ensure that discounts offered by retailers are truly discounts as people typically understand this term and not a “discount” a retailer offers off of a listed price that is higher than an item’s actual price to make customers feel like they are saving money.

⁴⁰ See, e.g., James K. Wilcox, *Guide to Streaming Video Services*, Consumer Reports (Aug. 27, 2025), <https://www.consumerreports.org/electronics-computers/streaming-media/guide-to-streaming-video-services-a4517732799/>; Beth Braverman, *Pros and Cons of Retail Membership Programs*, Consumer Reports (Nov. 9, 2019), <https://www.consumerreports.org/shopping-retail/retail-membership-programs-pros-and-cons/>.

⁴¹ See Sherman, *supra* note 4.

D. S.B. 387 should have narrower exceptions to discounts and differential pricing that do not harm consumers.

There are several ways that prices and discounts are offered based on personal data that are uncontroversial and do not harm consumers. S.B. 387 should be amended to accommodate those scenarios.

First, S.B. 387 should allow businesses to charge different prices for products if the price differential is solely based on cost differences in providing the good or a service. For example, a business can charge higher prices to deliver a good based on the consumer's location data if the cost to deliver the good is higher because the consumer lives further away.

Second, uncontroversial discounts such as student or senior discounts, membership discounts or discounts based on how many items the consumer has bought before (i.e. buy 10 coffees and get one free) should be exempted from the law's coverage. While those discounts depend on personal data, they are based on publicly known conditions, are generally uncontroversial because they reflect social norms about a customer's ability to pay or benefits they should receive, and are not applied based on surreptitious data collection and price adjustments. Currently, the law would prohibit such discounts in grocery stores, even though they do not threaten consumer privacy. We recommend the bill exempt publicly communicated discounts that are offered to all consumers or large and defined groups of consumers, that are clear about the eligibility criteria that the consumer needs to meet, and that consumers affirmatively make the choice to claim. This way, the bill can preserve discounts that help lower the costs of groceries for Maryland consumers that do not pose a threat to their privacy.

* * *

EPIC commends Governor Moore and Maryland lawmakers for prioritizing the privacy of their constituents and recognizing the detrimental impact that surveillance pricing has on everyday people. With a few key amendments, S.B. 387 would better protect Maryland residents from unfair practices while keeping popular discounts that don't pose a threat to their privacy. We urge the Committee to advance this important legislation.

Thank you for the opportunity to testify today. EPIC is happy to be a resource to the Committee on these issues.

Sincerely,

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Deputy Director

/s/ Tom McBrien
Tom McBrien
EPIC Counsel

/s/ Kara Williams
Kara Williams
EPIC Counsel

/s/ Mayu Tobin-Miyaji
Mayu Tobin-Miyaji
EPIC Law Fellow

MD ESL-SP testimony sb387.pdf

Uploaded by: Nelson Hill

Position: FWA



**Testimony of
Nelson Hill
United Food and Commercial Workers Union Local 27**

before the

**Maryland Senate Finance Committee
February 12, 2026**

regarding

SB 387-Protection from Predatory Pricing Act

Thank you Chair Beidle, Vice-Chair Hayes and all the members of the Senate Finance Committee for the opportunity to testify on SB 387, the Protection from Predatory Pricing Act. This is an enormously important issue for consumers. Electronic Shelf Labels (ESLs) are a new technology being deployed in grocery stores that threaten family budgets, and the public's privacy and UFCW urges you to vote in favor of SB 387 with amendments.

I serve as the Vice President of UFCW Local 27. At Local 27, we represent members at worksites across grocery, retail, healthcare, meat packing, food processing, and the cannabis industry. Along with our partner local in Maryland, UFCW Local 400, UFCW represents more than 22,000 workers in the state. Our mission is to secure a living wage, good benefits, and a positive work environment for our members.

In its current form, SB 387 is an incomplete bill because it is missing the most important element to make this policy work. To protect customers from the predatory and dangerous overreach of surveillance pricing, this bill must be amended to include a ban on electronic shelf labels. Governor Moore understands the dangers of ESLs and the need to ban its use in grocery stores, and we thank him and his office for their vocal support to amend this bill to include such a ban.

