



March 2, 2026

Minnesota House of Representatives
Commerce and Finance Policy Committee

Re: HF 3794 - Surveillance-based price and wage discrimination prohibited

Dear Honorable Committeemembers,

HF 3794 bill 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 Reports¹ is strongly supportive of prohibiting surveillance pricing.

We applaud Rep. Greenman for tackling this critical issue at a time when affordability is front of mind for Minnesotans. If enacted, this bill would make Minnesota a leader on affordability. CR has some suggested changes that we believe would make the bill more workable for both consumers and retailers, and look forward to working with Rep. Greenman.

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 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

¹ 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.

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.² 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).³ 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.
- ProPublica found that test-prep company Princeton Review was offering different prices for its tutoring services depending on a customer’s zipcode.⁴ The result, they found, was that Asian customers were nearly twice as likely to receive a higher price.

² 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/>

³ 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>

⁴ 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>

- 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.⁵
- 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.⁶

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.⁷

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, because comparison shopping for the best price is a key engine of market competition.

What HF 3794 does

HB 3794 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. HB 3794 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

⁵ Dana Mattioli, “On Orbitz, Mac Users Steered to Pricier Hotels,” *Wall Street Journal*, Aug. 23, 2012 <https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

⁶ 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>

⁷ 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>

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.” Consumer Reports investigated Kroger’s data practices, and found that the grocer maintains hyper-detailed profiles of customers in their loyalty program, including inferences about their gender, income, education level, interest in going on a cruise, buying a car, or traveling domestically versus internationally.⁸ One consumer who requested a copy of their data from Kroger received a report that was 62 pages long.⁹

HB 3794 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. Discounts for particular groups—such as students or active military members—are exempt so long as the discounts are consistent with antidiscrimination law, the company discloses the terms of those discounts publicly. 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.

Suggested changes

While CR strongly supports a policy of prohibiting surveillance pricing, there are some tweaks we suggest in order to ensure workability, while providing core consumer protections.

Use existing definition of “personal data” in Minnesota law

This bill defines the term “surveillance data” to cover the universe of data that cannot be used to personalize a price. CR strongly encourages the legislature to consider instead using the existing definition of “personal data” already defined in Minnesota law under the Minnesota Consumer Data Privacy Act. That definition has several benefits. First, it covers everything that the bill’s definition of “surveillance data” currently covers. Second, it is similar to definitions in consumer data privacy laws across the country, which companies have built compliance practices around. Third, it covers “information that is linked or can reasonably be linked to an identified or identifiable consumer.” This is important language that reflects the reality of how companies collect and store granular consumer information. Fourth, it covers categories of data that are critical to capture—such as the type of device a consumer is operating, their IP address, the battery level of their device, and other technical information—that companies have used to change the price or product that someone sees, but which may not be clearly captured by the current definition of surveillance data.

⁸ Derek Kravitz, “Inside Kroger’s Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors”, *Consumer Reports*, May 21, 2025

⁹ *ibid*

Add narrowly tailored exemptions for behavior-based discounts

Pricing legislation should protect transparent and commonly understood discounts, while also ensuring that discounts do not become an avenue through which personalized pricing functionally occurs.

As currently written, this bill includes an exemption for transparently offered, commonly understood group discounts. This is a thoughtful and necessary exemption. A similar exemption should be added for transparently offered behavior-based discounts that anyone could potentially receive but that may rely on personal data, such as volume-based discounts (e.g. buy four pints of ice cream and get the fifth free), discounts for signing up for a promotional email list, and more. We suggest the following, with new material in italics:

(a) A person is prohibited from engaging in surveillance-based price discrimination.

(b) A person does not engage in surveillance-based price discrimination if the person demonstrates:

(1) differential prices are justified based on differences in the cost incurred to provide a good or service to different consumers;

(2) differential prices reflect discounts offered to all consumers on equal terms in a manner consistent with applicable antidiscrimination laws *[and the discounts, eligibility criteria, and other terms of the discounts are available and accessible to consumers and the public in such a manner that an ordinary consumer would understand them]*, if:

(i) *[the discount is based on eligibility criteria that any consumer could potentially meet, including, but not limited to, signing up for a mailing list, registering for promotional communications, participating in a promotional event, or affirmatively purchasing or joining a publicly offered loyalty or rewards program or;]*

(ii) the discount rewards membership in a particular group, including but not limited to active members of the military, veterans, teachers, students, or seniors; or

...

Publication of procedures need not apply to pricing

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.

Overall, we are strongly supportive of prohibiting surveillance pricing. We appreciate the committee's consideration, and applaud Rep. Greenman for her leadership on this pocketbook issue.

Sincerely,
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