ELECTRONIC FRONTIER FOUNDATION

July 28, 2026

Board of Supervisors
City and County of San Francisco

Submitted electronically

Dear Members of the Board of Supervisors of the City and County of San Francisco :

We are writing to express our disappointment at the Board's unwillingness to advance a resolution in support of state bill A.B. 2564, authored by Asm. Chris Ward, which would ban the use of surveillance pricing in California.

EFF supports A.B. 2564. Surveillance pricing is just one part of a much larger problem: corporations maximizing their profits by invading our privacy. The all-too-common business model is to systematically harvest, collate, and store as much of our personal data as possible, and then monetize it through use and sale.

Specifically, surveillance pricing is harmful in many ways. First, this practice invades our privacy. Vendors offer us a price only after scrutinizing our personal data about what we've clicked online and where we've traveled offline. Surveillance pricing also incentivizes all businesses to harvest as much of our personal data as possible. Some businesses will use it for their own surveillance pricing. Other businesses, which might not themselves use it this way, will sell it to data brokers, which in turn will sell it to others for use in surveillance pricing.

Second, surveillance pricing can disparately burden people of color and other vulnerable groups. For example, surveillance pricing led to Asian people paying more for test prep services, older people paying more for dating services, and people living in non-white neighborhoods paying more for a ride home.

Third, surveillance pricing is opaque. Many people don't even know when they've been subjected to it. Those that do often cannot determine the unknown reasons for the price they're offered. As a result, consumer advocates will be less able to publish meaningful price comparisons to help consumers make choices. And regulators will be less able to identify unlawful pricing practices.

Defenders of this practice sometimes argue that surveillance pricing benefits consumers because it can lead to lower prices. But while some consumers some of the time might get lower prices because of surveillance of their personal data, other consumers will get higher prices, as shown by the examples above. Some recent studies indicate there will be losers and winners based on factors like whether a consumer is willing or able to switch products. Who loses or wins also will turn on the accuracy of the underlying data – yet surveillance pricing is often based on false information.

In any event, both losers and winners of this price discrimination are harmed by surveillance. Privacy is a human right, not a property to be bought and sold on a market. For this reason, EFF has long opposed pay-for-privacy schemes, in which a company charges a higher price to a customer who refuses to submit to processing of their personal data. Thus, even if surveillance pricing sometimes leads to lower prices (and, again, it often will not), we oppose it as just another way that corporations try to make customers pay for their privacy.

When it comes specifically to A.B. 2564 the bill is clear: "a retailer shall not engage in surveillance pricing." The banned practice is defined as: "[i] a customized price for a good for a specific consumer or group of consumers, [ii] based, in whole or in part, on personally identifiable information collected through electronic surveillance," including if that information is "acquired from a third party." In other words, "surveillance pricing" is a customized price based on personal information.

The bill has three exemptions where surveillance pricing is allowed. These are:

- First, for price differences "based solely on costs associated with providing the good to different consumers."
- Second, for a discount offered to a consumer who is taking steps to terminate a service.
- Third, for a discount, conspicuously posted on a retailer's website, that is uniformly available based on (1) criteria anyone can meet, such as signing up for a mailing list, (2) membership in a broadly defined group, such as seniors, or (3) participation in a loyalty program.

These exemptions, particularly the third, address concerns from businesses, including small businesses, who wish to retain their existing loyalty programs, or create loyalty programs. They also give businesses flexibility to use some of their existing strategies for customer retention. Between its definition and these exemptions, the bill provides clear guidance for businesses of all sizes about what practices allow them to serve their customers without unlawfully surveilling them.

Surveillance pricing is very similar to online behavioral advertising, a business practice that EFF has urged governments to ban. Both practices incentivize all businesses to collect as much of our personal data as possible, in order to later monetize it. Both practices lead some businesses to collate and store our data into dossiers about us for later use. Both practices use these surveillance-based dossiers to manipulate and limit our economic choices, by altering the advertisements and prices we see online.

Finally, there is little to no risk that A.B. 2564 will have unintended consequences that hurt internet users' speech or technological innovation. The bill does not address any particular type of technology. It does not limit any collection, retention, or disclosure of personal data. It limits only one very narrow and easily defined use of data: use to set a customized price. And it has three broad exemptions, as we outline above.

For 36 years, the Electronic Frontier Foundation has been advocating for technology use that promotes innovation and privacy from our San Francisco office. We hope our city, which has demonstrated in the past its willingness to protect residents from the excesses of surveillance, would do the same again. For these reasons, we urge the commission to reconsider the resolution in support of the legislation.

Sincerely,

Director of State Affairs
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