
A BILL FOR AN ACT

RELATING TO SURVEILLANCE PRICING.

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

1 SECTION 1. The legislature finds that the increasing cost
2 of groceries and basic necessities is placing a strain on
3 Hawaii's residents. Many individuals often have to carefully
4 weigh the cost of their purchases, whether it is an item like
5 milk or fresh produce. In Hawaii, some residents must spend
6 over seventeen per cent of their household budget to put a meal
7 on the table, which is significantly higher than the national
8 average of twelve per cent, according to the United States
9 Bureau of Labor Statistics. Furthermore, the Hawaii Foodbank
10 reports that nearly one in three households is food-insecure,
11 meaning that they do not have access to sufficient or quality
12 food to meet their basic needs.

13 The legislature further finds that surveillance
14 pricing — which is a form of dynamic pricing where a consumer's
15 personal data and behavior, including location, demographics,
16 browsing patterns, and shopping history, is used to determine
17 their willingness to pay for a good or service — can have an



1 adverse effect on consumers, especially for low-income
2 individuals and households that rely on government assistance,
3 such as the supplemental nutrition assistance program and
4 special supplemental foods program for women, infants, and
5 children. These kinds of retail practices can obscure the base
6 price of everyday items and can lessen the power that consumers
7 wield to make responsible and financially sound decisions.
8 Although retailers contend that surveillance pricing can be used
9 to lower the cost of goods, data has shown that instead,
10 retailers often change prices to raise their own profits while
11 leaving consumers to pay.

12 Accordingly, the purpose of this Act is to prohibit
13 retailers from using surveillance pricing in the sale of food
14 that is sold, or qualifies to be sold, as part of the
15 supplemental nutrition assistance program or special
16 supplemental foods program for women, infants, and children.

17 SECTION 2. Chapter 480, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 **"§480- Surveillance pricing; prohibition; fines. (a)**
21 **No retailer shall use surveillance pricing in the sale of food**



1 that is sold, or qualifies to be sold, as part of the federal
2 supplemental nutrition assistance program or special
3 supplemental nutrition program for women, infants, and children.

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

9 (c) Any retailer that violates this section shall be
10 subject to a civil fine of no more than \$5,000 per item per day.
11 Each day of a continued violation of this section shall
12 constitute a distinct and separate offense. The attorney
13 general or director of the office of consumer protection may
14 bring an action to collect the fine.

15 (d) This section shall not apply to:

16 (1) Discounts that are readily available to the public,
17 posted in an easily accessible area of a company's
18 website or mobile application, and may be obtained by
19 any customer;

20 (2) Common group discounts; and

21 (3) Loyalty programs.



1 (e) As used in this section:

2 "Common group discounts" means discounts that are offered
3 or provided to a cognizable group, such as teachers, students,
4 senior citizens, or veterans and:

5 (1) The eligibility, type, quantity, or any other term of
6 the discount is readily available to the public and
7 posted in an easily accessible area of a company's
8 website or mobile application; and

9 (2) Any consumer can obtain the discount if the consumer
10 demonstrates they are part of the cognizable group.

11 "Electronic surveillance technology" means the use of
12 technological methods, systems, or tools, including but not
13 limited to sensors, cameras, device tracking biometric
14 monitoring, or other forms of observation or data collection,
15 that are capable of gathering personally identifiable
16 information about a consumer's behavior, characteristics,
17 location, or other personal attributes, whether in physical or
18 digital environments.

19 "Loyalty program" means a program where discounted prices,
20 including lower prices or other rewards, are offered to members
21 of the program to encourage repeat purchases and patronage and:



1 (1) The terms of the loyalty program, including any
2 discounted prices and conditions for loyalty rewards,
3 are readily available to the public and posted in an
4 easily accessible area of a company's website or
5 mobile application; and

6 (2) The terms of the loyalty program are applied
7 consistently to all consumers in the program and are
8 not individualized for consumers.

9 "Personally identifiable information" means:

10 (1) Any of the following:

11 (A) An individual's social security number, either in
12 its entirety or the last four or more digits;

13 (B) Driver's license number, federal or state
14 identification card number, or passport number;

15 (C) A federal individual taxpayer identification
16 number;

17 (D) A military identification number;

18 (E) An individual's financial account number, or
19 credit or debit card number, unless redacted;



1 (F) A security code, access code, personal
2 identification number, or password that would
3 allow access to an individual's account;

4 (G) Unique biometric data generated from a
5 measurement or analysis of human body
6 characteristics used for authentication purposes,
7 including a fingerprint, voice print, retina or
8 iris image, or other unique physical or digital
9 representation of biometric data;

10 (H) A private key that is unique to an individual and
11 is used to authenticate or sign an electronic
12 record; or

13 (I) Health insurance policy number, subscriber
14 identification number, medical identification
15 number, or any other unique number used by a
16 health insurer to identify a person; and

17 (2) In combination with any one or more of the following
18 when the information in paragraph (1) is not
19 encrypted, redacted, or otherwise protected by another
20 method that renders the information unreadable or
21 unusable:



1 (A) An individual's first initial or first name, and
2 last name;

3 (B) A user name or electronic mail address, in
4 combination with a password or security question
5 and answer that would permit access to an online
6 account;

7 (C) A name used by an individual, including the
8 combination of the first name, any initials in
9 the name, whether at the beginning or middle of
10 the name, or a nickname combined with the last
11 name;

12 (D) A user name for an online account;

13 (E) A mobile or home phone number; or

14 (F) An electronic mail address specific to the
15 individual.

16 "Surveillance pricing" means the practice of offering or
17 setting a customized price for a good or service for a specific
18 consumer or group of consumers based, in whole or in part, on
19 personally identifiable information collected through electronic
20 surveillance technology."



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

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

Surveillance Pricing; Food; Prohibition; Fines; Exceptions

Description:

Prohibits 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 or Special Supplemental Nutrition Program for Women, Infants, and Children. Establishes fines. Exemptions certain discounts and loyalty programs. Effective 7/1/3000. (HD1)

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