
THIRD READING

Bill No: AB 446
Author: Ward (D), et al.
Amended: 8/29/25 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-2, 7/15/25

AYES: Umberg, Allen, Arreguín, Caballero, Durazo, Laird, Stern, Wahab, Weber
Pierson, Wiener

NOES: Niello, Valladares

NO VOTE RECORDED: Ashby

SENATE APPROPRIATIONS COMMITTEE: 4-2, 8/29/25

AYES: Caballero, Cabaldon, Grayson, Wahab

NOES: Seyarto, Dahle

NO VOTE RECORDED: Richardson

ASSEMBLY FLOOR: 47-20, 5/12/25 - See last page for vote

SUBJECT: Surveillance pricing

SOURCE: United Food and Commercial Workers Western States Council
Consumer Watchdog

DIGEST: This bill prohibits grocery establishments from engaging in “surveillance pricing,” as defined, except as provided.

ANALYSIS:

Existing law:

- 1) 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. It places attendant obligations on businesses to respect those rights.

(Civil (Civ.) Code § 1798.100 et seq.) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends the CCPA. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)

- 2) Provides that these provisions do not restrict a business' ability to collect, use, retain, sell, share, or disclose consumers' personal information that is deidentified or aggregate consumer information. (Civ. Code § 1798.145(a)(6).)
- 3) Defines "personal information" as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. (Civ. Code § 1798.140(v).)
- 4) Establishes a prohibition on unfair competition, known as the Unfair Competition Law, which covers any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, and any act prohibited under the False Advertising Law. (Business (Bus.) & Professions (Prof.) Code § 17200.)

This bill:

- 1) Prohibits grocery establishments from engaging in "surveillance pricing," defined as offering or setting a customized price increase for a good or service for a specific consumer or group of consumers, based, in whole or in part, on personally identifiable information collected through electronic surveillance technology. "Surveillance pricing" includes the use of technological methods, systems, or tools, including sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection, 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.
- 2) Provides that a grocery establishment does not engage in surveillance pricing if any of the following apply:
 - a) The difference in price is based solely on costs associated with providing the good or service to different consumers.
 - b) A discounted price is offered based on publicly disclosed eligibility criteria, including, but not limited to, signing up for a mailing list, registering for promotional communications, or participating in a promotional event.

- c) A discounted price is offered to members of a broadly defined group, including, but not limited to, teachers, active or retired military, senior citizens, residents of a certain area, or students, based on publicly disclosed eligibility criteria.
 - d) A discounted price is offered through a loyalty, membership, or rewards program that consumers affirmatively purchase or enroll in.
 - e) A discounted price is offered after a consumer directly and knowingly provides specific personally identifiable information for the purpose of obtaining a discount. The nature and purpose of the consumer's disclosure of personal information shall be conveyed in clear and prominent terms in such a manner that an ordinary consumer would notice and understand it.
 - f) The person operates as an insurance institution as defined in Section 791.02 of the Insurance Code and the pricing is in connection with that activity, as provided.
- 3) Requires the discounted price offered in b), c), d), or e) above to comply with the following:
- a) The eligibility criteria, available discounts, and any conditions for receiving or earning the discount or reward shall be clearly and conspicuously disclosed before any personally identifiable information is collected.
 - b) The discount or reward shall be uniformly offered or made available to all consumers who meet the disclosed eligibility criteria.
- 4) Subjects a grocery establishment in violation to liability for civil penalties. Intentional violations are subject to trebling, and a grocery establishment in violation shall be required to disgorge all revenues earned thereby. A prevailing plaintiff shall be awarded reasonable attorney's fees and costs. A court may also award injunctive or declaratory relief as necessary. Such actions can only be brought by specified public prosecutors. This bill authorizes a consumer to bring an action for injunctive relief and for reasonable fees and costs.
- 5) Provides that a person is not in violation if the refusal to extend credit on specific terms, the pricing or specific terms of extending credit, or the refusal to enter into a transaction with a specific consumer, is based on information contained in a consumer report, as defined.
- 6) Makes any waiver void and unenforceable and clarifies that the rights, remedies, and penalties are cumulative to any others.

Background

Companies regularly and systematically collect, analyze, share, and sell the personal information of consumers. While this data collection provides consumers various benefits, public fears about the widespread, unregulated amassing of personal information have only grown since privacy was made a part of California's Constitution. One particularly troubling area of this systematic data collection is utilization of this information to engage in differential pricing for consumers based on various elements of that information.

This bill prohibits this practice of "surveillance pricing," defined as offering or setting a customized price increase for a good or service for a specific consumer or group of consumers, based on consumers' personal information collected through electronic surveillance technology. However, the bill has been recently amended to limit the application to grocery establishments. The bill applies to information gathered through sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection. The bill provides a series of limitations on the offering of discounted pricing, such as requiring transparency about the basis for such discounts. Violations are subject to civil penalties and other relief to be sought in a civil action by specified public prosecutors. Consumers are authorized to bring actions for injunctive relief and to recover reasonable fees and costs.

This bill is sponsored by the United Food and Commercial Workers (UFCW) Western States Council and Consumer Watchdog. It is supported by a wide array of labor, advocacy, and low-income services groups. It is opposed by various industry groups, including TechNet and Chamber of Progress.

