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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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## Testimony of the Department of Commerce and Consumer Affairs

Before the  
Senate Committee on Labor and Technology  
Monday, March 23, 2026  
3:01 p.m.  
Via Videoconference  
Conference Room 225

On the following measure:  
**H.B. 2458 S.D.3, RELATING TO SURVEILLANCE PRICING**

Chair Elefante and Members of the Committee:

My name is Dominic Jancaterino, and I am an Enforcement Attorney for the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). OCP appreciates the amendments to this bill that were made by the previous committees and offers comments.

In January 2025, the Federal Trade Commission described surveillance pricing as when companies leverage advanced data collection technologies to adjust the prices of goods and services for individual consumers based on competitor pricing, precise location, browser history, purchase history, consumer preferences, demographics, and other sources of real-time data.<sup>1</sup> Under these conditions, presumably people no longer

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<sup>1</sup> [FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices | Federal Trade Commission](#) (Jan. 17, 2025) (last accessed 3/22/2026).

see the same price for the same product, making comparison shopping impossible and perhaps undermining the basics of market competition.

More than a decade ago, ProPublica reported that the test-prep company Princeton Review was offering different prices for its tutoring services depending on a customer's zipcode.<sup>2</sup> The result, they found, was that Asian customers were nearly twice as likely to receive a higher price. When prices vary based on these characteristics, there is a potential to replicate or worsen existing inequalities, including charging higher prices to vulnerable groups.

Surveillance pricing depends on collecting vast amounts of personal data about individuals. Article I, section 6 of the Hawaii State Constitution recognizes a fundamental right to privacy and requires the legislature to “take affirmative steps” to implement this right. Roughly 19 states have enacted comprehensive privacy laws to protect their citizens' right to privacy, but Hawaii is not among them. Collecting vast amounts of private data about individuals creates significant privacy risks, as companies collect and maintain data about nearly all aspects of a person's life. Because Hawaii has not enacted a comprehensive privacy law, Hawaii law does not currently create an individual right to opt-out of the collection or sale of private data.

Turning to the bill before this Committee, TechNet and the Chamber of Progress previously testified that the bill risks reducing consumer access to promotional discounts. In California, the Assembly amended AB446 to focus on the harm of **increased** prices due to surveillance pricing with a simple definitional fix. “Surveillance pricing” was amended to mean “offering or setting a customized price **increase** for a good or service for a specific consumer or group of consumers, based, in whole or in part, on personally identifiable information collected through electronic surveillance technology.”

Turning to implementation and enforcement, this bill places the responsibility to enforce the measure on the Office of Consumer Protection. The responsibility to investigate and bring civil enforcement actions challenging prohibited surveillance pricing requires resources to aid in understanding the technologies behind companies' data

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<sup>2</sup> Angwin, Julia, Surya Mattu and Jeff Larson, [The Tiger Mom Tax: Asians Are Nearly Twice as Likely to Get a Higher Price from Princeton Review — ProPublica](#) (last accessed 3/22/2026).

collection efforts. Hiring a technologist would assist our office in investigations, collecting evidence, and asking questions about new technologies and data brokers. A technologist is a professional who specializes in the application of technology to solve real-world problems. Technologists include professionals in computer science, robotics, engineering, and information technology (IT). Technologists work in diverse fields such as software development, hardware design, artificial intelligence, cybersecurity, and systems integration.

Should the Committee wish to pass this bill, we respectfully request the following amendments:

(1) Insert a \$450,000 general fund appropriation for a technologist position, a staff attorney position, and an investigator position at the agency with primary enforcement responsibility to support enforcement efforts.

Thank you for the opportunity to testify on this bill.



## HIPHI Board

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Hawaiian Research Office*

Danette Wong Tomiyasu, MBA  
*Retired, Hawai'i State Department of  
Health*

## HIPHI Initiatives

Coalition for a  
Tobacco-Free Hawai'i

Community-Based Research &  
Evaluation

Community Health  
Worker Initiatives

Environmental Health

Hawai'i Climate Change and Health  
Working Group

Hawai'i Drug & Alcohol-Free Coalitions

Hawai'i Immunization Coalition

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Collective/Healthy Aging &  
Community Living

Public Health Workforce Development

Date: March 20, 2026

To: Sen. Brandon J.C. Elefante, Chair  
Sen. Rachele Lamosao, Vice Chair  
Members of the Senate Committee on Labor and Technology

Re: Support for HB 2458 HD3, Relating To Surveillance Pricing

Hrg: March 23, 2026, at 3:01PM, Conference Room 225

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Hawai'i Public Health Institute (HIPHI)<sup>1</sup> and the Healthy Eating + Active Living<sup>2</sup> (HEAL) Statewide Coalition are in **support of HB 2458 HD3**, which would prohibit persons from using surveillance pricing in the sale of food.

### Same Item, Different Prices for Different People

Surveillance pricing enables companies to use personal information such as purchasing history, browsing behavior, and demographic data to charge different consumers different prices for the same products. This practice lacks transparency and can disproportionately harm low-income families who rely on SNAP and WIC benefits, effectively penalizing them through algorithmic profiling rather than reflecting actual market costs.

A person's precise location or browser history can be "frequently used to target individual consumers with different prices for the same goods and services."<sup>3</sup> FCC staff found that behaviors ranging from mouse movements on a webpage to the items left in consumers' online shopping carts can be tracked and used to tailor product pricing.

Consumer Watchdog, a consumer protection organization based in California, released a report in December 2024 found that at Amazon, prices change over 2.5 million times a day, roughly once every ten minutes.<sup>4</sup> Policy analysts at the American Civil Liberties Union have identified the cyclical pattern of surveillance pricing, noting that "Where some companies begin increasing their competitors will likely be forced to

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<sup>1</sup> Hawai'i Public Health Institute's mission is to advance health and wellness for the people and islands of Hawai'i. We do this through expanding our understanding of what creates health of people and place, fostering partnerships, and cultivating programs to improve policies, systems, and the environments where people live, learn, work, age, and play.

<sup>2</sup> The Healthy Eating + Active Living (HEAL) Coalition, formerly known as the Obesity Prevention Task Force, was created by the legislature in 2012 and is comprised of over 60 statewide organizations. The HEAL Coalition works to make recommendations to reshape Hawai'i's school, work, community, and health care environments, making healthier lifestyles obtainable for all Hawai'i residents.

