



May 14, 2026

New Jersey General Assembly

Assembly Commerce and Economic Development Committee

Re: A4085 Surveillance Pricing - Support with amendments

Dear Honorable Committee Members,

A4085 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 real-time location, or inferences about family size, health conditions, or income—to set the price of a product or determine the discount offered to a consumer. Consumer Reports¹ has heard from our members, 39,000 of whom live in New Jersey, about their frustrations with opaque pricing tactics.

We applaud the legislature and Assemblyman Onyema for tackling this critical issue at a time when affordability is front of mind for New Jersey residents. It would also be an important starting point for prohibiting surveillance pricing in other sectors, including online retail more broadly. CR has some suggested changes that we believe would make the bill more workable for both consumers and retailers, and we look forward to supporting the legislature's work on this issue.

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

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.

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 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.

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.³

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,

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 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/>

and location (his computer's IP address).⁴ 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.⁵ 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.⁶
- 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.⁷

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.⁸

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.

⁴ 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>

⁵ 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>

⁶ Dana Mattioli, "On Orbitz, Mac Users Steered to Pricier Hotels," *Wall Street Journal*, Aug. 23, 2012 <https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

⁷ 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>

⁸ 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 A4085 does

A4085 primarily applies to the sale of foodstuffs in New Jersey. It prohibits the use of personalized algorithmic pricing in the sale of foodstuffs, with some exceptions. For example, retailers can charge different prices if the cost of providing a good to one consumer is different than the cost of providing a good to another consumer (such as delivery fees that vary based on distance). It exempts common group discounts and loyalty program discounts, so long as the retailer meets a few conditions, including the clear and conspicuous disclosure of the terms and criteria. It also prohibits personalized pricing via electronic shelf labels, places a one year moratorium on the new use of electronic shelf labels, and requires a study on the use of electronic shelf labels.

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.

Build upon existing New Jersey law on discounts

New Jersey already has rules that describe what conditions must be met to ensure that a discount is a true discount and not a "fictitious former price."⁹ These existing standards are much clearer than the definition of "bona fide discount" offered in the bill. For example, the bill's definition of "bona fide discount" is silent on how long a retailer needs to be offering a product at price A for price A to be considered a legitimate "original price" from which a discount can be offered; existing New Jersey law addresses this. Rather than creating competing definitions, we suggest the legislature amend the definition of "bona fide discount" to reference language in N.J. Admin. Code § 13:45A-9.6.

Ensure that discounts are transparently offered and provide additional exemption for discounts that any consumer could potentially receive

Exemptions in 3. b.(2)-(3) should be conditioned on the public disclosure of both the actual discounts offered, as well as any terms, conditions, and criteria that must be met to receive the discount.

⁹ See N.J. Admin. Code § 13:45A-9.6 - Pricing; prohibition on fictitious pricing and methods of substantiation

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. 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.¹⁰ 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.¹¹

To mitigate these harms while protecting a wide array of discounts, the legislature should condition the discount exemptions on public disclosure. This would enable consumers to discover discounts they might be eligible for and disincentivize retailers from utilizing discounting practices that they know the public would find invasive, misleading, or otherwise troublesome.

The legislature should also add a third discount exemption, in addition to the exemptions for broadly defined groups and loyalty programs. This new exemption should cover discounts that any consumer could potentially qualify for, such as discounts for signing up for a mailing list, participating in a promotional event, buy-one-get-one, buy product A and get 20% off more A, etc. These discounts are common and do not fall neatly into one of the existing exemptions; they should be similarly exempted, on the condition that the retailer disclose the discount and the terms and conditions publicly on their website in a clear and conspicuous manner.

Expand definition of location

The bill’s definition of location is overly narrow; it would seem to permit many uses of a consumer’s location to personalize a price, such as whether they are rarely near competitor stores, and which locations they frequent, which can be used to make inferences about their preferences, habits and lifestyle. It is critical to scope the coverage of consumer’s location data correctly, as there’s evidence retailers use it to customize pricing, as in the Target example referenced above. The legislature should expand the definition of location information to include other forms of location information, such as device-generated geolocation data, which has been used by some retailers to raise prices on consumers who were deemed to be distant from competitors’ physical stores.

¹⁰ Charles Duhigg, “How companies learn your secrets,” *The New York Times Magazine*, Feb. 16, 2012

¹¹ 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>

Ensure enforcers can access the information they need, and add clear private enforcement

To ensure enforceability, it is crucial that enforcers can access the information needed to determine if a retailer may have violated the law. Because of the bill's exemptions, if an enforcer detects variation in prices between individuals for the same good at the same time, it will be difficult to ascertain whether a retailer is likely violating the law, or utilizing one of the exemptions. For that reason, we suggest adding the following language to 3. b.: "The provisions of this section shall not prohibit any person from offering a different price on groceries and other foodstuffs based upon **if the person can demonstrate that:**" (Bolding new). This would require the retailer to generate evidence that they qualify for one of the exemptions.

Additionally, the bill should clearly provide for private enforcement. Attorney General offices across the country have strapped budgets and are understaffed relative to the number of laws they are expected to enforce. Placing the burden of enforcement on the Attorney General alone will lead to infrequent enforcement. The legislature should make clear that all enforcement mechanisms available under the Consumer Fraud Act are similarly available under this bill.

Clarify that randomized differential pricing is also prohibited

When CR investigated Instacart, researchers and journalists found that consumers were seeing different prices for the same item at the same time. Instacart said this was the result of randomized tests. Instacart users who spoke to CR expressed dismay in response to the investigation's findings; one shared "I do not accept that they should set prices like that... there needs to be regulation that all prices need to be universal." To address this form of differential pricing, we suggest amending the definition of personalized algorithmic pricing to include "offering random variations in prices to different customers using a website, mobile application, or comparable online technology."¹²

We appreciate the committee's consideration and look forward to answering any questions the committee may have.

Sincerely,
Grace Gedye
Senior Policy Analyst
Consumer Reports

¹² For one example of how this can be implemented, see AB 2564 in California.
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB2564