

ASSEMBLY THIRD READING

AB 2564 (Ward)

As Amended April 16, 2026

Majority vote

SUMMARY

This bill would impose a blanket ban on personalized price discrimination – "surveillance pricing" – based in whole or in part on the consumer's personally identifying information.

Major Provisions

- 1) Prohibits retailers from engaging in surveillance pricing.
- 2) States that a retailer is not engaging in surveillance pricing if either of the following apply:
 - a) The difference in price is based solely on costs associated with providing the good to different consumers.
 - b) The retailer is offering a discounted price based on publicly disclosed eligibility criteria and is uniformly offered or made available to all consumers who meet the criteria.
Specifically:
 - 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, providing personal information 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.
 - iii) A discounted price is offered through loyalty, membership, or rewards programs that consumers purchase or enroll in.
- 3) Defines the following terms:
 - a) "Discounted price" means a price that is verifiably lower than the widely available and publicly disclosed bona fide price.
 - b) "Electronic surveillance technology" means the use of methods, systems, or tools, including, but not limited to, sensors, cameras, device tracking, or biometric monitoring, that are capable of gathering personally identifiable information about a consumer's behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.
 - c) "Personally identifiable information" has the same meaning as "personal information" from the California Consumer Privacy Act (CCPA).
 - d) "Retailer" means any seller who makes any retail sale of tangible personal property, as defined.

- e) "Surveillance pricing" means offering or setting a customized price for a good for a specific consumer or group of consumers based on personally identifiable information collected through electronic surveillance technology.

"Surveillance pricing" does not include a discounted price offered to a consumer terminating or taking steps to terminate a service or membership with a person but does include offering random variations in prices to different customers using a website, mobile application, or comparable online technology.

- 4) Enables public prosecutors to seek a civil penalty of \$12,500 for violations, treble damages and disgorgement of revenues earned for intentional violations, and reasonable attorney's fees and costs.
- 5) Allows a consumer to bring an action solely for injunctive relief as necessary for enforcement.
- 6) Provides that waivers of the bill are against public policy and are void and unenforceable.

COMMENTS

Surveillance pricing is the practice of using consumers' personal information – including location, device type, demographics, and credit, browsing, or shopping history – to set the price of a good based on the consumer's perceived willingness to pay. This can lead to different consumers being charged different prices for the same good based on data-driven inferences and personal characteristics. While proponents of this practice claim it enhances price efficiency, critics contend that it is a surreptitious form of economic discrimination that disproportionately impacts lower-income communities that lack adequate options for purchasing essential goods.

It is important to distinguish surveillance pricing from dynamic pricing, which adjusts prices in response to market demand. For example, Wendy's fast food restaurants appeared to briefly flirt with dynamic pricing with plans to rapidly adjust the cost of their menu items based on demand – increasing the costs at times of peak demand.¹ In contrast, surveillance pricing treats each consumer as their own economy, using algorithms to assess their willingness to pay based on personal information such as browsing history, purchase behavior, and location.

The use of surveillance pricing does not just impact the consumers with higher incomes that the AI tool has determined are willing to pay more because they are able to. Surveillance pricing tools are able to also adjust prices based upon the inferred desperation of the consumer. For example, it is conceivable that a dossier might contain information suggesting that someone is a new parent and is in a 24-hour store late at night that they do not usually frequent that carries diapers. It would not be difficult for the tool to infer that the consumer has a level of desperation and urgency and is therefore willing to pay more for the diapers than someone in a less urgent situation.

The use of AI to set prices also raises concerns regarding biases within the algorithms that may disadvantage different groups. A 2021 study from George Washington University found that Uber and Lyft charged, on average, higher prices for pickups and drop-offs in predominantly

¹ "Wendy's denies plans for surge pricing after backlash," BBC News (Feb. 28, 2024).

non-white neighborhoods or neighborhoods with lower incomes.² While it is unclear whether these disparities stem from market forces or algorithmic bias because these companies use opaque algorithms to set prices, a possible conclusion is that algorithmic price setting could reinforce structural inequities.

