

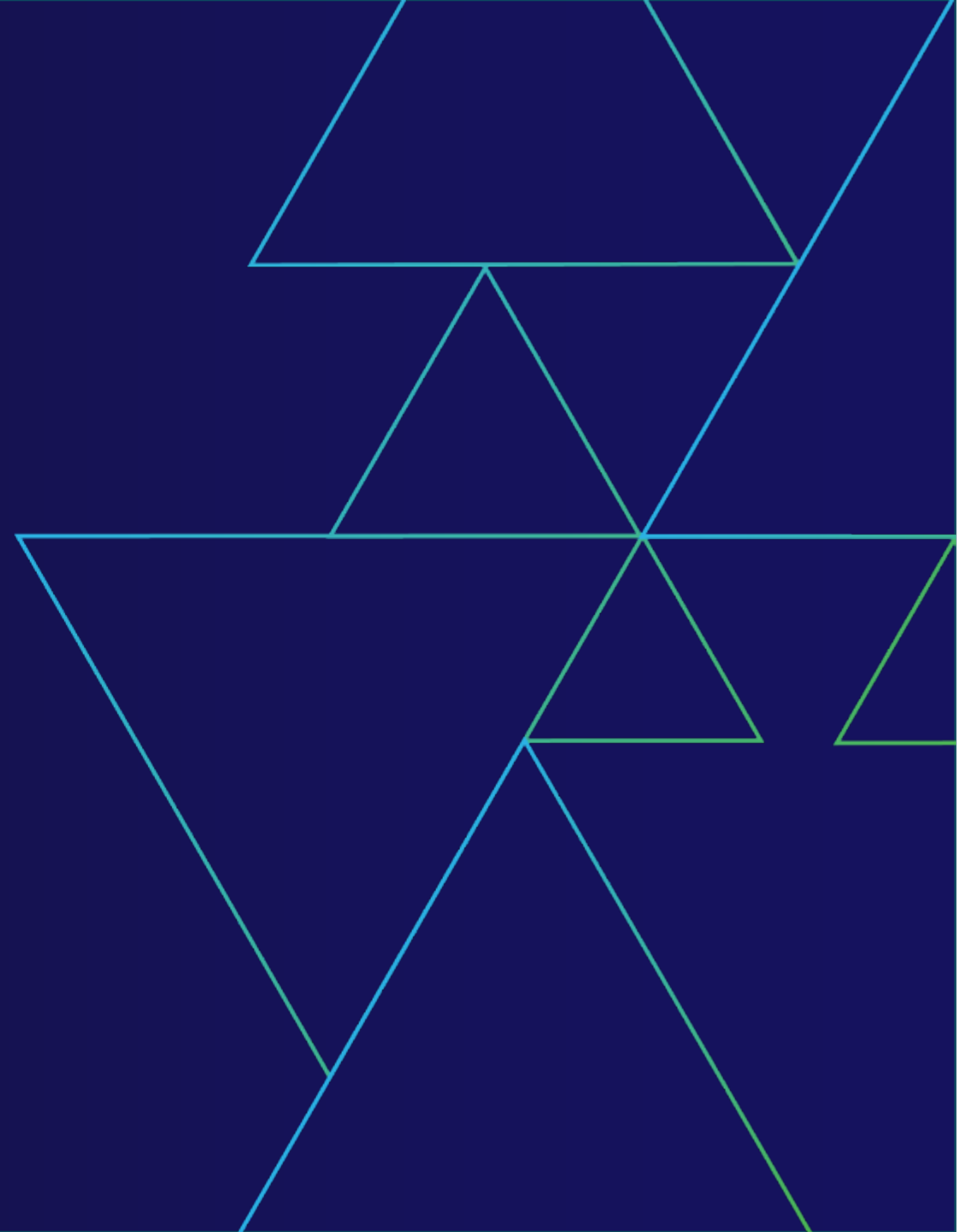


Surveillance Pricing: The Modern Landscape

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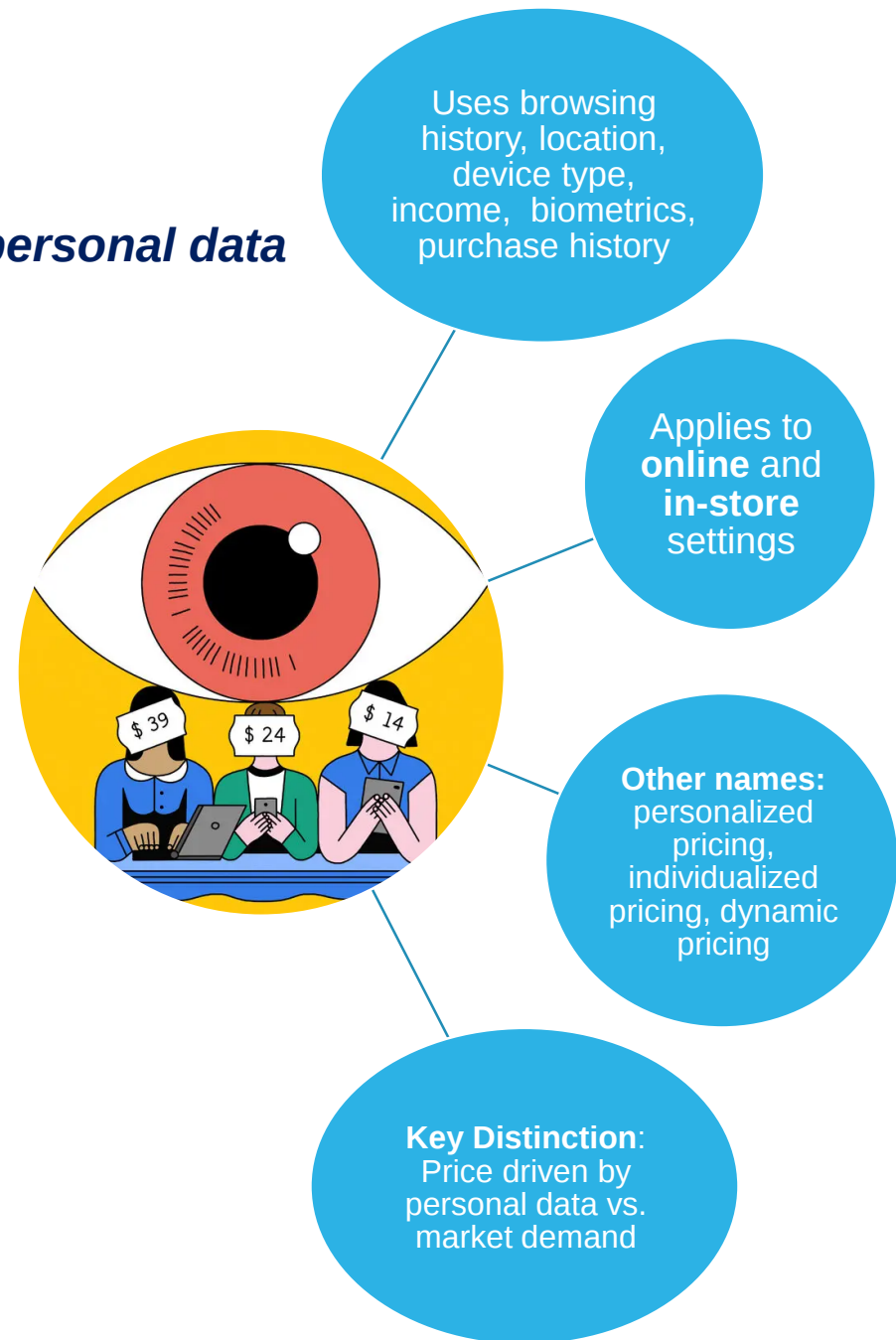
Agenda

1. What is surveillance pricing anyway
2. What's prohibited, what's allowed
3. Enforcement and class action risk
4. Let's discuss use cases
5. Risk mitigation measures

What Is Surveillance Pricing

Customized or individualized price set using consumer personal data

The practice of establishing a customized price for a consumer good or service that is specific to a consumer or group based, in whole or in part, on the consumer's personal data.



