

Date of Hearing: May 6, 2025

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

AB 446 (Ward) – As Amended May 1, 2025

**SUBJECT: SURVEILLANCE PRICING**

**KEY ISSUE:** SHOULD CALIFORNIA PROHIBIT BUSINESSES FROM USING SURVEILLANCE-DERIVED DATA TO VARY PRICES BETWEEN CONSUMERS FOR THE SAME GOOD OR SERVICE—UNLESS THE PRICE DIFFERENCE IS BASED ON COST, DISCLOSED AND UNIFORMLY AVAILABLE DISCOUNT CRITERIA, GROUP STATUS, OR OTHER NARROWLY DEFINED EXCEPTIONS—IN ORDER TO PREVENT OPAQUE AND DISCRIMINATORY PRICING PRACTICES?

**SYNOPSIS**

*This bill prohibits the practice of “surveillance pricing,” whereby a business offers or sets a customized price for a good or service for a specific consumer or group of consumers based on personal or aggregate data collected through electronic surveillance technology. The bill targets a growing pricing model that uses data such as location, browser history, device usage, or behavioral profiling to infer a consumer’s willingness or ability to pay and adjust prices accordingly—often without the consumer’s knowledge. In response to stakeholder concerns, recent amendments to this bill significantly restructure the measure. AB 446 now expressly exempts from the surveillance pricing prohibition: (1) price differences based solely on actual cost differentials; (2) publicly disclosed promotional discounts; (3) group-based discounts (e.g., for seniors, students, or veterans); (4) discounts offered through loyalty or membership programs affirmatively joined by the consumer; (5) pricing by insurers regulated under the Insurance Code; and (6) pricing decisions based solely on consumer reports governed by the federal Fair Credit Reporting Act (FCRA). The bill requires that eligibility criteria for qualifying discounts be clearly and conspicuously disclosed before any data is collected and that such discounts be offered uniformly to similarly situated consumers. Covered information collected under an exemption may only be used to administer the discount or program and may not be repurposed for profiling, targeted advertising, or further individualized price setting. Civil penalties of up to \$12,500 per violation apply, with treble penalties and disgorgement for intentional violations. The bill also provides for injunctive and declaratory relief and attorney’s fees for prevailing plaintiffs. Opponents continue to raise concerns about the bill’s necessity and scope, but the recent amendments appear designed to meaningfully narrow its impact and respond to the core objections.*

*This measure is co-sponsored by Consumer Watchdog and United Food and Commercial Workers Western States Council, and is supported by numerous consumer rights and labor organizations, including the California Nurses Association, Oakland Privacy, and California Federation of Labor Unions. The bill is opposed by a variety of business trade associations, including the California Chamber of Commerce and the American Advertising Federation. This measure previously passed the Committee on Privacy and Consumer Protection by a 10-3 vote.*

**SUMMARY:** Prohibits the practice of “surveillance pricing” and establishes enforcement provisions. Specifically, **this bill:**

- 1) Defines “aggregate information” as data about groups or categories of consumers, from which individual identities have been removed and which is not linkable to a particular consumer or household, including via a device.
- 2) Defines “covered information” as either personally identifiable information or aggregate consumer information.
- 3) Defines “surveillance pricing” as offering or setting a customized price for a good or service for a specific consumer or group of consumers, based, in whole or in part, on covered information collected through electronic surveillance technology.
- 4) Clarifies that “surveillance pricing” includes the use of technological methods, systems, or tools, including, but not limited to, sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection, that are capable of gathering covered information about a consumer’s behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.
- 5) Incorporates the definition of “personally identifiable information” from the California Consumer Privacy Act (CCPA) and also provides that, for purposes of the bill, this term includes deidentified or aggregated consumer information.
- 6) Prohibits a person from engaging in surveillance pricing.
- 7) Exempts the following from prohibition:
  - a) Price differences based solely on costs of providing the good or service to different consumers.
  - b) Discounts based on publicly disclosed eligibility criteria, such as signing up for a mailing list or participating in promotions.
  - c) Discounts for members of broadly defined groups (e.g., teachers, seniors, students) based on publicly disclosed criteria.
  - d) Discounts offered through loyalty, membership, or rewards programs that consumers affirmatively enroll in.
  - e) Insurance companies whose pricing practices are governed by existing insurance law.
- 8) Clarifies that a refusal to extend credit or enter into a transaction based solely on information in a consumer report governed by the federal Fair Credit Reporting Act (FCRA) is not a violation.
- 9) Establishes that a discounted price offered pursuant to 7b-d) must:
  - a) Have eligibility criteria, discount terms, and conditions clearly and conspicuously disclosed before any covered information is collected.
  - b) Be applied uniformly to all consumers who meet the disclosed eligibility criteria.

