

# NAAG Annual Conference 2026: Pricing & Priorities

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April 26, 2026

This April, State Attorneys General, their staff, and members of the public gathered to discuss a variety of topics at the National Association of Attorneys General (NAAG) Annual Conference. Panel topics included, among others, intoxicating hemp, addressing illegal sales of tobacco and nicotine products, combating online scams with AI, developments in state pre-merger notification laws, and addressing the opioid overdose problem in schools. We break down one panel in more detail below, “Behind the Price Tag: Giving Consumers Clarity in the Data Driven Pricing Ecosystem.”

## Behind the Price Tag: Giving Consumers Clarity in the Data Driven Pricing Ecosystem

Utah Attorney General Derek Brown headed this panel consisting of representatives of the National Retail Federation, Electronic Privacy Information Center (EPIC), and Chamber of Progress, as well as Sundeeep Iyer, Executive Assistant Attorney General at the New Jersey Attorney General’s Office. General Brown began by providing his own definitions and examples for four terms:

1. *Dynamic pricing*, where pricing goes up and down based on supply and demand, and may adjust immediately (e.g., gasoline).
2. *Surge pricing*, a variation of dynamic pricing where prices are tied to times of peak demand (e.g., rideshare pricing that goes up after a concert).
3. *Surveillance pricing* or *personalized pricing*, where prices are based on the individual consumer (e.g., health insurance).
4. *Algorithmic pricing*, which “matters to a lot of AGs,” and involves pricing structures utilizing algorithms. AG Brown noted that, through algorithmic pricing, competitors may end up charging the same price even though they have not colluded with each other and questioned whether antitrust laws are sufficient for this world of pricing.

**Misconceptions.** AG Brown asked each panelist to describe misconceptions regarding these types of pricing. The Chamber of Progress panelist noted that although the term “surveillance pricing” gives the impression that businesses have troves of data on individuals, regulators have not found evidence of this. Rather, pricing data is used for mundane things like personalized coupons. He said the impulse to regulate because it “could be scary” may undermine competitive purposes.

New Jersey’s representative Iyer agreed that at some level all pricing is data driven and determined by market forces, but said there are differences based on industry. Regardless of pending legislation, he explained, states have existing enforcement tools such as UDAP and state data privacy laws that

continue to apply to new concepts and technology. New legislation would just provide additional tools for states and clarity for businesses.

EPIC's panelist said surveillance pricing does not always come in the form of charging different base prices but could instead present through loyalty or rewards programs based on inferences of what a customer is likely to pay. The National Retail Federation said there are misconceptions about loyalty programs, which are designed to build customer trust in a competitive marketplace based on selling on volume.

**Current legislation.** New Jersey described the current laws in this area in California, New York, (see our latest blog post [here](#)) and Maryland (awaiting governor's signature). Maryland's law goes further to ban certain types of surveillance pricing. AG Brown questioned if disclosure of the use of algorithmic pricing (like New York's law) solves the issue or not. Iyer said it is a matter of what we are trying to solve, whether it is affordability or whether consumers are informed about their rights. He said depending on the end goal, transparency might be one avenue.

AG Brown noted potential First Amendment issues, and again questioned whether a disclosure solves the problem or just "freaks people out." The National Retail Federation brought First Amendment litigation on the New York law because it required a specific sentence in specific font, which the panelist explained could end up having no meaning. Operationally, it could also be a problem where wording is required on price tags. It also could become "annoying," according to the National Retail Federation representative, like cookie banners. The EPIC speaker disagreed with the National Retail Federation panelist, saying disclosures at the point of sale are simple, understandable, and important, where privacy policies have failed.

**Where does it go too far?** AG Brown posed the following hypothetical—where do businesses go too far in collecting and individualizing data, or when is surveillance pricing a good thing? He noted that it is one thing if businesses know his zip code, but another if they can estimate BMI or other personal items of information. The Chamber of Progress representative said though the line is difficult to draw, he looks at whether the data is being used in a competitive way to offer a discount on a price or to extract value to increase price. Iyer echoed this, noting that AGs use existing antitrust laws to address price fixing—such as in rental pricing with the [RealPage lawsuit](#)—where companies allegedly used algorithms to collude on sharing nonpublic information that was not an approximation of market price. AG Brown noted that with antitrust price fixing actions, companies typically have a meeting of the minds but questioned what happens if there is a hub and spoke where companies outsource pricing to a third party and end up with parallel results driven by technology. Iyer said that in RealPage, management companies were on notice that their data would be used in setting a model using other nonpublic data and said he would not be surprised if AG offices look at other competitive markets to evaluate whether they may also have price fixing.

The EPIC panelist said the right question is whether pricing practices match or defy consumer expectations, and whether they extract wealth or provide bona fide discounts or perks. For example, loyalty programs that lower prices are helpful, but he asserted that loyalty programs may also be used to have an anticompetitive impact on consumers. The National Retail Federation representative pointed out that loyalty programs are voluntary, and if a business does things customers don't like, the customers will vote with their feet. According to him, retailers don't build a giant dossier - they know information such as clothing sizes to serve deals.

**Where should AGs focus?** AG Brown asked the panel about potential UDAP claims, for example where market efficiencies may go too far. Iyer said where there is an information gap for consumers

and regulators, transparency is important to understand how tools are being used. This may require significant resources from enforcement perspective. He also noted that privacy laws may be an avenue for addressing surveillance pricing where the practices do not accord with disclosures the company is making (citing California's recent enforcement sweep). Further, state AGs could have a role to play in educating consumers. He explained that states will also play a more active role in enforcement because the FTC halted its 2024 surveillance pricing inquiry.

The Chamber of Progress panelist said there is strong evidence that tools can serve consumers by enhancing competition, but in different context can have different effects. He suggested AGs focus on a specific harm they are trying to eradicate, not the mechanism itself so as not to disrupt pro-competitive effects of technology. The EPIC speaker echoed this some, asking, where do you distinguish a loyalty perk from a penalty? The National Retail Federation panelist said that though the topic is not top of mind for consumers, they do have expectations for data. He suggested not taking tools away that help small businesses and drive prices lower, but rather using the existing consumer protection framework to protect from egregious practices such as using data based on protected class.

## NAAG Conference Takeaways:

After another successful NAAG conference, we look forward to next month's [Consumer Protection Conference](#) where we will hear more from staff on enforcement priorities. Until then:

- Continue monitoring State AG meetings for additional insights into state enforcement priorities.
- States will continue to focus on protecting children, from dangerous substances to allegedly harmful technologies.
- Consider education to consumers and State AGs on new or complex business practices - if appropriate.
- On pricing, don't wait for further "surveillance pricing" or similar statutes. Review practices now for transparency and consumer expectations to address potential UDAP concerns (see our other suggestions [here](#)).