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DEPARTMENT OF HUMAN SERVICES
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TRISTA SPEER
DEPUTY DIRECTOR
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February 2, 2026

TO: The Honorable Representative Lisa Marten, Chair
House Committee on Human Services & Homelessness

FROM: Ryan I. Yamane, Director

SUBJECT: **HB 2458 – RELATING TO SURVEILLANCE PRICING.**

Hearing: Thursday, February 5, 2026, Time 9:30 a.m.
Conference Room 329, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill, to prohibit retailers from using surveillance pricing in the sale of food that is sold, or qualifies to be sold, as part of the Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Foods Program For Women, Infants, and Children (WIC), and provides comments. The Department defers to the Department of Health on the WIC program.

Currently, SNAP-authorized retailers must treat SNAP participants the same as cash purchasers. SNAP-Electronic Benefit Transfer (EBT) authorized retailers must enter into an agreement with the United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) as a requirement to process SNAP purchases. A condition of their retailer agreement is to comply with the SNAP Equal Treatment Rule.

In accordance with 7 CFR 278.2(b), all SNAP customers must receive equal treatment when making SNAP purchases. Further, it states, "Coupons [SNAP benefits] shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. However, nothing in this part may be construed as authorizing

FNS to specify the prices at which retail food stores may sell food..." Consequently, the proposed measure creates an additional regulatory framework and penalties on retailers.

Further guidance, including potential disqualifications, fines, and other consequences for violations of the terms of the agreement with FNS, is provided to all retailers in the FNS-330, a retailer training guide, available on the USDA website www.fns.usda.gov/snap/retailer/training/guide.

Thank you for the opportunity to provide testimony on this measure.



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
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NADINE Y. ANDO
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DEAN I. HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Human Services & Homelessness
Thursday, February 5, 2026
9:30 a.m.
Via Videoconference
Conference Room 329

On the following measure:
H.B. 2458, RELATING TO SURVEILLANCE PRICING

Chair Marten 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). The Department appreciates the intent of this bill and offers comments.

The purpose of this bill is to prohibit retailers from using surveillance pricing in the sale of food that is sold, or qualifies to be sold, as part of the supplemental nutrition assistance program or special supplemental foods program for women, infants, and children.

We have concerns about the exemptions for common group discounts and loyalty programs. See P.4, lines 1-2. Research shows that discount programs and loyalty programs "have evolved into data-harvesting machines that should be scrutinize

as closely as any other surveillance-based business model.”¹ From fast food companies, airlines, hotels, grocery stores and gas stations, loyalty programs “track not just what consumers buy, but who we are, what we search for, and even how we move our cursors across a screen.”²

Companies “then monetize this data – selling it to brokers, building profiles on each of us, and most importantly, learning how much each of us is willing to pay.”³ In fact, some loyalty programs “generate more profit for companies than their actual business.”⁴ The exemptions for common group discounts and loyalty programs may compound the very issue this bill aims to address by providing cover for extensive data collection.

Although “surveillance pricing” is defined in the bill, the definition turns on “personally identifiable information,” which is not defined in the bill. We have for years advocated in favor of measures such as S.B. 1038, S.D. 1, H.D. 1, to expand the existing definition of “personal information” in section 487N-1. To clarify that biometric and other protected health information is included within the scope of “personally identifiable information” in this bill, it would be desirable to add an appropriate definition of “personal identifiable information.”

To deter prohibited conduct, this bill provides for a civil fine to be collected through a civil action brought by the Attorney General, and an administrative fine to be collected through an action brought by the Director of the Department of Commerce and

¹ Samuel A.A. Levine & Stephanie T. Nguyen, *The Loyalty Trap: How Loyalty Programs Hook Us with Deals, Hack our Brains, and Hike Our Prices*, Vanderbilt Policy Accelerator, UC Berkeley Center for Consumer Law & Economic Justice (Oct. 2025).

² *Id.*

³ Derek Kravitz, *Inside Kroger’s Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors*, CONSUMER REPORTS (May 21, 2025), <https://www.consumerreports.org/money/questionable-businesspractices/kroger-secret-grocery-shopper-loyalty-profiles-unfair-a1011215563/>.