- 10) Provides that any covered information collected for the purposes described in 7) must be used solely for the purpose of offering or administering the applicable discount, cost-based pricing, or loyalty program.
- 11) Prohibits the use of covered information for any purpose, including, but not limited to profiling, targeted advertising, or individualizes price setting.
- 12) Subjects violators to a civil penalty not to exceed \$12,500 for each violation, with each violation of this part constituting a separate violation with respect to each consumer or transaction involved.
- 13) Subjects intentional violators to a civil penalty no greater than three times the civil penalty, and disgorgement of all revenues earned from the violation.
- 14) Provides a prevailing plaintiff in an action with reasonable attorney's fees and costs.
- 15) Provides for injunctive or declaratory relief.
- 16) Provides that waivers of the bill are against public policy and are void and unenforceable.

**EXISTING LAW:**

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (California Constitution, Article 1, Section 1.)
- 2) Establishes the Unruh Civil Rights Act. (Civil Code Section 51.)
- 3) Establishes the California Consumer Privacy Act (CCPA), which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. Places attendant obligations on businesses to respect those rights. (Civil Code Section 1798.100 *et seq.*)
- 4) Establishes the California Privacy Protection Agency and vests it with full administrative power, authority, and jurisdiction to implement and enforce the CCPA. (Civil Code Section 1798.199.10.)
- 5) Establishes the Unfair Practices Act (UPA), which is intended to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented. (Business and Professions Code Section 17000 *et seq.*)
- 6) Prohibits, under the UPA, a range of behavior that reduces competition in pricing, including specified locality discrimination in pricing, sales under costs or loss leaders made with the intent of injuring competitors or destroying competition, and contracts for the performance of warranty service and repair below the cost of the service or repair. (Business and Professions Code Sections 17040-17051.)
- 7) For purposes of investigating potential violations of the UPA, extends all of the investigative powers granted to the Attorney General to the district attorney of any county when the

district attorney reasonably believes that a violation has occurred. (Business and Professions Code Section 16759 (a).)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** Over the past decade, advances in artificial intelligence, machine learning, and data collection technologies have given rise to a new and largely unregulated pricing model known as surveillance pricing—a form of individualized price discrimination in which businesses use real-time consumer data to set different prices for the same good or service based on a consumer’s perceived willingness or ability to pay. This data may include the consumer’s location, device type, browsing history, financial characteristics, or behavioral profile. The price is then algorithmically adjusted to maximize the seller’s profit from that individual consumer.

While California law provides some of the strongest privacy protections in the nation through the California Consumer Privacy Act (CCPA), existing law does not restrict businesses from using lawfully collected consumer data to change their internal pricing. The CCPA was designed to increase transparency and give consumers control over their data—but it does not prohibit a business from using that data to charge a consumer more, as long as that practice is disclosed or purportedly tied to the “value provided” by the data. In practice, this creates a loophole that permits forms of digital economic discrimination. This measure seeks to address that problem.

As explained by the author:

AB 446 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. This will ensure that consumers have the right to the price that would have been offered if no personal data was used in generating the price. At a time when prices for basic necessities are rising across the board, it is more critical than ever to ensure that people are not being unfairly charged higher prices due to their actual or perceived characteristics. [This] disproportionately affects lower-income individuals and those with fewer shopping alternatives. Ensuring fairness in pricing is not just about economic justice—it is about preventing a new form of digital exploitation. Without legal protections and stronger regulations, companies will continue to use these opaque practices to maximize profits at the expense of ordinary people, making essential goods and services even more inaccessible. The right to fair pricing should not be a privilege for the few but a fundamental protection for all.

