

Department of Legislative Services  
 Maryland General Assembly  
 2026 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 895

(The Speaker, *et al.*) (By Request - Administration)

Economic Matters

Finance

Consumer Protection - Price Setting of Consumer Goods and Services and Use of Protected Class Data (Protection From Predatory Pricing Act)

This Administration bill prohibits a “food retailer” or a “third-party food delivery service provider” from engaging in the practice of “dynamic pricing” or using personal data to set a price for consumer goods or services for a single consumer or a group of consumers. These entities may not use protected class data to offer, advertise, or sell a consumer good or service to a consumer for whom the protected class data pertains if the use of such data has the effect of withholding or denying from the consumer an accommodation, an advantage, or a privilege provided to others. The bill also generally prohibits other types of merchants from setting the price of consumer goods or services using dynamic pricing or personal data unless a required disclosure is made. Violation of these provisions is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil penalty provisions, except provisions that allow a private right of action.

Fiscal Summary

**State Effect:** General fund expenditures increase, at least minimally beginning in FY 2027, for the Office of the Attorney General (OAG), as discussed below. The bill’s imposition of existing penalty provisions is not anticipated to have a material impact on State revenues.

**Local Effect:** The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

## Analysis

### Bill Summary:

#### *Definitions*

“Dynamic pricing” means the practice of varying the prices of consumer goods or services within the same business day based on demand or other factors. It does *not* include:

- the use of promotional pricing offers, loyalty program benefits, or other temporary discounts or changes to pricing related to retention of existing customers;
- a difference in price based on objective costs attributable to providing goods or services to different consumers, such as a difference in price caused by shipping costs or taxes based on a consumer’s physical location;
- a discounted price offered to a consumer through a clear and conspicuous disclosure on a merchant’s website that lists all eligibility criteria, the available discount, and any conditions for receiving or earning the discounted price that meet specified criteria;
- a price correction resulting from a pricing error; or
- resetting a price following a system or network outage.

“Food retailer” means a merchant that operates a business establishment that (1) has a minimum of 15,000 square feet and (2) sells food that is exempt from the sales and use tax in accordance with the Tax-General Article.

“Third-party food delivery service provider” means a merchant that provides as a consumer service the delivery of food that is exempt from the sales and use tax in accordance with the Tax-General Article. It does not include a food retailer.

#### *Use of Dynamic Pricing or Personal Data by Other Types of Merchants*

A merchant may not set the price of a consumer good or service using dynamic pricing or personal data and directly or indirectly advertise or promote, include on a label, or publish any other communication containing the price, unless the merchant includes with the advertisement, promotion, label, or other communication a clear and conspicuous disclosure stating that the price was set by an algorithm or by using personal data. These requirements do not apply to the following:

- conduct of a merchant that is regulated under the Insurance Article;

- conduct of a food retailer or third-party food delivery service provider subject to the bill's other provisions;
- a financial institution regulated under State law or a financial institution (or an affiliate) that is subject to federal regulation under the Gramm-Leach-Bliley Act; or
- a lower price that is offered to a consumer who is an employee of the merchant.

### *Enforcement Actions*

Before initiating an enforcement action under MCPA for a violation of the bill, OAG must issue a notice of violation to the alleged violator and provide the alleged violator 45 days after the notice is received to cure the violation. If the violation is cured within that period, OAG may not initiate an enforcement action.

**Current Law:** "Personal data" means any information that is linked or can be reasonably linked to an identified or identifiable consumer. It does not include de-identified data or publicly available information.

### *Price Regulation*

State law generally does not regulate price setting in the manner specified by the bill. However, various provisions of State law address the practice of adjusting or advertising prices for consumer goods and services. For example, Chapters 630 and 631 of 2023 prohibit a person from selling a good or service designated as essential (including a repair or reconstruction service) for a price that exceeds a specified threshold during and, in some cases, after a state of emergency. Additionally, a seller is prohibited from increasing the layaway price of a consumer good that is sold under a layaway agreement.

### *Maryland Consumer Protection Act*

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease-and-desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

### *Sales and Use Tax – Exemption for Food*

Generally, the sales and use tax does not apply to a sale of food for consumption off the premises by a food vendor who operates a substantial grocery or market business at the same location where the food is sold. However, this exemption does not apply to (1) food that the vendor serves for consumption on the premises of the buyer or of a third party or (2) food for immediate consumption.

**Background:** According a [study](#) by the Federal Trade Commission (FTC), details such as a person’s location or browser history can frequently be used to target individual consumers with different prices for the same goods or services. More specifically, third-party intermediaries (*i.e.*, entities hired by retailers that can algorithmically tweak and target their prices) may set individualized prices for products and services based on a variety of factors – including demographics, browsing patterns, and shopping history. FTC staff found that consumer behaviors ranging from mouse movements on a webpage to the type of products that consumers leave unpurchased in an online shopping cart can be tracked and used by retailers to set unique pricing levels for individual consumers. Moreover, the FTC [found](#) that grocery stores were among the many types of consumer-facing businesses that utilized data from intermediaries.

**State Expenditures:** OAG advises that it requires additional staff to investigate and enforce the bill’s prohibition against dynamic pricing and the use of personal data. Specifically, OAG anticipates the need for one assistant Attorney General and one technologist, with estimated personnel expenditures of approximately \$325,000 on an annual basis.

DLS acknowledges that enforcement of the bill is likely to require specialized knowledge of the relevant industries and practices. This analysis assumes, therefore, that OAG incurs at least minimal contractual costs to facilitate training and the development of technical expertise. However, DLS advises that without experience under the bill, it is unclear to what extent food retailers, third-party food delivery service providers, and other merchants will be noncompliant and whether there will be a significant enough volume of related complaints to necessitate additional staff. To the extent OAG receives a significant number

of complaints from consumers under the bill that it is unable to handle with existing staff, OAG may request additional resources through the annual budget process.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 387 (The President, *et al.*) (By Request - Administration) - Finance.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Maryland Department of Labor; Federal Trade Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 17, 2026  
jg/jkb Third Reader - April 6, 2026  
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Analysis by: Eric F. Pierce

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

## **ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**TITLE OF BILL:** Consumer Protection - Price Setting of Consumer Goods and Services and Use of Protected Class Data (Protection From Predatory Pricing Act)

**BILL NUMBER:** SB 387

**PREPARED BY:** Governor's Legislative Office

### **PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

  X   WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

**OR**

       WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

### **PART B. ECONOMIC IMPACT ANALYSIS**