



March 18, 2026

California State Assembly
Committee on Privacy and Consumer Protection
1020 N Street, Room 162
Sacramento, CA 95814

Re: Assembly Bill 2564: Support

Dear Honorable Assemblymembers,

Consumer Reports¹ and TechEquity Action² are pleased to sponsor AB 2564. This bill is focused on an affordability issue that is an immense source of frustration 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, or inferences about family structure, health conditions, or income—to set the price of a product or the discount offered to a consumer.

If enacted, this bill would make California a leader on affordability. It prohibits surveillance pricing, while protecting transparently offered, non-discriminatory discounts. It builds on California’s data privacy and consumer protection statutes, while addressing a gap in the current law. Right now, nothing prohibits businesses from collecting or buying data about individual Californians, and then using that data against them to profile them and charge them a higher price than their neighbor. This bill would address that problem; we encourage an ‘aye’ vote.

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.

² TechEquity (TE) is a California-based nonprofit that envisions a world where the tech industry is responsible for building widespread prosperity and is held accountable for the economic harm it creates in our communities. TE raises public consciousness about economic equity issues resulting from the tech industry’s products and practices and advocates for change that ensures tech’s evolution benefits everyone.

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 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. Companies 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.

Surveillance pricing can be difficult to detect, because consumers rarely have a view into what information a company has about them, or what the prices they see are based on. Still, enterprising journalists have discovered examples.

- 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.
- 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

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>

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

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

In addition to these examples, 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.⁷ 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.

In the wake of the investigation, U.S. Senator Ruben Gallego introduced a bill to prohibit surveillance pricing citing the investigation, at least 12 other members of Congress sent letters to the FTC and to Instacart, the FTC reportedly opened an investigation into Instacart, and Instacart announced it was ending the practice.⁸

Research from the FTC indicates how widespread the practice of surveillance pricing may be. In July of 2024, the FTC issued orders to eight companies, including Mastercard, Accenture, McKinsey, and JP Morgan Chase, identified as middlemen that offer “surveillance pricing products and services that incorporate data about consumers’ characteristics and behavior.”⁹ The

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-c15eff0a0514>

⁷ 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-experimentinflating-grocery-bills-a1142182490/>

⁸ Derek Kravitz, “Instacart Stops Pricing Tests on It’s Platform Amid Outrage from Customers”, *Consumer Reports*, Dec. 22, 2025, <https://www.consumerreports.org/money/questionable-business-practices/instacart-stops-ai-pricing-experiments-a1176475852/>

⁹ “FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing”, *Federal Trade Commission*, July 23, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing>

orders contained a detailed list of questions about how the companies segmented consumers and targeted prices. In January of 2025, staff released an interim research summary which indicates breadth of the issue; clients of surveillance pricing or consumer segmentation products included grocery stores, apparel retailers, health and beauty retailers, home goods and furnishing stores, convenience stores, building and hardware stores, and general merchandise retailers such as department or discount stores.¹⁰ Some of the data categories that intermediary firms or their clients collected to facilitate pricing or segmentation include web-pixels, which can collect information like a consumer's IP address (which can approximate their location), the browser they use, the language settings they select, whether they've used their mouse to highlight the name of a particular product, how far down a page they scroll while shopping, and more.¹¹ Several companies, in response to FTC questions, claimed that these tools can increase margins by 1-4%.¹²

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 there was a death in the family and the consumer needs to attend a funeral.¹³

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 trying to discover a product's price and compare across vendors much more time intensive and frustrating. This difficulty will have broader effects in the market, since 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.

What AB 2564 does: Prohibiting surveillance pricing and protecting transparent discounts

¹⁰ "FTC Surveillance Pricing 6(b) Study: Research Summaries A Staff Perspective", January 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf

¹¹ *ibid*

¹² *ibid*

¹³ 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>

AB 2564 prohibits the use of a consumer’s personal data, gathered by electronic surveillance technology, to set a customized price. This includes, for example, data about a consumer’s race or weight, their parenthood status, their genetic information, their political affiliations, their web-browsing history, and their real-time location. AB 2564 also prohibits the secret and automated use of personal data to target niche 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 “diabetic male over 35 earning more than \$150k.”

