



‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai

SENATE BILL 2036

Ke Kōmike ‘Aha Kenekoa o ka Limahana a me ka ‘Enehana
(Senate Committee on Labor and Technology)

Hawai‘i State Capitol

Pepeluali 9th, 2026

3:01 PM

Lumi 225

Aloha e Chair Elefante, Vice Chair Lamosao, and Members of the Committee on Labor and Technology:

The Office of Hawaiian Affairs (OHA) **SUPPORTS SB2036**, which would prohibit surveillance pricing and strengthen consumer protections against nontransparent and discriminatory pricing practices enabled by emerging technologies. OHA is particularly concerned about algorithmic rental pricing and believes this measure will assist in appropriately regulating the practice.

OHA’s mission includes advocating for the economic well-being of Native Hawaiians and ensuring that public policy that shapes daily life does not compound existing inequities. As essential services move further into digital environments, Native Hawaiians who represent a disproportionate number of our state’s low-income households are especially vulnerable to practices that use algorithms and digital surveillance to extract greater costs from already struggling families. OHA is supportive of policies that seek to ensure fair pricing for our local families.

Surveillance pricing, as defined in this bill, involves the use of electronic surveillance technologies, such as device tracking, location data, behavioral monitoring, or biometric information to customize prices for individual consumers or groups of consumers. These practices undermine basic consumer expectations that prices are determined by the good or service being offered, rather than by covert assessments of a

consumer's identity, location, or perceived purchasing power. Most troubling, algorithmic and surveillance pricing of rental units has emerged as a concerning trend.¹

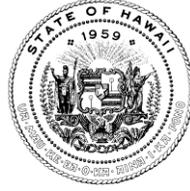
For Native Hawaiian families already facing Hawai'i's high cost of living, such practices risk compounding economic inequities and eroding trust in digital marketplaces that are increasingly unavoidable, even when searching for a rental unit. When consumers are unable to understand why prices differ or whether personal data is being used against them, they are deprived of the ability to make informed economic decisions and trapped in systems that exploit for maximum profit.

OHA strongly supports this bill because it makes clear an appropriate distinction between legitimate pricing practices and exploitative uses of surveillance technology. The measure preserves commonly used and local relevant practices, such as, cost-based pricing differences, publicly disclosed promotions, Kama'āina and other broad-based discounts, voluntary loyalty or rewards programs, and insurance and credit practices governed by existing law. The bill requires that information collected for permissible discounts or programs be used solely for that limited purpose, and not for profiling, targeted advertising, or individualized price setting. These guardrails prevent the misuse of consumer information in ways that would otherwise perpetuate surveillance-based inequities by clarifying such behavior as unfair or deceptive practices under existing consumer protection law. As technology continues to advance, it is critical that Hawai'i's laws keep pace to ensure that innovation does not come at the expense of fairness, dignity, or economic justice. This measure represents a thoughtful, forward-looking step toward protecting consumers particularly those most vulnerable to rising costs and hidden digital harms.

For these reasons, OHA respectfully urges the committee to **PASS SB2036**.

Mahalo for the opportunity to submit testimony.

¹ See: "[Justice Department Requires RealPage to End the Sharing of Competitively Sensitive Information and Alignment of Pricing Among Competitors](#)," US Dept of Justice Press Release, November 24, 2025.



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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Labor and Technology
Wednesday, February 11, 2026
3:01 p.m.
Via Videoconference
Conference Room 225**

**On the following measure:
S.B. 2036, RELATING TO CONSUMER PROTECTION**

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

The purpose of this bill is to ban surveillance pricing by adding a new section to Part I of Hawaii Revised Statutes (HRS) Chapter 481B. The bill provides that a violation shall be deemed a per se violation of Hawaii's Unfair and Deceptive Acts or Trade Practices (UDAP) law.