Concerns Driving Focus On Surveillance Pricing

Fear that personal data will be used to personalize the price a consumer pays, typically in the context of *increasing* the price someone pays, but legislation often is not limited to such circumstances

Location Data

GPS, IP address, store proximity

Browsing History

Pages visited, time on site, search terms

Demographics

Age, income, zip code, household

Mouse Movements

Hover patterns, click behavior, scroll

Shopping Carts

Abandoned items, cart-to-purchase ratio

Device Type

Phone model, OS, screen size

Emotional State

Inferred urgency, frustration signals

Purchase Intent

Price sorting, comparison behavior

Financial Sensitivity

Coupon usage, discount-seeking patterns

Source: FTC Surveillance Pricing Study, January 2025

Surveillance Pricing Laws: Now and Upcoming

Legal Taxonomy: Three Regulatory Models

Prohibition

- Bans personal-data pricing, with key exceptions

MD, NY (S 8623), CT

Disclosure

- Requires consumer notice
- Broad retail application
- “THIS PRICE WAS SET...”

NY (current § 349-a), CT

ESL Restrictions

- Targets physical retail
- Bans real-time increases
- Error-correction exceptions

VT (H 942), NJ, WA

State Surveillance Pricing Bills: Comparative Overview

Jurisdiction/ Bill	Primary Regulatory Target	Status (Effective)	Scope	Exception Model	Private Right of Action
MD HB 895	Prohibition (definitional limits) Bans narrowly defined “dynamic pricing” using personal data	Enacted (Oct. 1, 2026)	Food retailers (15K+ sq ft) + delivery services	Definitions-based (excludes general fluctuations); Conduct-based (promos, cost-justified, error corrections); Program-based (loyalty, subscriptions)	No. AG only. (45-day cure)
CT HB 5563	Hybrid (prohibition + disclosure) Ban for retail & delivery / disclosure for all others	Enacted (July 1, 2027)	All retail sellers + 3P delivery (ban); any person in CT (disclosure)	Conduct-based (retention, cost/delivery diffs, supply/demand); Program-based (loyalty, veterans/seniors); Entity-based (insurance, FCRA, ECOA)	No. AG only.
NY § 349-a	Disclosure -- requires notice; does not prohibit the practice	In effect (Nov. 10, 2025)	All entities in NY	Entity-based (insurance, financial inst./GLB); Program-based (subscription contracts); Definitions-based (excludes transport fares by mileage/duration)	No. AG only.
NY OFPA (S 8623B)	Prohibition (broad) -- ban on personalized algorithmic pricing	Awaiting Gov. (180 days post-sign)	All entities	Definitions-based; Program-based; Conduct-based	No. AG only.
VT H 942	ESL Restriction (technology-specific) -- bans ESL price increases when store open, as well as real time dynamic pricing	Enacted (July 1, 2026)	All retail establishments	Conduct-based; Definitions-based; Program-based (clearance/limited-time)	No. Sec. of Ag.

Source: Legislative tracking as of June 2026

How do surveillance pricing bills address discounts?

Across surveillance-pricing legislation, discount exceptions generally appear in two ways: as a definitional carve-out from “surveillance pricing” or as a fact-based defense.

