

## SENATE THIRD READING

SB 259 (Wahab)

As Amended July 10, 2025

Majority vote

**SUMMARY**

Prohibits businesses from using device-specific data to generate or adjust prices offered to consumers through online devices.

**Major Provisions**

- 1) Prohibits businesses from generating or offering a price to a consumer through their online device based, in whole or in part, on any of the following:
  - a) The hardware or hardware state of the device (e.g., battery life, wireless connections, device age).
  - b) The presence or absence of software on the device.
  - c) The geolocation of the device, with narrow exceptions.
- 2) Permits use of geolocation data only when necessary:
  - a) To reflect legitimate cost or demand differences associated with providing a good or service in different locations.
  - b) To apply a real-time surcharge for goods or services delivered immediately upon request (e.g., rideshare pricing).
  - c) To provide accurate pricing information based on price variances at different physical locations, due to legitimate cost or demand differentials or state or local government taxes, duties, or other fees.
- 3) Does not apply to any coupon, discount, rebate, sale or other bona fide promotion that reduces the price of goods or service, provided it is (a) made available to the general public on the same terms and (b) not based on any input data specified in 1).

**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."<sup>1</sup>

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<sup>1</sup> 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>.

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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."<sup>6</sup>

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<sup>2</sup> 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/>.

<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> 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>.

<sup>6</sup> 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>.

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

### **According to the Author**

We are seeing more instances of companies using our own phones and computers against us to engage in predatory pricing practices. Your battery running low, the type of browser you use, or the neighborhood you live in should not determine the price charged to a consumer. SB 259 addresses these issues by ensuring these characteristics cannot be used as a determinant of the price presented to a consumer. According to the PPIC, 69% of Californians expect bad times economically in the coming year. Meanwhile, these discriminatory pricing tools are being used to extract more money from consumers for the same goods and services being offered to their neighbor for a lower price. According to a January poll by Consumer Reports on loyalty programs, consumers don't even want retailers using this type of data as a consideration for discounts they are given. These pricing tools are crushing both consumers and innovation, as businesses no longer need to improve their products and services to earn customer confidence—they simply scrape customer data to figure out how much they can squeeze out of a customer.

### **Arguments in Support**

The Open Markets Institute writes:

For over a decade, media reports have been exposing the price discrimination schemes employed by companies via surveillance algorithms. Examples of businesses actually and allegedly engaging in these practices include The Princeton Review, Uber, and Staples. Earlier this year, the Federal Trade Commission published a report on surveillance pricing, describing how corporations can use troves of data mined from consumers, directly and indirectly, to set individualized prices for consumers, exploiting their needs and vulnerabilities to charge as high a price as possible.

There is also reporting that indicates the device itself is used to determine pricing. For example, an iPhone or Mac user may be served a higher price because of their presumed higher socio-economic status.

SB 259 will target these discriminatory pricing practices by excluding specific data relative to a consumer's device for the purposes of calculating a price. The excluded data is defined as the hardware, hardware state such as age and battery life, presence or absence of software on the device, and geolocation data.

SB 259 is a critical piece of pro-consumer legislation that will rein in exploitative surveillance pricing practices and support efforts to increase affordability for all Californians.

### **Arguments in Opposition**

A coalition of industry opponents, led by California Chamber of Commerce, writes:

SB 259 would prohibit offering any price to a consumer through their online device that is generated, *even in part*, based on any of the following "input data": (1) the hardware or hardware state of an online device; (2) the presence or absence of any software on an online device; or (3) geolocation data of the device. SB 259 seems to assume that any consideration of this information is inherently predatory or otherwise unfair. As a result, the bill would

unfairly cause companies to overhaul their pricing models and strategies at significant cost, to the detriment of both the businesses themselves and their consumers. This threatens not only the profitability of businesses, but also potentially reduces the availability of discounts and personalized deals for consumers.

A law that imposes a broad prohibition on the use of certain data—while carving out only narrow exceptions—fundamentally differs in impact from a legal framework that generally permits data use but targets and prohibits specific, harmful practices. The former chills innovation, constrains legitimate business models, and limits consumer benefit by default. The latter enables responsible data use, encourages economic growth, and focuses enforcement on truly harmful conduct. Imagine if SB 259 predated the gig economy: what would the Covid 19 pandemic have looked like? How many more businesses would have permanently shut their doors?

And while we appreciate that the author has sought to and is open to adding amendments with various exceptions that might recognize various legitimate uses of the geolocation data, the inescapable reality is that narrow exceptions may not account for all legitimate applications of geolocation data in pricing models used, today, and simply *cannot* account for potential future legitimate applications of this data that could help increase market competition with more fair and less arbitrary pricing models, tomorrow. Given the likelihood of this bill to have devastating [sic] impacts on our economy, we find it troubling that SB 259 seeks to enact the broadest prohibitions possible with the narrowest expectations necessary – as opposed to surgically drafting narrow prohibitions that are tailored to specific, predatory or unfair pricing practices – particularly when there are extensive protections for how businesses set pricing under existing law. (Emphasis in original.)

## FISCAL COMMENTS

As currently in print, this bill is keyed nonfiscal.

## VOTES

### SENATE FLOOR: 30-9-1

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

**NO:** Alvarado-Gil, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

**ABS, ABST OR NV:** Reyes

### ASM PRIVACY AND CONSUMER PROTECTION: 10-4-1

**YES:** Bennett, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Pellerin, Ward, Wicks, Wilson

**NO:** Dixon, 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:** Dixon, Macedo, Sanchez

**ABS, ABST OR NV:** Pacheco

**UPDATED**

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