Grocery chains across the country are rapidly rolling out ESLs – essentially, digital price tags that can change in an instant. Large grocery chains are already using ESLs around the country. Wal-Mart has announced it will bring ESLs to 2,300 of its stores by 2026. Kroger began using ESLs in dozens of stores in 2018, targeting 500 stores by 2023.

With the help of AI and surveillance technologies, ESL systems can pull in massive amounts of personal data which can be used to charge different customers different prices based on who they are. This could mean a future where factors like race, gender, and financial circumstance could influence how much you pay at checkout. Kroger has 60 million household profiles by its own admission and is now selling that household data to advertisers and other businesses.

With electronic shelf labels, companies can change the price of an item at the drop of a hat without any warning. Prices could spike at peak hours, when companies know the store will be full of customers looking to shop quickly. ESLs can change so quickly, the price of an item could change before a customer reaches the cash register. With ESLs there is no way for us to know when we are getting a deal and when the store is squeezing us for every dollar it thinks it can get.

We are seeking to ban the use of electronic shelf labels because food is a necessity, and the price should be clearly understood. This technology is so dangerous that even with well-meaning regulations, consumers can still be gouged to feed their families.

A ban on ESLs is necessary, and this bill must be amended accordingly. I urge you to amend SB 387 and pass it. Thank you for your time.

Ad Trade Letter in Opposition to Maryland SB 387 (

Uploaded by: Adam Wadsworth

Position: UNF



February 11, 2026

Senator Bill Ferguson
Senate President
State House, H-107
100 State Circle
Annapolis, Maryland 21401

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 Malcolm Augustine
214 James Senate Office Building
11 Bladen Street
Annapolis, MD 21401

RE: Letter in Opposition to Maryland SB 387

Dear Senate President Ferguson, Chair Beidle, Vice Chair Hayes, and Senator Augustine:

On behalf of the advertising industry, we write to oppose Maryland SB 387.¹ We provide this letter to offer our non-exhaustive list of concerns about this bill. SB 387 would significantly limit Maryland consumers' access to discounts and special pricing by banning the practice of "dynamic pricing," banning the use of "surveillance data," and creating a private right of action by tying enforcement to the Maryland Consumer Protection Act. 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 387 (2026 Session), located [here](#) (hereinafter, "SB 387").

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

SB 387, unfortunately, would not preserve the value of discounts to Marylanders, resulting in higher prices for consumers. Under the bill, a business would be prohibited from engaging in “dynamic pricing” or using “surveillance data” to set a price for consumer goods or services.⁴ In practice, these restrictions would prohibit consumer-friendly pricing practices that Marylanders encounter and value every day. For example, SB 387 would make it unclear whether it would be permissible for a grocery retailer to use zip code-based location data and purchase history to offer a consumer who regularly purchases fresh produce a targeted discount on surplus fruits nearing their sell-by date. Under the bill, these types of information may be classified as “consumer information” collected through “technological methods, systems, or tools” and thus be treated as “surveillance data.”⁵ Although this type of personalized discount benefits consumers through lower prices, reduces food waste, and helps retailers manage inventory more efficiently, it may be swept into the bill’s broad prohibition simply because it relies on consumer information that may be deemed “surveillance data.”

Further, although SB 387 excludes certain activities from its definition of “dynamic pricing,” including promotional pricing offers, loyalty program benefits, or other temporary discounts or pricing changes intended to retain existing customers, those exclusions do not meaningfully resolve the problem.⁶ First, the bill would still significantly restrict the availability of discounts and special pricing for ordinary consumers who are *not* enrolled in a loyalty program and for whom the business is not specifically seeking to encourage continued patronage. Second, and more importantly, those exclusions do not apply to use of “surveillance data,” which is separately defined and also flatly prohibited under the bill. As a result, promotional pricing, loyalty program benefits, and temporary discounts that are expressly excluded when categorized as “dynamic pricing” may nonetheless be prohibited when the same conduct is categorized as use of “surveillance data.” This internal inconsistency creates substantial uncertainty for retailers and risks chilling consumer-friendly pricing practices that SB 387 does not appear intended to ban.

II. SB 387 should not tie enforcement to the Maryland Consumer Protection Act or allow for a private right of action.

SB 387 would amend the Maryland Consumer Protection Act (“MCPA”) by adding § 13-421.⁷ Effectively, enforcement of this new section would be able to proceed not just through

⁴ SB 387 § 13-321(B).