For example, in a Consumer Reports investigation of Kroger’s loyalty program data practices, consumers requested the data the grocer had collected about them.¹⁴ 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.¹⁵ An investigation by the Wall Street Journal found that Staples varied the prices consumers saw for specific items based on their estimated location, seemingly offering a discount if a consumer is physically near competitor stores OfficeMax or Office Depot.¹⁶ The result was that consumers in higher average income areas tended to get more discounts than consumers in lower average income areas.

AB 2564 also has several reasonable exemptions. If a company offers different prices to different people based on differences in the cost of providing a good or service—like higher prices in regions with higher labor costs—that practice is not prohibited. Insurers complying with the insurance code and companies that deny credit or do not transact with a consumer based on information contained in a consumer report covered by the Fair Credit Reporting Act—such as credit checks for potential renters—are also exempt.

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. Specifically, the bill makes clear that if 1) the retailer clearly and publicly discloses current discounts and eligibility criteria and 2) the discounted prices are offered to everyone who

¹⁴Derek Kravitz, “Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors”, Consumer Reports, May 21, 2025

¹⁵ *ibid*

¹⁶ Jennifer Valentino-DeVries, Jeremy Singer-Vine and Ashkan Soltani, ‘Websites Vary Prices, Deals Based on Users’ Information’, *Wall Street Journal*, Dec. 24, 2012

meets the eligibility criteria, then the following categories of discounts are not surveillance prices and are protected by this bill:

- Discounts that any consumer could potentially receive. 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% off of 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. But, for example, discounts that microtarget specific seniors based on inferences about their health conditions or wealth would not be permitted.
- Discounts that are offered through a loyalty or reward program that a consumer purchases or enrolls in

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.¹⁷ An online casino was 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.¹⁸

Consumers are opposed to personalized pricing

To get a sense for how consumers feel about personalized pricing, Consumer Reports has conducted a series of nationally representative surveys on the subject. One, administered in May of 2024 to a sample of 2,022 US adults, found that 66% of Americans were opposed to the practice of online retailers selling the same goods and services at different prices depending on the buyer’s personal information.¹⁹

¹⁷ Charles Duhigg, “How companies learn your secrets,” *The New York Times Magazine*, Feb. 16, 2012

¹⁸ 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>

¹⁹ Consumer Reports Survey Group, “A.I./Algorithmic Decision-Making: Consumer Reports Nationally Representative Phone and Internet Survey, May 2024,” report prepared July 9, 2024

<https://advocacy.consumerreports.org/wp-content/uploads/2024/07/CR-AES-AI-Algorithms-Report-7.25.24.pdf>

We also asked consumers about specific practices for offering tailored discounts within loyalty programs. “Discounts” for some are, of course, the same as price increases for everyone else, but the framing of a “discount” may be more palatable to many consumers. Still, we found high levels of opposition to particular discounting practices within loyalty programs in another of CR’s nationally representative surveys, this one of 2,209 US adults in January of 2025.²⁰

- 76% of Americans opposed companies offering discounts through their loyalty programs based in part on demographics such as age, income, race/ethnicity, where a person lives, and more. The examples of surveillance pricing at Target, Princeton Review, and hotels mentioned above appear to be examples of location-based surveillance pricing.
- 73% of Americans opposed giving deeper discounts to newer or less active members of loyalty programs than members in the loyalty program who have shopped at that retailer consistently over time.
- 72% of Americans opposed companies offering discounts based in part on online presence or behavior, such as the kind of devices or browsers they use, search history, past purchases, and more. The Orbitz example appears to be an example of surveillance pricing based on type of device.

Often, our members can’t know for sure if they are experiencing surveillance pricing, or dynamic pricing—where the price for everyone changes quickly—or other pricing tactics. What they do know is that it is increasingly difficult to try to find the best price for a product. AB 2564 would help address this frustration. It also provides California a way of tackling affordability when constituents are feeling the pinch. We respectfully encourage an ‘aye’ vote.

Sincerely,

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Samantha Gordon, Chief Advocacy Officer, TechEquity Action

²⁰ Consumer Reports Survey Group, “American Experience Survey: A Nationally Representative Multi-Mode Survey January 2025 Omnibus Results” January, 2025
https://article.images.consumerreports.org/image/upload/v1738949712/prod/content/dam/surveys/Consumer_Reports_AES_January_2025.pdf