



**STATEMENT FOR THE RECORD  
BEFORE THE COLORADO SENATE BUSINESS, LABOR & TECHNOLOGY  
COMMITTEE ON HB26-1210 PROHIBIT SURVEILLANCE PRICE & WAGE  
SETTING**

**April 21, 2026  
Awesta Sarkash  
Vice President, State Policy & Advocacy  
Small Business Majority**

Dear Chairwoman Danielson, and Members of the Committee:

My name is Awesta Sarkash and I'm the Vice President, State Policy & Advocacy for Small Business Majority, a small business advocacy organization with a mission to empower America's diverse entrepreneurs to build a thriving and equitable economy. I'm pleased to provide written testimony in support of HB26-1210, legislation that would prohibit discrimination against a consumer or worker through the use of a price or wage setting algorithm (PWSA), which would protect small businesses from an increasingly unlevelled playing field.

We urge you to help level the playing field for small firms by supporting legislation that blocks large businesses from using PWSAs to create individualized pricing that relies on surveillance data, thereby preventing companies from charging different consumers different prices for the same goods or services based on individualized profiling rather than demonstrated cost differences, time-based factors or publicly disclosed eligibility criteria for discounts.

Large corporations constantly collect information about consumers' locations, viewing habits, social networks, purchases, loans, what they pay attention to online and more. They are able to then run this consumer data through algorithms to set individualized price points, thereby rigging the market and gaining a substantial advantage over small businesses who cannot afford to implement such systems. Small businesses already struggle to compete with larger businesses. As technology that captures consumer behavior becomes increasingly sophisticated, the likelihood of surveillance pricing will increase without government regulation, giving larger businesses market dominance over smaller firms.

Small businesses need laws like HB26-1210 so they can compete on a level playing field. We urge you to support this commonsense approach to reign in unfair surveillance pricing that would yet again put small businesses at a disadvantage.

Sincerely,

Awesta Sarkash  
Vice President, State Policy & Advocacy  
Small Business Majority

April 21, 2026

Colorado General Assembly  
Senate Committee on Business, Labor & Technology  
200 E Colfax Avenue  
Denver, CO 80203

Dear Chair Danielson and Members of the Committee,

EPIC writes in support of HB26-1210, Prohibiting Individualized Price and Wage Setting Using Surveillance Data, to further protect Coloradans from these harmful practices. Colorado has the opportunity to further its leadership in protecting the rights, privacy, and financial security of Colorado residents and workers with this proposal. At a time when policymakers are concerned about affordability for their constituents, the impact of practices like surveillance pricing and wage setting cannot be ignored.

The Electronic Privacy Information Center (EPIC) is an independent non-profit research organization based in Washington, D.C., established in 1994 to protect privacy, freedom of expression, and democratic values in the information age.<sup>1</sup> EPIC has advocated for strong AI, privacy, and consumer protection laws at both the state and federal levels for many years.<sup>2</sup>

### **Surveillance pricing regulation is urgently needed, and Colorado should act now.**

Legislation like HB26-1210 is critical to address the harms caused by companies using AI systems to set individualized prices for consumers. Retailers have long sought to charge the highest amount consumers are willing to pay for a product or service to maximize their profits.<sup>3</sup> Until recently, retailers were forced to set a single price for a market—all similarly situated customers saw the same price and decided whether they would or would not pay it. Today, the combination of advanced algorithms and troves of personal data on individual customers allows

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<sup>1</sup> EPIC, *About EPIC*, <https://epic.org/about/>.

<sup>2</sup> See e.g., Protecting America's Consumers: Bipartisan Legislation to Strengthen Data Privacy and Security: Hearing before the Subcomm. on Consumer Protection & Comm. of the H. Comm. on Energy & Comm., 117th Cong. (2022) (testimony of Caitriona Fitzgerald, Deputy Director, EPIC), [https://epic.org/wp-content/uploads/2022/06/Testimony\\_Fitzgerald\\_CPC\\_2022.06.14.pdf](https://epic.org/wp-content/uploads/2022/06/Testimony_Fitzgerald_CPC_2022.06.14.pdf); *EPIC Testifies in Support of Maryland Bill on High-Risk AI*, EPIC (Feb. 27, 2025), <https://epic.org/epic-testifies-in-support-of-maryland-bill-on-high-risk-ai/>.

