

ASSEMBLY THIRD READING

AB 446 (Ward)

As Amended May 1, 2025

Majority vote

SUMMARY

This bill prohibits the use of surveillance-derived data to set or offer a price to a consumer based on information collected through various electronic surveillance technologies. This bill makes exceptions to using collected information for price setting including for group discounts and loyalty programs as well as exempts insurers and creditors from this prohibition. The bill also establishes a private right of action to pursue violators.

Major Provisions

- 1) Prohibits a person from engaging in surveillance pricing which is defined 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 personal or aggregate information, as defined in the California Consumer Privacy Act, collected through electronic surveillance technology.
- 2) 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.
- 3) Exempts price setting that is based solely on the cost of providing the service or good to different consumers, discounts offered for broadly defined groups (e.g., teachers, seniors, students), discounts for loyalty programs, and other discounts that are the result of publically disclosed eligibility requirements. This bill also exempts insurers and financial institutions that vary loan terms based on contents of a consumer report governed by the federal Fair Credit Reporting Act.
- 4) Establishes that all 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.
- 5) Establishes a civil penalty of up to \$12,500 for a person who violates this bill, further stipulates that in the case of intentional violations the penalties may be trebled and the businesses must disgorge revenues earned from the violation, and provides for injunctive and declaratory relief and attorney's fees for prevailing plaintiffs.

COMMENTS

Surveillance pricing, also known as individualized pricing, uses AI or other technology for the real-time processing of personal information about a consumer to set a price specific to that consumer. The Federal Trade Commission (FTC) has described surveillance pricing as "an ecosystem designed to use large-scale data collection to help sellers maximize their revenues by

customizing the pricing, as well as the selection of products and services, offered to each consumer."¹

It is important to distinguish surveillance pricing from dynamic pricing, which adjusts prices in response to market demand. For example, Ticketmaster uses dynamic pricing to increase ticket prices for all consumers when demand rises.² 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.

In 2022, Target was found to have used an algorithm to adjust the price of a TV once a customer entered the parking lot, leading to a \$5 million settlement with the City of San Diego for false advertising and unfair business practices related to surveillance pricing.³ Similarly, an investigative journalist from the *SF Gate* recently reported that Bay Area consumers are offered a higher price than users in either Phoenix or Kansas City for the same exact hotel reservations on various hotel booking websites, suggesting that geolocation information was used to inform the price setting.⁴

Moreover, the use of AI to set prices 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.⁵ 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

¹ Federal Trade Commission, "Issue Spotlight: The Rise of Surveillance Pricing" (January 17, 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>.

² Cody Mello-Klein, "What is dynamic pricing and why is it hiking ticket prices for Oasis, Taylor Swift and your favorite artist?" *Northeastern Global News* (Oct. 2, 2024), <https://news.northeastern.edu/2024/10/02/dynamic-pricing-ticketmaster-oasis-taylor-swift/>.

³ Chris Hrapsky, "Target settles lawsuit alleging false advertising, overpricing; fined \$5M", *KARE* (Apr. 27, 2022), <https://www.kare11.com/article/news/local/kare11-extras/target-settles-ca-lawsuit-alleging-false-advertising-overpricing-fined-5m/89-ba4a5441-c38e-4c9f-b524-b0d13414042f>.

⁴ 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>.

⁵ 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>.

being used to set the prices they pay and whether firms are charging different people different prices for the same good or service."⁶

For a full discussion of surveillance pricing please see the policy committees' analyses of this bill.

According to 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.

Arguments in Support

UFCW Western States Council, a cosponsor of this bill, argues:

A too-often overlooked aspect of functioning markets is how they permit personal autonomy and freedom. Rather than only being able to build personal wealth by working for a giant company, an individual armed with a good idea, some savings or modest capital, and grit, can in a competitive market choose to earn a living by profitably working for themselves.

But, if a pre-requisite to being able to compete profitably in every market is access to the world's biggest computers, the richest repositories of personal behavioral data, and most powerful AI, such entrepreneurial individual choices and freedoms become either impossible or restrained only to tiny, Etsy-like, boutique ambitions.

And then there is the loss of freedom that is caused by a person becoming a product themselves against their will or knowledge, with the insult-to-injury result that the unwitting person-product is financially poorer than they would have been otherwise. As Harvard Professor Shoshana Zuboff has passionately written:

"Right now, [] the extreme asymmetries of knowledge and power that have accrued to unilaterally rendered as data, expropriated, and repurposed in new forms of social control, all of it in the service of others' interests and in the absence of our awareness⁸ or means of combat."

⁶ 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>.

Arguments in Opposition

>: A coalition of industry groups, led by the Chamber of Commerce, argue:

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 broad language prohibits "surveillance pricing," which it defines 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 ..." AB 446 uses civil penalties and a private right of action to enforce this prohibition. Notably, AB 446's broad definition of surveillance pricing prohibits not just cost increases, but also any discounts offered to consumers based on any aggregate or personal data

[...]

While we appreciate and support the intention of this bill—to ensure California consumers are treated fairly and without discrimination—we are very concerned by its infringement upon the CCPA, and the collateral damage that its broad language will have for California businesses. We have shared amendments to address our concerns, while maintaining the core of the bill (prohibiting the use of personal information to target prices at consumers), but they have not been accepted as of the date of this letter.

FISCAL COMMENTS

No Fiscal Impact

VOTES

ASM PRIVACY AND CONSUMER PROTECTION: 10-3-2

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

NO: Dixon, DeMaio, Ellis

ABS, ABST OR NV: Patterson, Petrie-Norris

ASM JUDICIARY: 8-3-1

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

NO: Dixon, Macedo, Sanchez

ABS, ABST OR NV: Pacheco

UPDATED

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CONSULTANT: John Bennett / P. & C.P. / (916) 319-2200

FN: 0000355