Defined out of the law

- Certain discounts excluded from the definition or treated as conduct outside the prohibition

Affirmative-defense

- Discount permitted only if the company can show the price difference is based on qualifying criteria

Core requirements across models

- True discount, not hidden markup
- Clear, public eligibility terms
- Loyalty/rewards programs acceptable but only if meeting certain conditions



Maryland: Protection From Predatory Pricing Act

HB 895 — Signed April 28, 2026 by Gov. Wes Moore | **Effective October 1, 2026** (No private right of action)

First state to restrict surveillance pricing, specifically in the food industry

Scope & Prohibitions

Applies to:

- Food retailers (15,000+ sq ft, grocery stores)
- Third-party delivery service providers

Prohibits:

- Using personal data to set higher prices for individual consumers
- Using protected class data to deny accommodation/service

Enforcement & Exceptions

- Mandatory 45-day cure period
- Penalties: Up to \$10K/violation, \$25K/repeat violators
- Enforcement by AG Consumer Protection Division
- No authorization for a private right of action (expressly stated)

Exceptions:

Loyalty programs, promotional pricing, temporary discounts, retention-related pricing, rewards, cost-based differences

Connecticut: Disclosure + Prohibition Hybrid

Public Act 26-130 | Signed June 4, 2026 | **Effective July 1, 2027** (No private right of action)

Prong 1: Surveillance Pricing Ban

- Retail sellers + delivery services
- Prohibits:
 - customizing prices, *other than to establish a discounted price*, for a consumer or group of consumers...
 - Collected through technology instore/online *and*
 - based in whole or part on personal data acquired from a third party

Prong 2: If engaged in surveillance pricing, must provide mandatory disclosure:

- **“THIS PRICE WAS INCREASED...USING YOUR PERSONAL DATA”**
- Only when price exceeds bona fide market price
- Applies to any person doing business in CT

Key Exceptions:

- Retention/acquisition/reengagement/cross-selling discounts
- Cost, location, delivery, time, supply/demand differences
- Publicly disclosed uniform discounts; loyalty (affirmative enrollment)
- Price corrections; outage resets

Note: Replaces § 11 of CT SB 4 (PA 26-64) (Signed May 27, 2026)

New York: One Fair Price Act

S 8623 — Passed Both Chambers June 5, 2026 | **Awaiting signature** | **Eff. 180 days post-sign** (No private right of action)

What it does: Amends GBL § 349-a (existing algorithmic pricing disclosure law) and replaces the disclosure requirement with ban on surveillance pricing, subject to exceptions.

Prohibits:

- Price changes resulting from surveillance pricing
 - But “nothing in this section shall be interpreted to affect prices or discounts except to prohibit surveillance pricing”*
- Advertising or publishing labels, displays, or offers that use surveillance pricing, and no custom discounts unless offered uniformly to all if disclosed criteria met
- Processing personal data for surveillance pricing

Scope and Enforcement:

- All goods/services; all entities in New York
- Includes liability for service providers if showing “reckless disregard” for entity’s prohibited conduct
- Civil penalties: \$5K first violation, \$20K subsequent

Narrow Exceptions:

- BUT...**
- Bona fide discounts/custom discounts permitted (narrowly-defined terms; strict limits)
 - Requires affirmative opt in to loyalty/rewards program
 - Discount offered and clearly disclosed to all in local geographic market or common distribution channels
 - Prior purchase history can’t be combined or cross-referenced with any other personal information except enrollment in program

California – Surveillance Pricing Act

AB 2564 (Ward) – Introduced Feb. 20, 2026 | Passed Assembly | In Senate Committee (but hearing canceled by author)

If enacted, California would be the largest consumer market to regulate surveillance pricing.

AB2564

Applies to:

- Retailers (any seller making retail sales of tangible personal property)
- Third-party delivery service providers

Prohibits:

- Setting a customized price based on “personally identifiable information collected through electronic surveillance technology.”

