

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 889 (Senator Lam)
 Finance

**Consumer Protection and Labor and Employment - Electronic Shelving Labels
 and Surveillance-Based Price and Wage Setting - Prohibitions**

This bill prohibits merchants doing business or providing consumer goods in the State from using surveillance-based price setting. The bill also prohibits a food retailer from using electronic shelving labels or any digital shelf display technology to display the price of consumer goods; instead, a food retailer must use nondigital presentations of price. A violation of these requirements is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions. The bill also prohibits surveillance-based wage setting, except under limited circumstances, and authorizes the Commissioner of Labor and Industry in the Maryland Department of Labor (MD Labor) to investigate and take specified actions after receiving a written complaint from an employee.

Fiscal Summary

State Effect: General fund expenditures increase by \$349,400 in FY 2027 for staff needed to enforce the bill’s prohibitions. Future years reflect annualization, ongoing operating expenses, and the elimination of one-time costs. The bill’s imposition of existing penalty provisions is not anticipated to have a material impact on general fund revenues.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	349,400	410,900	430,000	449,300	468,800
Net Effect	(\$349,400)	(\$410,900)	(\$430,000)	(\$449,300)	(\$468,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

“Automated decision system” means a system, software, or a process that uses computation to assist, approximate, or replace human decision making. It includes a system, software, or a process derived from machine learning, statistics, or other data processing or artificial intelligence (AI) techniques.

“Electronic shelving label” means an electronic and wireless paper display that shows product and pricing information of consumer goods; it includes e-paper.

“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 State law.

“Nondigital presentation of price” means a sign that offers the unit price for one or more brands or sizes of a consumer good or a sticker, stamp, sign, label or tag indicating the price of a consumer good affixed to the consumer good or to the shelf on which the consumer good is displayed.

“Surveillance-based price setting” means the practice of setting the price of consumer good or services based on profiling or other processing of consumer or device data.

“Surveillance data” means data obtained through observation, inference, or surveillance of an individual relating to personal or genetic information, behavior, or biometrics of the individual or a group, band, class, or tier to which the individual belongs.

“Surveillance-based wage setting” means the use of surveillance data in conjunction with an automated decision system to offer or inform a customized wage for a specific employee or group of employees in the State.

Surveillance-based Price Setting

The prohibition against surveillance-based pricing setting does not apply to a merchant that offers a customized price to a consumer or group of consumers when the different prices:

- are based on differences in cost to provide a good or service to different consumers;
or

- reflect a discount offered to all consumers on equal terms consistent with antidiscrimination laws.

Surveillance-based Wage Setting

The prohibition against surveillance-based wage setting does not apply if an employer:

- offers a customized wage based on data specific to an employee that is directly related to the task the employee was hired to perform or based on the location where the employee works and the cost of living in that location; and
- before hiring an employee whose wages are set in whole or in part through an automated decision system, discloses in plain language to the employee what data is considered and how the automated decision system considers the data.

Whenever the commissioner determines that the prohibition has been violated, the commissioner must either try to resolve any issues involved in the violation informally by mediation or ask the Attorney General to bring an action on behalf of the applicant or employee. The Attorney General is authorized to bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief.

Current Law:

Artificial Intelligence

“AI” 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.

For additional information on the status of AI in the State and nation, please see the **Appendix – Artificial Intelligence**.

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.

Chapter 818 of 2017 explicitly prohibited a manufacturer or wholesale distributor of prescription drugs from engaging in price gouging in the sale of an essential off-patent or generic drug; however, the law was declared unconstitutional as a violation of the federal Commerce Clause in *Association for Accessible Medicines. v. Frosh*, 887 F.3d 664 (4th Cir. 2018).

Employment Discrimination

State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, military status, or disability. The State and local governments are considered employers.

Regardless of employer size, under the State's Equal Pay for Equal Work law, an employer may not discriminate between employees in any occupation by providing less favorable employment opportunities based on sex, race, religious beliefs, sexual orientation, disability, or gender identity. An employer is also prohibited from paying a wage to employees at a rate less than the rate paid to other employees working in the same establishment and performing comparable work, as specified, if the pay difference is based on race, religious beliefs, sex, gender identity, or sexual orientation. The State and local governments are considered employers.