<sup>3</sup> [FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices](#), Federal Trade Commission, January 2025.

<sup>4</sup> ["Surveillance Price Gouging"](#), Consumer Watchdog, December 2024.



follow suit to keep up. Surveillance pricing also incentivizes companies to increase surveillance of their customers as they try to squeeze ever more profits out of them.”<sup>5</sup>

### **Increased Prices Make Hawai'i Even Less Affordable**

While 1 in 3 households face food insecurity each year, it's important we take every step necessary to keep grocery prices from rising. Allowing corporate profits to rise at the expense of our grocery budgets is not a sign of progress. The state is tasked with protecting our residents from exploitative practices, and charging some people more for the same bag of rice or carton of eggs needs to be stopped.

Mahalo for helping to protect our residents working to create a more affordable Hawai'i for us all.

A handwritten signature in black ink that reads 'Nate Hix'.

Nate Hix  
Director of Policy and Advocacy

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<sup>5</sup> [“Surveillance Pricing Hurts Consumers. Incentivizes More Corporate Spying on Them”](#), American Civil Liberties Union, September 2024.

## Testimony on HB2458, HD3

Date: 3/23/2026

To: Senate Committee on Labor and Technology

Re: **HB 2458, HD3 – Testimony OPPOSING**

Aloha Chair Elefante, Vice Chair Lamasao and members of the committee,

My name is Jill McGinnis, and I am in Government Affairs for Albertsons Companies. In Hawaii, we have twenty-three stores that operate under the Safeway banner. We appreciate the opportunity to submit testimony in **opposition** to HB 2458, HD3 and we do so with strong concern that this bill risks unintentionally banning key features of our grocery loyalty program that Hawaii families rely on for everyday savings on food.

Grocery loyalty programs are used by roughly 80% of American consumers and function as savings programs that help households manage food costs through discounts, coupons, and weekly deals.

Specifically, HB 2458, HD3 would:

- Reduce retailers' flexibility to offer discounts, promotions, and price-relief programs that directly benefit consumers.
- Negatively impact consumers by preventing pro-consumer benefits (personalized savings, loyalty rewards, coupons).

From a consumer protection perspective, HB 2458, HD3, raises a key concern:

- Higher grocery prices through reduced access to cost-saving programs: The bill may unintentionally limit retailers' ability to offer promotions, loyalty discounts, or tailored pricing programs that help consumers manage food costs.

At a time when policymakers are appropriately focused on protecting consumers from rising costs, policies that risk increasing everyday grocery costs deserve careful reconsideration. Offering personal discounts is NOT surveillance or surge pricing. We do not set individualized prices to drive up prices based on inferences about a customer's willingness to pay. Where we personalize offers, e.g., loyalty discounts, coupons, etc. we do so to deliver savings by offering relevant discounts to customers on products we think they will be interested in based on their purchasing history.

Albertsons Companies respectfully urges the Senate Committee on Labor and Technology, if it wishes to move this bill forward, to amend the bill to reflect the following:

- Exclude loyalty programs from HB2458, HD3 (in the form that it was in the previous draft, HB2458, HD2)

We appreciate the Senate Committee on Labor and Technology's shared commitment to Hawaii consumers and its attention to this bill. Albertsons Companies and our Safeway associates remain committed to advancing policies that protect consumers and preserve affordability.

Respectfully submitted,

Jill McGinnis | Government Affairs | Albertsons Companies

To: Senate Committee on Labor and Technology  
Re: **HB2458 HD3 – Relating to Surveillance Pricing**  
Hawai'i State Capitol & Via Videoconference  
March 23 2026, 3:01 PM

Dear Chair Elefante, Vice Chair Lamosao, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB2458 HD3**, which would prohibit persons from using surveillance pricing in the sale of food, with exemptions for certain discounts and restaurants.

Surveillance pricing is the practice of using personal data such as location, browsing history, and purchase behavior to charge different prices based on what an algorithm predicts a family is willing or able to pay. A 2025 Consumer Reports investigation found that Instacart's algorithmic pricing led to grocery prices differing by as much as 23% for the same item depending on the customer, and these pricing experiments could cost families more than \$1,200 per year.<sup>1</sup>

This is especially concerning in Hawai'i, where families already face the highest cost of living in the nation and limited retail competition—particularly on neighbor islands where families often have few alternatives. Surveillance pricing allows companies to quietly charge higher prices to families who cannot easily shop elsewhere, worsening the affordability crisis for local households.

With this bill, Hawai'i would join a growing national movement to protect consumers from surveillance pricing. New York and California recently passed bans on algorithmic price collusion, and at least 19 states are considering legislation to curb similar practices.<sup>2</sup>

Mahalo for the opportunity to provide this testimony. Please pass this bill.

Thank you,

Nicole Woo  
Director of Research and Economic Policy

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<sup>1</sup> <https://www.consumerreports.org/media-room/press-releases/2025/12/new-report-exposes-instacarts-hidden-price-games/>

<sup>2</sup> <https://www.reuters.com/sustainability/boards-policy-regulation/us-states-take-aim-data-driven-pricing-ease-consumer-pain-2025-11-21/>



TESTIMONY OF DAVE ERDMAN  
INTERIM PRESIDENT & CEO  
RETAIL MERCHANTS OF HAWAI'I

BEFORE THE  
COMMITTEE ON LABOR AND TECHNOLOGY  
Senator Brandon J.C. Elefante, Chair  
Senator Rachele Lamosao, Vice Chair

Monday, March 23, 2026  
3:01 p.m.  
Conference Room 225 & Videoconference

**IN OPPOSITION TO H.B. 2458, H.D. 3  
RELATING TO SURVEILLANCE PRICING**

Aloha Chair Elefante, Vice Chair Lamosao, and Members of the Committee:

My name is Dave Erdman, and I am the Interim President and CEO of Retail Merchants of Hawai'i, a statewide nonprofit trade association representing retailers, shopping centers, restaurants located in retail establishments and shopping centers, and allied businesses across Hawai'i.