<sup>3</sup> Wells, Owens, Han & Smith, Groundwork Collaborative & Consumer Reports, *Same Cart, Different Price: Instacart's Price Experiments Cost Families at Checkout* 4–5 (2025), <http://groundworkcollaborative.org/wp-content/uploads/2025/12/Same-Cart-Different-Price.pdf> [hereinafter “Instacart Investigation”].

retailers to practice price discrimination, inferring the prices individual consumers are willing to pay and targeting those prices accordingly.<sup>4</sup>

Surveillance pricing can involve disturbingly sensitive and varied personal information on an individual. Retailers can access enormous amounts of data both by collecting data firsthand from their customers and by purchasing data from data brokers.<sup>5</sup> Data brokers gather data about consumers as they engage a wide range of activities in today's economy.<sup>6</sup> Data brokers then use this information to profile, categorize, and make inferences about individuals based on the personal data collected about them, including location, purchase history, economic status, mental and physical health conditions, or specific vulnerabilities.<sup>7</sup> For example, consumers may be categorized as expectant mothers, older people struggling financially, people with symptoms of depression, people struggling with addiction, or people interested in weight loss, among countless other intimate categories.<sup>8</sup>

Fueled by these detailed consumer profiles, surveillance pricing algorithms can make real-time price adjustments based on these profiles and customer responses in both brick-and-mortar stores and online.<sup>9</sup> For example, a major investigation of Instacart found that the platform conducted surreptitious pricing experiments by varying grocery prices by tens of cents, making the changes difficult for consumers to detect but potentially resulting in an increased grocery cost of \$1,200 a year for the average customer.<sup>10</sup> Using surveillance pricing tools, businesses can significantly increase their profits at the direct detriment of everyday consumers.

Surveillance pricing is an unfair practice that violates consumers' reasonable expectation that the price of goods or services reflects value and the market as a whole—not exploitation of their individual personal data. In a time of rising cost of living and more people living paycheck-to-paycheck, surveillance pricing often targets the people who can least afford increased cost.<sup>11</sup>

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<sup>4</sup> FTC, FTC Surveillance Pricing 6(b) Study: Research Summaries, A Staff Perspective 5 (2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p246202\\_surveillancepricing6bstudy\\_researchsummaries\\_redacted.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf) [hereinafter "FTC Study"].

<sup>5</sup> FTC Study at 8–9.

<sup>6</sup> FTC Study at 8–9; Mayu Tobin-Miyaji, EPIC, *Assessing the Assessments: Maximizing the Effectiveness of Algorithmic & Privacy Risk Assessments* 6–7 (2025), <https://epic.org/assessing-the-assessments/>.

<sup>7</sup> FTC Study at 2 n. 10, 4.

<sup>8</sup> Jon Keegan & Joel Eastwood, *From "Heavy Purchasers" of Pregnancy Tests to the Depression-Prone: We Found 650,000 Ways Advertisers Label You*, The Markup (June 8, 2023), <https://themarkup.org/privacy/2023/06/08/from-heavy-purchasers-of-pregnancy-tests-to-the-depression-prone-we-found-650000-ways-advertisers-label-you>.

<sup>9</sup> FTC Study at 3–7; Instacart-owned Eversight, which sells pricing tools, admits that shoppers will see different prices. *Eversight by Instacart: AI-Powered Price Optimization*, Instacart Platform (last accessed Jan. 28, 2026), <https://www.instacart.com/company/retailer-platform/connected-stores/eversight>.

<sup>10</sup> Instacart Investigation at 3.

<sup>11</sup> Seth Frotman & Tara Mikkilineni, *The Trump Administration Wants to Reboot Redlining*, Jolt Digest (July 7, 2025), <https://jolt.law.harvard.edu/digest/the-trump-administration-wants-to-reboot-redlining>.

**The bill takes a nuanced, reasonable, pro-consumer approach to discounts and loyalty programs.**

Discounts and loyalty rewards programs can be good for consumers, but they can also be cover for surveillance pricing depending on how they are operated. HB26-1210 does an admirable job of exempting the kinds of discounts and loyalty rewards that consumers actually expect and benefit from while not exempting the kinds of discounts and loyalty rewards programs that defy consumers’ expectations and are easier for companies to use to exploit consumers’ personal data.

Recent research and experience have shown that abusive loyalty programs can promise loyalty perks while, in reality, delivering loyalty penalties.<sup>12</sup> By collecting or purchasing reams of data about loyalty customers, companies can determine who should get a coupon and who should not based on a consumer’s inferred price sensitivity and whether they would be willing to buy at a higher price.<sup>13</sup> It is unfair that some loyalty shoppers are charged more than others in ways that they do not know or expect based on their personal data.

Individualized loyalty program vendors are not shy about this. Eagle Eye is a vendor of individualized pricing technologies that boasts it sends out more than a billion individualized discounts per week and includes in its list of current and former customers retail giants such as Petco, Rite-Aid, and major grocery stores.<sup>14</sup> On its webpage advertising its personalized promotions product, it markets its technology as helping retailers avoid “customers [being] rewarded for behavior they would have delivered anyway” and “avoiding over-discounting customers who would have purchased anyway.”<sup>15</sup> This is not a loyalty perk—it is a loyalty penalty that occurs when companies are able to send out secret, individualized discounts.