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.

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 within the Office of the Attorney General (OAG) 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.

State Expenditures:

Office of the Attorney General – Consumer Protection Division

OAG does not currently have the technical expertise needed to investigate and enforce the bill’s prohibition against surveillance-based price setting. Therefore, general fund expenditures for OAG increase by \$221,956 in fiscal 2027, which accounts for the bill’s October 1, 2026 effective date. This estimate reflects the cost of hiring one technologist and one assistant Attorney General, both with specialized expertise in the use of AI, to handle responsibilities necessary to enforce the bill, including the investigation of complaints. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$203,674
Operating Expenses	<u>18,282</u>
Total FY 2027 OAG Expenditures	\$221,956

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Maryland Department of Labor

The bill creates new enforcement responsibilities for MD Labor for which it does not have sufficient existing staff. Therefore, general fund expenditures for MD Labor increase by \$127,404 in fiscal 2027, which accounts for the bill’s October 1, 2026 effective date. This estimate reflects the cost of hiring one full-time investigator and one half-time assistant

Attorney General to handle the responsibilities necessary to enforce the bill's requirements related to surveillance-based wage setting, including the investigation of complaints, mediation attempts, and case referrals to OAG. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.5
Salaries and Fringe Benefits	\$106,930
Operating Expenses	<u>20,474</u>
Total FY 2027 MD Labor Expenditures	\$127,404

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The estimate assumes a relatively low volume of complaints that must be investigated by MD Labor under the bill. To the extent that the number of complaints is greater, MD Labor may need additional investigators and/or a full-time assistant Attorney General to adequately enforce the bill's prohibition against surveillance-based wage setting. To the extent additional staff are needed, general fund expenditures increase accordingly in the out years.

Additional Information

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

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 11, 2026
caw/mcr

Analysis by: Eric F. Pierce

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

Appendix – Artificial Intelligence

Artificial Intelligence – Generally

Artificial intelligence (AI) is a broad field of computer science that deals with the creation of “intelligent” systems that can reason, learn, and act autonomously. There are many different branches of AI, each with its own focus and set of techniques, such as machine learning, neural networks, robotics, expert systems, fuzzy logic, and natural language processing. AI research has been successful in developing algorithms for solving a wide range of problems, from game playing to conversation simulation.

AI use has expanded significantly in recent years. Many of the largest technology companies have each developed their own AI systems and have integrated the systems into their respective companies’ products and services. AI’s ability to quickly synthesize and summarize vast amounts of data and apply the results have made it a useful tool in modern society while also raising questions about its use. The following list briefly describes a few of the impacts of and issues surrounding AI.

- Related to education, AI may have potential benefits to help tutor or otherwise provide additional resources to assist students in their studies. However, some students use AI to cheat on their schoolwork;
- Related to energy use, the significant power draw necessary to run the data systems that host AI systems has contributed to localized energy shortages and increased energy costs;
- Regarding environmental issues, these data centers require a significant amount of water for cooling and increasingly have been using freshwater resources for this purpose;
- Related to criminal justice, AI image and video generation systems can be used to make “deep fake” pictures and videos that may be difficult or impossible to differentiate from actual events;
- AI’s reliance on information from the internet has raised concerns regarding the accuracy of AI-generated content as well as copyright infringement and data privacy.
- Related to health, AI is being used to assist doctors in developing medical diagnoses, but is also being used by insurance companies to screen requests for care and claims;
- Related to labor and employment, the expansion of AI has led to concerns about employees being replaced by AI systems as a means to save money on labor costs.