Retail Merchants of Hawai'i respectfully **opposes H.B. 2458, H.D. 3.**

RMH understands and appreciates the concern behind this measure. Consumers should be protected from unfair, deceptive, or exploitative pricing practices. However, as currently drafted, this bill is overly broad and could unintentionally restrict routine, pro-consumer retail practices that help local families save money on food and household purchases.

Retailers commonly use promotions, loyalty programs, and targeted discounts to provide customers with additional savings. These tools include digital coupons, loyalty rewards, discounts on frequently purchased items, and promotions on new or similar products. These practices help consumers manage household budgets while allowing retailers to compete and manage inventory efficiently.

Since the beginning of time, retailers have offered promotional discounts to attract and retain customers. Today, those offers may be delivered through mobile apps, websites, or loyalty platforms rather than paper circulars or checkout coupons, but the purpose remains the same: helping customers save money while encouraging repeat business. Many customers rely on these

programs for additional grocery savings, especially at a time when Hawai'i families continue to struggle with food costs.

A central concern with this bill is that its definition of “surveillance pricing” is broad enough to sweep in common discounting tools that consumers value and expect. Although H.B. 2458, H.D. 3 includes certain exemptions, the measure still creates legal uncertainty for retailers seeking to offer individualized discounts or promotions. The requirement that discounts be broadly posted and available to any customer does not reflect how many modern loyalty and promotional programs work. Retailers often provide targeted savings on items customers regularly purchase. These types of promotions benefit consumers and help reduce grocery costs.

RMH is also concerned that the bill’s definitions of “electronic surveillance technology” and “personally identifiable information” are expansive and could reach well beyond any harmful conduct the Legislature is trying to address. As drafted, the measure may create confusion for local businesses, compliance challenges for retailers, and unintended consequences for grocery promotions and loyalty-based savings programs.

Existing state and federal laws already prohibit unfair, deceptive, discriminatory, and anticompetitive conduct. If the Legislature believes additional guardrails are necessary, RMH respectfully suggests a much narrower approach focused specifically on individualized price increases above a clearly defined baseline price, rather than language that may also prohibit individualized discounts and promotions that help consumers save money.

At a time when Hawai'i residents are looking for every possible way to save on groceries, this bill risks reducing discounts, limiting consumer choice, and making food less affordable rather than more affordable. For these reasons, Retail Merchants of Hawai'i respectfully urges the Committee to **hold H.B. 2458, H.D. 3.**

Thank you for the opportunity to provide testimony.

Respectfully submitted,  
Dave Erdman  
Interim President & CEO  
Retail Merchants of Hawai'i

March 22, 2026

Senator Brandon J.C. Elefante  
Chair, Committee on Labor and Technology  
Hawaii State Capitol  
415 South Beretania Street, Room 225  
Honolulu, HI 96813

Senator Rachele  
Vice Chair, Committee on Labor and Technology  
Hawaii State Capitol  
415 South Beretania Street, Room 225  
Honolulu, HI 96813

**RE: HB 2458 HD3 (Grandinetti) - Surveillance Pricing – Oppose Unless Amended**

Dear Chair Elefante, Vice Chair Rachele, and members of the committee

On behalf of TechNet, we must respectfully oppose HB 2458 HD3 in its current form.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of American innovation by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes 100 dynamic American businesses ranging from startups to the most iconic companies on the planet and represents five million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

We share the Legislature's goal of protecting consumers, particularly in the context of raising grocery costs that place a strain on families. However, as drafted, HB 2458 HD3 broad definitions risk unintended consequences that could reduce access to legitimate discount programs that many households rely upon to manage grocery costs, as well as increase compliance uncertainty for retailers.

Broad Definitions and Operational Uncertainty

HB 2458 HD3 defines "electronic surveillance technology" broadly to include a wide range of data collection methods in physical or digital environments. The bill further ties enforcement to the use of "personally identifiable information," which is defined expansively and includes numerous identifiers and combinations of data elements. When combined, these provisions may unintentionally encompass routine retail

practices where customers voluntarily enroll in loyalty programs or digital applications in order to receive discounts.

In grocery settings, loyalty accounts and promotional programs necessarily rely on consumer identifiers to apply discounts at checkout. These programs are designed to provide lower prices to participating shoppers, allowing consumers to access savings. Without clear guardrails to distinguish harmful discriminatory pricing from legitimate rewards-based pricing, retailers face uncertainty about routine operational practices.

When pricing systems must weigh inventory, consumer enrollment, promotional eligibility, and cost factors simultaneously, overly rigid prohibitions risk disrupting ordinary business functions rather than preventing unfair conduct.

#### Impact on Grocery Affordability and Consumer Savings

Modern grocery retail frequently relies on loyalty programs, digital coupons, and promotional pricing to offer lower prices to consumers. These programs allow retailers to provide targeted discounts, reward repeat customers, and manage inventory efficiently—often lowering the effective price of food for families.

HB 2458 HD3 includes exemptions for certain publicly available discounts and loyalty programs. However, the exemption language remains unclear as to whether personalized digital coupons, app-based promotions, or account-triggered inventory markdowns would qualify. Even with the HD3 exemptions, retailers may reasonably determine that compliance risk remains too high to continue offering account-based or personalized discounts.

The unintended result would not be greater fairness—it will be fewer discounts and higher effective grocery prices for families who actively rely on savings programs, undermining the bill's stated goal of improving affordability.

#### Disproportionate Per-Item and Per-Day Liability

HB 2458 HD3 provides that each item sold in violation of the section constitutes a distinct and separate offense, and that each day of a continued violation constitutes a separate offense. In the context of grocery retail, where thousands of items are sold daily, this penalty structure creates extraordinary cumulative exposure.

Even inadvertent compliance ambiguities could result in significant liability. This enforcement structure risks driving retailers to adopt the most conservative pricing models possible, including eliminating discount programs altogether to avoid compounding penalties.

Such outcomes would likely reduce pricing flexibility and diminish savings opportunities for consumers.

A More Targeted Path Forward

We agree that individualized price increases based on sensitive personal data warrant scrutiny. However, HB 2458 HD3 adopts a categorical prohibition in the food sector that may sweep in lawful, pro-consumer pricing tools due to the limited exemptions outlined in the language.