Individualized algorithmic discounting can also harm consumers by enabling price increases that are hard to detect. Businesses may claim that they only use individualized algorithmic pricing to provide “discounts” or to “decrease prices,” but discounts are meaningless without an established and stable baseline price for a good. Otherwise, businesses may simply artificially raise prices across the board, then offer individualized “discounts” to arrive at the same surveillance pricing outcome they would have otherwise. As an illustrative example, if a business set the base price of a six-pack as \$5.99 for some consumers and \$7.99 for others based on their personal data, many would deem this unfair. But if, instead, a business changed the base price of a six-pack to \$7.99 for everyone, knowing that it could give more price-sensitive customers a coupon for \$2 off without giving more price insensitive customers a coupon at all,

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<sup>12</sup> Samuel A.A. Levine & Stephanie T. Nyugen, *The Loyalty Trap: How Loyalty Programs Hook Us with Deals, Hack our Brains, and Hike Our Prices*, Vanderbilt Policy Center at 6, 14–21 (2025), <https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/10/17195957/The-Loyalty-Trap.pdf>.

<sup>13</sup> FTC Study at 3.

<sup>14</sup> Eagle Eye, <https://eagleeye.com/>.

<sup>15</sup> Eagle Eye, *Personalized Promotions*, <https://web.archive.org/web/20260421150620/https://eagleeye.com/personalized-promotions>.

that would recreate the surveillance pricing outcome that consumers hate but shrouded in “discount” language that obscures what is really happening.

HB26-1210 properly disallows this kind of abusive discounting while permitting businesses to continue to provide the kinds of discounts that consumers like and actually benefit from, even ones based on personal data. It preserves discounts based on volume of goods bought (something like a coffee shop “get your tenth coffee free” punch card), discounts for loyalty customers, discounts offered as a retention strategy for unhappy customers, equal discounts for groups such as veterans and seniors, and more. This structure permits companies leeway in how to attract and retain consumers without risking re-creating the surveillance pricing infrastructure that the bill otherwise prohibits.

**Automated wage setting based on surveillance data requires urgent legislative action.**

Surveillance wage setting transforms wage determination from a fair calculation based on work performed to an exploitative system that gleans how little a worker is willing to accept in wages based on troves of their individual personal data.<sup>16</sup> Surveillance wage setting is a tactic for corporations employing workers to minimize costs, not through innovation but through exploitation of workers’ personal data. Millions of U.S. workers are already subject to surveillance wages through gig work, such as driving for Uber, Lyft, or other food delivery companies.<sup>17</sup> This framework is rapidly expanding into other industries, such as nursing.<sup>18</sup>

Employers using algorithmic surveillance wage determinations results in unfair low wages, instability and precarity for workers, and lack of transparency. A study into the experience of nurses working for on-demand nursing companies found that those platforms incentivize nurses to bid lower wages against one another, create unstable and unpredictable schedules and sudden scheduling changes, take little accountability for worker safety, and ultimately threaten patient well-being.<sup>19</sup> Studies of on-demand drivers also show companies charging consumers more, paying workers less, and increasing profit through algorithmic price and wage setting.<sup>20</sup> A 2022 research study from Colorado Jobs With Justice with Colorado Independent Drivers United surveying hundreds of gig workers in the Denver area found drivers on average took home \$5.49 an hour after expenses, significantly below Denver’s 2022

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<sup>16</sup> Veena Dubal & Wilneida Negrón, *How Artificial Intelligence Uncouples Hard Work from Fair Wages Through ‘Surveillance Pay’ Practices—and How to Fix it*, Washington Center for Equitable Growth (Aug. 21, 2025), <https://equitablegrowth.org/how-artificial-intelligence-uncouples-hard-work-from-fair-wages-through-surveillance-pay-practices-and-how-to-fix-it/>.

<sup>17</sup> AI Now Institute et al., *Prohibiting Surveillance Prices and Wages* 5–6 (2025), <https://towardsjustice.org/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf>.