⁵ SB 387 § 13-321(A)(5).

⁶ SB 387 § 13-321(A)(3)(II).

⁷ SB 387 § 13-321 (“By adding to Article – Commercial Law Section 13-321 Annotated Code of Maryland”).

baltimore

government action but through private lawsuits under the MCPA’s private right of action.⁸ As a result, a business offering cost-reducing coupons could be subject to a private right of action if such activity is deemed an impermissible use of “surveillance data.” 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 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 387 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.⁹ 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 Commonwealth’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 they are convinced they are without merit.¹⁰

⁸ Md. Code Ann., Com. Law § 13-401.

⁹ 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](#).

¹⁰ 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



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 consumers. We therefore encourage the Committee to clarify that SB 387 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 387. Rather than strengthening consumer protections, the bill risks higher prices, reduced choice, and fewer opportunities for consumers to benefit from discounts and incentives.

Thank you in advance for your consideration of this letter.

Sincerely,

Christopher Oswald
EVP for Law, Ethics & Govt. Relations
Association of National Advertisers
202-296-1883

Alison Pepper
EVP, Government Relations & Sustainability
American Association of Advertising Agencies, 4As
202-355-4564

Clark Rector
Executive VP—Government Affairs
American Advertising Federation
202-898-0089

Lou Mastria
CEO
Digital Advertising Alliance
347-770-0322

CC: Members of the Maryland Senate Finance Committee

Mike Signorelli, Venable LLP
Allie Monticollo, Venable LLP
Matthew Stern, Venable LLP

SB0387 -- Food Retailers - Dynamic Pricing, Survei

Uploaded by: Brian Levine

Position: UNF



Senate Bill 387 -- Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)
Senate Finance Committee
February 17, 2026
Oppose

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, opposes Senate Bill 387 -- *Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)*.

Senate Bill 387 prohibits a food retailer from engaging in the practice of dynamic pricing or using consumer surveillance data to set a price for consumer goods or services.

While MCCC agrees that protecting consumers is essential, businesses have expressed concern that the broad or ambiguous use of the term surveillance data may unintentionally encompass legitimate, privacy-respecting tools that support everyday commercial activity. The Chamber is concerned that surveillance data and dynamic pricing currently lack widely accepted technical or legal definitions. For example, common practices such as targeted promotions or loyalty programs could be interpreted as falling within the broad language used in Senate Bill 387.

Businesses in food retail, as well as those in other industries, are apprehensive that legislation of this kind could impede their ability to manage key operational functions that rely on data analytics. An unintended consequence could be a shift toward higher and more uniform pricing if companies are unable to use data to offer discounts or adjust prices efficiently. Additionally, limiting these technologies may introduce significant operational costs and create uncertainty, making it more challenging for companies to remain competitive in Maryland.

While MCCC appreciates the intent of this bill, concerns remain about its ambiguity and the potential unintended consequences for food retailers, an important sector of Maryland's economy.

For these reasons, the Montgomery County Chamber of Commerce opposes Senate Bill 387 and respectfully requests an unfavorable report.

The Montgomery County Chamber of Commerce (MCCC), on behalf of its members, champions the growth of business opportunities, strategic infrastructure investments, and a strong workforce to position Metro Maryland as a premier regional, national, and global business location. Established in 1959, MCCC is an independent, non-profit membership organization.

Brian Levine | Vice President of Government Affairs
Montgomery County Chamber of Commerce
51 Monroe Street | Suite 1800
Rockville, Maryland 20850
301-738-0015 | www.mcccmd.com

Chamber of Progress_MD SB 387_Oppose.pdf

Uploaded by: Brianna January

Position: UNF



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,¹ 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.