Surveillance pricing, also known as algorithmic pricing, uses personal information of consumers collected through various means to price identical products differently from one customer to the next. In September 2025, Consumer Reports and Groundwork Collaborative, as part of a larger project with More Perfect Union, two nonprofit organizations with experience analyzing food prices, conducted a monthslong

investigation of Instacart’s surveillance pricing model and found that prices of identical grocery products purchased through Instacart varied between consumers by as much as 23%.¹

During the investigation, “[h]undreds of volunteers shopped simultaneously at specific stores on Instacart’s platform during controlled experiments, taking screenshots of the prices they saw. About three quarters of the products checked were offered at different prices to different consumers. Some products were offered at as many as five different prices. Seemingly small price variations could add up to big differences in the overall cost of groceries: The price of the same basket of food at a Seattle-area Safeway on the Instacart platform, for example, ranged from \$114.34 to \$123.93 — roughly a \$10 difference. Based on how much Instacart says the typical household of four spends on groceries, the average price variations observed could translate into a cost swing for a household of four of about \$1,200 per year.”²

Although “surveillance pricing” is defined in the bill, the key definition is in the meaning of the phrase “information about a consumer’s behavior, characteristics, location, or other personal attributes” that is “collected through electronic surveillance technology,” 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.

We have concerns about the bill’s carve-out exemptions for loyalty memberships and rewards programs. See P.2, lines 3-5. Research shows that loyalty memberships and rewards programs that once rewarded repeat business “have evolved into data-harvesting machines that should be scrutinized as closely as any other surveillance-based business model.”¹ From fast food companies to airlines and hotels to grocery

¹ 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/>.

² Consumer Reports, Letter to Chris Mufarrige, Dir., Bureau of Consumer Prot., Fed. Trade Comm’n (Dec. 16, 2025).

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 loyalty memberships and rewards programs may compound the very issue this bill aims to address by providing cover for extensive data collection.

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

- 1) An appropriate definition of “personal information” be inserted, to include each of the “specified data elements” identified in S.B. 1038, S.D. 1, H.D. 1;
- 2) Remove subsection (4), P. 2, lines 3-5; and
- 3) Add 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.



TESTIMONY OF DAVE ERDMAN, PRESIDENT & CEO
RETAIL MERCHANTS OF HAWAII
FEBRUARY 6, 2026
IN OPPOSITION OF SB 2036 – RELATING TO CONSUMER PROTECTION

Aloha Chair, Vice Chair, 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 trade association representing retailers, shopping centers, and allied businesses across the islands.

Retail Merchants of Hawai'i respectfully submits testimony in opposition to SB 2036.

For decades, retailers—both online and in physical stores—have used ordinary, well-understood shopping information to offer clearly identified discounts and promotions that help consumers save money. These include checkout coupons, loyalty rewards, recurring-purchase discounts, and targeted promotions on items customers regularly buy, such as household essentials and groceries. These practices benefit consumers by helping them manage personal and family budgets, while also allowing retailers to manage inventory more efficiently and reduce waste.

As currently drafted, SB 2036 provides no clear or workable path for retailers to continue offering many of these data-driven discounts. The exemption language is too narrow, as it applies only to customers who affirmatively sign up for promotional or email lists. In practice, many retailers offer discounts to customers who do not formally enroll in such programs. Similarly, the exemption certain membership programs, but it does not account for targeted discounts offered to non-members, which are common across the retail industry.

The bill could also unintentionally undermine membership and loyalty programs that many consumers rely on for additional savings, including discounts, free shipping, or special offers based on purchasing history. Without a clear and workable exemption for these programs, SB 2036 could make them less viable, reducing savings opportunities for consumers and placing small and local retailers at a competitive disadvantage.

Retail is an intensely competitive industry. Consumers can easily compare prices across stores, websites, and mobile apps, and retailers must remain transparent and competitive to earn customer trust. Existing federal and state laws already address unfair or deceptive pricing practices, price discrimination, and price gouging. Adding a broad and overly restrictive prohibition risks fewer discounts, higher costs, and less choice for consumers, rather than increased consumer protection.

For these reasons, Retail Merchants of Hawai'i respectfully urges the Committee to **oppose SB 2036.**

Thank you for the opportunity to provide testimony.

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



February 8, 2026

The Honorable Brandon Elefante
Chair
Senate Committee Labor and Technology
Room 217, Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

The Honorable Rachele Lamosao
Vice Chair
Senate Committee Labor and Technology
Room 204, Hawaii State Capitol
415 South Beretania Street
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RE: Oppose SB 2036 - "Relating to Consumer Protection"

Thank you for the opportunity to submit testimony regarding SB 2036 for the record. 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 SB 2036, which would harm consumers in Hawaii.**

We share the legislature's concern about affordability. The cost of living is the top issue facing American families,¹ and we understand the impulse to ensure consumers are getting a fair deal. But SB 2036 risks backfiring on the very families it aims to help by eliminating the personalized discounts, digital coupons, and targeted deals that help Hawaii families stretch their budgets.