<sup>18</sup> Wells & Spilda, *Uber for Nursing: How an AI-Powered Gig Model is Threatening Health Care*, Roosevelt Inst. (Dec. 2024), [https://rooseveltinstitute.org/wp-content/uploads/2024/12/RI\\_Uber-for-Nursing\\_Brief\\_202412.pdf](https://rooseveltinstitute.org/wp-content/uploads/2024/12/RI_Uber-for-Nursing_Brief_202412.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> Len Sherman, *Will Other Companies Follow Uber’s Lead Into The Black Hole of Opaque Algorithmic Pricing?*, Medium (Sept. 16, 2025), <https://len-sherman.medium.com/will-other-companies-follow-ubers-lead-into-the-black-hole-of-opaque-algorithmic-pricing-d79acd9cfe35>.

minimum wage.<sup>21</sup> Some drivers report experiencing their work as a form of gambling and trickery, where the worker has little wage predictability based on the work they perform.<sup>22</sup>

HB26-1210 would be a strong step toward ensuring workers get paid fairly for their work. The bill would prohibit the use of personal data that does not relate to the performance of tasks that the worker was hired to perform. This ensures that employers don't take advantage of workers by offering lower pay based on data unrelated to work performance. The bill would also ensure increased transparency and accountability by requiring any company using an automated decision system to assist or replace human decision-making related to wages to develop and publish procedures to ensure accuracy of the data considered, for workers to request and receive information regarding what data is used and how it is considered for setting wages, and to challenge the accuracy of the data considered. These protections, coupled with the private right of action, would go far to ensure that Colorado workers are paid fairly.

### **Enforcement is critical.**

Robust enforcement is critical to effective privacy protection. Strong state enforcement via Attorney General authority is a key part of any strong consumer protection law, and funds should be appropriated to ensure the Attorney General can meaningfully enforce the law.

However, while government enforcement is vital, a private right of action ensures that companies have strong financial incentives to comply with privacy laws. Evidence of this is seen in Illinois,<sup>23</sup> where a biometric privacy law passed in 2008 includes a private right of action. Lawsuits under that law have led to changes in harmful business practices, such as forcing facial recognition company Clearview AI to stop selling its face surveillance system to private companies.<sup>24</sup> In contrast, in states where Attorneys General have sole enforcement authority, there has been little enforcement of, and compliance with, privacy laws.<sup>25</sup>

Many privacy laws include a private right of action, allowing individuals to hold companies accountable for privacy violations.<sup>26</sup> Colorado residents have had the right to enforce their consumer rights in court under the Colorado Consumer Protection Act for decades. There is

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<sup>21</sup> Kari Paul, *Colorado Gig Drivers Make an Average of Just \$5.49 an Hour, Study Finds*, The Guardian (Nov. 9, 2022), <https://www.theguardian.com/us-news/2022/nov/09/gig-drivers-colorado-wages-less-than-minimum-study>.

<sup>22</sup> Veena Dubal, *On Algorithmic Wage Discrimination*, 123 Colum. L. Rev. 1929 (2023); Reuben Binns, Jake Stein, Siddhartha Datta, Max Van Kleek & Nigel Shadbolt, *Not Even Nice Work If You Can Get It: A Longitudinal Study of Uber's Algorithmic Pay and Pricing*, arXiv (June 18, 2025), <https://arxiv.org/abs/2506.15278>.

<sup>23</sup> Woodrow Hartzog, *BIPA: The Most Important Biometric Privacy Law in the US?*, AI Now Institute (2020), <https://ainowinstitute.org/wp-content/uploads/2023/09/regulatingbiometrics-hartzog.pdf>.

<sup>24</sup> Ryan Mac & Kashmir Hill, *Clearview AI Settles Suit and Agrees to Limit Sales of Facial Recognition Database*, N.Y. Times (May 9, 2022), <https://www.nytimes.com/2022/05/09/technology/clearview-ai-suit.html>.

<sup>25</sup> See generally Consumer Reports, *Mixed Signals: Many Companies May Be Ignoring Opt-Out Requests Under State Privacy Laws* (Apr. 2025), <https://innovation.consumerreports.org/new-report-many-companies-may-be-ignoring-opt-out-requests-under-state-privacy-laws/>.

<sup>26</sup> See Lauren Henry Scholz, *Private Rights of Action in Privacy Laws*, 63 Wm. & Mary L. Rev. 1639 (2022), <https://scholarship.law.wm.edu/wmlr/vol63/iss5/5>.

no reason privacy violations should be treated differently from other consumer rights violations. We encourage the Committee to keep this provision.

**With amendments, HB26-1210 could provide even stronger protections for Colorado residents.**

HB26-1210 takes important steps to protect Coloradans from the harms of surveillance pricing and automated wage setting. However, while the bill includes “locations frequented” in the definition of “Behaviors,” adding precise geolocation data<sup>27</sup> under the definition of “Personal Characteristics” would avoid confusion and make clear that such data about an individual cannot be used to conduct surveillance pricing or individualized wage setting. This would still allow companies to use non-precise, or course, location data to set prices in different areas of the state, but including “precise geolocation data” in the definition of “behaviors” would have two advantages: one, it disincentivizes the collection of this particularly sensitive form of data in the first place, and two, it prevents companies from using our precise comings and goings, to unfairly determine prices.