⁴ *How Loyalty Programmes Are Keeping America’s Airlines Aloft*, THE ECONOMIST (Aug. 6, 2025), <https://www.economist.com/business/2025/08/06/how-loyalty-programmes-are-keeping-americasairlines-aloft>.

Consumer Affairs. It does not expressly provide for a private right of action. This leaves the plaintiffs unable to assert a challenge for unlawful surveillance pricing practices prohibited by this bill.

Although OCP has the power and the duty to enforce consumer protection laws, our enabling statute requires us to enforce consumer protection laws by bringing civil actions, not administrative actions. See HRS 487-5. The current language authorizing the Director of the Department of Commerce and Consumer Affairs to bring an administrative action to collect a fine, page 3, lines 9-16, does not authorize OCP to act within its delegated authority to enforce consumer protection laws.

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

(1) An appropriate definition of “personally identifiable information” be inserted, to include each of the “specified data elements” identified in S.B. 1038, S.D. 1, H.D. 1,

(2) Page 3, lines 9-16 be deleted, and page 3, lines 4-8 be amended to read as follows:

(b) Any retailer that violates this section shall be subject to a civil fine of not more than \$5,000 per item per day. Each day of a continued violation of this section shall constitute a distinct and separate offense. The attorney general or the director of the office of consumer protection may bring an action to collect the fine.

(3) Adding an appropriation for a new technologist position and a new staff attorney position.

The responsibility to investigate and bring civil enforcement actions challenging prohibited surveillance pricing requires staff resources to meet the challenge, including technologists. 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.

Thank you for the opportunity to testify on this bill.



February 4, 2026

The Honorable Lisa Marten
Chair
House Committee on Human Services
and Homelessness
Room 426, Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

The Honorable Ikaika Olds
Vice Chair
House Committee on Human Services
and Homelessness
Room 326, Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: Oppose HB 2458 - "Relating to Surveillance Pricing"

Dear Chair Marten, Vice Chair Olds and members of the Committee:

On behalf of Chamber of Progress, a tech industry association supporting public policies to build a society in which all people benefit from technological advances, **I respectfully urge you to oppose HB 2458.** By banning what it calls "surveillance pricing" on food eligible for SNAP or WIC – a category that covers nearly all grocery items – this bill **risks eliminating the personalized deals, loyalty program promotions, and discounts that help Hawai'i families afford groceries, without evidence that the practices it targets are harming consumers or driving up grocery prices.**

The bill threatens the savings Hawai'i families rely on to address unproven harms

We share the Legislature's concern about the cost of food in Hawai'i. When families are spending over 17% of their household budget on groceries¹ and nearly one in three households is food-insecure,² every dollar matters. That is precisely why we are concerned about HB 2458.

Using customer data to personalize deals, discounts, and shopping experiences delivers real value to consumers, particularly those on tight budgets. A parent who regularly buys

¹ Bureau of Labor Statistics. *Consumer Expenditures for the Honolulu Metropolitan Area, 2021–22*. Oct. 19, 2023. https://www.bls.gov/regions/west/news-release/consumerexpenditures_honolulu.htm

² Mark Ladao. "1 in 3 Local Households Experience Food Insecurity, Hawai'i Foodbank Reports." Hawai'i Public Radio, May 30, 2024. <https://www.hawaiipublicradio.org/local-news/2024-05-30/1-in-3-local-households-experience-food-insecurity-hawaii-foodbank-reports>

baby formula through a grocery app might receive a timely coupon when the brand she uses goes on sale. A family that stocks up on rice and children's cereal every month might see a targeted promotion when those staples are discounted. These are examples of retailers using customer information to make everyday groceries more affordable, not "surveillance pricing." A global survey of 23,000 consumers found that the vast majority are not only comfortable with personalized offers but expect them, saying that personalization helps them find better prices and save time.³

HB 2458's definitions put these everyday tools at risk. The bill defines "surveillance pricing" as any customized price based "in whole or in part" on personally identifiable information collected through "electronic surveillance technology." This sweep captures not just the price a shopper pays at checkout, but the full range of personalized grocery tools consumers have come to depend on: coupons matched to past purchases, targeted promotions, personalized loyalty rewards, and savings alerts based on shopping history.

Digital coupons alone save the average household \$1,465 per year,⁴ and research shows that low-income families with children are among the most active users of coupons and promotions.⁵ In a state where groceries cost far more than the national average, these savings matter.