Personalized pricing in practice: coupons, discounts, and consumer savings

The term "surveillance pricing" suggests that companies are using personal data to charge individual consumers higher prices. But **despite widespread speculation, there is very little evidence that this is actually happening.** What companies overwhelmingly use consumer data for is the opposite: offering discounts, coupons, and targeted promotions that help consumers save money.

This should not be surprising. Retail is an intensely competitive business. Across e-commerce, mobile apps, and brick-and-mortar stores, retailers compete vigorously for every sale. In a market where consumers can compare prices with a few taps on their phone, using personal data to charge a customer more is a losing strategy – a competitor will simply offer a better price and win the sale. These competitive pressures push

¹ Erin Doherty, "New poll paints a grim picture of a nation under financial strain," *POLITICO*, Dec. 10, 2025, <https://www.politico.com/news/2025/12/10/poll-affordability-cost-of-living-00678076>.

data-driven pricing in one direction: toward the deals and discounts that attract and retain customers.

Personalized pricing is already a familiar part of daily life. Students and seniors receive discounts, insurance companies charge safer drivers less, and colleges vary tuition based on family income. Digital tools simply make these same practices more scalable. In practice, data-driven pricing looks like this:

- *Personalized discounts.* A grocery chain that uses a customer's purchase history to offer a coupon on items they buy regularly – a parent who regularly buys children's cereal receiving a timely discount when a new brand hits the shelves.
- *Targeted seasonal deals.* A retailer that identifies families with school-age children through past purchases and sends them targeted discounts on back-to-school supplies.
- *Cart abandonment discounts.* An online retailer that offers a discount to a shopper who viewed a product but didn't purchase.
- *Location-based offers.* A restaurant app that sends a discount notification when a customer is nearby, or a retailer that offers a better price at a store with excess inventory.
- *Re-engagement offers.* A subscription service that offers a returning customer a discounted rate based on their prior usage patterns.

Consumers have long shown their acceptance and expectation around personalized deals. 70% of consumers say they value loyalty programs,² and about 1 in 4 consumers earning under \$40,000 choose their supermarket based on loyalty program membership.³ Furthermore, a 2024 survey of more than 10,000 consumers found that 91% are willing to share personal data in exchange for value from brands, with discounts, loyalty points, and exclusive access cited as the top motivators.⁴ Finally, 71% of consumers now expect personalized interactions from the companies they buy from, and 76% get frustrated when that doesn't happen.⁵

SB 2036 would ban these practices and raise costs for Hawaii families

Under SB 2036's sweeping definitions, every one of the practices described above would be prohibited. The bill bans offering a "customized price" based on information collected through "electronic surveillance technology," a term defined broadly enough to

² Bobby Stephens and Ramya Murali, *2024 Consumer Loyalty Survey*, Deloitte, Feb. 24, 2025,

<https://www.deloitte.com/us/en/services/consulting/articles/brand-loyalty-program-consumer-behavior.html>.

³ F. Watty, "Supermarket Choice Due to Membership in Its Loyalty Program in U.S. 2023 by Income," Statista, Jan. 11, 2024, <https://www.statista.com/statistics/1548425/supermarket-choice-due-to-loyalty-program-by-income-us/>.

⁴ Marigold, "2024 Global Consumer Trends Index" (2024),

<https://www.globenewswire.com/en/news-release/2024/01/16/2809582/0/en/Annual-Marigold-Global-Consumer-Trends-Index-Reveals-Need-for-Brands-to-Deliver-on-Data-Privacy-and-Personalization-to-Win-Customer-Loyalty.html>.

⁵McKinsey & Company, "The Value of Getting Personalization Right--or Wrong--Is Multiplying" (2021),

<https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/the-value-of-getting-personalization-right-or-wrong-is-multiplying>.

encompass virtually any digital data collection. And because the prohibition triggers whenever pricing is based "in whole or in part" on such data, even minimal use of consumer information in a pricing decision could expose a business to liability. The bill does not distinguish between manipulative practices and ordinary, data-driven discounts that consumers know and enjoy.

