



April 2, 2025

**Re: House Bill 1264: Prohibit Surveillance Data to Set Prices and Wages - Support**

Dear Honorable Representatives of House Judiciary Committee,

Consumer Reports<sup>1</sup> writes in support of HB 1264. This bill is focused on a pocketbook 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 data that they’ve gathered about a consumer—often without the consumer’s knowledge or consent—to set the price of a product or the discount offered to a consumer. Consumer Reports has heard from members about their frustrations with opaque pricing tactics, and nationally representative polling shows that consumers are opposed to personalized pricing. HB 1264 would prohibit this practice, with reasonable exemptions. We urge an ‘aye’ vote.

*What HB 1264 does*

HB 1264 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, and their web-browsing history. HB 1264 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 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.”

HB 1264 also has several reasonable exemptions. 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 prohibited. Additionally, 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

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### *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. Companies 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. 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).<sup>2</sup> 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.<sup>3</sup> The result, they found, was that Asian customers were nearly twice as likely to receive a higher price.

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- 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.<sup>4</sup>
- 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.<sup>5</sup>

### *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 difference prices depending on the buyer’s personal information—generally known as price discrimination or “personalized pricing.”<sup>6</sup>

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.<sup>7</sup>

- 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.

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- 72% of Americans oppose basing discounts 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.

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.<sup>8</sup>

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.

We asked our members about their experiences with unpredictable prices, or discovering they were offered a different price than someone else, or seeing different prices when they shopped on different web browsers, or when they shopped online versus in person. We received an outpouring of comments from frustrated members, including the following anecdotes.

- “When I purchase airline tickets, I do all my comparison shopping to choose the best flight. Then, I clear my browser history and check again. Often the price is lower then! It is as if the more you look at a flight, the more the price increases because companies know you want it.” – member from Washington
- “Sometimes, when I've logged into Amazon.com as a guest and then returned to the site and logged in with my Amazon account, the price of an item will have increased by a few dollars within the span of a few minutes. I've often wondered if this is because of my purchasing profile, my credit rating or my ability to pay a higher price. If so, that doesn't seem right. The increase in cost is usually by only a few dollars. Of course, by coincidence, Amazon could have raised the price for everyone at the same time, within the span of a few minutes. This, however, has happened to me several times, which makes me wonder if instead some computer algorithm might be behind these changes in price. Seems a lot like consumer profiling.” – member from Virginia
- “There's a small Target store near me....Anyway, you get better prices if you use the app and pick up (or have them bring it to your car in the special parking spaces) the goods rather than buying them in the store. This is a casual observation and I can only think

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- “I was shopping for a name-brand electric razor—at first, I checked the price and it included a substantial discount coupon. I then checked a more expensive, newer model from the same manufacturer. I was interrupted and had to return and reload the page a few minutes later. Suddenly, the original product was a higher price without the digital coupon offered earlier. It was very odd—it almost seemed like because I considered the higher-end model, Amazon calculated that I’d be willing to buy the mid-range product without the discount.” – member from Missouri
- “I have also noticed that when I use a VPN, the prices for flight tickets can drop substantially depending upon my geographic location. There are also flight price variations using certain apps as opposed to using the company’s website.” – member from Texas

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. HB 1246 would help address this frustration. Consumer Reports respectfully encourages an ‘aye’ vote.

Sincerely,  
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Policy Analyst  
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Grace Gedye  
Policy Analyst  
Consumer Reports

**House Judiciary**

**04/02/2025 01:30 PM**

**HB25-1264 Prohibit Surveillance Data to Set Prices and Wages**

**Typed Text of Testimony Submitted**

<b>Name, Position, Representing</b>	<b>Typed Text of Testimony</b>
<p>Steven Lustig For Colorado Independent Drivers United, CWA Local 7777</p>	<p>Thank you, chair and members of the committee, my name is Steve Lustig and I've driven for Uber and Lyft since 2019. I also represent Colorado Independent Drivers United of CWA Local 7777. I write to you in support of HB-1264</p> <p>Last Fall, our union participated in a march alongside other drivers groups from Chicago, LA, the Bay Area, and beyond, outside Uber and Lyft's corporate headquarters in San Francisco, CA. Afterwards, the other CIDU organizers and I thought it'd be entertaining and ironic if we hailed a ride in a driverless Waymo vehicle and, as rideshare drivers, confronted the robot car that wants to replace us. It was quite the Orwellian experience.</p> <p>Not only does Artificial Intelligence control which rides we receive, how much we're paid, the cost to riders, and rewards some drivers over others based on arbitrary and translucent metrics, its investment and development by Silicon Valley is intended to control workers then toss them out when they possess the requisite technology to completely automate the job. How long until the Colorado Legislator T-1000 model is sitting in your seats? I'm sure Elon and other billionaire oligarchs are pouring money into the venture now.</p> <p>Please show that you value human beings over this dystopian technocratic hellscape that the gig economy, federal government, and our society are rapidly devolving into and support HB-1264. Thank you.</p>