We are currently working on proposed amendments to address our previously stated concerns and protect consumers' ability to access all forms of discounts and loyalty programs. We welcome ongoing engagement with the committee to refine the bill in a way that protects consumers while maintaining grocery affordability.

Protecting families from unfair pricing practices is an important goal. However, HB 2458 HD3's broad definitions and severe per-item penalty structure risk unintended consequences that could reduce access to discounts and increase operational costs, ultimately harming the very consumers the bill seeks to protect.

For these reasons, we respectfully oppose HB 2458 HD3 unless amended and urge the Legislature to pursue a more targeted approach that protects consumers without undermining affordability and loyalty programs that families have come to rely on.

If you have any questions regarding our position, please contact Robert Boykin at [rboykin@technet.org](mailto:rboykin@technet.org) or 408.898.7145.

Sincerely,



Robert Boykin  
Executive Director for California and the Southwest  
TechNet



Date of Hearing: 23 March, 2026

To: Chair Elefante, Vice Chair Lamosao, and Members of the Senate Committee on Labor and Technology

Subject: **HB2458 HD3**, Relating to Surveillance Pricing

Aloha,

Hawai'i Food+ Policy **strongly supports HB2458 HD3** which seeks to prohibit and fine the practice of surveillance pricing deployed against qualifying foods sold in retailers. We also want to acknowledge the addition of protecting consumers who purchase food from restaurants within retail locations added by amendments from the House Committee on Consumer Protection and Commerce. With many in Hawai'i dealing with difficulties in affording food, the uncertainty in pricing within the market makes it difficult/impossible to budget in an already constrained area of life. These protections will benefit many consumers – our fellow community members.

We also want to acknowledge recent amendments from the House Committee on Judiciary & Hawaiian Affairs which removes the exemption from loyalty programs as well. We believe this is a push towards greater equity. Especially if loyalty programs then had to account for access to digitally exclusive deals using digital data for preferential bias. From an FTC report on surveillance pricing<sup>1</sup>, findings revealed that “consumer behaviors ranging from mouse movements on a webpage to the type of products that consumers leave unpurchased in an online shopping cart can be tracked and used by retailers to tailor consumer pricing.” As a legislative body, when community members do not have the ability to easily identify and opt-out of programs which delete this collected data, consumers have no protections beyond legislated consumer protections. It is important that the legislature establishes safeguards for individuals against practices to prevent decreased food security and food access.

The argument that surveillance pricing can be used to lower the cost of goods, as identified by the legislature, is not substantiated by data which shows retailers often change prices to raise their own profits while leaving consumers to pay. The possibility of benevolence is not a reason to forgo protection through policy.

We urge the committee to **pass** this bill seeking to prohibit retailers from using surveillance pricing in the sale of food that is sold or qualifies to be sold, as part of the federal supplemental nutrition assistance program (SNAP) or special supplemental food program for women, infants, and children (WIC). We appreciate the previous amendment specifying the fine amount of \$5,000.00 per item per day rather than \$500 for the first offense and removing conflicting language that persisted. We also want to acknowledge recent amendments to expand the prohibition on surveillance pricing for all sales of food, including those items beyond those foods which qualify for SNAP and WIC.

Mahalo,  
Brandon Kinard & the Food+ Policy Team  
#fixourfoodsystem

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[1] Federal Trade Commission. (2025, January). FTC surveillance pricing study indicates wide range of personal data used to set individualized consumer prices [Press release].  
<https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>

**The Food+ Policy internship** develops student advocates who learn work skills while increasing civic engagement to become emerging leaders. We focus on good food systems policy because we see the importance and potential of the food system in combating climate change and increasing the health, equity, and resiliency of Hawai'i communities.

In 2026, the cohort of interns are undergraduate and graduate students and young professionals working in the food system. They are a mix of traditional and nontraditional students, including parents and veterans, who have backgrounds in education, farming, public health, nutrition, and Hawaiian culture.



**LATE**

March 23, 2026

Hawai'i State Senate  
Committee on Labor and Technology  
415 S. Beretania Street  
Honolulu, HI 96813

**Re: House Bill 2458: Support**

Dear Honorable Senators of the Committee on Labor and Technology,

Consumer Reports<sup>1</sup> HB 2458 addresses an everyday affordability problem for consumers: surveillance pricing. Surveillance pricing, also sometimes referred to as “personalized” pricing, is when a company uses personal data that they’ve gathered about a consumer—like data about their online search history, their location, or inferences about family structure, health conditions, or income—to set the price of a product or determine the discount offered to a consumer. Consumer Reports<sup>2</sup> has heard from our members, more than 5,000 of whom live in Hawai'i, about their frustrations with opaque pricing tactics.

We applaud Rep. Grandinetti and the seventeen other legislative co-sponsors for tackling this critical issue at a time when affordability is front of mind for Hawai'i residents. If enacted, this bill would make Hawai'i a leader on affordability. It prohibits surveillance pricing, while protecting transparent, non-discriminatory discounts. It would also be an important starting point for prohibiting surveillance pricing in other sectors, including online retail more broadly. CR has one suggested change that we believe would make the bill more workable for both consumers and retailers, and look forward to working with the legislature.

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<sup>1</sup> Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

<sup>2</sup> Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

## *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. They can use artificial intelligence to make detailed inferences about consumers based on this data. These 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.

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 unsuspecting customers.<sup>3</sup> 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 AI-enabled 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 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.

In the wake of the investigation, U.S. Senator Ruben Gallego introduced a bill to prohibit surveillance pricing citing the investigation, at least 12 other members of Congress sent letters to

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<sup>3</sup> 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-experiment-inflating-grocery-bills-a1142182490/>

the FTC and to Instacart, the FTC reportedly opened an investigation into Instacart, and Instacart announced it was ending the practice.<sup>4</sup>

Other enterprising journalists have conducted investigations and discovered examples of apparent surveillance pricing:

- 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>5</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>6</sup> 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.<sup>7</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>8</sup>

Research from the FTC indicates how widespread the practice of surveillance pricing may be. 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.”<sup>9</sup> The

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<sup>4</sup> Derek Kravitz, “Instacart Stops Pricing Tests on It’s Platform Amid Outrage from Customers”, Consumer Reports, Dec. 22, 2025,

<https://www.consumerreports.org/money/questionable-business-practices/instacart-stops-ai-pricing-experiments-a1176475852/>

<sup>5</sup> 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>

<sup>6</sup> 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>

<sup>7</sup> Dana Mattioli, “On Orbitz, Mac Users Steered to Pricier Hotels,” *Wall Street Journal*, Aug. 23, 2012

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

<sup>8</sup> 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>

<sup>9</sup> “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>

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 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.<sup>10</sup> 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 they use, 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.<sup>11</sup> Several companies, in response to FTC questions, claimed that these tools can increase margins by 1-4%.<sup>12</sup>

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>13</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. This difficulty will have broader effects in the market, since comparison shopping is an engine of market competition. Retailers only feel the need to compete to offer the best price if consumers can comparison shop with ease, identify the best price, and make a decision based on that knowledge. As comparison shopping becomes more cumbersome for consumers, the competitive pressure decreases.