Eliminating these practices would come at a real cost – the economic evidence bears this out. A study published in the *Journal of Political Economy* found that personalized pricing delivers lower prices for the majority of consumers.⁶ In fact, digital coupons alone save the average household \$1,465 each year,⁷ before even counting the benefits of loyalty programs and targeted promotions. Eliminating these practices would disproportionately impact low-income families, especially those with children, who are among the most active deal-seekers and coupon users.⁸ Finally, separate research in the *Journal of Business Ethics* found that personalized pricing can have progressive distributional effects, directing savings toward the consumers who benefit most from discounts.⁹

In a state where the cost of living already puts enormous pressure on family budgets, personalized deals and targeted discounts help ease that burden. **Rather than protecting consumers from unfair pricing, SB 2036 would take away the very tools that help Hawaii families cope with high costs.**

SB 2036's exemptions concede the value of personalized pricing but fail to protect pro-consumer uses

SB 2036's exemptions – for publicly disclosed promotions, group discounts, and loyalty programs – implicitly concede what the evidence makes clear: personalized pricing delivers real value to consumers. But the bill cannot reconcile this concession with its sweeping prohibition, because **there is no clean way to ban "surveillance pricing" without also banning the personalized savings that families depend on.** Similar algorithmic pricing bills have been introduced in legislatures across the country, and they have repeatedly stalled or failed to advance for precisely this reason: **broad bans on personalized pricing inevitably capture the very savings tools that consumers rely on.**

The bill's loyalty program exemption highlights this tension. SB 2036 allows discounted prices through loyalty, membership, or rewards programs in which consumers have voluntarily enrolled. But while the bill exempts loyalty programs, the proviso at the end of

⁶ Jean-Pierre Dube and Sanjog Misra, "Personalized Pricing and Consumer Welfare," *Journal of Political Economy* 131, no. 1 (2023): 131-189, <https://www.journals.uchicago.edu/doi/10.1086/720793>.

⁷ Elyssa Kirkham, "Study: Skipping Online Coupons Could Cost You \$1,465 Per Year," CouponFollow, last modified May 19, 2021, <https://couponfollow.com/research/coupon-data-study>.

⁸ Stephanie M. Noble et al., "Coupon Clipping by Impoverished Consumers: Linking Demographics, Basket Size, and Coupon Redemption Rates," *International Journal of Research in Marketing* 34, no. 2 (2017): 553-571, <https://doi.org/10.1016/j.ijresmar.2016.08.010>.

⁹ Jerod Coker and Jean-Manuel Izaret, "Progressive Pricing: The Ethical Case for Price Personalization," *Journal of Business Ethics* 173, no. 3 (2021): 387-398, <https://doi.org/10.1007/s10551-020-04545-x>.

subsection (b) prohibits using data collected under the exemption for "individualized price setting." Furthermore, the bill does not define "loyalty program," nor does it clarify how this restriction interacts with the exemption itself. That ambiguity can have devastating consequences for consumers: **if businesses cannot confidently determine whether personalizing a loyalty offer constitutes prohibited "individualized price setting," many will err on the side of caution and scale back the personalized features that make loyalty programs worth joining in the first place.**

Beyond loyalty programs, many of the personalized savings consumers enjoy today require no enrollment at all. Cart abandonment discounts, re-engagement offers, location-based deals, targeted seasonal promotions – consumers receive all of these without signing up for any program. **Under SB 2036, these practices would simply be prohibited, eliminating everyday savings for any consumer who has not joined a formal program, and creating a barrier to personalized deals that does not exist in any other state.**

For these reasons, **I respectfully urge you to oppose SB 2036.**

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Singleton". The signature is fluid and cursive, with a large initial "R" and a stylized "S".

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

February 9, 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 Lamosao
Vice Chair, Committee on Labor and Technology
Hawaii State Capitol
415 South Beretania Street, Room 225
Honolulu, HI 96813

RE: SB 2036 (Keohokalole) - Surveillance Pricing - Oppose

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

On behalf of TechNet, we respectfully oppose SB 2036, which would prohibit “surveillance pricing” and deem violations an unfair or deceptive act or practice.

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.

While we share the Legislature’s commitment to protecting consumers from unfair pricing practices, SB 2036 is drafted so broadly that it would outlaw widely accepted, consumer-friendly pricing practices, undermine competition, and create significant legal uncertainty across Hawaii’s economy.

