



October 29, 2026

Re: Int 0891-2026 (Surveillance Pricing) must be strengthened

Dear members of the New York City Council

Consumer Reports applauds the City Council, particularly Speaker Menin, for their thoughtful work on Int 0891-2026 (Surveillance Pricing).¹ At a time when New Yorkers are struggling with rising costs, this legislation could be a meaningful step towards affordability.

We thank you for the consideration you have already given this bill, but write to you with deep concerns: the latest draft of the bill has worrisome language that will leave consumers poorly protected in practice. Especially concerning is the "corrective action request" language, which is unusual for a bill dealing with a substantive consumer harm and will render the bill unenforceable in practice. We respectfully urge you to reconsider some of this language and have provided specific suggestions starting on page 4 of this letter.

Surveillance pricing, also sometimes referred to as personalized pricing, is when a company uses personal data that they've gathered about a consumer—their online search history, realtime location, inferences about family structure, health conditions, income, and more—to change the price of a product or the discount offered to specific consumer.

Surveillance pricing is incredibly unpopular with consumers. Polling finds that 76% of consumers say it is unfair for companies to use customers' personal information to charge different prices for the same products, which is precisely what Int 891 tackles.² Policymakers on both sides of the aisle have identified this issue as one that requires immediate action,³ and several other states have enacted legislation to ban surveillance pricing.⁴

¹ *New York City, N.Y., Int. No. 891 (2026)*,

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=8027985&GUID=A6815BBB-AC2B-487F-A27B-46449A644474>.

² Polling from Data for Progress and Groundwork Collaborative, May 8, 2026,

https://groundworkcollaborative.org/wp-content/uploads/2026/06/Pricing-Survey_IP-Memo_May2026.pdf

³ See, for example, the Senate hearing convened by Sen. Josh Hawley (R-MO) on August 4th, "Your Data, Their Profit: The Consumer Cost of Surveillance Pricing," and the One Fair Price Act, introduced by Sen. Ruben Gallego (D-AZ), which would prohibit the practice.

⁴ So far in 2026, three states and one city have enacted laws aimed at banning surveillance pricing. See New Jersey: *Fair Price Protection Act*, A.B. 4085, 222d Leg., Reg. Sess. § 3 (N.J. 2026) (enacted July 23, 2026); Connecticut: Conn. Pub. Act No. 26-130, § 11(c)(1) (2026); Maryland: *Protection From Predatory Pricing Act*, 2026 Md. Laws

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 now gather vast troves of data on each individual consumer. For example, in a Consumer Reports investigation of Kroger's loyalty program data practices, consumers requested the data the grocer had collected about them.⁵ 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.⁶

Profiles like these, combined with technology that enables companies to display different prices to different consumers online—or send discounts on an individualized basis—mean 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.⁷

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).⁸ 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.

ch. 154, § 1 (codified at Md. Code Ann., Com. Law § 13-321(b)(2); New York: *One Fair Price Act*, S. 8623-B & A. 9349-B, 2025–2026 Leg. Sess. § 1 (N.Y. 2026); Seattle, Wash., Ordinance 127515 (Oct. 5, 2026) (codified at *Seattle Municipal Code* ch. 7.35)

⁵ Derek Kravitz, “Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors”, Consumer Reports, May 21, 2025 <https://www.consumerreports.org/money/questionable-business-practices/kroger-secret-grocery-shopper-loyalty-profiles-unfair-a1011215563/>

⁶ *Id.*

⁷ For example, when a *Washington Post* reporter requested their loyalty program data from Starbucks, they found that they actually received fewer discounts during periods when they made more purchases from Starbucks. See: Geoffrey Fowler, “The hidden way that using a rewards card can cost you more,” *Washington Post*, October, 18 2025, <https://www.washingtonpost.com/technology/2025/10/18/starbucks-loyalty-program-surveillance-pricing/>

⁸ 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.⁹ 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.¹⁰
- 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.¹¹
- 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.¹² The result was that consumers in higher average income areas tended to get more discounts than consumers in lower average income areas.