Supporters of AB 446 argue that the bill addresses a pressing and underregulated form of algorithmic manipulation in modern commerce. They assert that surveillance pricing allows companies to exploit invisible data asymmetries to extract higher prices from those perceived as desperate, isolated, or wealthy—often without the consumer’s knowledge that they are being charged more than others for the same product. This pricing model, they argue, threatens to entrench economic inequality and undermine the principle of market fairness. By preventing the use of surveillance-derived data in price setting and requiring pricing programs to operate on transparent, uniform terms, AB 446 seeks to ensure that consumers pay fair prices based on real value—not on algorithmic predictions of how much they can be squeezed.

***The problem & legal background.*** Surveillance pricing—the practice of using real-time consumer data to adjust the price of goods or services for specific individuals—has emerged as a pervasive and largely unregulated feature of the digital economy. Enabled by advances in

artificial intelligence, biometric surveillance, and algorithmic profiling, this pricing model allows businesses to extract maximum profit from each consumer based not on market conditions or product costs, but on a predictive assessment of the consumer's personal habits, financial capacity, or perceived willingness to pay.

Surveillance pricing is distinct from traditional dynamic pricing, in which prices change uniformly for all consumers based on time, demand, or inventory. Instead, surveillance pricing relies on individualized inputs such as browsing history, ZIP code, geolocation, device type, demographic data, purchase patterns, and even biometric characteristics. These data points—collected through cookies, mobile apps, facial recognition, or sensor-equipped shelves—are analyzed to generate behavioral profiles and assign different prices to different consumers for the same product or service.

Real-world examples illustrate the risks. In 2022, the County of San Diego settled a \$5 million lawsuit against Target Corporation for using consumers' location data to increase online prices when a customer physically entered a store's parking lot—without clear disclosure. (Associated Press, *Target pays \$5 million to settle California pricing lawsuit*, Dec. 6, 2022, available at <https://apnews.com/article/technology-business-lawsuits-california-target-corp-35db1e4f1eald43ef7a1f7f2b4630c41>.) In January 2025, the Federal Trade Commission (FTC) released findings from its surveillance pricing inquiry, revealing that over 250 businesses had adopted systems capable of using personal data to algorithmically tailor prices. (FTC Press Release, *FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices*, Jan. 29, 2025 available at <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>.) Former FTC Chair Lina Khan noted that retailers routinely rely on “a person's location and demographics, down to their mouse movements on a webpage,” to determine individualized prices. (*Id.*) Investigative reporting from *SF Gate* further confirmed that major hotel booking websites offered Bay Area consumers rates up to \$500 higher than identical listings shown to users in less affluent cities—despite identical booking parameters. (*SF Gate*, *Hotel sites quietly raising prices based on your location*, January 12, 2025, available at <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>.)

While companies claim that such models improve pricing efficiency, critics argue that surveillance pricing redistributes consumer surplus entirely to the seller—leaving buyers with diminished bargaining power and no visibility into the pricing algorithm. The result is a non-transparent and inequitable digital marketplace in which consumers may unknowingly pay more based on private inferences drawn from their data profiles.

Despite California's strong consumer privacy framework under the CCPA and the California Privacy Rights Act of 2020, existing law does not prohibit surveillance pricing. The CCPA provides consumers with rights to opt out of the sale or sharing of their personal information (Civil Code Section 1798.120) and mandates notice at collection (Civil Code Section 1798.100). However, it also permits businesses to charge different prices to consumers based on the “value provided to the business by the consumer's data” (Civil Code Section 1798.125 (b)), a provision that may inadvertently authorize surveillance pricing as long as the practice is disclosed. The absence of substantive legal limits on these practices leaves consumers with little recourse. Surveillance pricing often operates invisibly, making it difficult for consumers to detect that they are being charged more than others. There is no obligation for companies to disclose

individualized pricing, no way for consumers to compare prices offered to others, and no regulatory mechanism to prevent price discrimination based on income, race, geography, or inferred behavior.