Overbroad Definition Sweeping in Routine Pricing Practices

SB 2036 defines “surveillance pricing” as offering or setting a customized price based, in whole or in part, on information collected through “electronic surveillance technology,” which itself is defined expansively to include virtually any tool capable of gathering information about a consumer’s behavior, characteristics, or location. As a result, the bill risks sweeping in routine, long-standing pricing practices unrelated to unfair discrimination or price gouging, such as logging a person’s address.

The use of consumer location data as “surveillance pricing” raises concerns about the bill’s impact on routine, non-discriminatory pricing practices. While the bill appears to permit price differences based solely on costs associated with providing goods or services to different consumers, we encourage clearer statutory language related to transactional routing or store-specific pricing from the definition of “surveillance pricing,” so businesses can continue to surface accurate prices based on geographic location without legal uncertainty.

Similarly, broad definitions essentially assume that any price difference, including discounts, is unlawful unless a business can affirmatively prove it falls within narrow exceptions. This structure places lawful, pro-consumer conduct on the defensive and creates uncertainty that discourages competitive pricing.

Unclear and Expansive Data Restrictions

SB 2036 further provides that any information collected in connection with permitted discounts may be used solely to administer those discounts and for no other purpose, including profiling or targeted advertising. This restriction fails to account for how modern businesses responsibly use aggregated or contextual data to manage inventory, forecast demand, and compete on price—uses that do not raise concerns about individualized consumer harm.

Treating broadly defined or aggregated data as inherently problematic risks regulating well beyond the bill’s stated intent and conflicts with established privacy frameworks that distinguish between personal data and non-identifying information.

Threat to Consumer-Friendly Discounts and Affordability

Although SB 2036 includes limited exemptions for cost-based pricing, loyalty programs, and certain group discounts, those exemptions are narrow and conditioned on strict use limitations. In practice, many common discounts—such as retention offers, localized promotions, or tailored incentives based on prior interactions—could be chilled or eliminated due to litigation risk.

Experience in other states shows that when businesses face uncertain liability tied to routine discounting, the rational response is to stop offering discounts altogether. This outcome harms affordability and disproportionately impacts consumers who rely on discounts to manage rising costs.

UDAP Enforcement Creates Disproportionate Liability Risk

Most concerning, SB 2036 deems any violation to be an unfair or deceptive act or practice. This UDAP-style enforcement mechanism significantly increases risk by lowering liability thresholds and exposing businesses to enforcement and litigation under ambiguous standards.

When paired with sweeping definitions and unclear exemptions, UDAP enforcement invites inconsistent application and retrospective second-guessing of ordinary

pricing decisions. As seen in other jurisdictions, this structure creates litigation pressure that bears little relationship to actual consumer harm and further incentivizes businesses to abandon beneficial pricing practices.

A More Targeted Path Forward

We agree that targeting unfair price increases based on sensitive personal information is an appropriate policy goal. However, as urged in other states, a workable approach should be narrowly tailored to address price increases tied to impermissible data use—without banning discounts, loyalty programs, or competitive pricing strategies that benefit consumers.

Unfortunately, SB 2036's broad definitions, limited and uncertain exemptions, and UDAP enforcement framework would have far-reaching consequences that extend well beyond the bill's stated purpose. By chilling lawful discounts and undermining competitive pricing, the bill risks increasing costs while creating substantial legal uncertainty for businesses.

For these reasons, we respectfully oppose SB 2036 and urge the Legislature to pursue a more targeted, evidence-based approach that protects consumers without undermining affordability and competition.

If you have any questions regarding our position, please contact Robert Boykin at rboykin@technet.org or 408.898.7145.

Sincerely,



Robert Boykin
Executive Director for California and the Southwest
TechNet



February 8, 2026

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<https://www.deloitte.com/us/en/services/consulting/articles/brand-loyalty-program-consumer-behavior.html>.

³ F. Watty, "Supermarket Choice Due to Membership in Its Loyalty Program in U.S. 2023 by Income," Statista, Jan. 11, 2024, <https://www.statista.com/statistics/1548425/supermarket-choice-due-to-loyalty-program-by-income-us/>.

⁴ Marigold, "2024 Global Consumer Trends Index" (2024),

<https://www.globenewswire.com/en/news-release/2024/01/16/2809582/0/en/Annual-Marigold-Global-Consumer-Trends-Index-Reveals-Need-for-Brands-to-Deliver-on-Data-Privacy-and-Personalization-to-Win-Customer-Loyalty.html>.

