

Department of Legislative Services  
Maryland General Assembly  
2026 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 387  
Finance

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

Economic Matters

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**Food Retailers and Third-Party Food Delivery Service Providers - Dynamic Pricing and Personal Data (Protection From Predatory Pricing Act)**

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This Administration bill prohibits a “food retailer” or a “third-party food delivery service provider” from (1) engaging in the practice of “dynamic pricing” to increase a price for consumer goods or services for a specific consumer or (2) using personal data to increase 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. 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.

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**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.)

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## Analysis

### Bill Summary:

#### *Definitions*

“Dynamic pricing” means the discriminatory practice of offering or setting a personalized price for a good or service that is specific to a consumer based on the consumer’s personal data, regardless of whether the seller collected or purchased the personal data. 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 difference in price based on costs or differences in supply or demand associated with providing or selling a good or service in different locations or geographies;
- a difference in price based on costs associated with the availability or supply of the good or service;
- a price offered to a consumer through a loyalty, membership, or rewards program in which any consumer may voluntarily enroll or consent to participate;
- a price offered to a consumer in connection with a subscription-based contract or agreement;
- a price offered to a consumer who consents to providing personal data or other information in exchange for obtaining the price;
- 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.

### *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. These requirements may not be construed to authorize a private right of action under the bill or any other law.

### **Current Law:**

#### *Applicable Definitions*

“Consent” means a clear affirmative act signifying a consumer’s freely given, specific, informed, and unambiguous agreement to allow the processing of personal data relating to the consumer for a particular purpose. Consent includes a written statement, a written statement by electronic means, or any other unambiguous affirmative action. It does not include specified methods (*e.g.*, hovering over, muting, pausing, or closing a piece of content).

“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 by food retailers and third-party food delivery service providers. 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. 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 and third-party food delivery service providers 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:** HB 895 (The Speaker, *et al.*) (By Request - Administration) - Economic Matters.

**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 16, 2026  
caw/jkb Third Reader - March 30, 2026  
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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Food Retailers - Dynamic Pricing, Surveillance Data, and Collective Bargaining Agreements (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