Enforcement & Exceptions

Penalties:

- Up to \$12,500/violation
- Up to \$37,500 + revenues earned from violation for intentional violations
- No express cure period
- AG Consumer Protection Division enforcement
- PRA for injunctive relief

Exceptions:

Loyalty programs, retention related pricing, broad group discounts, retention-related pricing, rewards, cost-based differences

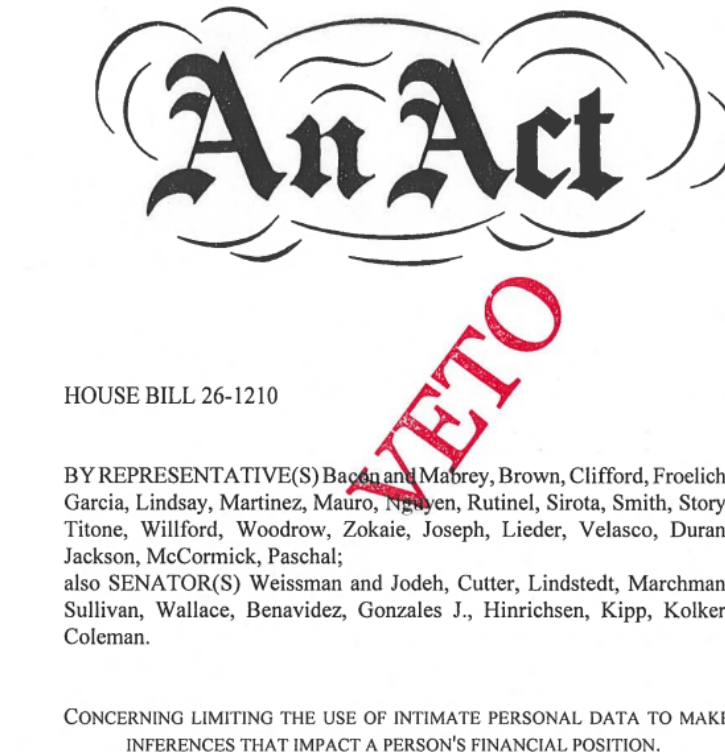
Colorado HB 26-1210

HB 1210 — **VETOED** by Gov. Polis June 2, 2026 | Passed House 39-24; Senate 19-15

Broadest scope: all industries + wages + private right of action. Vetoes but informative template

What Was Different

- Covered prices and wages across all industries
- Targeted PWSAs using surveillance data
- “Substantial factor” test for individualized outcomes
- Worker data accuracy and correction rights
- Private right of action



Keep in Mind: Electronic Shelf Label Legislation Too

“Virtually no surge pricing before or after ESL adoption” — only 0.0042% of products had temporary price increases¹

The Concern

- Enables demand/time of day pricing
- AI + ESLs raise fair-pricing/privacy fears
- Could enable per-shopper pricing

Industry Response (FMI)

- No personal data collection or tracking
- 92% of price changes occur overnight
- Reduce waste; improve accuracy



Active ESL Legislation

- **VT H 942:** Prohibits ESL price increases when open to public
- **NY A 9396B:** Would ban ESLs in grocery/pharmacies
- **NJ SB 3612:** 1-year moratorium on ESLs
- **WA HB 2481:** Would impose 4-year ESL moratorium

¹Stamatopoulos et al. (May 2025), SSRN [5271491](#)

Vermont: ESL and Real-Time Dynamic Pricing

H 942 — Signed by Gov. June 18, 2026 | Enacted | Effective July 1, 2026 (No private right of action)

Targeted prohibition on ESL-enabled and real time dynamic price increases. Does not address personal-data-driven pricing

Electronic Shelf Labels: “An electronic display that retailers can use to present a product’s name, price, unit price, and other information on a small wired or wireless panel, usually on the edge of a store shelf.”

Targeted Retail Rule

- All retailers selling consumer goods
- Prohibits ESL price increases **while store is open**
- Excludes made-to-order food and restaurants

What It Does NOT Do

- Does not ban ESLs outright
- Does not regulate personal-data pricing
- Does not create algo-pricing disclosure duty

What's around the corner?

