

Mapping The Shifting Landscape Of Algorithmic Pricing Laws

By **Lindsey Tonsager, Jayne Ponder and Irene Kim** (October 1, 2026, 5:33 PM EDT)

On Sept. 25, the Federal Trade Commission closed the submission period for comments on a proposed enforcement policy statement on personalized pricing. The proposed policy provided the FTC's preliminary view on what personalized pricing practices could be deceptive or unfair, and when an affirmative disclosure could be expected by the commission.[1]

The agency's action follows New Jersey's enactment on July 23 of the first surveillance pricing law to give consumers a private right of action. It also prohibits the use of surveillance pricing to determine or vary the sale price of groceries and other foodstuffs based on personal data.[2]

Although the New Jersey law's enforcement mechanism is unique, the prohibition itself is not — the state follows other states that have targeted surveillance pricing, also referred to as algorithmic pricing, personalized pricing or dynamic pricing.

Algorithmic pricing generally refers to the use of consumer personal data and algorithmic tools to set individualized prices, and in some cases, coupons, discounts and other promotions. New York, Connecticut and Maryland have also enacted laws addressing such pricing practices.[3]

The challenge for businesses is significant given the laws vary widely in scope, structure and obligations imposed on the covered entities. For instance, while some target specific sectors, such as food retail or grocery transactions,[4] others apply broadly to any retail transaction.[5]

This article provides practical takeaways for businesses to navigate the growing patchwork of state laws that may capture routine pricing practices. As discussed further below, a company should consider whether it is a regulated entity or acts in the regulated sector, whether it is using algorithms to set prices or discounts, and if certain exceptions may apply.

Overview of the Legal Landscape

Several states have enacted or are actively considering algorithmic pricing legislation, each taking a somewhat different approach.



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Sector-Specific: New Jersey, Maryland

State legislatures in New Jersey and Maryland have passed laws that outright prohibit the use of algorithmic pricing for groceries and food retailers. New Jersey's Fair Price Protection Act, A4085, prohibits the use of surveillance pricing to determine or vary the sale price of groceries and other foodstuffs based on personal data.[6]

The statute broadly defines surveillance pricing as any action where the price is determined, adjusted, optimized, or recommended by an algorithm or automated system based on personal data and that results in price variation for consumers.[7]

Similarly, Maryland's Protection from Predatory Pricing Act, or H.B. 895, prohibits food retailers and third-party delivery service providers from engaging in so-called dynamic pricing, which is defined as the discriminatory practice of offering or setting a personalized price based on the consumer's personal data, to set higher prices for covered grocery items, among other prohibitions.[8]

Disclosure: New York

In contrast to this sector-specific approach targeting food and groceries, New York's approach would more broadly target any sector that engages in covered pricing activities. The existing New York law requires businesses that use personalized algorithmic pricing to set prices to clearly display a disclosure, with personalized algorithmic pricing defined as pricing that fluctuates due to an algorithm that uses personal data.[9]

However, New York may soon be moving toward outright prohibition, after the state legislature passed the One Fair Price Act, or S. 8623B/A. 9349B.[10]

If signed by the governor, this bill would amend the current statute, replacing the disclosure requirement with an outright prohibition on using personal data for surveillance pricing to set or adjust a price for consumers.[11]

The law would recognize exceptions, such as for a genuine reduction in price to a consumer who affirmatively and knowingly enrolls in a loyalty program, provided that the discount is clearly and conspicuously disclosed to all members and any tiers of bona fide discounts based on prior purchase history data are not paired or combined with data other than enrollment in the loyalty program.

Hybrid Approach: Connecticut

States like Connecticut have taken a hybrid approach in combining both a prohibition of algorithmic pricing and imposing a disclosure requirement. Connecticut's law prohibits the use of algorithmic pricing by retail sellers and third-party delivery services for any reason other than to establish a discounted price, with limited exceptions.[12]

Businesses that engage in algorithmic pricing for any reason other than to establish a discounted price must include a disclosure stating, "This price was increased using your personal data." [13]

The Connecticut definition of surveillance pricing excludes certain activities, such as offering different prices due to justifiable differences in costs incurred in providing the consumer good or service.[14]

Federal Developments

In addition to state legislative activity, there have been several federal developments. The One Fair Price Act, S. 3387, was introduced in the Senate last December and would prohibit offering different prices to consumers for the same, or substantially similar, product or service using, informed by, or based on, in whole or in part, certain personal data — defined as surveillance data.[15]

The Senate Judiciary Committee held a hearing on the practice in August.[16] The legislative activity follows a January 2025 FTC staff report publishing initial findings from its pricing study, and Andrew Ferguson, the FTC's chairman, said this week that the commission may launch a new study on personalized pricing practices.[17]

The FTC also requested public comments on a proposed enforcement policy statement on personalized pricing, which were due in late September. The proposal generated a significant number of public comments, attracting over 4,500 submissions, many of which highlighted concerns about the scope and administrability of potential regulation and enforcement in this area.