The bill's findings assert that retailers use surveillance pricing to raise profits at consumer expense, but cite no specific data, study, or example of this practice harming consumers in Hawai'i's grocery sector or in any U.S. grocery market. To the contrary, the majority of grocery shoppers say they appreciate personalized discounts and rewards from the stores where they shop.⁶ HB 2458 would ban a broad category of pricing practices without evidence that they are hurting consumers, while putting at risk the personalized savings tools that Hawai'i families actually use.

The bill's exemptions concede the value of personalized pricing but are functionally unworkable

HB 2458 exempts three categories of pricing from its ban: publicly available discounts; common group discounts for teachers, students, seniors, and veterans; and loyalty programs. These exemptions implicitly acknowledge what consumers already know: data-driven discounts and loyalty programs deliver real value. But the bill's conditions could prevent retailers from offering those discounts to customers.

³ Mark Abraham et al. "What Consumers Want from Personalization." *Boston Consulting Group*, Dec. 12, 2024. <https://www.bcg.com/publications/2024/what-consumers-want-from-personalization>

⁴ Elyssa Kirkham. "Study: Skipping Online Coupons Could Cost You \$1,465 Per Year." *CouponFollow*, Jul. 29, 2019. <https://couponfollow.com/research/coupon-data-study>

⁵ Stephanie M. Noble et al. "Coupon Clipping by Impoverished Consumers: Linking Demographics, Basket Size, and Coupon Redemption Rates." *International Journal of Research in Marketing*, 2017. <https://doi.org/10.1016/j.ijresmar.2016.08.010>

⁶ RRD. 2024 CPG + Grocery Consumer Report. 2024. <https://www.rrd.com/resources/research-report/2024-cpg-and-grocery-consumer-report>

Personalization is what makes many of these discounts viable and accessible in the first place. Retailers use customer data to identify who would benefit from a deal and deliver it at the right moment. Without that ability, many targeted offers simply will not be made. Offering a blanket discount to every customer is far more costly, and retailers that cannot identify shoppers who most value these offers have less incentive to compete for their loyalty. Fewer deals get made, and the consumers who need savings most lose out.

The loyalty program exemption illustrates this clearly. To qualify, a loyalty program's terms must be "applied consistently to all consumers in the program and are not individualized for consumers." This non-individualization requirement would block the most valuable feature of modern grocery loyalty programs: personalized deals based on a shopper's purchase history and preferences. Under HB 2458, these deals would fall directly under the ban, bypassing any exemption outlined in the bill.. Shoppers would keep the loyalty card but lose the savings that made it worth signing up for.

Additionally, the exemption for publicly available discounts suffers from a similar problem by requiring that the discount be posted on a website or app and obtainable by "any customer." But the value of personalized savings is that they reach consumers automatically. By requiring that all protected discounts be publicly posted and universally available, the bill excludes the targeted offers that reach the consumers who would benefit most, at the moment they need them.

Personalized pricing is a familiar, pro-consumer practice

The term "surveillance pricing" is designed to make a familiar practice sound menacing. But using data to adjust prices and offers to individual circumstances is already part of daily life: students and seniors receive discounts, insurance companies charge safer drivers less, and colleges vary tuition by family income and merit. These are all forms of price differentiation that make goods and services more accessible to more people. The underlying principle does not become exploitative simply because digital tools make it more efficient.

Research published in the *Journal of Political Economy* has found that over 60% of individual consumers receive lower prices under personalized pricing.⁷ Separate research in the *Journal of Business Ethics* concluded that personalized pricing can have progressive distributional effects, directing savings toward the consumers who benefit most from discounts.⁸ Without personalization, retailers must set uniform prices that inevitably exclude some consumers or charge others more than necessary. Banning

⁷ Jean-Pierre Dube and Sanjog Misra. "Personalized Pricing and Consumer Welfare." *Journal of Political Economy*, 2023. <https://www.journals.uchicago.edu/doi/10.1086/720793>

⁸ Jerod Coker and Jean-Manuel Izaret. "Progressive Pricing: The Ethical Case for Price Personalization." *Journal of Business Ethics*, 2021. <https://doi.org/10.1007/s10551-020-04545-x>

personalized pricing does not produce a fairer market – it risks producing one that is both less accessible and less efficient.