~100 bills pending | 30 + states | Growing patchwork

- Prohibition models gaining ground over disclosure-only
- Sector-specific (food) vs. economy-wide scope
- AG-only enforcement standard; private action provisions scrutinized (CO vetoed)
- Discount safe harbors universal but definitions vary
- ESL restrictions as separate legislative track

Enacted in 2026

Connecticut HB 5563
Maryland HB 895

Likely to Pass / Pending

NY One Fair Price Act (S 8623)
Illinois HB 4248 | VT H 942 | CA
AB 2564

Enforcement and Litigation Risk

Enforcement Risk

*Risk lens: Privacy + UDAP + civil rights + competition:
Overall, concern over how AI and personal data are
used to adjust prices paid by consumers*

FTC Signals

- 6(b) orders to intermediaries; 250+ retail clients
- No final report under FTC Chair Ferguson

Congressional Scrutiny

- **Pallone Inquiry:** 25 companies; AI/ML, opt-outs, protected class data
- **Gottheimer:** 8 companies received an inquiry; introduced the No Rigged Grocery Prices Act

State Attorneys General

- New York
 - Consumer alerts, One Fair Price Advocacy
 - Purposed: \$5K first / \$20K subsequent + restitution
- California
 - Sweep: retail, grocery, hotel pricing data
 - Purpose limitation theory; up to \$7.5K / viol.
- Connecticut
 - Application of existing antitrust and unfair and deceptive laws on surveillance pricing issues

Class Action Risk

Early Test Case

- *Phillips v. JetBlue* (E.D.N.Y., Apr. 2026)
- Claims: ECPA, NY GBL § 349, NY GBL § 396
- Theory: undisclosed trackers + third-party pricing vendors

Legal Theories

- Federal/state wiretap (ECPA); state UDAP
- Privacy notice/consent gaps; vendor data sharing
- Antitrust hub-and-spoke (shared algorithms)

INTRODUCTION

1. This is one of the very first class actions in American history regarding dynamic surveillance pricing and the surreptitious use of consumer data in order to set pricing based on consumer behavior.

Complaint, Phillips v. JetBlue (Apr. 22, 2026)

Discovery Risk

- Pricing logic, data flows, vendor arrangements
- ECPA statutory damages: \$100/day or \$10k min.
- Discrimination/proxy-pricing allegations

Class Action Risk

 **Chariot Claims - formerly ClaimClam**
Sponsored

Booked travel on Priceline? Recent allegations suggest IP addresses and device info may have been shared without clear disclosure 🔍

Booked travel through Priceline in recent years? Reports suggest that certain tracking tools on the website and app may have captured browsing and purchase activity and shared it with third parties without users' knowledge. If you believe you were affected, you may be eligible for up to \$750 in potential compensation.

Do you think your **online browsing activity** may have been shared with third parties without clear consent by **priceline**?

You could potentially be eligible for up to **\$750**.

 **Chariot** Claims
Chariot Claims helps you file claims against corporate wrongdoings and get the maximum compensation you deserve. Chariot Claims is not affiliated with the law firm. The case law and the potential a settlement, and a settlement is not guaranteed. If there is a settlement in the future, the option to file a claim issued for this may become available.

 **Ahdoot & Wolfson, PC**
Sponsored

Ahdoot Wolfson is investigating a potential class action against JetBlue. It has been reported that JetBlue is collecting and transmitting the sensitive personal information of its website visitors to unauthorized third-party data trackers, as well as setting pricing based on their browsing behavior and personal data. If you purchased airline tickets from the JetBlue website, you may be entitled to compensation.