In the absence of legislative intervention, surveillance pricing risks becoming the industry default—deepening inequality, normalizing digital redlining, and undermining consumer trust in fair market practices.

***How this bill works.*** AB 446 establishes a high-level prohibition on the use of surveillance-derived data to set or offer different prices to a consumer, making it unlawful for a business to vary the price of a good or service based in whole or in part on information collected through electronic surveillance technologies.

By prohibiting the use of covered information—defined as personally identifiable information or aggregate information—to individualize prices, AB 446 eliminates the core mechanism that enables opaque and discriminatory pricing models. The bill defines “surveillance pricing” to include that which uses both physical and digital surveillance technologies—such as facial recognition, sensors, geolocation tracking, and behavioral monitoring—ensuring that the law applies across both online platforms and brick-and-mortar retail environments.

AB 446 prohibits businesses from using surveillance-derived data—such as a consumer’s location, browser history, or behavioral profile—to set individualized prices, but it preserves a range of common, legitimate pricing practices through narrowly drawn exemptions. Specifically, AB 446 does not interfere with:

- Cost-based pricing differentials;
- Publicly disclosed discounts based on promotional events or mailing list sign-ups;
- Group discounts (e.g., for students, seniors, veterans);
- Loyalty or membership programs that consumers affirmatively opt into;
- Lawful insurance underwriting practices under the Insurance Code;
- Credit denials or transaction refusals based solely on information from a consumer report governed by the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(d)).

So, for example, under these exemptions, a furniture retailer may lawfully charge \$75 to deliver a couch to a home in the Sierra Foothills, while charging only \$25 for delivery to a central Sacramento address, because the price difference reflects actual cost differentials in transportation and logistics—not profiling based on personal attributes. Similarly, a skincare company may offer 10% off to anyone who signs up for its mailing list, or offer 50% off to customers who recently unsubscribed in an effort to win them back—as long as the reason for the discount is clearly disclosed and available to all consumers in the same situation. Group discounts, such as a movie theater offering \$3 off tickets to seniors age 65 and older or \$2 off for college students with a valid student ID, are also allowed under the bill, provided that the eligibility criteria are made public and applied uniformly. A grocery chain may run a loyalty program that gives members one free item for every 10 purchases, so long as the program is opt-

in and the benefits are consistent across all participants, regardless of their individual purchasing behavior. AB 446 also exempts insurance companies whose pricing practices are governed by existing insurance law. This is meant to allow the continuation of risk-based insurance underwriting practices that comply with the Insurance Code and Proposition 103—for example, allowing a car insurer to lawfully, and reasonably, charge higher premiums to drivers with recent DUI convictions than to those with clean records. Finally, the bill preserves the ability of financial institutions to deny credit or vary loan terms based solely on the contents of a consumer report governed by the federal Fair Credit Reporting Act, such as a FICO score or credit history reported by a credit bureau.

These real-world examples illustrate how AB 446 draws a clear line between exploitative price discrimination based on surveillance data and lawful, transparent, pricing practices based on cost, consent, regulation, potential risk, or group status.

**Enforcement.** Under Civil Code Section 7204, a person who violates the Act is subject to civil penalties up to \$12,500 per violation. In the case of intentional violations, the penalty may be trebled, and the business must disgorge revenues earned from the violation. The bill authorizes injunctive and declaratory relief, and awards attorney’s fees and costs to prevailing plaintiffs, in order to ensure that large-scale, low-value violations can be properly enjoined by courts. *To ensure the broadest possible enforcement of this bill, the author may wish to add public prosecutor enforcement.*

**Opposition.** Opponents of AB 446, including the California Chamber of Commerce and a coalition of business, advertising, and retail associations, oppose the bill as amended May 1, 2025.