⁵McKinsey & Company, "The Value of Getting Personalization Right--or Wrong--Is Multiplying" (2021),

<https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/the-value-of-getting-personalization-right-or-wrong-is-multiplying>.

encompass virtually any digital data collection. And because the prohibition triggers whenever pricing is based "in whole or in part" on such data, even minimal use of consumer information in a pricing decision could expose a business to liability. The bill does not distinguish between manipulative practices and ordinary, data-driven discounts that consumers know and enjoy.

Eliminating these practices would come at a real cost – the economic evidence bears this out. A study published in the *Journal of Political Economy* found that personalized pricing delivers lower prices for the majority of consumers.⁶ In fact, digital coupons alone save the average household \$1,465 each year,⁷ before even counting the benefits of loyalty programs and targeted promotions. Eliminating these practices would disproportionately impact low-income families, especially those with children, who are among the most active deal-seekers and coupon users.⁸ Finally, separate research in the *Journal of Business Ethics* found that personalized pricing can have progressive distributional effects, directing savings toward the consumers who benefit most from discounts.⁹

In a state where the cost of living already puts enormous pressure on family budgets, personalized deals and targeted discounts help ease that burden. **Rather than protecting consumers from unfair pricing, SB 2036 would take away the very tools that help Hawaii families cope with high costs.**

SB 2036's exemptions concede the value of personalized pricing but fail to protect pro-consumer uses

SB 2036's exemptions – for publicly disclosed promotions, group discounts, and loyalty programs – implicitly concede what the evidence makes clear: personalized pricing delivers real value to consumers. But the bill cannot reconcile this concession with its sweeping prohibition, because **there is no clean way to ban "surveillance pricing" without also banning the personalized savings that families depend on.** Similar algorithmic pricing bills have been introduced in legislatures across the country, and they have repeatedly stalled or failed to advance for precisely this reason: **broad bans on personalized pricing inevitably capture the very savings tools that consumers rely on.**

The bill's loyalty program exemption highlights this tension. SB 2036 allows discounted prices through loyalty, membership, or rewards programs in which consumers have voluntarily enrolled. But while the bill exempts loyalty programs, the proviso at the end of

⁶ Jean-Pierre Dube and Sanjog Misra, "Personalized Pricing and Consumer Welfare," *Journal of Political Economy* 131, no. 1 (2023): 131-189, <https://www.journals.uchicago.edu/doi/10.1086/720793>.

⁷ Elyssa Kirkham, "Study: Skipping Online Coupons Could Cost You \$1,465 Per Year," *CouponFollow*, last modified May 19, 2021, <https://couponfollow.com/research/coupon-data-study>.

⁸ Stephanie M. Noble et al., "Coupon Clipping by Impoverished Consumers: Linking Demographics, Basket Size, and Coupon Redemption Rates," *International Journal of Research in Marketing* 34, no. 2 (2017): 553-571, <https://doi.org/10.1016/j.ijresmar.2016.08.010>.

⁹ Jerod Coker and Jean-Manuel Izaret, "Progressive Pricing: The Ethical Case for Price Personalization," *Journal of Business Ethics* 173, no. 3 (2021): 387-398, <https://doi.org/10.1007/s10551-020-04545-x>.

subsection (b) prohibits using data collected under the exemption for "individualized price setting." Furthermore, the bill does not define "loyalty program," nor does it clarify how this restriction interacts with the exemption itself. That ambiguity can have devastating consequences for consumers: **if businesses cannot confidently determine whether personalizing a loyalty offer constitutes prohibited "individualized price setting," many will err on the side of caution and scale back the personalized features that make loyalty programs worth joining in the first place.**

Beyond loyalty programs, many of the personalized savings consumers enjoy today require no enrollment at all. Cart abandonment discounts, re-engagement offers, location-based deals, targeted seasonal promotions – consumers receive all of these without signing up for any program. **Under SB 2036, these practices would simply be prohibited, eliminating everyday savings for any consumer who has not joined a formal program, and creating a barrier to personalized deals that does not exist in any other state.**

For these reasons, **I respectfully urge you to oppose SB 2036.**

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Singleton". The signature is fluid and cursive, with a large initial "R" and a stylized "S".