We also recommend that the bill be adapted to explicitly ban use of device specifications, such as what model phone a consumer is using or how low their battery is, in setting prices.<sup>28</sup>

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EPIC urges the Committee to support this bill because the threat to privacy and affordability caused by surveillance pricing and algorithmic wage setting is an urgent problem. Thank you for the opportunity to testify today, and EPIC is happy to be a resource to the Committee on these issues.

Sincerely,

/s/ Tom McBrien  
Tom McBrien  
Counsel, EPIC

/s/ Calli Schroeder  
Calli Schroeder  
Senior Counsel, EPIC

/s/ Kara Williams  
Kara Williams  
Counsel, EPIC

/s/ Mayu Tobin-Miyaji  
Mayu Tobin-Miyaji  
Fellow, EPIC

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<sup>27</sup> As defined under C.R.S. 6-1-1303(17.5).

<sup>28</sup> *Uber Accused of Charging People More If Their Phone Battery Is Low*, Vice (Apr. 11, 2023), <https://www.vice.com/en/article/uber-surge-pricing-phone-battery/>.



April 21, 2026

The Honorable Jessie Danielson  
Chair  
Senate Committee on Business, Labor, &  
Technology  
200 E Colfax, RM 346  
Denver, CO 80203

The Honorable Nick Hinrichsen  
Vice Chair  
Senate Committee on Business, Labor, &  
Technology  
200 E Colfax, RM 346  
Denver, CO 80203

**RE: Oppose HB 26-1210 - "Prohibiting Individualized Price and Wage Setting Using Surveillance Data"**

Dear Chair Danielson, Vice Chair Hinrichsen, and members of the Committee:

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advances, I respectfully urge you to **oppose HB 26-1210, which would harm consumers and small businesses in Colorado.**

We share the legislature's concern about affordability. The cost of living is the top issue facing American families,<sup>1</sup> and we understand the impulse to ensure consumers are getting a fair deal. But HB 26-1210 risks backfiring on the very families it aims to help by eliminating the discounts, digital coupons, and targeted deals Colorado families use to stretch their budgets. **Colorado voters see this plainly: 70% oppose banning these practices.**<sup>2</sup>

**Personalized pricing in practice: savings that help Colorado families**

The term "surveillance pricing" suggests that companies are using personal data to charge individual consumers higher prices. **But despite widespread speculation, there is no conclusive evidence that this is actually happening.** What businesses overwhelmingly

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<sup>1</sup> Erin Doherty, "New poll paints a grim picture of a nation under financial strain," *POLITICO*, Dec. 10, 2025, <https://www.politico.com/news/2025/12/10/poll-affordability-cost-of-living-00678076>.

<sup>2</sup> Morning Consult, *Coloradans Oppose Algorithmic Pricing Bans*, prepared for Chamber of Progress, April 2026. Survey of 525 Colorado adults conducted April 2–9, 2026; margin of error  $\pm 4$  percentage points. <https://progresschamber.org/research/chamber-of-progress-poll-colorado-voters-oppose-sweeping-algorithmic-pricing-bans/>

use consumer data for is the opposite: offering discounts, coupons, and targeted promotions that help families save money.

This makes economic sense. Retail markets are intensely competitive. When shoppers can compare prices with a few taps on their phone, using personal data to charge a customer more is a losing strategy. A competitor will simply offer a better price and win the sale. The businesses that use consumer data most actively are the ones competing hardest for customers, and they compete by offering better deals, not higher prices.

In practice, personalized pricing looks like this:

- *Personalized coupons.* Your grocery store's app sends you a \$2-off coupon for the cereal you buy every week, or a deal on diapers because you have a baby at home.
- *Tailored loyalty rewards.* Your local coffee shop gives you a free drink after ten purchases, or sends you a discount because you haven't visited in a month.
- *Cart abandonment discounts.* An online retailer offers a discount to a shopper who viewed a product but didn't purchase, winning back a sale with a better price.
- *New product introductions.* A new snack brand enters your grocery store and the store sends a coupon to customers who already buy similar products, reaching the shoppers most likely to be interested instead of advertising blindly to everyone.
- *Small business offers.* You favorited a handmade necklace on an online marketplace and the seller sends you a 10% off coupon, or a small clothing brand offers a discount because you've browsed their site before.