¹ 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,² and about 1 in 4 consumers earning under \$40,000 choose their supermarket based on loyalty program membership.³ 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.⁴

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

² 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>

³ 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/>

⁴ 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.⁵ Digital coupons alone save the average American household \$1,465 each year.⁶ 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.⁷

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%,⁸ and U.S. grocers waste roughly 5 million tons of food each year.⁹ 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**

⁵ 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>

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

⁷ 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>

⁸ 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/>

⁹ 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%.¹⁰ 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.¹¹ **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

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

¹¹ 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

PDF_final_[MD] SB 387_SP_TechNet.pdf

Uploaded by: margaret durkin

Position: UNF

February 13, 2026

The Honorable Pam Beidle
Chair
Senate Finance Committee
Maryland Senate
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 387 - Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (Protection From Predatory Pricing Act)

Dear Chair Beidle and Members of the Committee,

On behalf of TechNet, I'm writing to share comments on SB 387.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes 103 dynamic American businesses ranging from startups to the most iconic companies on the planet and represents five million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

TechNet recognizes that automated decision systems raise complex and evolving policy questions, and our member companies are committed to providing a positive customer experience that is transparent. We do not condone any targeting of consumers based on factors such as religion, race, sexuality, or political affiliation. States across the country have been carefully studying how to balance innovation with consumer protection. The difficulty of getting this right has been demonstrated in other states, where similar proposals were ultimately withdrawn or rejected on a bipartisan basis after months of deliberation.

Our members support fair pricing practices, and we believe that SB 387 is overly broad and will harm consumers through higher prices and reduced innovation. Data-driven pricing enables lower average prices, better inventory management, and reduced food waste. Our members have invested in pricing technology, inventory management, and customer experience systems that rely on data-driven pricing optimization, and have used this technology responsibly for years to improve the consumer experience, lower prices for customers, and enhance competition.

We believe that the bill could be improved in three areas – definitions, prohibitions and enforcement - and have provided suggested amendments with rationale to SB 387 below this letter.

Definitions

The bill creates multiple novel definitions, some of which conflict with the Maryland Online Data Privacy Act (MODPA). For instance, the definition of “Surveillance Data” differs from the existing definition of “Personal Data” from the MODPA. While the rhetoric around the bill implies applicability only to brick-and-mortar grocery stores, the definitions are broad enough to capture a much larger universe of retail. For example, our read of the bill is that the “Food Retailer” definition could capture a small business that sells packaged coffee beans online from its 15,000 square foot warehouse. Moreover, the definition of “Surveillance Data” clearly applies to both a “physical or digital environment”. Finally, the vague definition of “Dynamic Pricing” could capture routine, uncontroversial practices used to assess supply and demand across stores or markets, and prohibit standard retail activities such as adjusting prices based on inventory levels, expiration dates, or competitive positioning.

Prohibitions

We do not object to prohibiting personalized price increases for individual consumers, but the current language is much broader than that. For example, the prohibition, on the use of surveillance data and dynamic pricing, as drafted, applies to setting prices for a “group of consumers”, a vague term that could be read to include all consumers within a geographic area or store. Combined with the broad definition of “Surveillance Data,” the prohibition on the use of “Dynamic Pricing” would restrict merchants’ ability to adjust prices based on localized supply, demand, inventory, or costs—longstanding pricing practices that help manage costs and keep baseline prices lower.

Enforcement

Finally, the bill’s current language is silent on violations and enforcement, but by placing the title within the Maryland Consumer Protection Act, the legislation would create a private right of action (PRA). In our view, PRAs lead to frivolous lawsuits and only benefit a subset of industry operating in the litigation space.

We believe that SB 387 will put Maryland at a competitive disadvantage by creating an uneven playing field. Other industries known to use customer data in pricing decisions are exempt while both online and brick and mortar retailers are targeted.

Without the ability to optimize pricing dynamically, stores must price conservatively, which could lead to higher average prices. This bill could also reduce businesses’ ability to offer targeted promotions and personalized discounts to price-sensitive customers, and will limit markdown capabilities on perishables, increasing food waste and costs passed to consumers.

For the reasons mentioned above, TechNet respectfully opposes SB 387 in its current form, but looks forward to working with those involved with this legislation to balance consumer protection with business innovation. Please don't hesitate to reach out with any questions.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic

Suggested amendments:

Page 1, line 2, strike **DYNAMIC** and insert **SURVEILLANCE**

Page 2, lines 17-25 strike language and insert:

(3) "SURVEILLANCE PRICING" MEANS THE PRACTICE OF USING ARTIFICIAL INTELLIGENCE TO OFFER OR DISPLAY AN INDIVIDUALIZED PRICE INCREASE FOR A SPECIFIC CONSUMER BASED ON SURVEILLANCE DATA OF SUCH CONSUMER.