For instance, business associations raised concerns that the policy statement does not adequately describe what practices are covered, and whether the commission would distinguish between a markup and a discount. Similarly, commenters also urged the commission to preserve long-standing practices, such as discounts, loyalty and rewards programs, and other marketwide practices, while contending that existing legal frameworks, including state privacy laws, may provide an appropriate framework for evaluating the use of personal data in pricing.

These comments underscore some of the challenges with regulating personalized pricing practices and complying with the law given the uncertainty surrounding other pricing and promotional practices.

Overarching Challenges With These Laws

Algorithmic pricing will likely continue to be a legislative and regulatory priority in the future, both at the state and federal level. In addition to the FTC's policy statement on personalized pricing and request for comments, members of Congress are discussing perceived concerns with surveillance pricing and legislative proposals for a national framework.[18]

The current patchwork of algorithmic pricing laws raises significant policy and practical challenges both for businesses and consumers. Recognizing some of these concerns, Colorado Gov. Jared Polis vetoed the Colorado General Assembly's algorithmic pricing bill, H.B. 26-1210, which would have prohibited using personal data to determine prices for consumers as well as wages for workers.[19]

The governor specifically cited the "breadth of the bill" and its potential to capture "any technology that incidentally influences a price or wage amount." [20]

Sweeping in Routine and Beneficial Pricing Practices

Some of the current algorithmic pricing laws are overbroad and may capture legitimate pricing strategies that enhance market efficiency, expand access to goods and services, or lower costs for consumers. Algorithmic pricing more broadly involves the adjustment of price based on supply, demand, time and other variables.

This pricing strategy is not ubiquitously harmful, and research has revealed benefits to consumers. For instance, research on ride-hailing platforms has found that so-called surge pricing increases driver supply and reduces passenger wait times, improving overall market efficiency compared to a randomized pricing mechanism.[21]

Farewell Discounts and Coupons?

Another difficulty with the current suite of broadly drafted algorithmic pricing laws is that they may inadvertently capture standard promotional practices that are good for consumers, such as personalized coupons, loyalty rewards and targeted discounts.

Businesses may choose to stop offering these promotions given the complexity of complying with the patchwork of state laws. For instance, while the Connecticut law recognizes cost or location differences as factors for different prices, the New York amendments do not include such exceptions.

Recognizing this dilemma, some states are carving out discount practices as exceptions to these laws.

For instance, the amended version of California's algorithmic pricing bill, A.B. 2564, includes an exception for cart abandonment discounts, i.e., discounts where the retailer sends a code to complete a purchase based on what's in a customer's online cart.[22] However, discount exceptions are not uniform across jurisdictions.

Disclosure Mandates May Confuse Rather Than Inform

Additionally, for the laws that require businesses to disclose when they are using algorithmic pricing, these obligations risk confusing consumers and creating a misleading impression that all algorithmic pricing is harmful.

Consumers who see the notice that the price was set using algorithmic pricing may incorrectly believe that they are being charged an unfairly high price, even when in practice, the algorithm resulted in a lower price, discount or other pricing mechanism that advantages consumers.

Practical Business Takeaways

Given the complexity and variation in algorithmic pricing laws, businesses face challenges in complying with these requirements and maintaining consumer trust. Below are some considerations for businesses.

Determine whether you are a covered entity.

The threshold question for any business is whether it falls within the scope of a particular state's algorithmic pricing law. A business should carefully map its operations against the specific definitions in each applicable jurisdiction. For instance, a firm that does not sell groceries would generally fall outside the scope of New Jersey or Maryland's laws.

Distinguish between personalized prices and discounts.

The next question for the business is whether its pricing activity constitutes a personalized price or

merely a discount from a price, which may fall under a statutory exception.

This may be beneficial for states like Connecticut that carve out discounted prices for a consumer to retain the consumer, cross-sell an item or reengage a lapsed customer. However, New York's framework notably focuses on any price set using personalized algorithmic pricing and recognizes a different set of exemptions.

Consider applicable exceptions.

Each jurisdiction includes its own set of exceptions, and a business should conduct a careful review of available carveouts for each pricing strategy. Key categories of exceptions to consider include the following, though there may be additional restrictions on the use of data or activities within these exemptions to consider as well:

- Food and beverages for immediate consumption;[23]
- Objective cost differences;[24]
- Loyalty programs;[25]
- Supply and demand considerations;[26] and
- Promotional pricing discounts.[27]

Conclusion

As states continue to enact legislation around algorithmic pricing, businesses will continue to face challenges in ensuring their pricing strategies are compliant with these laws. A business should consider whether it is a covered entity in certain jurisdictions, whether it is discounting prices or setting personalized prices, and whether potential exceptions apply.