*What HB 2458 does: Prohibiting surveillance pricing in food sales and protecting transparent discounts*

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<sup>10</sup> "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](https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf)

<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

<sup>13</sup> Jaures Yip, "FTC chair Lina Khan warns that airlines might one day use AI to find out you're attending a funeral and charge more," *Business Insider*, September 23, 2024

<https://www.businessinsider.com/ftc-chair-lina-khan-warns-ai-pricing-discrimination-risks-2024-9>

HB 2458 prohibits the use of a consumer’s personal data, to set a customized price for food. HB 2458 also prohibits the secret and automated use of personal data to target niche 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 “diabetic male over 35 earning more than \$150k.”

For example, in a Consumer Reports investigation of Kroger’s loyalty program data practices, consumers requested the data the grocer had collected about them.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> The result was that consumers in higher average income areas tended to get more discounts than consumers in lower average income areas.

#### *How HB 2458 protects transparent discounts*

Straightforward discounts and sales that everyone is eligible for and that do not rely on personal data are not impacted by this bill. The bill also protects transparently offered, non-discriminatory discounts—a crucial provision as discounting practices become more opaque and less trustworthy. Specifically, the bill makes clear that following categories of discounts are not surveillance prices and are protected by this bill:

- Discounts that any consumer could potentially receive, so long as it is posted publicly on the company's website or mobile application. This is a broad category that includes many common kinds of discounts, such as BOGO, discounts for signing up for a mailing list, discounts for related products (eg. 20% off of meals after you buy theme park tickets), discounts a consumer could receive through a loyalty program, so long as anyone could sign up for the loyalty program—just about any kind of discount that is based on the consumer taking an action or making a purchase.
- Discounts that are offered to members of a broadly defined group, such as teachers, students, veterans, and seniors, so long as the terms and criteria are posted publicly, and any consumer who can demonstrate they are part of the group can receive the discount.

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<sup>14</sup>Derek Kravitz, “Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors”, Consumer Reports, May 21, 2025

<sup>15</sup> *ibid*

<sup>16</sup> Jennifer Valentino-DeVries, Jeremy Singer-Vine and Ashkan Soltani, ‘Websites Vary Prices, Deals Based on Users’ Information’, *Wall Street Journal*, Dec. 24, 2012

This protects commonly understood group discounts, but does not permit profiling that is invasive and causes unfairness. For example, discounts that microtarget seniors but specifically exclude certain seniors based on inferences about their health conditions or wealth would not be permitted.

Why require some transparency around discounts? Discounts are increasingly complex and opaque. Retailers can end-run around a ban on personalized pricing by increasing list prices and then offering “personalized discounts” based on individual’s personal data and inferences about their willingness to pay. In the Staples example mentioned above, the office supplier seemingly inferred that consumers with easier access to competitor stores would have a lower willingness to pay. Consumers are also invasively profiled in the name of “personalized discounts.” In another example, pricing analysts at Target created an algorithm to predict the likelihood that a specific consumer is pregnant—based on their shopping habits—and then allocate discounts on the basis of that prediction.<sup>17</sup> In yet another example, an online casino was penalized by a UK regulator for advertising free spins and bonuses to someone who searched online “How to unsubscribe from all gambling,” a query that indicates a possible gambling addiction.<sup>18</sup>

### *Suggested changes*

While CR strongly supports a policy of prohibiting surveillance pricing, there are some tweaks we suggest in order to ensure workability, while providing core consumer protections.

### *Use consensus definition of ‘personal data’ for ‘personally identifiable information’*

At least 20 states have enacted consumer data privacy laws,<sup>19</sup> and most of these laws have converged on a definition of personal data that is adapted to how companies collect and store consumer data in the 21st century. For example, companies may collect hundreds of data points about a consumer, but not associate that information with their name or email address, and instead associate it with a unique identifier such as a cookie, device identifier, or IP address. The bill’s current definition, on the other hand, appears to be derived from data breach notification laws that cover only a narrow range of personal data, and has many gaps that would not cover common, invasive profiling techniques that companies employ in 2026.

We strongly recommend substituting in a definition of personally identifiable information that is similar to consumer data privacy laws across the country; this definition has also been road tested, and companies have built compliance practices around it:

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<sup>17</sup> Charles Duhigg, “How companies learn your secrets,” *The New York Times Magazine*, Feb. 16, 2012

<sup>18</sup> Rob Davies, “Online casino advert banned for targeting problem gamblers” *The Guardian*, Oct. 9, 2019, <https://www.theguardian.com/society/2019/oct/09/casumo-ad-banned-for-targeting-people-trying-to-stop-gambling>

<sup>19</sup> “Which States Have Consumer Data Privacy Laws?” *Bloomberg Law*, April 7, 2025, <https://pro.bloomberglaw.com/insights/privacy/state-privacy-legislation-tracker/#map-of-state-privacy-laws>

“Personal data” means any information, including unique identifiers, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual or a device that identifies or is linked or reasonably linkable to an individual. “Personal data” does not include de-identified data or publicly available information.<sup>20</sup>

...

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 2458 would help address this frustration. It also provides Hawai'i a way of tackling affordability when constituents are feeling the pinch. We respectfully encourage an 'aye' vote.

