



MEMORANDUM IN SUPPORT OF A9349B and S8623B

SYNOPSIS: Prohibits the practice of surveillance pricing — the use of personal data to set individualized prices for consumers based on willingness and ability to pay. With exceptions for certain discounts, companies would not be allowed to use invasive personal profiles — such as data about their online search history, or inferences about family structure, health conditions, or income — to set personalized prices for goods and services

INTRODUCED BY: Assemblymember Torres and Senator May

STATEMENT OF SUPPORT: Consumer Reports supports A9349B and S8623B which would protect consumers from the growing practice of surveillance-based personalized 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 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.¹ The

¹ 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/>.

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).² 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.³ 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.⁴
- 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.⁵

² 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>.

³ 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>.

⁴ Dana Mattioli, *On Orbitz, Mac Users Steered to Pricier Hotels*, Wall Street Journal, (Aug. 23, 2012), <https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

⁵ 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>.

A9349B and S8623B would put in place consumer protections to prohibit many of these abusive practices, while allowing companies to preserve transparently offered discounts — including senior citizen and military discounts, loyalty program discounts, and even certain customized discounts. The bills also carve out certain industries, such as insurance, that depend on individual risk assessments and personalization. While Consumer Reports would prefer to see additional protections — such as limiting profiling based on purchase history, tightening language around location-based pricing discrimination, and ensuring discounted prices and related terms and conditions are publicly disclosed — A9349B and S8623B would improve upon New York’s current generic disclosure-only law.

For all these reasons, Consumer Reports urges you to vote YES for A9349B and S8623B, to improve affordability.