



March 11, 2026

Colorado House of Representatives  
House Business Affairs & Labor

**Re: HB26-1210 - Prohibit Surveillance Price & Wage Setting**

Dear Honorable Committee members,

HB26-1210 addresses an everyday affordability problem for consumers: surveillance pricing. Surveillance pricing, also sometimes referred to as “personalized” pricing, is when a company uses personal data that they’ve gathered about a consumer—like data about their online search history, their location, or inferences about family structure, health conditions, or income—to set the price of a product or determine the discount offered to a consumer. Consumer Reports<sup>1</sup> is strongly supportive of prohibiting surveillance pricing.

If enacted, this bill would make Colorado a leader on affordability. It prohibits surveillance pricing, while protecting transparently offered, non-discriminatory discounts. It builds on Colorado’s data privacy and consumer protection statutes, while establishing clearly that businesses cannot use Coloradans personal data against them to charge them a higher price than their neighbor. Consumer Reports encourages an ‘aye’ vote.

*What is surveillance pricing?*

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.

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

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<sup>1</sup> Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today’s consumers, and provides ad-free content and tools to 6 million members across the U.S.

inferences about consumers based on this data. These detailed 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. Retailers 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.

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.<sup>2</sup> 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.

Other enterprising journalists have conducted investigations and discovered examples of apparent surveillance pricing:

- An investigative journalist writing for SFGate looked at the prices offered for a hotel room in Manhattan for a specific date, and varied his operating system, browser, cookies, and location (his computer’s IP address).<sup>3</sup> He found that when he changed his IP address from a Bay Area location to locations in Phoenix and Kansas City, the prices dropped by more than \$200 per night in one instance, and more than \$511 in another instance.

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<sup>2</sup> Derek Kravitz, “Instacart’s AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds” *Consumer Reports*, Dec. 9, 2025, <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

<sup>3</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>

- ProPublica found that test-prep company Princeton Review was offering different prices for its tutoring services depending on a customer's zipcode.<sup>4</sup> The result, they found, was that Asian customers were nearly twice as likely to receive a higher price.
- The Wall Street Journal reported that Orbitz, the travel aggregation company, determined that Mac users spent more per night on hotels than Windows users, and began steering Mac users towards pricier hotels.<sup>5</sup>
- A Minnesota local news site discovered that Target changed the prices displayed on its app for certain products based on whether the customer—and their device—was physically inside a Target store. When the reporters looked at the Target app while inside a store, they found that a Graco car seat was \$72 more expensive than when they had been sitting on the far side of the Target parking lot, and a Dyson vacuum was \$148 more expensive.<sup>6</sup>

Surveillance pricing can hurt consumers by offering different prices based on a protected status, such as race or gender. It can also hurt consumers by pushing them to pay the most they are individually willing to pay, or by taking advantage of them in moments of desperation, when their willingness to pay increases. One hypothetical example offered by former chair of the Federal Trade Commission, Lina Kahn, is airlines charging an individual more for a plane ticket if the airline infers—based on the individual's search history—that there was a death in the family and the consumer needs to attend a funeral.<sup>7</sup>

There's another downside for consumers beyond potentially paying higher prices. Personalized pricing, especially personalized discounts that are offered through membership programs or are contingent on the use of certain mobile apps, can make the experience of finding a product's price and comparing across vendors much more time intensive and frustrating. This difficulty will have broader effects in the market, comparison shopping is an engine of market competition; retailers only feel the need to compete to offer the best price if consumers can comparison shop with ease, identify the best price, and make a decision based on that knowledge. As comparison shopping becomes more cumbersome for consumers, the competitive pressure decreases.

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<sup>4</sup> Julia Angwin, Surya Mattu and Jeff Larson, "The Tiger Mom Tax: Asians Are Nearly Twice as Likely to Get a Higher Price from Princeton Review," *ProPublica*, Sept. 1, 2015

<https://www.propublica.org/article/asians-nearly-twice-as-likely-to-get-higher-price-from-princeton-review>

<sup>5</sup> Dana Mattioli, "On Orbitz, Mac Users Steered to Pricier Hotels," *Wall Street Journal*, Aug. 23, 2012

<https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

<sup>6</sup> Chris Hrapsky, "The Target app price switch: What you need to know" *Kare 11*, Jan. 27, 2019

<https://www.kare11.com/article/money/consumer/the-target-app-price-switch-what-you-need-to-know/89-9ef4106a-895d-4522-8a00-c15cff0a0514>

<sup>7</sup> Jaures Yip, "FTC chair Lina Khan warns that airlines might one day use AI to find out you're attending a funeral and charge more," *Business Insider*, September 23, 2024

<https://www.businessinsider.com/ftc-chair-lina-khan-warns-ai-pricing-discrimination-risks-2024-9>