Governance at the State Level

The State defines AI as 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. At the State level, AI is governed primarily by the Department of Information Technology (DoIT) and the Governor's AI Subcabinet. This governance structure was established by Chapter 496 of 2024 and, broadly speaking:

- requires DoIT to adopt policies and procedures, in consultation with the Governor's AI Subcabinet, concerning the development, procurement, deployment, use, and ongoing assessment of systems that employ high-risk AI by a unit of State government;
- prohibits units of State government from procuring or deploying a new system that employs AI unless the system complies with the policies and procedures adopted by DoIT;
- requires each unit of State government to conduct a data inventory to identify data that meets criteria established by the Chief Data Officer and that is (1) necessary for the operations of the unit or otherwise required to be collected as a condition to receive federal funds or by federal or State law and (2) in a form prescribed by the Chief Data Officer, including when the data is used in AI; and
- requires each unit of State government to conduct an inventory of systems that employ high-risk AI.

Most recently, DoIT and the subcabinet have released the [2025 Maryland AI Enablement Strategy & AI Study Roadmap](#), which includes plans for studying opportunities, risks, and next steps associated with the use of AI in State services. Additionally, in November 2025, the Governor's Office announced a [State partnership](#) with two AI companies to integrate certain AI systems into a portion of the State's workforce.

Other Recent State Laws and Policies

In addition to the direct governance effectuated by Chapter 496, various other laws and policies address some of the issues posed by AI.

Chapter 105 of 2025 established the Workgroup on AI Implementation to monitor issues and make recommendations related to AI, including (1) the regulation of AI used in decisions that significantly impact the livelihood and life opportunities of individuals in

the State; (2) deployer and developer obligations related to labor and employment and protection of individual privacy rights; (3) protection of consumer rights; (4) current private sector use of AI; (5) general AI disclosures for all consumers; (6) enforcement authority for the Office of the Attorney General’s Consumer Protection Division; and (7) the impact of the use of AI in the determination of government benefits. The first report from the workgroup is due July 1, 2026.

Chapter 747 of 2025 requires a carrier (*i.e.*, insurance company or another organization that provides health benefit plans), pharmacy benefits manager, or a private review agent that uses AI, algorithms, or other software tools for utilization review (including working through an entity that uses such tools) to ensure that such tools are used in a specified manner. Notably, the Act specifies that an AI, algorithm, or other software tool may not deny, delay, or modify health care services and that carriers must submit in their quarterly appeals and grievance reports whether an AI, algorithm, or other software tool was used in making an adverse decision.

Chapter 17 of the 2025 special session established an AI Evidence Clinic Pilot Program in the Administrative Office of the Courts to provide expertise in AI to the circuit courts and the District Court in the form of expert testimony on the authenticity of electronic evidence that a court determines may have been created or altered using AI.

Regarding education, the Maryland State Department of Education has begun an [AI initiative](#) to develop policies and procedures for AI use by students and teachers. Additionally, Chapter 237 of 2025 specifies that, for school years 2025-2026 through 2027-2028, certain requirements for the procurement and use of digital tools to assure equivalent access to technology for students with disabilities do not apply to digital tools that use AI.

Federal Action

The National Artificial Intelligence Initiative Act of 2020 became law on January 1, 2021. The aim of the Act is to promote U.S. leadership in AI research and development with the goal of accelerating the nation’s economic prosperity and national security through the development and use of trustworthy AI in the public and private sectors and preparation of the workforce for the inevitable integration of AI systems. This multi-agency initiative has included work by the U.S. Department of Energy, in consultation with the National Institute of Standards and Technology, to develop the AI Risk Management Playbook as a reference guide to support responsible and trustworthy AI use and development. Though not a binding document, the playbook addresses common AI risks and steps that AI leaders, practitioners, and procurement teams can take to manage data privacy and bias risks.

Other Executive Orders guiding and governing AI use of the federal level signed during the previous administration were revoked under the current administration. Moreover, an [Executive Order signed in December 2025](#) generally expresses the federal government's attempt to preempt State AI laws and regulations, directs certain federal agencies to penalize states that are found to not be in compliance with the preemption, and directs certain federal entities to prepare a legislative recommendation establishing a uniform federal policy framework for AI that preempts state AI laws.