Coloradans actively seek out these kinds of deals. An April 2026 Morning Consult survey of Colorado adults found that 74% are willing to share personal information about their shopping behavior in exchange for discounts, 80% have joined a customer loyalty or rewards program, and 76% have signed up for coupons or offers by sharing contact information.<sup>3</sup>

Targeted promotions are also how small businesses and new brands actually compete. A new grocery brand can use targeted discounts to introduce itself to likely buyers; a local retailer can use promotional pricing to reach customers who would otherwise default to national chains with far larger advertising budgets. These tools have become central to how small businesses operate. A March 2026 survey by the Small Business & Entrepreneurship Council found that 35% of small businesses already use some form of automated pricing tool, that optimizing discounts and promotions is the most common use case, and that 95% of users report improved competitive positioning as a result.<sup>4</sup>

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<sup>3</sup> Morning Consult, April 2026.

<sup>4</sup> Small Business & Entrepreneurship Council, *Technology Use Survey*, March 2026, <https://sbecouncil.org/wp-content/uploads/2026/03/SBE-Technology-Use-Survey-March-2026-Final-2.pdf>.

## **HB 26-1210 would ban these practices and raise costs for Colorado families**

Under HB 26-1210, every personalized coupon, cart abandonment discount, tailored loyalty reward, and automated targeted promotion described above would be illegal. The bill's definitions sweep in virtually any targeted promotional tool used in Colorado retail. "Surveillance data" covers almost any consumer information;<sup>5</sup> a "price or wage setting algorithm" (PWSA) is any system that analyzes surveillance data and is a "substantial factor" in setting a price;<sup>6</sup> and "individualized" extends beyond single consumers to any group, band, class, or tier sharing particular characteristics, sweeping in standard market segmentation.<sup>7</sup> The bill does not distinguish between a company using personal data to charge a consumer more and a grocery store using purchase history to send a family a discount. Both are prohibited.

**At a moment when the cost of living is the top concern for Colorado families, the most immediate casualty of that ban is the consumer.** Digital coupons alone save the average household \$1,465 each year,<sup>8</sup> and low-income families, especially those with children, are among the most active coupon users.<sup>9</sup> HB 26-1210 would eliminate the very tools these families rely on to stretch their budgets.

The cost also falls hard on small businesses and new entrants, because the cost of promotion depends heavily on whether it can be targeted. Broad, non-personalized campaigns run at scale are expensive even for large retailers. For a new Colorado-based brand or an independent grocer, they are often out of reach entirely. Strip away the ability to target, and the result is a marketplace tilted toward large incumbents, with fewer new entrants and less of the competition that keeps prices low.

## **The bill's exemptions concede the value of personalization but fail to protect it**

HB 26-1210 approaches data-driven pricing from the wrong starting point. It presumes that using consumer data to set prices is inherently harmful and then attempts to carve out the forms of discounting the sponsors consider acceptable. That framing ignores how modern retail actually works. Personalization is overwhelmingly how businesses compete for customers and deliver value, not how they extract from them. Starting from a presumption of harm and working backward toward exemptions will always produce a list that fails to match how modern discounting actually works.

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<sup>5</sup> HB 26-1210, §6-1-1901(13); §6-1-1901(9)

<sup>6</sup> HB 26-1210, §6-1-1901(11); §6-1-1901(12)

<sup>7</sup> HB 26-1210, §6-1-1901(3)

<sup>8</sup> Elyssa Kirkham, "Study: Skipping Online Coupons Could Cost You \$1,465 Per Year," CouponFollow, last modified May 19, 2021, <https://couponfollow.com/research/coupon-data-study>.

<sup>9</sup> Stephanie M. Noble et al., "Coupon Clipping by Impoverished Consumers: Linking Demographics, Basket Size, and Coupon Redemption Rates," *International Journal of Research in Marketing* 34, no. 2 (2017): 553-571, <https://doi.org/10.1016/j.ijresmar.2016.08.010>.

Each exemption tries to preserve a surface-level practice while stripping out the personalization that makes that practice viable. Businesses offer targeted discounts because extending the same discount to every customer is rarely sustainable. Targeting lets retailers reach the customers a promotion is meant for (deal-seekers, new customers, lapsed shoppers) without reducing revenue across every transaction.

**Colorado consumers grasp this intuitively: 70% say they prefer having access to targeted discounts and deals even when that means not every customer pays the same price for the same item, and 77% say that if stores were required by law to offer the same discount to every customer, businesses would either offer fewer discounts overall or stop offering them entirely.**<sup>10</sup>

The customer service exemption applies only to differential prices offered "in response to" a consumer's complaint, inquiry, billing dispute, cancellation request, or similar interaction the consumer initiates.<sup>11</sup> A grocery app's automatic cart abandonment discount, a rideshare app's proactive "we miss you" promo code, or a retailer's predictive re-engagement offer to a customer flagged as likely to lapse: none of these are triggered by a consumer complaint, so none are covered.