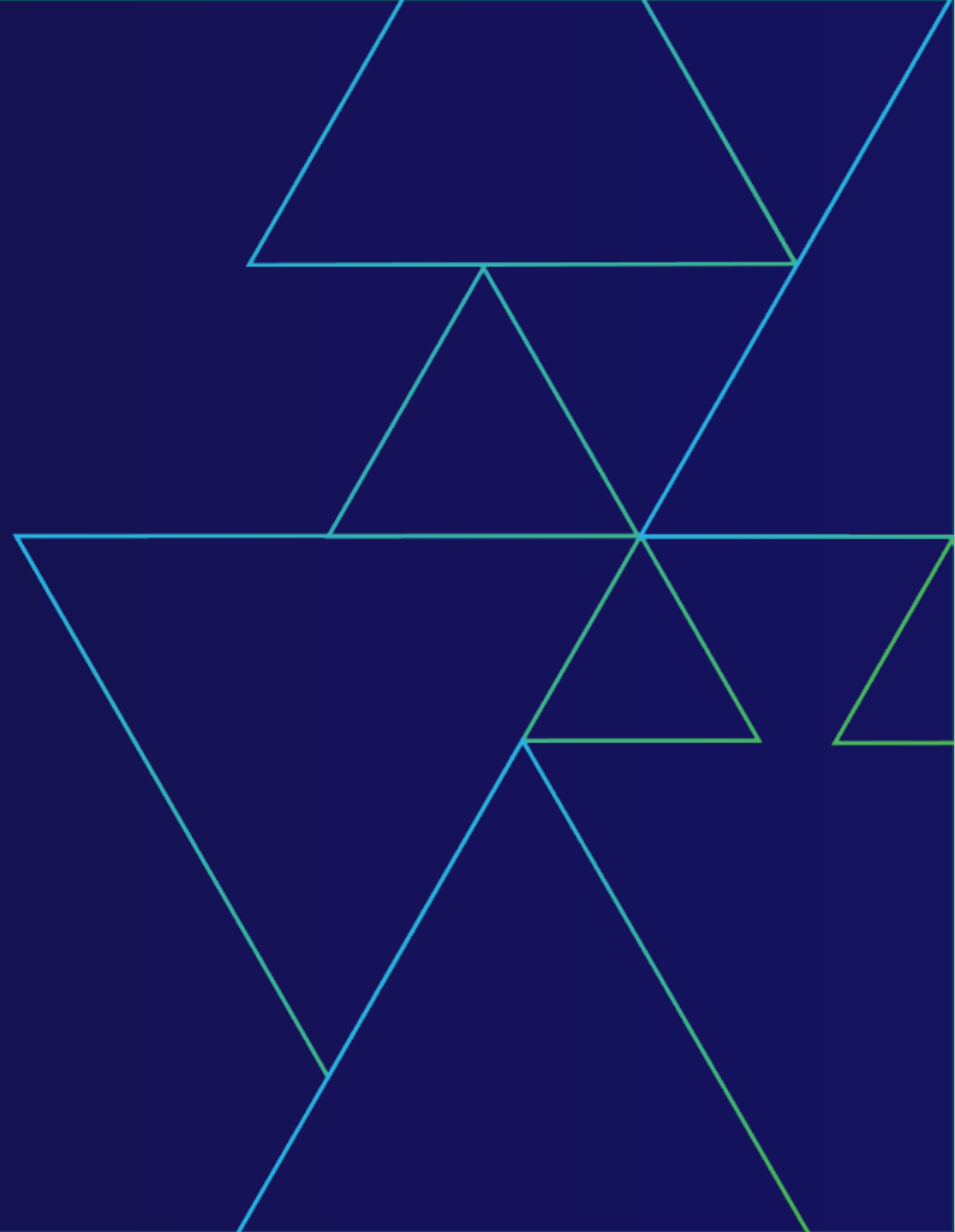
JetBlue

PRICE PROFILING

YOU MAY BE ENTITLED TO COMPENSATION. CHECK IF YOU QUALIFY.

 **LEARN MORE** 

Let's talk hypotheticals



Parking Lot Price Switch

PRICE DIFFERENTIATION

Different price online, in-store location?



AT HOME

AT-HOME PRICE

\$3.49

Per Item



Check online.
Order from home.



VS.



IN THE PARKING LOT

PARKING LOT PRICE

\$4.99

Per Item



Scan. Order.
We'll bring it out.

HIGHER
PRICE
+\$1.50
PER ITEM!



Same Product. What Factors Drive Riskier Price Changes?