(4) "BASELINE PRICE" MEANS, WITH RESPECT TO A GOOD OR SERVICE, THE THEN-CURRENT PRICE GENERALLY MADE AVAILABLE TO CONSUMERS IN A GIVEN REGION BY THE SUPPLIER, EXCLUDING LOYALTY OR CLUB MEMBER PRICING, PROMOTIONAL OFFERS, LIMITED TIME SALES, DISCOUNTS, OR ADDITIONAL FEES FOR PREMIUM OR ADDITIONAL FEATURES.

(5) (I) "INDIVIDUALIZED PRICE INCREASE" MEANS A PRICE FOR A GOOD OR SERVICE THAT IS ABOVE THE BASELINE PRICE AND IS SET FOR A CONSUMER BASED ON SURVEILLANCE DATA.

(II) "INDIVIDUALIZED PRICE INCREASE" DOES NOT INCLUDE PRICE DIFFERENCES BASED ON:

(I) COSTS ASSOCIATED WITH PROVIDING THE GOOD OR SERVICE TO DIFFERENT CONSUMERS, FOR EXAMPLE PRICE CHANGES ATTRIBUTABLE TO INVENTORY, SUPPLY CHAIN, ORDER FULFILLMENT, TAXES, SHIPPING, OR DELIVERY; OR

(II) NON-INDIVIDUALIZED FACTORS SUCH AS CURRENT MARKET DEMAND, PUBLIC COMPETITOR PRICING OR TIME-OF-DAY.

(6) "PERSONAL DATA" HAS THE MEANING STATED IN §13-4701 ONLINE DATA PRIVACY ACT.

(7) "PROTECTED CLASS DATA" MEANS INFORMATION ABOUT AN INDIVIDUAL PERSON OR GROUPS OF PEOPLE THAT DIRECTLY, IN

COMBINATION, OR BY IMPLICATION IDENTIFIES A CHARACTERISTIC THAT IS LEGALLY PROTECTED FROM DISCRIMINATION UNDER THE LAWS OF THIS STATE OR UNDER FEDERAL LAW.

On page 2, lines 31-33 strike language. On page 3, lines 1-4, strike language.

Rationale:

TechNet's suggested language clearly defines surveillance pricing as limited to individualized price increases and provides a definition of "Individualized Price Increase" in relation to "Baseline Price". These changes also distinguish individualized price increases from price differences that may be associated with costs of providing the good to the customer, such as taxes or costs of delivery. Additionally, the suggested language removes the definition of "Dynamic Pricing", allowing retailers to offer time-of-day discounts, such as lowering the price of bakery goods or prepared foods at the end of the day to prevent food waste. Instead of creating a novel definition of "Surveillance Data", we suggest the definition of "Personal Data" in accordance with the Maryland Online Data Privacy Act:

- (w)(1) "Personal data" means any information that is linked or can be reasonably linked to an identified or identifiable consumer.
- (2) "Personal data" does not include:
 - (i) De-identified data; or
 - (ii) Publicly available information.

Finally, these changes clearly define "Protected Class Data".

Page 3, lines 5-7, replace prohibition language with the following:

(B) A FOOD RETAILER MAY NOT ENGAGE IN SURVEILLANCE PRICING.

Rationale:

This language will clearly prohibit surveillance pricing as limited to individualized price increases, and aligns the prohibition with the definitions.

Page 3, lines 13-23 strike and insert:

**(D) A VIOLATION OF THIS SECTION IS:
(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE;
(2) SUBJECT TO EXCLUSIVE ENFORCEMENT BY THE ATTORNEY GENERAL AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE EXCEPT FOR §13-408 AND §13-411 OF THIS ARTICLE; AND**

(3) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED AS PROVIDING THE BASIS FOR, OR BE SUBJECT TO, A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS CHAPTER OR UNDER ANY OTHER LAW.

Rationale:

- This language sets out clear consequences for violating the surveillance pricing provision set out in the proposed Section 13-321 of the Consumer Protection Act. It also clarifies AG-only enforcement and no private right of action (13-408 does not apply). Finally, it eliminates criminal penalties, consistent with the original language (13-411 does not apply).