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



Testimony to the Senate Committee on Labor and Technology
Wednesday, February 11, 2026, 9:30 AM
Conference Room 229

To: The Honorable Brandon Elefante, Chair
The Honorable Rachele Lamosao, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League (HCUL), the local trade association for 45 Hawaii credit unions, representing over 879,000 credit union members across the state.

HCUL offers the following comments regarding SB 2036, Relating to Surveillance Pricing. This bill prohibits surveillance pricing, or differential pricing based on information collected with electronic surveillance technology, and deems surveillance pricing an unfair and deceptive practice.

HCUL appreciates the Legislature's intent to protect consumers from unfair or discriminatory pricing practices. However, we respectfully raise concerns that the bill's definitions may be overly broad and could unintentionally capture legitimate practices used in mortgage underwriting and real property valuation. Mortgage lending and appraisal processes rely on tools and technologies used to ensure accuracy, consistency, and compliance with federal safety and soundness standards. These technologies are not used to personalize prices based on consumer behavior in a retail or advertising sense, but rather to evaluate credit risk. Their purpose is to promote fair, objective, and consistent lending practices while helping keep mortgage credit available and affordable.

If the definition of "surveillance pricing" is interpreted to include the use of electronic data tools in financial underwriting or property valuation, the bill could create significant uncertainty for credit unions and other mortgage lenders.

Thank you for the opportunity to provide comments on this important issue.



LATE

February 11, 2026

Chair Brandon Elefante
Senate Committee on Labor and Technology
Conference Room 225
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: SB 2036

Dear Chair Elefante, Vice Chair Lamosao, and members of the Senate Committee on Labor and Technology,

On behalf of Expedia Group, a family of brands that includes Expedia.com, Hotels.com, and Vrbo, I am writing to share comments on SB 2036 which prohibits surveillance pricing.

Expedia Group supports consumer protections including prohibiting sellers from adjusting prices for consumers based on personal characteristics or increasing prices based on shopping or browsing history. We appreciate that SB 2036 specifically allows for discounts based on loyalty programs and other defined promotions. However, the way the bill is drafted could inadvertently have the effect of prohibiting sellers from offering discounted prices to consumers, including Hawai'i residents.

Expedia Group does not adjust prices (up or down) based on personal characteristics like race, gender, age, income, or religion. Similarly, it does not adjust prices (up or down) using any off-site or off-app browsing data or search history from other websites. Expedia does not use browsing, search, or purchase history from its own sites to *increase* prices.

Expedia Group does, however, offer a range of *discounts* for travelers on its websites.

Expedia Group sometimes works with local and state governments, economic development organizations, and tourism organizations to offer discounts to travelers based on their destination or location of origin. For example, Expedia Group could contract with a tourism organization in Las Vegas to offer discounts to travelers from Hawai'i. These discounts for Hawai'i travelers could arguably be prohibited by this bill.

Similarly, Expedia sometimes offers targeted promotions and discounts to consumers. For example, if a traveler from Hawai'i has been searching for a hotel in Las Vegas, but has yet to



book, Expedia Group could offer that traveler a discount on that hotel. These beneficial discounts could arguably be prohibited by the proposed language.

To ensure that Hawai'i consumers continue to benefit from a wide range of discounts, we recommend changing the definition of "surveillance pricing" to read:

"Surveillance pricing" means offering or setting a customized, **increased** price for a good or service for a specific consumer or group of consumers based in whole or in part, on information collected through electronic surveillance technology.

We also recommend changing the language at the end of Chapter 481B subsection (b) to read:

provided that any information collected in connection with paragraphs (1), (2), (3), or (4) shall be used ~~solely~~ for the purpose of offering or administering the applicable discount, cost-based pricing, or loyalty program, and shall not be used **to increase consumer prices** for any other purpose, including profiling, targeted advertising, or individualized price setting.

We appreciate and support the legislature's work to protect consumers from increased and malicious pricing structures, and we would greatly appreciate the opportunity to work with you to ensure that the legislation does not unintentionally increase prices for Hawai'i residents.

Thank you for your consideration. We welcome the opportunity to answer any questions you may have or to provide additional information that might aid your deliberations.