The loyalty program exemption has the same problem. It covers only discounts offered "on equal terms" to all members under publicly disclosed conditions,<sup>12</sup> effectively prohibiting personalization *within* loyalty programs. But personalization is what makes these programs useful in the first place. A \$2-off coupon for the member who buys cereal every week or a free drink for the customer who hasn't visited in a month is personalized value, not equal-terms discounting. Coloradans recognize what is lost: 63% say it is reasonable for loyalty programs to charge different customers different prices, and 76% oppose banning these programs.<sup>13</sup>

### **Colorado voters strongly oppose this approach**

Colorado voters themselves reject the policy HB 26-1210 would enact. In an April 2026 Morning Consult survey, **70% of Colorado adults opposed banning personalized discounts – including loyalty programs, targeted coupons, and student or senior pricing – even when these practices rely on algorithms to function.** Only 11% supported a ban, and opposition is consistent across party lines.<sup>14</sup>

Voters also see clearly who a ban would hurt. Asked who would be negatively affected, the groups most often identified were people on tight budgets (59%), families with

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<sup>10</sup> Morning Consult, April 2026.

<sup>11</sup> HB 26-1210, §6-1-1902(1)(b)(VI).

<sup>12</sup> HB 26-1210, §6-1-1902(1)(b)(IV); see also §6-1-1901(7) (defining "loyalty, membership, or rewards program").

<sup>13</sup> Morning Consult, April 2026.

<sup>14</sup> Morning Consult, April 2026.

children (52%), deal-seekers (50%), and seniors (50%). These are precisely the Coloradans this bill's sponsors say they want to help.<sup>15</sup>

And voters are prepared to hold lawmakers accountable. **If a ban on personalized pricing led to the loss of rewards programs or tailored discounts, 49% of Coloradans said they would be less likely to vote for lawmakers who supported it, compared to just 11% more likely, a four-to-one electoral penalty.**<sup>16</sup>

### **HB 26-1210 would compound regulatory uncertainty while SB 24-205's replacement is still being drafted**

Colorado's experience with SB 24-205 illustrates how difficult it is to regulate algorithmic systems through broad, technology-focused statutes. The law's effective date has been delayed twice, and a working group convened at the Governor's direction recently proposed repealing and replacing it with a new framework that is still being finalized. HB 26-1210 repeats that same approach, sweeping regulation of a broad category of automated systems rather than a targeted response to documented harms, and layers a second, inconsistent regime on top of an unresolved first one. **The same pricing algorithm could be subject to both statutes simultaneously, with different definitions of "substantial factor" and different enforcement mechanisms, including a private right of action under HB 26-1210 that SB 24-205 deliberately excluded.**

If Colorado concludes there is a specific, documented harm in algorithmic pricing, the right response is targeted, sector-specific policy, not a second broad technology statute enacted before the first one has settled.

**For these reasons, we ask you to oppose HB 26-1210.** The bill promises to protect Colorado consumers but would do so by eliminating the everyday discounts, coupons, and rewards shoppers rely on to stretch their budgets. Coloradans see the tradeoff clearly, and we urge the committee to do the same.

Sincerely,



Kouri Marshall  
Director of State & Local Public Policy, Central/Southern Region  
Chamber of Progress  
[www.progresschamber.org](http://www.progresschamber.org)

<sup>15</sup> Morning Consult, April 2026.

<sup>16</sup> Morning Consult, April 2026.

## **HB26 1210 - Prohibit Surveillance Price and Wage Setting**

### **Stance – Support**

Senate Committee: Business, Labor, & Technology

Thank you for the opportunity to testify. My name is Janene Fiest and I represent the League of Women Voters of Colorado. The League is a nonpartisan organization that encourages the informed and active participation of citizens in their government and influences public policy through education and advocacy. The League of Women Voters supports **HB26 1210 - Prohibit Surveillance Price and Wage Setting**

Historically prices and wages have been determined in part by analyzing consumer purchasing data and using market analysis, where prices reflect what a buying group is willing to spend and wages are set based on what a similarly skilled/experienced or educated group of workers are willing to accept. But with the advent of AI-based decision systems, organizations can now potentially leverage an individual's purchasing history to set prices for that individual or an individual's employment status and history and other extraneous data points to determine an individual wage level.

The use of AI in this manner raises individual privacy concerns by incentivizing the collection of large amounts of personal data to maximize profits, using this data to make pricing or wage determinations based on a individual's shopping or browsing history, their hobbies, professional and political interests or affiliations, physical locations visited, or financial circumstances.