Sincerely,

Grace Gedye  
Senior Policy Analyst  
Consumer Reports

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<sup>20</sup> Consumer Reports, Electronic Privacy Information Center, “Consumer Reports and the Electronic Privacy Information Center unveil new model legislation to protect the privacy of American consumers” Sept. 24, 2024, [https://advocacy.consumerreports.org/press\\_release/consumer-reports-and-the-electronic-privacy-information-center-unveil-new-model-legislation-to-protect-the-privacy-of-american-consumers/](https://advocacy.consumerreports.org/press_release/consumer-reports-and-the-electronic-privacy-information-center-unveil-new-model-legislation-to-protect-the-privacy-of-american-consumers/)



### Seeking Amendment HB 2458 Dynamic Pricing on Groceries

While Uber supports the goal of preventing discriminatory "surveillance pricing," we are concerned that the current broad language in HB 2458 would ban the discounts Hawaiians rely on to lower their cost of living. It is critical to distinguish between item prices, which Uber does not personalize, and promotional discounts, which Uber uses to lower costs for consumers.

On Uber Eats, grocery partners—ranging from local, family-owned stores to national chains—set their own item prices. These prices do not fluctuate dynamically throughout the day to charge customers more, nor are they ever tailored to individual customers; customers ordering the same items at the same time from the same store will always see the same item prices. If a grocer chooses to update an item's price, they must submit that change to Uber for implementation.

We share policymakers' view that consumers deserve to be treated fairly. Uber does not permit the use of protected characteristics – including race, ethnicity, gender, religion, sexual orientation, disability status, or political affiliation — to determine prices or promotions and we would support legislation that bans these discriminatory practices. *Customers can also opt out of personalized promotions at any time through the app.*

While item pricing is uniform, we occasionally offer discounts to make goods more affordable. Businesses have used purchase history to make promotions more relevant and help cut costs for consumers for decades. For example, stores may offer a coupon to someone who hasn't ordered recently, provide a discount on diapers to a family who regularly purchases baby products, or lower the price of bottled water for people impacted by wildfires. Under this bill, companies would not be able to offer tailored discounts, **which would make essential goods such as groceries less affordable.**

Targeted promotions also serve as a critical marketing tool for small businesses, allowing them to reach customers without the massive budgets required for universal advertising. While a national corporation can afford to run promotions for hundreds of thousands of people, a local grocery store may only want to offer discounts to customers who have not ordered from them recently. Banning these specific tools would not only limit the ability of small businesses to compete and give larger entities a competitive advantage. It would also reduce competitive pressures that encourage businesses to lower prices and win more customers - raising the price floor for all Hawaiians.

#### Proposed Amendment

To ensure that Hawaii consumers can continue to benefit from promotional offers and loyalty programs, we propose:

1. Updating the exemption language in Section 2(c) to ensure that all bona fide discounts are covered: "*Promotional pricing offers, loyalty program benefits and subscriptions, or other temporary discounts.*"
2. Striking the restrictive language in section 2(d) to align with the broad exemption under 2(c)

We welcome continued dialogue and are happy to provide any additional information that would be helpful as policymakers evaluate these issues.

Best,

Allison Ford

Senior Manager, Public Policy, Uber Technologies



**2026 Network Members**

- Aloha Harvest
- Aloha United Way
- Chef Hui
- City and County of Honolulu
- County of Hawai'i
- Hawai'i Alliance for Progressive Action (HAPA)
- Hawai'i Appleseed
- Hawai'i Children's Action Network
- Hawai'i Dept. of Agriculture
- Hawai'i Dept. of Health
- Hawai'i Food Bank
- Hawai'i Food Bank - Kaua'i Branch
- Hawai'i Good Food Alliance
- Hawai'i Public Health Institute
- Kōkua Kalihi Valley
- Lanakila Pacific
- Mālama Kaua'i
- Maui Department of Agriculture
- Maui Food Bank
- Parents and Children Together
- Supersistence
- The Food Basket
- The Pantry, by Feeding Hawai'i Together
- Wai'anae Coast Comprehensive Health Center

[hawaiihungeraction.org](http://hawaiihungeraction.org)

## Senate Committee on Labor & Technology

Monday, March 23, 2026 at 3:01PM

**RE: Support for HB 2458, Relating to Food Security**

Dear Chair Elefante, Vice Chair Lamosao, and members of the Committee,

The Hawai'i Hunger Action Network, a coalition of more than twenty local organizations with the mission to advocate for food security for Hawai'i households, would like to express support for HB 2458. This bill would prohibit persons from using surveillance pricing in the sale of food.

Hawai'i has the highest grocery prices in the nation. With one in three Hawai'i residents struggling to afford enough to eat, protecting food affordability is more important than ever.

Pricing practices that allow companies to adjust food costs based on personal data or shopping behavior create uncertainty and make it even harder for families to budget. Not only do these practices make the price of essential groceries unpredictable, but it provides access to use personal, demographic, consumer, and workplace, and contextual data to charge higher prices for foods. It should be noted that the current version of this bill exempts certain discounts and restaurants.

Hawai'i has an opportunity to join other states and stand up for consumers and help ensure that the cost of basic necessities remains fair and transparent. Mahalo for your leadership and your consideration of HB 2458.

With aloha,  
Hawai'i Hunger Action Network membership

**LATE**



**HAWAII APPLESEED**  
CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai‘i Appleseed Center for Law and Economic Justice  
Support for HB 2458 – Relating to Food Security  
Senate Committee on Labor & Technology  
Monday, March 23, 2026 at 3:01PM

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Dear Chair Elefante, Vice Chair Lamosao, and members of the Committee:

Thank you for the opportunity to submit testimony in support of **HB 2458**, which would prohibit retailers from using surveillance pricing for food sales.

Hawai‘i Appleseed is committed to advancing a food system that is equitable, accessible, and affordable for all residents. Hawai‘i is already experiencing the highest costs of living and highest grocery costs in the entire nation. This affordability crisis has led to one in three households struggling to afford food.<sup>1</sup>

Surveillance pricing—where prices are adjusted based on consumer data such as browsing behavior or demographic—is a predatory corporate practice that has become rampant across other industries, threatening affordability and predictability for consumers across the nation. It has no place in our food industry, when grocery shopping is the primary way that people fulfil one of the most basic human needs. These practices are more than just inconsistent pricing, they are a way for large companies to use personal, demographic, consumer, workplace, and contextual data to charge higher prices for essential foods.<sup>2</sup>

Other states such as Maryland, California, and New York have proposed similar bans on these forms of predatory pricing for groceries, citing concerns about unfair and unpredictable costs for consumers.<sup>3</sup> Hawai‘i has the opportunity to join these states in getting ahead of exploitative pricing practices for our state's hardworking residents.

