

Surveillance Pricing Policy Landscape and Legislative Frameworks

January 2026



Rainey
Center





Surveillance pricing— the practice of using AI and personal data to set individualized prices— has emerged as a major consumer protection issue.

This brief examines the current policy landscape, compares legislative approaches across states, and analyzes how lawmakers from both parties are addressing this challenge.

Key Findings

Legislative Explosion

51 bills across 24 states in 2025
(up from 10 bills in 8 states in 2024)

Bipartisan Interest

Both parties engaged, but with different framings and approaches

Federal Activity

FTC study completed; DOJ pursuing algorithmic collusion cases

State Leadership

New York first to enact disclosure law; Ohio has only Republican-sponsored bill



What is surveillance pricing?

Surveillance pricing occurs when companies use data collected from consumers—such as location, browsing history, demographics, device type, purchase history, and behavioral patterns—to determine **individualized prices** for the same goods or services. Unlike traditional price discrimination (student discounts, senior pricing), surveillance pricing uses personal data to estimate each consumer's maximum willingness-to-pay.

FTC Study Findings (January 2025)

Finding	Details
Data Points Used	Retailers use at least 250 different data points to set prices
Tracking Methods	Mouse movements, items left in carts, time spent on pages
Data Sources	Precise location, browser history, purchase history, credit history, demographics
Industry Scope	Eight major companies investigated including Mastercard, JPMorgan Chase, McKinsey



MEDIA COVERAGE

Surveillance Pricing in the News

Major news outlets have reported on surveillance pricing practices, raising public awareness and creating momentum for legislative action.

Outlet/Story	Key Finding	Significance
CBS News: Instacart Investigation	Prices vary up to 23% based on location and consumer data	Demonstrates real-world consumer harm
Walmart Digital Price Tags	Testing electronic shelf labels that can change prices remotely	Infrastructure for future surveillance pricing
FTC Report (Jan 2025)	Companies use 250+ data points for pricing	Federal validation of widespread practice





LEGISLATIVE FRAMEWORKS

Four Approaches

States have adopted four primary strategies to address surveillance pricing, each with different tradeoffs between consumer protection and business flexibility.

Framework	Approach	Business Impact	Consumer Protection	Examples
Prohibition	Ban surveillance pricing entirely	High—eliminates practice	Strong	CA AB 446
Disclosure Only	Require notice to consumers	Low—allows practice	Weak	NY A3008
Data Limitation	Restrict what data can be used	Moderate—targeted	Strong	GA SB 164 PA HB 1779
Hybrid	Combine prohibition + disclosure	Moderate-High	Very Strong	IL SB 2255



PARTISAN PERSPECTIVES

How Democrats and Republicans Differ

Democrats and Republicans frame algorithmic pricing concerns differently, leading to distinct legislative strategies.

Dimension	Democratic Approach	Republican Approach
Core Framing	Consumer protection—companies exploit consumers	Antitrust/property rights—unfair market distortion
Legal Framework	New consumer protection regulations	Existing antitrust law + property rights
Primary Concern	Price discrimination harms vulnerable consumers	Data harvesting violates property rights; collusion distorts markets
Regulatory Philosophy	Proactive regulation to prevent harm	Minimal regulation; enforce existing law
Enforcement Preference	Strong private right of action	AG enforcement; targeted private action
Data Treatment	Prohibit use of specific data categories	Require consent; treat data as property
Business Impact Tolerance	Higher—willing to restrict practices	Lower—preserve business flexibility
Key Federal Champions	Sen. Klobuchar Rep. Casar Sen. Warren	Sen. Lee Sen. Hawley Sen. Grassley



KEY VOICES

Republican Perspectives

Senator Mike Lee (R-UT)

“Ownership should mean control. Americans deserve to decide who has access to their personal data and how it is used.”

Senator Josh Hawley (R-MO)

“We should give every single American the right to go to court and to sue these companies when they violate our property rights.”

Trump DOJ AAG Gail Slater

Algorithmic price fixing is “plain old collusion between competitors”—DOJ enforcement will increase.



KEY VOICES

Democratic Perspectives

Senator Amy Klobuchar (D-MN)

"Big corporations are using algorithms to raise prices and limit competition."

Rep. Greg Casar (D-TX)

"You don't have to be a progressive Democrat to say these gigantic corporations should not be spying on us."





PARTISAN PERSPECTIVES

Areas of Bipartisan Agreement

Area of Agreement	Policy Implication
Algorithmic Collusion is Problematic	Both parties support DOJ RealPage enforcement
Consumers Deserve Transparency	Disclosure requirements have bipartisan support
Some Data Use is Inappropriate	Protected class data should not be used for pricing
Consent Matters	Opt-in requirements align with property rights framing



State Legislative Activity

Enacted Legislation

State	Bill	Approach	Status
New York	A3008	Disclosure requirement	Enacted May 2025 Effective Nov 2025

Notable Active/Recent Bills

State	Bill	Sponsor (Party)	Approach
California	AB 446	Democratic	Prohibition + Disclosure
Ohio	SB 328	Republican (Sen. Blessing)	Antitrust approach
Illinois	SB 2255	Democratic	Prohibition + Private right of action
Georgia	SB 164	Democratic	Data limitation + Disclosure
Pennsylvania	HB 1779	Democratic	Data limitation
Colorado	HB 1264	Democratic	Prohibition (Vetoed)



Federal Activity

Actor	Action	Status
FTC	6(b) Study of surveillance pricing practices	Completed Jan 2025; public comment cancelled
DOJ	RealPage algorithmic collusion lawsuit	Active litigation; Trump DOJ continuing
Congress (D)	H.R. 4640 - Stop AI Price Gouging Act	Introduced July 2025
Congress (Bipartisan)	Preventing Algorithmic Collusion Act	Reintroduced 2025



DATA CATEGORIES

Risk Framework

A data limitation approach requires defining which data categories should be restricted in pricing algorithms.

Data Category	Risk Level	Policy Recommendation
Protected Class Data (race, gender, religion)	Highest	Prohibit—clearly discriminatory
Biometric Data (facial geometry, fingerprints)	High	Prohibit—invasive, discrimination risk
Genetic Information	High	Prohibit—health discrimination risk
Precise Geolocation (real-time tracking)	High	Prohibit—proxy for race/income
Web Browsing History	Moderate-High	Prohibit—personal preferences should not affect price
Purchase History (first-party)	Moderate	Allow with consent + disclosure
Aggregate Demographics (zip code level)	Lower	Allow with restrictions





Policy Options for State Legislators

Option	Advantages	Considerations
Full Prohibition	Strongest consumer protection; eliminates practice	High business impact; may face industry opposition
Disclosure Only	Low business impact; transparency	May be insufficient; consumers rarely change behavior
Data Limitation	Targeted approach; preserves business flexibility	Requires clear definitions; enforcement complexity
Data Limitation + Consent + Disclosure	Balanced approach; bipartisan appeal	More complex to draft; multiple compliance requirements



Key Sources

FTC Surveillance Pricing Study

ftc.gov/news-events/features/surveillance-pricing

Consumer Reports State Bill Tracker: Innovation

consumerreports.org

Future of Privacy Forum Analysis

fpf.org/blog/a-price-to-pay-u-s-lawmaker-efforts

Ohio SB 328

legislature.ohio.gov/legislation/135/sb328

New York A3008

nysenate.gov/legislation/bills/2025/A3008

H.R. 4640 Bill Text

congress.gov/bill/119th-congress/house-bill/4640





**Rainey
Center**

info@raineycenter.org
raineycenter.org