
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds, while the set of
2 products and services offered by a particular seller - and their
3 corresponding prices - were historically the same for most
4 potential buyers under the posted-price paradigm, that is no
5 longer necessarily the case. In the existing market,
6 specifically online, potential buyers can have different
7 experiences when visiting a seller's business: the offers the
8 seller presents to a particular buyer can depend on a host of
9 other factors, including the demographics of the prospective
10 buyer, the buyer's location, and the buyer's previous history
11 with the seller or the seller's partners.

12 The legislature further finds that this new personalized
13 buying experience is the result of surveillance pricing, an
14 ecosystem designed to use large-scale data collection to help
15 seller maximize their revenues by customizing the pricing, as
16 well as the selection of products and services, offered to each
17 customer. In the existing market, sellers and various third



1 parties collect large amounts of data on consumers – including
2 their purchase history, their physical movements, their
3 communications, their medical information, and other highly
4 sensitive data – sometimes without consumers' knowledge or
5 consent.

6 The legislature also finds that the rapid development of
7 computer and mobile technologies has only increased the scope
8 and granularity of collected data: mobile devices now routinely
9 run applications that embed third-party library code for the
10 purpose of tracking users, websites use a variety of techniques
11 to track browsing across the web, and even vehicles collect data
12 on consumers for resale to third parties. Moreover, the recent
13 progress in fast-moving technologies, such as artificial
14 intelligence, presents new opportunities for data use by
15 sellers, enabling potentially easier translation of input data
16 into actionable pricing and marketing strategies.

17 Consequently, the legislature finds that surveillance
18 pricing is inherently deceptive and harmful to consumers as the
19 pricing model is based on the lack of transparency, the
20 exploitation of personal data, and the undermining of price
21 comparison, and may lead to discrimination.



1 Accordingly, the purpose of this Act is to designate
2 pricing practices based on surveillance data as unfair or
3 deceptive acts or practices and unfair methods of competition in
4 the conduct of any trade or commerce.

5 SECTION 2. Chapter 481B, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 **"§481B- Use of surveillance data in pricing;**
9 **prohibited.** (a) No covered entity shall use surveillance data
10 to:

11 (1) Set or adjust a consumer specific price;
12 (2) Determine whether a coupon or discount is available to
13 a specific consumer;
14 (3) Impose a consumer specific mandatory fee or service
15 charge; or
16 (4) Steer a consumer to a higher priced offer for the same
17 or substantially similar item.

18 (b) This section shall only apply when:
19 (1) The covered entity is doing business in the State or
20 offering goods or services to consumers in the State;



1 (2) The consumer is physically located in the State when
2 the price is displayed or offered;
3 (3) The goods or services are delivered to the State; or
4 (4) The transaction occurs in the State.
5 (c) This section shall apply to the model of pricing in
6 which a business sets prices for its goods or services that are
7 tailored to different customer accounts or segments, if such
8 practice uses surveillance data in the model.

9 (d) This section shall not apply under the following
10 circumstances:

11 (1) For the following entities or products:
12 (A) Air carriers with respect to passenger ticket
13 pricing;
14 (B) Federally regulated credit products and bank
15 lending terms;
16 (C) Insurance underwriting and regulated rate
17 setting; and
18 (D) Public utilities and regulated rates;
19 (2) Where the differentiated price is a result of
20 objective, non-profile-based price difference,
21 including:





1 and records shall include the categories used in pricing,
2 documentation of pricing rules or decision logic, and audit logs
3 detailing when and why prices or discounts were available for
4 substantially similar items.

5 (f) Notwithstanding section 480-3.1, any person who
6 violates subsection (a), other than intentionally or knowingly,
7 shall be fined a sum of no more than \$, which shall be
8 collected in the manner as provided under section 480-3.1.

9 (g) This section shall not be construed to prevent any
10 fraud or security measures that are designed to prevent abuse or
11 harm and do not affect an offered price.

12 (h) For purposes of this section:

13 "Add-to-cart events" means the metric that logs when a
14 person places an item in an online shopping cart.

15 "Clicks" means a measure of the number of times a person
16 actively selects an advertisement or link on a webpage or
17 digital application.

18 "Consumer" means an individual acting in a personal or
19 household context.

20 "Covered entity" means any person advertising, offering,
21 selling, or facilitating the sale of goods or services to



1 consumers in the State. "Covered entities" includes
2 marketplaces and intermediaries that participate in price
3 setting or presentation.

4 "Device identifiers" means a unique code assigned to a
5 physical electronic device to track, manage, and secure the
6 device across networks and that is distinct from user accounts.

7 "Digital application" means a software program that is for
8 electronic devices and that performs specific tasks.

9 "Dwell time" means the length of time a person spends on a
10 specific webpage after clicking from a search result or
11 advertisement, before returning to a previous webpage or taking
12 another action.

13 "HTTP cookie" means a small block of data created by a web
14 server while a person is browsing a website and placed on the
15 person's electronic device by the person's web browser.

16 "Inferred traits" means the characteristics, assumptions,
17 or conclusions about a person that are analytically deduced from
18 collected data. "Inferred traits" includes income proxy,
19 willingness to pay, risk score, and sensitivity to discounts.

20 "Location signals" means data that indicates the geographic
21 location of an electronic device.



1 "Lookalike modeling" means the process that identifies
2 persons that look and act like a target audience.

3 "Mobile electronic device advertising identifier" means the
4 unique, resettable alphanumeric code assigned by mobile electric
5 device operating systems to identify devices for personalized
6 advertising.

7 "Online or digital application behavioral data" means the
8 following metrics: clicks, search queries, browsing behavior,
9 and dwell time.

10 "Same or substantially similar item" means an item with the
11 same stock keeping unit number, a materially identical product,
12 or the same service package on materially identical terms.

13 "Surveillance data" means data collected, derived, or
14 inferred about a consumer from:

- 15 (1) Online or digital application behavioral data;
- 16 (2) Device identifiers;
- 17 (3) HTTP cookies;
- 18 (4) Mobile electronic device advertising identifiers;
- 19 (5) Internet protocol address;
- 20 (6) Location signals;
- 21 (7) Transaction and commerce behavior;



1 (8) Third-party data brokers;

2 (9) Lookalike modeling; and

3 (10) Inferred traits.

4 "Surveillance data" includes data indicating the type or
5 condition of the hardware of the person's electronic device.

6 "Transaction and commerce behavior" means a person's
7 purchase history, add-to-cart events, and account behavior."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on July 1, 2026.

13

INTRODUCED BY:


JAN 26 2026

H.B. NO. 2136

Report Title:

Pricing Practices Based on Surveillance Data; UDAP; Unfair Methods of Competition

Description:

Designates pricing practices based on surveillance data as unfair or deceptive acts or practices and unfair methods of competition in the conduct of any trade or commerce.

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