



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 Reports<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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).<sup>3</sup> 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.

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<sup>2</sup> 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/>

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>
- 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.<sup>6</sup>

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.<sup>7</sup>

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*

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<sup>4</sup> 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>

<sup>5</sup> Dana Mattioli, "On Orbitz, Mac Users Steered to Pricier Hotels," *Wall Street Journal*, Aug. 23, 2012  
<https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

<sup>6</sup> 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>

<sup>7</sup> 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.<sup>8</sup>

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,

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

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