Comment

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 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The Department of Justice (DOJ) indicates a fiscal impact of approximately \$1 million or less (Unfair Competition Law Fund). DOJ notes that implementation of this bill will be dependent upon the appropriation of funds. DOJ will be unable to absorb the costs to comply with or implement the requirements of the bill within existing budgeted resources. DOJ reports that the Consumer Protection Section (CPS) within the Public Rights Division anticipates increased workloads in enforcing AB 446 beginning on January 1, 2026, and ongoing. The workload includes enforcement AB 446. CPS will require additional resources consisting of 2.0 Deputy Attorneys General (DAGs), 1.0 Associate Governmental Program Analysts (AGPA), 1.0 Special Investigator, and 1.0 Legal Secretary.
- Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate civil actions. Creating a new private cause of action that allows for the recovery of attorney's fees, and authorizing a new civil penalty with significant statutory damages, may lead to additional case filings that otherwise would not have been commenced. Expanding civil penalties and creating new causes of action could lead to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

SUPPORT: (Verified 8/29/25)

Consumer Watchdog (source)

UFCW - Western States Council (source)

American Economic Liberties Project

American Federation of Musicians, Local 7

Black Women for Wellness Action Project

California Civil Liberties Advocacy

California Federation of Labor Unions, AFL-CIO

California Food and Farming Network

California Low-income Consumer Coalition
California National Organization for Women
California Nurses Association
California Safety and Legislative Board, Smart – Transportation Division
(SMART – TD)
California School Employees Association
California State Council of Service Employees International Union (SEIU
California)
Center for Democracy and Technology
Center on Policy Initiatives
CFT- a Union of Educators & Classified Professionals, AFT, AFL-CIO
Consumer Attorneys of California
Consumer Federation of California
Courage California
Economic Security California Action
Equal Rights Advocates
Los Angeles Alliance for a New Economy
National Consumer Law Center, INC.
Oakland Privacy
Powerswitch Action
Tech Oversight California
Techequity Action
United Domestic Workers/AFSCME Local 3930
Western Center on Law & Poverty
Working Partnerships USA

OPPOSITION: (Verified 8/29/25)

Airlines for America
American Property Casualty Insurance Association
Associated Equipment Distributors
Association of National Advertisers
Brea Chamber of Commerce
Building Owners and Managers Association of California
CalBroadband
California Attractions and Parks Association
California Bankers Association
California Business Properties Association
California Chamber of Commerce
California Credit Union League
California Grocers Association

California Hotel & Lodging Association
California New Car Dealers Association
California Retailers Association
California Travel Association
Carlsbad Chamber of Commerce
Chamber of Progress
Chino Valley Chamber of Commerce
Corona Chamber of Commerce
CTIA
Cupertino Chamber of Commerce
Folsom Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
LA Cañada Flintridge Chamber of Commerce and Community Association
Lake Elsinore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Naiop California
National Association of Mutual Insurance Companies
National Federation of Independent Business
Newport Beach Chamber of Commerce
Orange County Business Council
Palm Desert Area Chamber of Commerce
Paso Robles and Templeton Chamber of Commerce
Personal Insurance Federation of California
Rancho Cordova Area Chamber of Commerce
Rancho Mirage Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Software Information Industry Association
TechNet
The Travel Technology Association
Torrance Area Chamber of Commerce
USTelecom - the Broadband Association

ARGUMENTS IN SUPPORT: UFCW Western States Council, a sponsor of the bill, explains:

Surveillance Pricing Should Be Prohibited Because It Exacerbates Inequality, Especially as Applied To Necessities Like Food.

In October 2024, an explosive news report found that Kroger, one of the largest grocery store chains in the United States,¹ was exploring the use of facial recognition technology in its stores. Immediately, shoppers and public officials worried that consumers' faces might be used, along with other intimate data, to deliver different prices for different consumers.

Surveillance pricing exacerbates economic inequality. “Higher-income consumers may receive discounts, while those with less disposable income might face higher prices. Surveillance pricing can further entrench these inequalities, like how credit scores impact loan rates or zip codes affect insurance premiums. Marginalized communities, including people of color and low-income individuals, are particularly vulnerable to higher prices due to algorithmic biases[.]”

ARGUMENTS IN OPPOSITION: A large coalition of industry associations, including the Association of National Advertisers, writes in opposition:

AB 446 conflicts with the approach of the CCPA because it treats “aggregate consumer information” as if it were “personal information,” in explicit contradiction of Civil Code 1798.140. As a policy matter, we believe this is incorrect; information that has been deidentified and aggregated is not personal information under the CCPA, nor should it be here. Such data is not a risk of individual profiling or discrimination exactly because it is deidentified or aggregated. That is why, as a matter of public policy, aggregated data and personal data are not treated the same because they neither implicate the same rights for consumers nor pose the same risks in the event of a data leak.

ASSEMBLY FLOOR: 47-20, 5/12/25

AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Ortega, Papan, Pellerin, Quirk-Silva, Ransom, Celeste Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Solache, Ward, Wicks, Wilson, Zbur, Rivas

¹ <https://therecord.media/kroger-facial-recognition-lawmakers-concerns>.

NOES: Alanis, Castillo, Davies, DeMaio, Dixon, Ellis, Flora, Gallagher, Jeff
Gonzalez, Hadwick, Hoover, Lackey, Macedo, Patterson, Ramos, Sanchez, Ta,
Tangipa, Valencia, Wallis

NO VOTE RECORDED: Ávila Farías, Bains, Chen, Irwin, Nguyen, Pacheco,
Patel, Petrie-Norris, Michelle Rodriguez, Blanca Rubio, Soria, Stefani

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
9/2/25 17:56:30

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