For these reasons, **we respectfully urge the Committee to oppose HB 2458**. Hawai‘i families struggling with the highest grocery costs in the nation⁹ cannot afford to lose the deals and loyalty savings that help them put food on the table.

Sincerely,



Robert Singleton
Senior Director of Policy and Public Affairs, California and US West

⁹ Jim Manzon. "Hawaii Beats New York, Florida, and California for Most Expensive Groceries" *IBTimes UK*, Jan. 29, 2026. <https://www.ibtimes.co.uk/hawaii-beats-new-york-florida-california-most-expensive-groceries-where-does-your-us-state-1774760>



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
House Committee on Human Services & Homelessness
Thursday, February 5, 2026, at 9:30AM

Dear Chair Marten, Vice Chair Olds, 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 sold in the Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Foods Program for Women, Infants, and Children (WIC).

Hawai‘i Appleseed is committed to advancing a food system that is equitable, accessible, and affordable for all residents. With recent figures showing 1 in 3 Hawai‘i residents struggle to afford enough food,¹ supplemental nutrition programs programs are more important than ever to support working families, individuals with disabilities, and others living on fixed or limited incomes.

Surveillance pricing, where prices are adjusted based on consumer data, behavior, or technology use, threatens affordability and predictability for any consumer—especially for 155,000 Hawai‘i residents² relying on SNAP and 25,000 pregnant people, infants, and young children served by WIC.³ 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.⁴

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.⁵ Hawai‘i has the opportunity to join these states in getting ahead of exploitative pricing practices while protecting SNAP and WIC participants.

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.

¹ 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

² U.S. Department of Agriculture, “SNAP Data Tables: National and/or State Level Monthly and/or Annual Data,” Food and Nutrition Service, 2025. <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>

³ U.S. Department of Agriculture, “WIC Data Tables: Monthly Data – State Level Participation by Category and Program Costs,” Food and Nutrition Service, 2025. <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>

⁴ 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>

⁵ 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/>.



5 February, 2026

To: Chair Lisa Marten, Vice Chair Ikaika Olds and the House Committee on Human Services & Homelessness

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

Aloha,

Hawai'i Food+ Policy **strongly supports HB2458** which seeks to prohibit and fine the practice of surveillance pricing deployed against qualifying foods sold in retailers. One in three households in Hawaii are experiencing difficulty in securing consistent access to food and two-thirds of these families are experiencing the most extreme version of this – reducing food intake, skipping meals, or going whole days without eating. Uncertainty in pricing within the market makes it difficult/impossible to budget in an already constrained area of life.

From an FTC report on surveillance pricing¹, 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 opt-out and 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 the 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 would also support 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

[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.

HB-2458

Submitted on: 2/2/2026 8:30:16 PM
Testimony for HSH on 2/5/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Julia D Cramer	Individual	Support	Written Testimony Only

Comments:

I support HB 2458, essential goods are already higher priced in Hawaii when compared to the national average. We cannot allow multinational corporations to prey on us, while they make record profits and fail to contribute to the local economy. They already pay their workers low wages and avoid taxes.

HB-2458

Submitted on: 2/3/2026 8:59:54 AM
Testimony for HSH on 2/5/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Dawn Wakukawa	Individual	Support	Written Testimony Only

Comments:

Surveillance pricing is a cruel tool being used by companies to vary the prices based on the purchaser. It just makes the CEO's richer while draining the pocketbooks of working class families, especially those of ALICE status.

HB-2458

Submitted on: 2/3/2026 12:38:36 PM
Testimony for HSH on 2/5/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Jessica Kuzmier	Individual	Support	Written Testimony Only

Comments:

Aloha, I am writing in support of HB2458. I fully agree with regulating the practice of surveillance pricing. Mahalo for your consideration.

HB-2458

Submitted on: 2/4/2026 2:12:31 AM
Testimony for HSH on 2/5/2026 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Michelle R Stefanik	Individual	Support	Written Testimony Only

Comments:

I support this bill at this time because there are currently no regulations governing surveillance pricing. However, I would urge you to expand it to ALL Food and retail purchases within the state. The state government should take a stand against this from the outset. Surveillance Pricing is unfair. When a customer enters a store, they should know they are not being charged more than anyone else for the same item. Please make an amendment to this bill to PROHIBIT ALL SURVEILLANCE PRICING.