### *What HB26-1210 does*

HB26-1210 prohibits the use of data related to a person’s characteristics, behavior, or biometrics to automatically and secretly inform the price or wage they are offered. This includes, for example, data about a consumer’s race or weight, their parenthood status, their genetic information, the geometry of their face, their political affiliations, their location, and their web-browsing history. HB26-1210 also prohibits the secret and automated use of surveillance data to target groups of individuals with prices. This is important because the fine-grained data that companies possess about consumers enables them to place individuals into highly specific groups, such as “mothers of toddlers without higher education earning less than \$75k” or “sports enthusiast male over 35 earning more than \$150k.” In a Consumer Reports investigation of Kroger’s loyalty program data practices, consumers requested the data the grocer had collected about them. One consumer received a 62-page long profile, which included inferences about the size of his family, his education level, an estimate of his income, and other disparate information other companies might use to segment their shoppers for price targeting, including how likely he is to go on a cruise, have a pet, or travel internationally.<sup>8</sup>

HB26-1210 also has several reasonable exemptions from the prohibition on surveillance pricing. If a company can demonstrate that it offers different prices to different people based on differences in the cost of providing a good or service to different consumers, that practice is not surveillance pricing, and is not prohibited. There are also tailored exemptions for insurers relying on risk-relevant data, and for refusals to offer credit based on data covered by the Fair Credit Reporting Act. There are also important protections for discounts.

### *Protecting transparent discounts*

Straightforward discounts and sales that everyone is eligible for and that do not rely on personal data are not impacted by this bill. The bill also protects transparently offered, non-discriminatory discounts—a crucial provision as discounting practices become more opaque and less trustworthy. More specifically, the bill protects three large categories of transparently offered discounts:

- Discounts that any consumer could potentially receive, so long as the eligibility criteria are publicly disclosed. This is a broad category that includes many common kinds of discounts, such as BOGO, discounts for signing up for a mailing list, discounts for related products (eg. 20% meals after you buy theme park tickets)—just about any kind of discount that is based on the consumer taking an action or making a purchase.
- Discounts that are offered to members of a broadly defined group, such as teachers, students, veterans, and seniors, so long as the eligibility criteria, terms, and discounts are

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<sup>8</sup> Derek Kravitz, “Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors”, Consumer Reports, May 21, 2025

clearly disclosed, and any consumer who can demonstrate they are part of the group can obtain the discount.

- Discounts that are offered through a loyalty or reward program, so long as prices are not individualized between consumers in the program, and current discounts, promotions, or benefits are publicly disclosed, and if the program offers a system for accruing or exchanging points, credits, any other non-monetary system, the program doesn't effectively personalize prices through that system.

Why require some transparency around discounts? Discounts are increasingly complex and opaque. Retailers can end-run around a ban on personalized pricing by increasing list prices and then offering "personalized discounts" based on individual's personal data and inferences about their willingness to pay. In the Staples example mentioned above, the office supplier seemingly inferred that consumers with easier access to competitor stores would have a lower willingness to pay. Consumers are also invasively profiled in the name of "personalized discounts." For example, pricing analysts at Target created an algorithm to predict the likelihood that a specific consumer is pregnant—based on their shopping habits—and then allocate discounts on the basis of that prediction.<sup>9</sup> An online casino was recently penalized by a UK regulator for advertising free spins and bonuses to someone who searched online "How to unsubscribe from all gambling," a possible indicator of gambling addiction.<sup>10</sup>

### *Suggested changes*

While CR strongly supports a policy of prohibiting surveillance pricing, there is one tweak we suggest in order to ensure workability. Subdivision 4, relating to publication of procedures, need not apply to pricing. Since the bill already prohibits pricing based on personal data, the remaining data considered by automated decision systems would be non-personal data, such as various input costs. Giving consumers access to that information goes beyond the scope of what is necessary to address the harms of surveillance pricing. It is also unclear what pricing data consumers would be in a position to correct, given that this bill prohibits the use of their personal data to set prices.

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<sup>9</sup> Charles Duhigg, "How companies learn your secrets," *The New York Times Magazine*, Feb. 16, 2012

<sup>10</sup> Rob Davies, "Online casino advert banned for targeting problem gamblers" *The Guardian*, Oct. 9, 2019,

<https://www.theguardian.com/society/2019/oct/09/casumo-ad-banned-for-targeting-people-trying-to-stop-gambling>

Overall, we are strongly supportive of prohibiting surveillance pricing. We appreciate the committee's consideration, and applaud Rep. Bacon, Rep. Mabrey, Sen. Weissman, and Sen. Jodeh for their leadership on this pocketbook issue.

Sincerely,  
Grace Gedye  
Senior Policy Analyst  
Consumer Reports