*Scope, definitions, and pricing concerns.* Opponents argue that the bill’s definition of “surveillance pricing” remains overly broad and risks prohibiting widely accepted, pro-consumer pricing practices. They contend that the bill could unintentionally capture routine promotional strategies such as personalized coupons, re-engagement offers to returning subscribers, or regional price variations that reflect differences in delivery costs or local demand. These models, they argue, often rely on general consumer behavior or location data—not for exploitation, but to extend savings or enhance accessibility—and are central to the functioning of modern retail and e-commerce platforms.

In response, the author and sponsors emphasize that AB 446 does not prohibit dynamic pricing, cost-based price variation, or general promotional offers. The bill targets only the use of surveillance-derived data—such as biometric signals, real-time location tracking, or inferred behavioral profiles—to generate individualized prices that are not transparently available to similarly situated consumers. The bill’s scope has been narrowed through amendments to preserve legitimate practices, and includes six explicit exemptions: 1) for pricing based on cost to serve, 2) group-based discounts, 3) opt-in loyalty programs, 4) disclosed promotional incentives, 5) insurance pricing regulated under Proposition 103, and 6) decisions based solely on consumer reports under the federal Fair Credit Reporting Act.

For example, it would remain fully lawful under AB 446 for a grocery chain to offer 10% off to any consumer who signs up for a mailing list, so long as the eligibility condition—signing up—is clearly and conspicuously disclosed in advance, and the offer is uniformly available to all who qualify. Similarly, it would remain lawful to offer regional pricing based on cost differentials,

such as charging \$25 for delivery in Sacramento and \$75 for delivery to a more remote or distant area like the Sierra Foothills, if those price differences reflect actual logistical costs. In contrast, it would be prohibited for a business to use real-time GPS data to detect when a customer is near a competitor and raise or lower prices accordingly, or to increase prices based on a shopper's browsing history, device type, or inferred purchasing power—because those practices rely on surveillance data to personalize prices, typically upward, without consumer awareness.

Opponents also express concern with the bill's use of the term “publicly disclosed” in the exemption provisions. They argue that the term is not defined and could expose businesses to litigation over whether a discount for a specific group (e.g., teachers, veterans) was sufficiently public. They note that “publicly disclosed” appears infrequently in California law and is subject to inconsistent judicial interpretation. In response, the author explains that the term is intended to ensure that qualifying discounts are available on equal terms and not secretly personalized. *Nonetheless, the author may wish to revise the language to clarify what constitutes adequate public disclosure, and to reduce ambiguity for businesses seeking to comply in good faith.*

*CCPA.* Opponents also raise concerns that AB 446 may conflict with or duplicate provisions of the CCPA, as amended by Proposition 24 in 2020. First, they argue that the bill treats aggregate data as equivalent to personal data, contrary to Civil Code Section 1798.140 (v), which expressly excludes aggregate and deidentified information from the CCPA's definition of “personal information.” They caution that by including aggregate data within the bill's definition of “covered information,” AB 446 could unintentionally sweep in low-risk, internal business uses—such as analyzing prior-year, anonymized sales data to plan future promotions—and subject them to disclosure obligations designed for individualized, surveillance-based profiling.

AB 446 does not amend, reinterpret, or conflict with the CCPA. Rather, it establishes a separate regulatory framework aimed at pricing conduct, not data privacy rights. The bill defines “covered information” more broadly for the specific purpose of addressing discriminatory pricing practices that may result from surveillance-based data inputs, whether or not the information directly identifies a consumer. This approach reflects concern that even aggregate or deidentified data, when processed through modern surveillance technologies and algorithmic pricing systems, can be used to generate individualized price variations that are invisible to consumers.

Opponents further argue that AB 446 introduces a disclosure requirement that may conflict with the CCPA's standards for financial incentive and loyalty programs. Under Civil Code Section 1798.125 (b)(3), the CCPA permits such programs only if the consumer provides prior opt-in consent after receiving a notice that “clearly describes” the program's material terms. By contrast, AB 446 requires that certain discount eligibility criteria be “clearly and conspicuously disclosed” before any covered information is collected. Opponents contend that this language could introduce ambiguity or inconsistent compliance obligations for businesses already subject to the CCPA.