Price Personalization in Travel

The illustration is split into two panels. The left panel shows a man in a business suit at an airport, representing 'Traveler A'. He is looking at a laptop and a smartphone, both displaying a flight price of \$489 for NYC to LAX from July 14-18. Above him, a blue speech bubble contains the same flight details and price. To his left, a vertical list of icons and labels identifies his profile: 'Frequent searches' (magnifying glass), 'Business traveler' (briefcase), and 'Loyalty member' (star). The right panel shows a woman in a green shirt at a home desk, representing 'Traveler B'. She is also looking at a laptop and a smartphone, both displaying a flight price of \$429 for the same route and dates. Above her, a green speech bubble contains the same flight details and price. To her right, a vertical list of icons and labels identifies her profile: 'New user' (person with plus), 'No loyalty history' (bar chart), and 'Budget browsing' (tag). A central white speech bubble between the two panels states: 'Same trip. Same dates. Different user profile.'

Traveler A Profile:

- Frequent searches
- Business traveler
- Loyalty member

Traveler B Profile:

- New user
- No loyalty history
- Budget browsing

Flight Details (Both): NYC → LAX, Jul 14-18

Traveler A Price: \$489

Traveler B Price: \$429

Summary: Same trip. Same dates. Different user profile.

Loyalty-Profile Pricing for Household Essentials

INFERRED NEED & URGENCY

Same items. Same time. Different inferred willingness to pay.



STANDARD SHOPPER



VS.



PROFILED SHOPPER



Same Products. **Hidden Inferences. Higher Default Price.**

The Zip Code Markup

HIGHER PRICES FARTHER FROM COMPETING STORES

NEAR COMPETITORS ← → **FAR FROM COMPETITORS**

NEAR COMPETITORS

- 2 competing stores within 5 miles
- More nearby options
- Lower price

Printer Paper

PREMIUM MULTI-PURPOSE PAPER
500 SHEETS 8.5" x 11"

\$29
Near Competitors Price

Far From Competitors

Printer Paper

PREMIUM MULTI-PURPOSE PAPER
500 SHEETS 8.5" x 11"

\$39
Far From Competitors Price

Same product. Same day. Different distance to competitors.

Same Day

Same Product

Different Price

Competing Stores Nearby

Few Nearby Competitors

Compliance Risk Mitigations

1. Scoping

Big picture assessment of how these laws/bills apply to your pricing and sale practices, loyalty/rewards programs, advertising and privacy obligations

2. Data Inputs

Know what data business is using to determine pricing, including price increases and discounts, what technology is being used, including AI-based tools and data inputs for AI tools

3. Pricing Logic

Does output vary by individual or groups of individuals based on personal data

4. Output Classification

Base pricing changes vs. discounts (and even on discounts, who's left out and how)

5. Jurisdiction Mapping

Which laws apply based on sector, location, effective dates

6. Disclosures

What notices are required, to whom, in what form?

7. Third-Party / Vendor Risk

Review vendor tools, data flows, contracts, audit rights, and sub-processors.

8. Landscape Monitoring

Monitor legislative, enforcement, and litigation trends for new pricing-risk themes.

What's Next?

- Additional clarity (or patchwork) from legislation and enforcement activity
- Developing your pricing and ESL narrative (how would you explain to an enforcer)
- Distinguishing the hypothetical from the real-world examples
- AG/FTC/Legislative engagement
- Educating the business of policy shift and risk implications

Thank you.



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How Legislatures Regulate “Surveillance Pricing”

Jurisdiction	Model	Scope	Status	Effective
Maryland HB 895	Prohibition	Food retailers (15K+ sq ft)	Enacted	Oct. 1, 2026
Connecticut HB 5563	Hybrid	All retail + delivery	Enacted	July 1, 2027
New York § 349-a	Disclosure	All entities	In effect	Nov. 10, 2025
NY One Fair Price Act	Prohibition	All entities	Awaiting Gov.	180 days post-sign
Vermont H 942	ESL Restriction	All retail	Enacted	July 1, 2026
Illinois HB 4248	Prohibition	All entities	Concurrence	1 yr. post-sign
Colorado HB 1210	Prohibition	All + wages	VETOED	N/A