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[1] Press Release, Fed. Trade Comm'n, FTC Seeks Comment on Enforcement Policy Statement Regarding Personalized Pricing (Aug. 19, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-seeks-comment-enforcement-policy-statement-regarding-personalized-pricing>.

[2] A.4085, 222d Leg., Reg. Sess. § 3(a) (N.J. 2026).

[3] See N.Y. Gen. Bus. Law § 349-a(2); H.B. 5563, Gen. Assemb., Jan. Sess. § 11(c)(1) (Conn. 2025); HB 895, 2026 Leg., Reg. Sess. § 13–321(B)(2) (Md. 2026).

[4] See, e.g., HB 895, 2026 Leg., Reg. Sess. § 13–321(A)(4) (Md. 2026); A. 4085, 222d Leg., Reg. Sess. § 3(a) (N.J. 2026).

[5] See, e.g., N.Y. Gen. Bus. Law § 349-a(2).

[6] A.4085, 222d Leg., Reg. Sess. § 3(a) (N.J. 2026).

[7] Id. § 2.

[8] H.B. 895, 2026 Leg., Reg. Sess. § 13-321(A)(3), (B)(2) (Md. 2026).

[9] N.Y. Gen. Bus. Law § 349-a(1)(f).

[10] S. 8623-B, 248th Leg., Reg. Sess. (N.Y. 2025-2026).

[11] Id.

[12] H.B. 5563, Gen. Assemb., Jan. Sess. § 11(c)(1) (Conn. 2025).

[13] Id. § 11(b)(1).

[14] Id. § 11(c)(2)(B).

[15] One Fair Price Act of 2025, S. 3387, 119th Cong. (2025).

[16] Your Data, Their Profit: The Consumer Cost of AI Surveillance Pricing, S. Comm. on the Judiciary, Subcomm. on Crime & Counterterrorism (Aug. 4, 2026), <https://www.judiciary.senate.gov/committee-activity/hearings/your-data-their-profit-the-consumer-cost-of-ai-surveillance-pricing>.

[17] <https://www.mlex.com/mlex/articles/2531078/ftc-to-launch-personalized-pricing-study-chairman-says>; Press Release, Fed. Trade Comm'n, FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices (Jan. 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>.

[18] Press Release, Sen. Josh Hawley, ICYMI: Hawley Exposes Predatory AI Surveillance Pricing, Consumer Data Harvesting in Subcommittee Hearing (Aug. 5, 2026), <https://www.hawley.senate.gov/icymi-hawley-exposes-predatory-ai-surveillance-pricing-consumer-data-harvesting-in-subcommittee-hearing/>.

[19] H.B. 26-1210, 75th Gen. Assemb., 2d Reg. Sess. (Colo. 2026).

[20] Veto Letter from Jared Polis, Governor of Colo., to Colo. House of Representatives, H.B. 26-1210 (June 2, 2026), <https://drive.google.com/file/d/1JER5O4KJpS4JvixecVKq24I-8Q7U2mf-/view>.

[21] Juan Camilo Castillo, Who Benefits From Surge Pricing?, 93 *Econometrica* 1811, 1825 (2025), <https://doi.org/10.3982/ECTA19106>.

[22] A.B. 2564, 2025-2026 Reg. Sess. § 7201(b) (Cal. 2026).

[23] See A. 4085, 222d Leg., Reg. Sess. § 2 (N.J. 2026) (definition of "groceries and other foodstuffs").

[24] See, e.g., H.B. 895, 2026 Leg., Reg. Sess. § 13-321(B)(1)(II) (Md. 2026) ("setting a different price based on objective costs attributable to providing consumer goods or services to different consumers, such as a difference in price caused by shipping costs or taxes based on a consumer's physical location").

[25] See id. § 13-321(B)(1)(I) ("using promotional pricing offers, loyalty program benefits, or other temporary discounts or changes to pricing related to retention of existing customers").

[26] H.B. 5563, Gen. Assemb., Jan. Sess. § 11(c)(2)(B) (Conn. 2025) ("Establishing for, or offering to, different consumers different prices for the same consumer good or consumer service due to (i) justifiable differences in the costs incurred [e.g., differences in consumers' physical locations] ... (ii) justifiable temporal differences [e.g., due to price fluctuations based on supply and demand]").

[27] See id. § 11(c)(2)(C) (exception for publicly discounted prices and uniform terms and conditions that can be satisfied by any consumer for a promotional event or by all consumers within a broadly defined group).