Because businesses often operate without transparency, the extent of surveillance pricing remains uncertain. In the summer of 2024, the Federal Trade Commission launched a study to investigate how companies leverage AI, other technologies, and consumer data to set individualized prices. A preliminary report released in January revealed that at least 250 businesses have adopted technologies capable of implementing surveillance pricing. Lina Khan, former FTC Chair, concludes in this report:

Initial staff findings show that retailers frequently use people's personal information to set targeted, tailored prices for goods and services—from a person's location and demographics, down to their mouse movements on a webpage. The FTC should continue to investigate surveillance pricing practices because Americans deserve to know how their private data is being used to set the prices they pay and whether firms are charging different people different prices for the same good or service.³

According to the Author

With the rise of artificial intelligence and data collection, businesses increasingly use personal data to set prices, often leading to unfair and discriminatory pricing practices. This legislation aims to establish safeguards that ensure transparency, fairness, and consumer protections in pricing algorithms. AB 2564 will prohibit the practice of surveillance pricing by making it unlawful for businesses to use personal data when charging different prices for the same product, or service whether online or during in-store checkout.

Arguments in Support

Consumer Reports and TechEquity, co-sponsors of the bill, write in support:

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.

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 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. Companies can understand when a consumer might

² Akshat Pandey and Aylin Caliskan, “Disparate Impact of Artificial Intelligence Bias in Ridehailing Economy's Price Discrimination Algorithms” *arXiv* (May 3, 2021), <https://arxiv.org/abs/2006.04599>.

³ Federal Trade Commission, “FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices” (Mar. 10, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>.

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. 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.

In the wake of the investigation, U.S. Senator Ruben Gallego introduced a bill to prohibit surveillance pricing citing the investigation, at least 12 other members of Congress sent letters to the FTC and to Instacart, the FTC reportedly opened an investigation into Instacart, and Instacart announced it was ending the practice.

Arguments in Opposition

Chamber of Progress writes in opposition:

The term "surveillance pricing" suggests that companies are using personal data to charge individual consumers higher prices. *But despite widespread speculation, there is no conclusive evidence that this is actually happening.* In reality, businesses overwhelmingly use consumer data for the opposite purpose: offering discounts, coupons, and targeted promotions that help families save money while enabling businesses to reach the right customers, increase sales, and operate more efficiently.

Consumer markets are intensely competitive. When shoppers can compare prices with a few taps on their phone, using personal data to charge a customer more is a losing strategy. A competitor will simply offer a better price and win the sale. The businesses that use consumer data most actively are the ones competing hardest for customers, and they compete by offering better deals, not higher prices.

Consumers actively seek out these kinds of deals. A 2024 survey of more than 10,000 consumers found that 91% are willing to share personal data in exchange for value from brands, with discounts, loyalty points, and exclusive access cited as the top motivators. That willingness translates into everyday behavior: 70% of consumers say they value loyalty programs, and about 24% of consumers earning under \$40,000 rely on them when choosing where to shop.

FISCAL COMMENTS

- 1) Costs (General Fund) to the Department of Justice of an unknown, but potentially significant, amount to investigate and enforce violations of the bill by the Attorney General's Office. Actual costs will depend on the number of enforcement actions pursued and the resources required to investigate alleged violations, including analysis of retailer pricing systems, algorithmic review, and litigation. Civil penalty revenue recovered may partially offset enforcement costs.
- 2) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts for processing civil penalty actions brought by public prosecutors and consumer-brought injunctive actions. Actual costs will depend on the volume of enforcement actions filed and the complexity of each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The state budget provides an annual General Fund backfill to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-26.

The Legislative Analyst's Office recently warned of General Fund structural deficits of around \$35 billion per year beginning in the 2027-28 fiscal year.

VOTES**ASM PRIVACY AND CONSUMER PROTECTION: 10-4-1**

YES: Bauer-Kahan, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Pellerin, Ward, Wicks, Wilson

NO: Macedo, DeMaio, Hoover, Patterson

ABS, ABST OR NV: Petrie-Norris

ASM JUDICIARY: 8-3-1

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Papan, Stefani, Zbur

NO: Macedo, Dixon, Sanchez

ABS, ABST OR NV: Pacheco

ASM APPROPRIATIONS: 10-4-1

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Ta, Tangipa

ABS, ABST OR NV: Pacheco

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