Thank you for the opportunity to provide testimony in support of HB 2458. We are pleased that the Hawai‘i legislature is paying attention to measures that improve food security across the state.

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<sup>1</sup> Hawai‘i Foodbank, “The State of Food Insecurity in Hawai‘i 2024-2025: Executive Summary,” Hawai‘i Foodbank, November 2025. [https://hawaiifoodbank.org/wp-content/uploads/2025/12/HFB.ExecutiveSummary2025\\_Web-FINAL.pdf](https://hawaiifoodbank.org/wp-content/uploads/2025/12/HFB.ExecutiveSummary2025_Web-FINAL.pdf)

<sup>2</sup> AI Now Institute, et al. *Prohibiting Surveillance Prices and Wages*. February 2025, American Economic Liberties Project, <https://www.economicliberties.us/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf>

<sup>3</sup> Tan, Cheyenne. *How U.S. States Are Tackling Algorithmic Pricing: 2025 Bill Tracker and Analysis*. *Innovation at Consumer Reports*, 1 Aug. 2025, <https://innovation.consumerreports.org/how-u-s-states-are-tackling-algorithmic-pricing-2025-bill-tracker-and-analysis/>.

**LATE**

**HB-2458-HD-3**

Submitted on: 3/23/2026 12:00:04 PM

Testimony for LBT on 3/23/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Nina DiSalvo	Testifying for Towards Justice	Comments	Remotely Via Zoom

Comments:

Good afternoon M. Chair and members of the committee. My name is Nina DiSalvo and I am an attorney and the policy director at Towards Justice, a non-profit law firm dedicated to ensuring fair markets and to leveling the imbalance of power in the modern workplace. We are very concerned about surveillance pricing - the very behavior House Bill 2458 seeks to address.

Corporate spying to raise prices is quickly becoming the norm across our economy. Intensive surveillance tracks our behaviors, associations, and characteristics in the marketplace and workplace. Large companies use [sophisticated price and wage setting technology](#) to analyze that data and identify individualized prices and [wages](#). These practices are profitable enough to justify substantial investments in data acquisition and price and wage-setting software. Only the largest companies can make those investments, and the profits generated offer substantial advantages over smaller competitors. Meanwhile, surveillance price setting incentivizes further surveillance, threatening privacy, chilling freedom of expression, and exacerbating marginalization of vulnerable people.

[Surveillance price setting:](#)

**Undermines principles of basic fairness:** Large grocers offer different consumers different prices for the same items based on purchase history, presumed age, and inferred number of children in the home.

**Raises extraordinary privacy concerns:** With access to fertility app data, a retailer could raise the price of sanitary products for a particular individual during a particular time of the month.

**Exacerbates systemic discrimination:** With access to info about repeat purchases of gluten free products, a retailer could raise the price of certain foods for an individual with celiac disease.

In a report released by the Federal Trade Commission on January 17 of last year, the commission indicated that surveillance pricing tools are actively being developed and marketed across a range of industries, including grocery stores. This bill would prohibit grocery stores from using these technologies. By prohibiting surveillance pricing by large grocers, this bill would not only protect Hawaii consumers from the vagaries of unpredictable food prices, it also would protect small food retailers and the free and fair market.



## TechEquity Action Testimony on HB 2485

Good morning. My name is Vinhcent Le, Vice President of AI Policy at TechEquity Action, a research and advocacy organization focused on ensuring that the benefits of technology flow to everyone, not just to Silicon Valley. We support HB 2485 because it will help keep groceries affordable and prevent a future where a mother who's too busy to shop around gets charged more for dinner ingredients, or where working families are profiled as desperate and pay premium prices for baby formula or eggs.

The threat of personalized pricing is not theoretical. We have examples of the technology being either tested or deployed from [Instacart](#) affiliated grocers like Safeway, [retailers like Target](#), hotel booking [websites](#), and test prep companies, among others. The FTC identified [250 retailers](#) invested in personalized pricing technology. The costs customers pay through these practices are significant:

- With [Target's](#) location based pricing techniques, "A Shark vacuum went up \$40, a Graco child car seat jumped \$72 and a Dyson vacuum shot up \$148.
- In a study of Instacart's dynamic pricing with over 400 Instacart shoppers, researchers found that for the exact same items in the exact same locations prices varied by about 7%. That could mean a [cost swing as much as \\$1200](#) for a household each year.

[Allstate](#) used an algorithm to set premiums, claiming their system would help provide discounts to drivers. In reality, the discounts maxed out at half a percent, a customer who was entitled to an \$800 discount was given just a \$26 discount while premiums for some increased by \$1900 - up to 20 percent. So this system purportedly designed for discounts targeted consumers that were most loyal and least price sensitive with inflated premiums.

Opponents of similar bills note that they want to protect discounts and they do not use personal data for price increases. However these same companies will not address the practice of fictitious pricing, where retailers inflate the advertised price, only to offer a deceptive discount. A [2025 study](#) where researchers spent six months tracking prices at 25 major retailers found that the discounts advertised by

most stores aren't special prices or savings; instead, nearly all retailers now use fake sales to mislead their customers. The study found that at most stores, the products tracked were offered at supposed discounts more than half of the time. And, at many retailers, the fake sales never end: For 12 of the 25 companies, shoppers found more than half the items tracked were offered at false discounts every week or almost every week we checked.

Surveillance pricing allows companies to turbocharge fictitious pricing at scale — using behavioral data and algorithmic tools to identify which consumers are most susceptible to inflated reference prices and deliver personalized "discounts" to those most likely to respond, all while keeping nominal prices high for everyone else.

The exceptions in HB 2485 are clearly drawn to preserve fair discounts. Publicly disclosed discounts such as for seniors, students, and military members are all explicitly preserved. Companies were giving those discounts just fine before they had surveillance pricing systems and they can keep giving them under this bill. What this bill targets is something different: using our deeply personal information to identify what we are willing to pay, and exploiting that information asymmetry to charge us more.

