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Grocery prices changing by the minute? Maryland lawmakers want to ban that.

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Gov. Wes Moore and lawmakers unveil legislation to limit “dynamic pricing” in grocery stores at an event at BD Provisions in Severna Park. (Madeleine O'Neill for The Banner)

Electronic labels could allow grocery stores to adjust prices in real time, a practice that alarms consumer advocates

Maryland legislative leaders want to try a new approach to tackling high grocery costs: banning retailers from adjusting their prices too often with electronic labels.

As electronic labels make their way into more grocery stores, consumer advocates are wary that they could be used for “dynamic pricing,” a practice similar to how airlines jack up prices during peak travel seasons.

Gov. Wes Moore introduced the Protection from Predatory Pricing Act Tuesday at a specialty bulk foods shop in Severna Park, where he was joined by Senate President Bill Ferguson and House Speaker Joseline A. Peña-Melnyk.

The bill would require grocery stores to keep their prices fixed for at least one business day and would ban the use of personal data to set individualized prices for groceries.

“The food you need shouldn’t cost more because you need it,” Moore said, arguing that technology should work for working families, not against them. “When you walk into a grocery store in Maryland, you will pay the same price as the person who walked in before you and the person who walked in after you.”

You’ve probably already run into examples of dynamic pricing, like when Uber charges more for rides during peak times or if you’ve [bought concert tickets to see a popular artist](#). But the growing amount of our personal data available to companies has made it possible for prices to be individualized even further.

Using tools that already exist, an online retailer could, [for example](#), use a consumer’s data to conclude she just had a baby, and then show that consumer higher-priced baby thermometers at the top of her search results. A sports betting website could target more aggressive pop-up advertising at a customer who is moving their cursor toward the “close tab” button.

These practices are commonly known as “surveillance pricing.”

While dynamic pricing is not new, the use of personal data to set individualized prices makes consumers uncomfortable, said Noah Giansiracusa, a mathematics professor at Bentley University in Waltham, Massachusetts, who authored the book “Robin Hood Math: Take Control of the Algorithms That Run Your Life.”

Companies want to find your “pain point,” or the maximum amount of money that you are willing to pay for a product at a given time, Giansiracusa said. Your pain point for the price of an umbrella might be higher on a rainy day than a sunny one, for instance.

“Everyone has some price they’re willing to pay, and the more the computer can figure out what that is, the closer they can bring us to that,” Giansiracusa said.

This kind of technology has mostly been used by e-commerce retailers, but electronic shelf labels would let brick-and-mortar stores change prices more quickly, too.

Walmart [announced last year](#) that it would place electronic labels in 2,300 stores by 2026, and you can also find them at Kroger and Whole Foods. A [Consumer Reports](#) investigation found that Instacart is experimenting with using algorithmic pricing to charge different customers varying prices for the same products. Some [grocery chains in Europe](#) also use electronic labels.

The shift has prompted concern [among lawmakers](#) and consumers about grocery stores' ability to adjust prices by the moment, opening up the possibility of price surges at peak shopping times or based on other factors.

"The same bag of groceries could cost me more than my neighbor based on this information," said Marceline White, the executive director of Economic Action Maryland. "Technology can be great: It can be used to increase transparency, to level the playing field. But this is doing exactly the opposite, creating a black box where people don't know why they're getting the prices they're getting."

State legislatures are just beginning to find ways to address new pricing models — California [passed a law last year](#) that banned the use of "affinity based algorithmic pricing," which combines the use of personal data with dynamic pricing to set different costs for different groups of consumers.

The Maryland legislation is sure to face opposition from retailers, who see electronic labels as a more efficient way to adjust prices without sending store employees to physically change tags.

There's also little evidence that this practice is happening in Maryland grocery stores, said Drew Ambrogi, a policy manager for the tech industry coalition Chamber of Progress.

Lawmakers "are talking about a speculative practice," he said. "There's this idea that because the technology exists, these kinds of pricing practices will inevitably harm consumers, but no one's really presenting tangible evidence of harm."

Instead, he said, the bill could inadvertently ban customer loyalty programs that use shoppers' purchase histories to target them for coupons and promotions.

"I get the desire to take quick action on the cost of living, but we need to be really careful about what consumers actually want," Ambrogi said.

Under the bill, violations would be treated as unfair or deceptive trade practices under the Maryland Consumer Protection Act. The Maryland Attorney General's Office would enforce the regulation with civil penalties of up to \$10,000 for a first offense and \$25,000 for additional offenses.

Giansiracusa said that [price transparency](#), rather than electronic price labels, is his biggest concern about these types of pricing models. Legislation that forced companies to disclose what goes into their pricing algorithms would be more helpful than a "whack-a-mole" approach to surveillance capitalism, he said. And some personalized pricing benefits customers, like discounts for frequent shoppers.

"If we just knew what was involved in setting those prices, we'd be more comfortable when we should be and more alarmed when we should be," Giansiracusa said.