The opportunity to discriminate based on need or vulnerability is high. Imagine an individual having to pay the highest price they can afford, possibly on credit, as predicted by AI for medical supplies they require to live. Imagine someone being offered the bare minimum wage they are willing to take because AI has predicted an amount based on their current unemployment status and data showing they have children with special needs that they need to support. The use of AI to set prices and wages at the individual level is dangerous and could lead to further socio-economic division, discrimination, and exploitation of vulnerable populations.

The League of Women Voters urges you to vote yes on HB26-1210, to protect individuals from these potential harms. Thank you for your consideration.

Thank you,

Janene Fiest



**SHARA SMITH**  
*Chief Executive Officer*

**INTERFAITH  
ALLIANCE**  
OF COLORADO  
ACHIEVING DEMOCRACY TOGETHER

April 21, 2026

RE: Support for HB26-1210 Prohibit Surveillance Price & Wage Setting

Chairperson Danielson and members of the Senate Business, Labor, & Technology Committee,

The Interfaith Alliance of Colorado promotes justice, religious freedom, understanding through building relationships all to educate, advocate, and advance positive social change. We are a public policy and advocacy organization with over 400 congregations in our statewide network, representing over two dozen faith traditions. Thank you for the opportunity to discuss our support for HB26-1210.

This bill addresses a fundamental moral crisis: the use of personal data to engage in “surveillance pricing” or “surveillance wages” designed to extract more profit and labor from people by taking advantage of personal information and opaque data systems. These practices exploit both Colorado consumers and workers by using their data against them, and with little to no transparency about what data is being gathered, how it's being analysed, and when or how it is being used to determine individualized pricing or wages. This should prompt profound moral concern as these practices can reinforce economic disparities, discriminate against protected classes, and are likely to have the strongest impact on the most economically and socially vulnerable Coloradans.

As an interfaith organization, we understand that economic justice and fairness are important cornerstones across our faith traditions. HB26-1210 doesn't stop innovation; it stops personalized exploitation. It ensures that our values follow us into the digital world. It says that our intimate, personal information – our heartbeats, our locations, our financial struggles and life events – is not a commodity to be bought, sold and used against us.

At the Interfaith Alliance of Colorado, we support policies that engender a marketplace of mutual respect and reject this kind of exploitation and profiteering. We respectfully ask that you support HB26-1210 and vote Yes to advance it from the committee with your favorable recommendation.

Thank you for your consideration,  
Shara Smith, CEO  
Interfaith Alliance of Colorado



**HB26-1210 Prohibit Surveillance Price & Wage Setting**  
**Senate Business, Labor, & Technology Committee**  
**April 21, 2026**

Louise Myrland, vice president of programs, [louisem@wfco.org](mailto:louisem@wfco.org)

Good afternoon, Madam Chair and members of the committee. My name Louise Myrland, vice president of programs at The Women's Foundation of Colorado. Thank you for the opportunity to submit written testimony in support of HB26-1210.

The Women's Foundation is the only statewide, community-funded foundation dedicated to protecting progress and expanding economic opportunity for Colorado women. Research shows that economic systems that disadvantage small businesses and low-wage workers disproportionately harm women.

Surveillance price setting poses real risks for women entrepreneurs and consumers. In Colorado, [more than 40 percent of small businesses are owned by women](#). Many small business owners cannot afford to engage with complex surveillance pricing systems. When large companies use these technologies, small businesses must compete on unequal footing.

As consumers, surveillance price setting means women face higher prices for necessities, such as [period products when they are menstruating](#). I know this all too well – I have Celiac disease, an incurable condition for which the only treatment is a *strict* gluten free diet. Prices for gluten-free staples such as bread, flour, or pasta are often twice as expensive, but I cannot choose cheaper alternatives made with wheat or other glutenous grains.

Surveillance wage setting similarly harms workers who are already economically vulnerable. [Low-wage workers are disproportionately women](#), and Colorado women are paid only [80.9 cents for every dollar](#) earned by men. A [recent study](#) found a seven percent gender pay gap among Uber drivers. Allowing employers to use surveillance tools to suppress wages risks deepening the pay gap.

Through the Equal Pay for Equal Work Act, our state has demonstrated that policies promoting transparency and fairness [improve outcomes for workers and strengthen our economy](#).

HB26-1210 protects Coloradans from predatory business practices and helps ensure a competitive marketplace that supports workers, consumers, entrepreneurs, and women-owned businesses.

Thank you for your consideration. I respectfully ask for your yes vote on HB26-1210.

***The only statewide, community-funded foundation protecting the progress and advancing gender, racial, and economic equity for all Colorado women.***