AB 446's disclosure requirement is not a privacy notice under the CCPA, but rather a condition tied to one of the bill's pricing exemptions. It applies only when a business seeks to offer a discount that would otherwise be prohibited under the surveillance pricing ban, and ensures that the basis for the discount is transparent and uniformly applied. The bill does not appear to alter consumers' rights to access, delete, or opt out of the sale of personal information, nor does it regulate how information is collected, shared, or stored.



As noted by the Assembly Privacy and Consumer Protection Committee, even if the disclosure requirement in AB 446 overlaps with privacy-related concepts, the CCPA operates as a regulatory floor—not a ceiling. Section 25(a) of Proposition 24 expressly grants the Legislature the authority to amend the CCPA by a majority vote, provided that the amendments are consistent with and further the purpose and intent of the CCPA. In this regard, Section 3 of the Proposition provides “it is the purpose and intent of the people of the State of California to further protect consumers’ rights, including the constitutional right privacy.” Since the passage of Proposition 24, the Legislature has amended the CCPA to expand privacy protections in several bills.

*Enforcement and liability concerns.* Opponents further argue that AB 446’s enforcement structure—particularly the inclusion of a private right of action and civil penalties—could expose businesses to excessive litigation, even when they are engaged in lawful or consumer-friendly conduct. They note that businesses bear the burden of proving that any pricing differential qualifies under one of the bill’s exemptions and must also demonstrate compliance with requirements such as uniform application and public disclosure. The enforcement mechanisms in AB 446, including statutory penalties and fee-shifting, mirror those found in other consumer protection statutes, and are intended to deter unfair or discriminatory price-setting practices that are difficult for consumers to detect or challenge without meaningful recourse.

**ARGUMENTS IN SUPPORT:** Consumer Watchdog, a co-sponsor of this bill, writes:

Unfortunately, the FTC has appeared to shelve its investigation into surveillance pricing, which makes the work of California legislators that much more important. AB 446 aims to address these concerns by prohibiting businesses from setting prices based on personally identifiable information gathered through electronic surveillance. The bill seeks to bar companies from using race, religion, residence, sexuality, political interests, web browsing and purchase history, financial circumstances, and consumer behaviors in setting prices. The bill also outlines civil penalties for violations, ensuring that consumers are protected from such exploitative practices.

As you’ve [Assemblymember Ward] said, “At a time when prices for basic necessities are rising across the board, it is more critical than ever to ensure that people are not being unfairly charged higher prices due to their actual or perceived characteristics.”

AB 446 demonstrates a commitment to consumer rights and privacy, ensuring that all Californians are treated fairly in the marketplace. One product, one price.

The UFCW Western States Council, a co-sponsor of this bill, writes:

Surveillance pricing also pre-ordains that today’s Big Tech hegemony will be able inevitably to extend their dominance even further over every aspect of commerce. Under a surveillance pricing-dominant regime, the few companies with the most data, the world’s most powerful computers, and the most state-of-the-art AI will have a permanent and ever-increasing advantage over their homely, better mousetrap-manufacturing competitors.

The cost for an innovator to enter a surveillance-dominated market will just be too high. If an innovator does somehow gain a market share, the company’s investors will prefer selling to the hegemony over trying to compete with them; already standard operating procedure for

today's internet and pharmaceutical start-ups. This may now be common but it is not how competitively functioning markets are supposed to work.

**ARGUMENTS IN OPPOSITION:** A coalition of industry groups, led by the Chamber of Commerce, continue to oppose the most recently amended version AB 446. In addition to the concerns discussed *supra* in the *Opposition* section, they raise the following concerns:

To be clear: we do not support any targeting of consumers based on protected characteristics. Price changes based on race, religion, sexuality, or political beliefs have no place in our democratic, individual rights-based capitalist system. However, we are very concerned that AB 446 will place civil penalties on non-problematic and widely-accepted practices (such as membership rewards programs, local discounts, or appropriate advertising) because of its overbroad language.

...