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 customers.¹³ 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 pricing 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

⁹ 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>

¹⁰ Dana Mattioli, "On Orbitz, Mac Users Steered to Pricier Hotels," *Wall Street Journal*, Aug. 23, 2012

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

¹¹ 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>

¹² Jennifer Valentino-DeVries, Jeremy Singer-Vine and Ashkan Soltani, "Websites Vary Prices, Deals Based on Users' Information," *Wall Street Journal*, Dec. 24, 2012,

<https://www.wsj.com/articles/SB10001424127887323777204578189391813881534>

¹³ 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/>

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.

Research from the FTC indicates how widespread the practice of surveillance pricing is. 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."¹⁴ The 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 the 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.¹⁵ 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 a consumer uses, 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.¹⁶

Suggested amendments to ensure the Int 0891-2026 (Surveillance Pricing) protects New Yorkers

Close 'location data' loophole: Currently, the use of a consumer's location data to set a personalized price is permitted if the location is being used to "assess current or historical local supply and demand conditions" (see definition of "personal data"). "Demand" is a capacious term, and one that is inextricably linked with willingness to pay; this exemption is in fact far broader than it appears at first blush. For example, residents of a neighborhood with poor transit access and limited grocery options could be charged a higher price for grocery delivery: they have fewer alternatives, so their demand for grocery delivery might persist even at a higher price point relative to neighborhoods with many grocers. During college finals, a pizza delivery chain could charge higher prices for pizzas delivered to college dorms, or buildings immediately surrounding a college, reasoning that college students' demand for pizza is unusually high. This exemption should be removed. It is unnecessary to use *any* consumer location data to evaluate market supply and demand conditions, which can be assessed solely based on how the quantity

¹⁴ "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>

¹⁵ "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

¹⁶ *Id.*

of purchases vary based on the price charged, and supply-related costs of production, distribution, and storage.

Tighten or remove the exemption for the use of purchase history data: The exemption for personalized discounts based on purchase history data is also overly broad and ripe for abuse (see definition of “bona fide custom discount” (3) and (4)). A consumer’s purchase history can be incredibly revealing about who they are, their life circumstances, vulnerabilities, and willingness to pay. A consumer who buys a walker, adult wipes, a shower bench, and has ordered grocery delivery from the same megastore for years might be inferred to be someone who is in poor health, perhaps homebound, and unlikely to switch grocery providers even if prices increased. A consumer who rarely buys luxury items, makes most of their purchases on a bi-weekly basis, purchases household groceries for four, and occasionally buys products aimed at kids could be inferred to be someone who is supporting a household, has kids, and is living paycheck-to-paycheck.

Companies know they can make detailed inferences from consumers’ purchase histories. Uber outlines one such example in one of its advertising patents: If someone routinely requests an Uber to a day care center or school before going to a workplace or university, they could be identified as a single working parent. From there, the age, gender, and sex of the rider can be determined through the ride history alone, Uber says.¹⁷ A review of Walmart patents found a patented technology for tracking the number of children in a shopper’s household and their ages based on the consumer’s purchase history, updating age estimates “on a periodic basis such as monthly or yearly,” with implications for what products they are steered towards.¹⁸ A consumer “with a large number of children may be offered bulk sizes [...] or less expensive product, whereas a household with a smaller number of juveniles may be offered [...] smaller quantity packaging or more expensive products.” We would welcome the opportunity to help Speaker Menin and the council focus this exemption to remove this vulnerability. But, the best approach may be to remove the exemption entirely.

Remove corrective action request in enforcement section: The current bill language requires the department to send a notice to companies that have violated the law, give them 30 days to correct the violation, and does not permit the department to pursue penalties if the company corrects the violation.

This language fundamentally alters the incentive to comply with the law. It takes considerable resources from the department to investigate a company and come up with a fact pattern. With a

¹⁷ U.S. Patent Application Pub. No. US 2018/0137593 A1, Pub. May 17, 2018

¹⁸ Lindsay Owens and Elizabeth Pancotti, “The Walmart Watchtower: Patents Speak Louder Than Pledges,” *Groundwork Collaborative*, October 5, 2026, <https://groundworkcollaborative.org/work/the-walmart-watchtower/>

right to take corrective action, companies know that on the off chance the department investigates them, they will have a chance to change the practice before they ever face a penalty. Why would they comply? Beyond that, if companies can harm consumers via surveillance pricing and never be challenged in court, how will the harmed consumers be made whole?

