CONCURRENCE IN SENATE AMENDMENTS
AB 2564 (Ward)
As Amended August 21, 2026
Majority vote

SUMMARY

This bill prohibits "surveillance pricing," defined as offering or setting a customized price for a good for a specific consumer or group of consumers, based, in whole or in part, on personally identifiable information collected through electronic surveillance technology, including personally identifiable information collected through electronic surveillance technology that is gathered, purchased, or otherwise acquired from a third party.

"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.

Senate Amendments

1) Remove enforcement from the bill.

2) Provide that the definition of "retailer" does not include automotive dealers.

3) Refine the definition of "surveillance pricing" and provides that a retailer does not engage in surveillance pricing by doing any of the following:
   a) Offering a customized discounted price to a consumer who is terminating or taking steps to terminate a subscription or membership with the retailer.

   b) Offering a customized discounted price to reestablish a consumer as a member, rewards program, or subscription enrollee if the retailer can demonstrate specified conditions.

   c) Offering a customized discounted price on a specific good to a consumer based on the consumer's prior purchase history if the retailer can demonstrate specified conditions.

   d) Offering a customized discounted price on a specific good to a consumer based on the consumer's saved goods if the retailer can demonstrate specified conditions.

   e) Offering a customized discounted price to a consumer who is a first-time visitor to a retailer's website or application if the retailer can demonstrate specified conditions.

   f) Offering a customized discounted price to a consumer for items the consumer has left in their online shopping cart if the retailer can demonstrate specified conditions.

   g) Offering a customized discounted price on equal terms if all of the following apply:

      i) The customized discounted price is offered to any of the following groups of consumers:

         (1) Consumers who affirmatively purchase or enroll in a loyalty, membership, or rewards program.

(2) Consumers who belong to a broadly defined group, as specified.

(3) Consumers who meet eligibility criteria, as specified.

ii) If the retailer exclusively offers a customized discounted price in stores, the current eligibility criteria, available customized discounted prices, and any conditions for receiving or earning the customized discounted price are clearly and conspicuously disclosed in all stores where the discount is available, as provided.

iii) If the retailer offers a customized discounted price online, the current eligibility criteria, available customized discounted prices, and any conditions for receiving or earning the customized discounted price are clearly and conspicuously disclosed on the retailer's website while the customized discounted price is offered. Disclosure is not required when the customized price is offered through a third-party promotional program, as provided.

iv) The customized discounted price is made available on equal terms to all consumers who meet the disclosed eligibility criteria.

h) Setting a price or specific terms to extend credit, refusing to extend credit on specific terms, or refusing to enter into a transaction with a specific consumer or commercial enterprise, if the retailer is acting based on information contained in a consumer or commercial credit report, as provided. Remove references to "electronic surveillance technology."

4) Add a series of additional exemptions from the bill.

5) Loosen some disclosure requirements.

6) Clarify its interaction with other laws.

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.

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

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 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:

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[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.

> 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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> 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 be desperate enough to tolerate a higher price or when a loyal customer will keep coming back even in the absence of discounts.
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> [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.
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> 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:

> Though we appreciate the efforts made to protect some personalized discounts, the amendments still leave AB 2564's central problem intact. Because of its failure to draw a clear line between using personal data to offer a higher price and using that data to offer a lower one, the bill continues to threaten many of the everyday personalized discounts Californians depend on today.
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> Even the discounts the bill does carve out, such as those offered through a loyalty program, remain subject to disclosure and equal-terms requirements that limit retailers' ability to tailor discounts to individual consumers and can make more valuable, targeted promotions impractical. Chamber of Progress therefore remains opposed and respectfully requests a broader safe harbor for genuine price reductions.

The latest amendments fail to adequately protect discounts Californians currently enjoy

Under Section 7201, a retailer may only offer a customized discounted price only through one of the bill's prescribed arrangements, such as a loyalty program, a broadly defined group, or an offer based on eligibility criteria that any consumer could potentially meet. Any discount that falls outside of the bill's set of "approved discounts," such as personalized deals for new or lapsed customers who have not signed up for a loyalty program, remain banned.

And even to continue offering these approved discounts, the retailer must disclose the current criteria, available discounts, and conditions, then make the discount available on equal terms to everyone who qualifies.1 Modern discounting rarely depends on one fixed criterion: retailers combine many data points in changing ways to decide which shoppers receive which offers. Requiring them to publish every criterion, combination, and possible price is often infeasible and will push businesses toward simpler, less valuable discounts – or none at all.

The cart-abandonment exception is a welcome acknowledgment that a retailer may use information about a shopper to offer a lower price. But it freezes that discount into one narrow scenario and requires cart-abandonment data to be isolated from every other signal the customer may have provided. Real-world offers are not static. They shift constantly and often combine a complex collection of data sources. The exception captures the bill's broader flaw: it forces the complexity of modern commerce into rigid categories that do not match how discounts actually work.

At a time when Californians are struggling with the cost of living, AB 2564 dictates which discounts retailers may offer and takes others off the table. Carving out discounts one at a time is no substitute for a clear rule: prohibit personalized markups and protect personalized discounts.

The bill would make common discounting and product promotion more difficult

Personalized promotions help shoppers save and let businesses compete more aggressively for customers. The bill's prescribed categories and equal-terms rule make those promotions less flexible and more expensive.

Consider a small pasta-sauce company trying to win customers in California. Most shoppers do not know the brand, and it can afford only a limited number of introductory coupons. A grocer can use purchase histories to offer those coupons to shoppers who regularly buy pasta, try new brands, or purchase products with similar ingredients. Concentrating the budget lets the company offer each shopper a meaningful discount instead of spreading a few cents across a much larger group.

AB 2564 makes that promotion harder to run. A grocer's decision to offer a coupon may depend on a complex combination of signals, including whether a shopper tries new products, buys similar products, or chooses foods with similar ingredients. That shifting mix cannot easily be converted into predefined customer segments with public eligibility rules and equal terms. Large incumbent brands can fund broad promotions and rely on name recognition. New companies often depend on focused introductory offers to persuade shoppers to try a product and retailers to keep carrying it.

A shopper may buy the same pet food from a local pet store every few weeks and then miss several purchases – perhaps switching to a rival. The store may want to offer that shopper $4 off to make the next purchase easier. Another shopper may receive a coupon for a household staple or a new alternative to a product they buy. In each case, the retailer is matching available savings with the people most likely to find them useful, not increasing anyone's price.

Instead of simply exempting these pro-consumer pricing strategies, AB 2564 makes them more difficult, if not impossible, to offer. At scale, thousands of changing product-level offers become a constantly changing set of public rules. Businesses may respond with broader but smaller discounts, fewer offers, or no personalized promotion at all. Discounts that now reach shoppers simply and automatically would come wrapped in disclosures and rigid rules, making them less relevant and less valuable.

FISCAL COMMENTS

As currently in print, this bill is keyed non-fiscal.

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

ASSEMBLY FLOOR: 42-21-17
YES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Caloza, Connolly, Elhawary, Fong, Gabriel, Garcia, Mark González, Haney, Harabedian, Hart, Jackson, Kalra, Lee, Lowenthal, Muratsuchi, Ortega, Pellerin, Ramos, Ransom, Michelle Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas
NO: Alanis, Ávila Farías, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Flora, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Johnson, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis
ABS, ABST OR NV: Bains, Calderon, Carrillo, Gipson, Irwin, Krell, McKinnor, Nguyen, Pacheco, Papan, Patel, Petrie-Norris, Quirk-Silva, Celeste Rodriguez, Blanca Rubio, Solache, Soria

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