Thank you,

Mackenzie Chase
Regional Manager, Hawai'i
Expedia Group

CC: Sen. Jarrett Keohokalole



SB-2036

Submitted on: 2/8/2026 2:27:06 PM

Testimony for LBT on 2/9/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Olderr	Individual	Support	Written Testimony Only

Comments:

Surveillance pricing is predatory and exploitative, and it has no place in the markets in Hawaii or in the United States.

SB-2036

Submitted on: 2/10/2026 10:46:42 AM

Testimony for LBT on 2/11/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Noelle Lindenmann	Individual	Support	Written Testimony Only

Comments:

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

I am submitting testimony today in support of SB2036.

Surveillance pricing, by its nature, is not only predatory and a privacy nightmare, but will only contribute to the cost of living in the state. It has the potential to be weaponized against working-class people by making it more and more expensive to stay in poverty. This bill will prevent the personal data of everyday people in this state from being extorted, but it will do the bare minimum to keep Hawaii affordable for those who live here.

Mahalo for this opportunity to testify.

Noelle Lindenmann, Kailua-Kona

SB-2036

Submitted on: 2/10/2026 11:06:00 AM

Testimony for LBT on 2/11/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Karen Takamine	Individual	Support	Written Testimony Only

Comments:

Aloha,

We are submitting testimony in SUPPORT of SB2036. Surveillance pricing, by its nature, is not only predatory and a privacy nightmare but will only contribute to the rising cost of living in Hawaii. Its potential to be weaponized against working-class people by making it more and more expensive to stay in poverty. This bill will prevent the personal data of everyday people here in Hawaii from being extorted, but it will do the bare minimum to keep Hawaii affordable for those who live here.

SB-2036

Submitted on: 2/10/2026 12:33:35 PM

Testimony for LBT on 2/11/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Irwin Jiang	Individual	Support	In Person

Comments:

I'm here to oppose surveillance pricing, particularly where it intersects with public subsidies, consumer protection, and fair market competition.

Surveillance pricing is not simply “dynamic pricing.” It is the individualized setting of prices based on behavioral surveillance, inferred willingness to pay, and opaque algorithms—often without the consumer’s knowledge or meaningful consent.

Supporters argue that this practice increases efficiency or benefits price-sensitive consumers. But in reality, surveillance pricing does not identify need. It identifies how much pressure a specific consumer can tolerate. That distinction matters.

Markets rely on shared prices to function. When prices become individualized and opaque, consumers lose the ability to compare, coordinate, or even understand whether competition is working. That is not innovation—it is the erosion of price transparency.

This concern becomes much more serious when companies receiving public subsidies or regulatory benefits are allowed to privately decide—through undisclosed surveillance systems—who actually receives the benefit of lower costs. Public subsidies are granted to serve a public purpose, not to be filtered through proprietary algorithms that selectively re-inflate prices.

Allowing firms to self-regulate this process creates a moral hazard. Risk is socialized through subsidies and public infrastructure, while gains are privatized through individualized extraction. That undermines both consumer trust and fair competition.

I also want to address the idea that disclosure or opt-out mechanisms are sufficient. If a pricing practice truly benefits consumers, it should withstand transparency and require affirmative opt-in. Opt-out regimes rely on consumer ignorance and asymmetric information, which is precisely the harm consumer protection laws are meant to address.

Finally, surveillance pricing structurally advantages large, vertically integrated firms with massive data access and computing power. Smaller businesses cannot compete with black-box pricing systems, which means this practice accelerates consolidation rather than competition.

In short, surveillance pricing replaces market pricing with individualized extraction. It undermines transparency, distorts competition, and allows public benefits to be quietly diverted into private rent-seeking.

I urge the committee to reject this approach and preserve clear, fair, and accountable pricing standards that protect both consumers and healthy markets.

Thank you for your time.

SB-2036

Submitted on: 2/10/2026 12:49:24 PM

Testimony for LBT on 2/11/2026 3:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Darian Perov	Individual	Support	Written Testimony Only

Comments:

I am submitting testimony in support of SB2036. Surveillance pricing, by its nature, is not only **predatory** and a **privacy nightmare** but will only contribute to the **rising cost of living** in Hawai'i. Its potential to be weaponized against working-class individuals by making it more and more expensive to stay in poverty. Trickle down poverty is more real than reagan's trickle down economics will ever be. This bill will prevent the personal data of everyday people here in Hawai'i from being **extorted**, but it will do the bare minimum to keep Hawai'i affordable and safe for those who live here.