Sincerely,  
Vinhcent Le  
Vice President of AI Policy  
[vinhcent@techequity.us](mailto:vinhcent@techequity.us)

**HB-2458-HD-3**

Submitted on: 3/20/2026 7:05:32 PM

Testimony for LBT on 3/23/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
William Caron	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and members of the committee,

I am testifying in **strong support** of HB2458, which prohibits retailers from using surveillance pricing in the sale of food. The previous version of this bill focused only on food purchased through SNAP and WIC. The new version extends that protection to **all food sales**—a huge improvement.

I applaud the previous committee for recognizing that algorithmic price discrimination is wrong regardless of whether the purchaser is using public benefits. This is a significant step toward protecting every consumer in Hawai‘i from a predatory and opaque pricing practice that has no place in the sale of essential nutrition.

However, I must respectfully question why **restaurants** remain exempted from this prohibition. If surveillance pricing is wrong at a grocery store checkout, it is equally wrong when a family is ordering a meal. A working parent picking up dinner after a long day, or a kupuna having a meal delivered, deserves the same protection from algorithmic exploitation as someone buying milk with SNAP benefits. There is no logical reason to carve out one sector while regulating another.

**The Stakes Could Not Be Higher**

Recent figures show that **one in three Hawai‘i residents** struggles to afford enough food. For working families, individuals with disabilities, and kūpuna on fixed incomes, every dollar spent on food—whether at a grocery store or a restaurant—matters.

More than **155,000 Hawai‘i residents rely on SNAP** to put food on the table, and over **25,000 pregnant people, infants, and young children** depend on WIC for access to critical nutrition during the most developmentally important years of life.

These programs exist because we recognize as a society that no one should go hungry. HB2458 ensures that when anyone buys food—regardless of how they pay—they are not also being exploited by algorithmic price manipulation.

**What Surveillance Pricing Is**

Surveillance pricing is not dynamic pricing based on supply and demand; it is something far more insidious. It refers to the practice of adjusting prices based on consumer data, behavior, or technology use—tracking where you shop, what you buy, how long you linger, what device you use, even your demographic profile—and using that information to charge you more for the same item someone else purchases for less.

Large corporations are already investing heavily in this technology. They are building profiles on consumers to identify who can be charged higher prices and who might not notice. For essential goods like food, this is not innovation; it is exploitation.

### **Why This Bill Is Necessary—and Why the Restaurant Carveout Must Go**

SNAP and WIC participants are uniquely vulnerable to surveillance pricing, but they are not the only ones. The same technology that tracks a shopper's loyalty card can track a diner's ordering history, their location, the time of day, and their perceived urgency to charge them a higher price for a meal. A family celebrating a birthday, a worker grabbing lunch on a short break, a tourist unfamiliar with local prices—all are equally vulnerable to algorithmic exploitation.

The restaurant carveout creates a dangerous loophole. If we believe surveillance pricing is fundamentally unfair—and HD3's expansion to all food suggests we do—then it must be unfair everywhere. We cannot claim to protect consumers in one aisle of the economy while leaving them vulnerable in another. The same principles of dignity, fairness, and transparency apply whether the transaction happens at a grocery store checkout or a restaurant counter.

Other states are already moving to address this threat. **Maryland, California, and New York** have proposed or enacted similar bans on surveillance pricing for groceries, citing concerns about unpredictable costs and consumer exploitation. Hawai‘i has the opportunity to lead by going further—not just by covering all food, but by closing the restaurant loophole entirely.

### **A Matter of Dignity and Fairness**

When a mother uses her WIC benefits to buy milk for her infant, she should not have to wonder whether the store's algorithm has determined she can be charged more. When a kupuna on a fixed income uses SNAP to buy bread, they should not be penalized for shopping at the same store each week. And when a family orders a meal from a restaurant, they should not be charged more because their data suggests they are in a hurry or have ordered from that place before.

HB2458 HD3 is a huge improvement. But it is not yet the complete protection our communities deserve. I urge this committee to remove the restaurant carveout and advance a bill that provides **a complete and total ban on surveillance pricing in the sale of food—blanket and uniform across all food retailers and restaurants alike.**

Passing HB2458 is urgent and necessary. But let us be clear-eyed about where this path leads. The practice is wrong for SNAP participants. It is wrong for WIC participants. It is wrong for grocery shoppers. And it is wrong for anyone buying a meal at a restaurant, too.

I urge you to pass HB2458 and commit to closing the restaurant loophole so that every consumer in Hawai'i is protected from algorithmic price discrimination.

Mahalo for the opportunity to testify.

**HB-2458-HD-3**

Submitted on: 3/22/2026 2:59:27 PM

Testimony for LBT on 3/23/2026 3:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Cameron Prestwich	Individual	Support	Written Testimony Only

Comments:

Food isn't a luxury, it's a human right. Fairness shouldn't depend on my data. Dynamic pricing for food is completely unfair and greedy. It will lead to more bad than good.

**LATE**

**HB-2458-HD-3**

Submitted on: 3/23/2026 8:32:24 AM

Testimony for LBT on 3/23/2026 3:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Leo Nahe Smith	Individual	Support	Written Testimony Only

Comments:

Aloha,

Please support HB2548 HD1. Climate change is upon us, and our food producers are already struggling with the costs of adaptation. Extreme weather events such as rain bombs and drought are already impacting farmers and food producers' livelihoods. One extreme weather event such as the current storm causing flooding across Hawaii can wipe out an entire harvest, destroy equipment and infrastructure, and ultimately put food producers out of business. Climate-resilient food system grants can help farmers be prepared as we will continue to face climate events such as the ones which have cost not only our farmers but communities at-least resources as flash floods occurred and ruined generators, small machines, and swept away tools and infrastructure.

Margins are already thin for farmers in Hawaii. To prioritize local food security we must support programs such as the proposed climate-resilient grant program to bolster our food producers and as a result, our local food security.

Mahalo for your consideration!  
Leo Nahe, Nu‘uanu

**LATE**

**HB-2458-HD-3**

Submitted on: 3/23/2026 12:50:24 PM

Testimony for LBT on 3/23/2026 3:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

**SUPPORT!**