AB 446's May 1st amendments create the following three process:

- Step (1) - any difference in price (including discounts) is presumptively banned as "surveillance pricing", and subject to a private right of action and penalties (Section 7200(e));
- Step (2) – Companies must prove that their price meets one of three listed exceptions in order to be offered (Section 7202(b)(2))
- Step (3) – Each of the three allowable types of discounts must then meet three additional qualifications in order to be acceptable. (Section 7202(d)(1),(d)(2), and (e).)

Speaking broadly, we are greatly concerned with having to go to court to defend discounts offered under a private right of action. Forcing companies to litigate their ability to offer discounts seems unlikely to improve affordability in California and seems like a strange priority for the legislature.

...

As noted above, AB 446 fails to define what price might be considered "customized" and therefore be considered an example of "surveillance pricing." We are concerned that this is further litigation bait, as companies will need to defend perfectly normal differences in price across our great state.

By way of example: California's Central Valley produces more fresh fruits and vegetables than almost anywhere in the world—and this fresh produce is sold across the state. However, these fruits and vegetables are not necessarily sold for the same price everywhere, as a myriad of factors will influence price. An incomplete list of obvious factors would include: supply (was the harvest plentiful), transportation cost (farther away stores might need to charge more to justify the cost of transport), freshness of the product, present demand (whether consumers have been buying it or not), anticipated demand (built on aggregate data from last year's consumers), when the next shipment is due to arrive (might lower price if need to clear inventory) ... and more. With all these factors in mind, even a single chain of stores might have different prices on a particular good across the state. Also notably: many of

these factors would apply to non-perishable goods just the same as produce—meaning that prices may differ in different locations.

A coalition of organizations representing the advertising industry, likewise oppose the introduced version of this measure:

AB 446 would also create unnecessary limitations by restricting businesses from setting prices based on collected, personally identifiable information including web browsing history, purchase history, financial circumstances, or consumer behaviors.<sup>5</sup> AB 446 overreaches by broadly limiting lawful and beneficial uses of personal information in ways that are non-discriminatory and bring value to both consumers and businesses. By tailoring offers and discounts to match individual interests or habits, businesses can ensure that consumers see relevant options rather than random, irrelevant promotions. This personalization not only saves time and money for consumers—such as a restaurant app offering a repeat customer discount to a person who has ordered from the restaurant many times before—but also helps consumers to discover new products or services that they might not have encountered otherwise. Using data and technology to inform discounting often leads to exclusive deals, enabling consumers to save money on items they were already planning to buy.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Consumer Watchdog (co-sponsor)  
UFCW - Western States Council (co-sponsor)  
American Economic Liberties Project  
American Federation of Musicians, Local 7  
Athena Coalition  
California Federation of Labor Unions, AFL-CIO  
California Nurses Association  
California School Employees Association  
California State Legislative Board of Smart – Transportation Division (smart – Td)  
CFT- a Union of Educators & Classified Professionals, AFL-CIO  
Consumer Attorneys of California  
Consumer Federation of America  
Consumer Federation of California  
Economic Security California Action  
Electronic Privacy Information Center (EPIC)  
Oakland Privacy  
Privacy Rights Clearinghouse  
SEIU California  
Smart - Transportation Division  
Techequity Action  
UDW/AFSCME Local 3930  
Western Center on Law & Poverty

### **Opposition**

American Advertising Federation (AAF)  
American Association of Advertising Agencies (4A's)

American Property Casualty Insurance Association  
Associated Equipment Distributors  
Association of National Advertisers  
Calbroadband  
California Attractions and Parks Association  
California Bankers Association  
California Chamber of Commerce  
California Grocers Association  
California Hotel & Lodging Association  
California New Car Dealers Association  
California Retailers Association  
California Travel Association  
Digital Advertising Alliance  
Interactive Advertising Bureau  
National Association of Mutual Insurance Companies  
National Federation of Independent Business  
Personal Insurance Federation of California  
Software Information Industry Association  
Southwest California Legislative Council  
TechNet  
The Greater Coachella Valley Chamber of Commerce  
The Travel Technology Association  
USTelecom - the Broadband Association  
Valley Industry and Commerce Association (VICA)

**Opposition Unless Amended**

California Credit Union League

**Analysis Prepared by:** Shiran Zohar / JUD. / (916) 319-2334