This language is incredibly damaging; it will make the law unenforceable in practice. It would also make New York City's law among the weakest in the nation when it comes to enforcement—putting it behind New Jersey and Connecticut.

Maintaining this language in a bill that handles real consumer harms would be highly unusual, and a clear giveaway to business lobbyists. We strongly urge you to remove it.

Avoid weakening the bill or adding new loopholes

In addition to the suggested changes above, we strongly urge you to be careful to avoid weakening the bill or adding new loopholes. Through work in other jurisdictions, we have seen business lobbyists push for various changes that would break similar legislation. For example, changing the scope of the bill to a prohibition on “personalized price increases,” sounds reasonable at first glance. But if businesses already charge different prices to different people for the same products at the same time, even on a randomized basis—as seen in the Instacart investigation—it becomes hard to determine “the price,” and therefore hard to determine what is a “price increase.” Similarly, if a business utilizes dynamic pricing and prices change second to second, it can be very challenging to determine “the price.” Furthermore, by prohibiting price increases but putting no transparency mechanisms or safeguards in place for personalized discounts, the policy would create inflationary pressure, incentivizing businesses to increase list prices and provide individualized discounts based on individual profiles.

For example, if Retailer A observes that certain customers often search for baby medicine and other baby products in middle of the night, are not sorting by lowest price, are ordering rush delivery, and their real-time location is not near competitor stores, Retailer A might charge them \$65 for a large pack of diapers, reasoning that those customers will tolerate a higher price, while charging most other shoppers \$50. Similarly, Retailer A could price the diapers at \$65, and then run a discount for consumers it infers are parents that reduces the price to \$50, but omit from that discount parents that it infers to be desperate. The upshot is the same: If you are a parent that the company has profiled to be time-poor and without good alternatives, you're going to be charged more for diapers.

Similarly, it would leave consumers vulnerable to personalized pricing if the bill were amended to remove the safeguards currently in place on personalized discounts. Not only would that incentivize the practice described above, it is clear that retailers do modulate “original” prices to

change the perceived discount. In an investigation of Amazon's Prime Day pricing, a *Washington Post* journalist tracked almost 50 products he'd bought on Amazon throughout the year, and compared the prices he paid to the products' Prime Day prices.¹⁹ A pack of coronavirus tests was advertised as 39% off on Prime Day, but the post-discount price was the same as the "full" price he'd paid less than a month before. Same with an Oral-B toothbrush, right down to the supposed 39% off. Some products actually *jumped* in price, like a TV console that was \$275 before Prime day and \$379 during the sale event. In Consumer Reports' investigation of Instacart, researchers found something similar.²⁰ Instacart showed different customers different "original" prices for an item with the same post-"discount" price. Volunteers using Instacart to shop at the same time at a Seattle Safeway, for example, saw several "original" prices for saltines: \$5.93, \$5.99, or \$6.69. But the "sale" price was the same for everyone—\$3.99.

Limiting the scope of the prohibition to prices that are personalized at the level of a literal individual would also leave consumers unprotected. If companies can still profile consumers into niche groups (e.g. women between 35-45, who have household incomes over 300k, live in a specific neighborhood and are interested in SSRIs and tropical vacations) and target those groups with different prices, the problem will persist. These are just a handful of the unfortunate changes we have seen proposed in other jurisdictions. (In the case of Maryland, some of these changes were adopted,²¹ making it the weakest law in the nation. Luckily, no state has followed Maryland's lead so far.) We would be happy to assist your office in evaluating other suggested amendments to ensure that they do not weaken the bill. Thank you for your consideration, and the time you have dedicated to this issue.

Sincerely,

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Consumer Reports

¹⁹ Geoffrey A. Fowler, "I tracked Amazon's Prime Day Prices. We've been played." *Washington Post*, Oct. 9, 2025, <https://www.washingtonpost.com/technology/2025/10/09/amazon-prime-day-prices/>

²⁰ 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/>

²¹ Maryland: *Protection From Predatory Pricing Act*, 2026 Md. Laws ch. 154, § 1 (codified at Md. Code Ann., Com. Law § 13-321(b)(2))