



August 3, 2026

The Honorable Kathy Hochul
Governor of New York
New York State Capitol Building, Executive Chambers
Albany, NY 12224

Re: S 8623/A 9349- “Prohibits the use of surveillance pricing” (Chapter Amendment Request)

Dear Governor Hochul:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully request chapter amendments to S 8623/A 9349.¹ CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.² Proposed regulations on the interstate provision of digital services could significantly impact CCIA members.

While our member companies support transparency and consumer protection, the current language of S 8623/A 9349 creates an unworkable regulatory environment that would likely result in higher prices and stifle the data-driven efficiencies that keep prices low for consumers. These proposed amendments are designed to preserve the bill’s intent while making it workable and appropriately scoped.

Broad Definitions Harm Beneficial Innovation

S. 8623/A. 9349 prohibits “surveillance pricing,” broadly defined as using an algorithm and personal data to offer different consumers different prices for the same goods or services. Although the bill excludes specified “bona fide” discounts, its definition of personal data encompasses any information that identifies or could reasonably be linked, directly or indirectly, to a consumer or device. The bill also permits personalized discounts only within detailed statutory categories and restricts the combination of purchase-history information with other consumer data. As a result, the legislation could reach beneficial loyalty, customer-acquisition, reengagement, and personalized-promotion practices that use ordinary retail data but do not increase the reference price or otherwise disadvantage consumers. By treating these practices as potentially unlawful “surveillance pricing” unless they satisfy prescriptive exceptions, the bill risks conflating harmful individualized pricing with consumer-friendly personalization.

¹ S. 8623-B, A. 9349-B, 2025–2026 Reg. Sess. (N.Y. 2026). Del. H.B. 453, 153d Gen. Assemb., § 1 (2026) (proposed Del. Code Ann. tit. 6, ch. 25S, § 2501S(12)).

² For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.



CCIA cautions against conflating predatory “surveillance pricing” with what is, in reality, standard digital pricing. For decades, retailers have relied on customer data to offer promotions.³ Whether it is a paper coupon at a physical checkout or a data-driven discount delivered via a mobile app, the goal remains the same: rewarding loyalty and helping consumers save on the products they need most. By failing to distinguish between these intuitive, industry-normative practices and ill-defined concepts of price discrimination, this bill inadvertently targets the tools that make groceries and household essentials more affordable.

Personalized Discounts Help Small Businesses and Increase Consumer Welfare

A common misconception is that pricing technology only benefits “big-box” retailers. In reality, these tools are a great equalizer. Many marketplaces and third-party vendors provide sophisticated analytics to small and medium-sized businesses at low cost.⁴ This allows a local boutique or independent grocer to access the same market intelligence as a global corporation, enabling them to respond quickly to market shifts and competitor pricing, offer targeted discounts to maintain their local customer base, and maintain healthy inventory levels to ensure products are available when customers need them.⁵

Retailers operate on thin margins where efficiency is of paramount importance to turn a profit. Variable pricing enables seamless markdowns on seasonal goods and perishable items nearing expiration. For retailers, dynamic pricing can allow them to increase customer satisfaction through lower prices and personalized choices, optimize prices for different products, and better respond to shifting consumer demands.⁶ Without these tools, retailers face increased waste and higher operational costs, which inevitably put upward pressure on base prices for every consumer.

Studies show how lower-income households typically gain the greatest benefits from dynamic pricing.⁷ Pricing technology enables retailers to offer real-time, personalized discounts to consumers, fostering greater innovation and stimulating competition.⁸ When rivals can quickly identify customers, they can offer poaching discounts that force incumbents to lower prices or lose the sale, ultimately benefiting consumers.⁹

³ Catherine Fox, dunnhumby, *Making the case for dynamic pricing in grocery*, (Aug. 6, 2025), <https://www.dunnhumby.com/resources/blog/price-value/en/dynamic-pricing-in-grocery/>.

⁴ CLEARomni, *What is a Multi-Vendor Marketplace? Benefits & How It Works* (Feb. 7, 2025), <https://clearomni.com/blog/what-is-a-multi-vendor-marketplace>.

⁵ Mark Hamstra, *AI tools drive widespread efficiencies for small retailers*, Supermarket News (Nov. 5, 2025), <https://www.supermarketnews.com/independents-regional-grocers/ai-tools-drive-widespread-efficiencies-for-small-retailers>.

⁶ Accenture, *Widening Gap Between Consumer Expectations and Reality in Personalization Signals Warning for Brands*, Accenture Interactive Research Finds (May 3, 2018), <https://newsroom.accenture.com/news/2018/widening-gap-between-consumer-expectations-and-reality-in-personalization-signals-warning-for-brands-accenture-interactive-research-finds> (“91 percent of consumers are more likely to shop with brands that recognize, remember, and provide them with relevant offers and recommendations.”).

⁷ Juan Camilo Castillo, *Who Benefits from Surge Pricing?*, University of Pennsylvania Department of Economics (Nov. 8, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3245533; see also Jose Betancourt et. al., *Dynamic Price Competition: Theory and Evidence from Airline Markets*, National Bureau of Economic Research (Aug. 2022), <https://www.nber.org/papers/w30347>.

⁸ Puzl, *The Future of Grocery Pricing: Dynamic Pricing Strategies with AI*, (Jun. 30, 2025), <https://www.puzl.ai/post/the-future-of-grocery-pricing-dynamic-pricing-strategies-with-ai#viewer-5hl0d155>.

⁹ Trevor Wagener, *Personalized Discounts, Public Gains: The Welfare Case for Algorithmic Pricing*, CCIA (Jul. 8, 2025) <https://ccianet.org/articles/personalized-discounts-public-gains-the-welfare-case-for-algorithmic-pricing/>.

Economic Harm to New York Businesses

As an evolution of pricing practices such as coupon clipping and “buy-one-get-one” specials,¹⁰ dynamic pricing is gaining worldwide adoption across online and offline sectors and industries,¹¹ including hospitality,¹² concert tickets,¹³ and ridesharing,¹⁴ providing many procompetitive benefits, including substantial efficiency gains and reduced costs for businesses and consumers alike.¹⁵ Dynamic pricing can reduce barriers to entry for small entrants, increasing competitiveness and reducing costs through improved production processes and enhanced worker productivity.¹⁶ As drafted, S. 8623/A. 9349 could require substantial changes to the pricing, data-governance, and promotional systems of many businesses. Covered entities and their service providers would need to determine whether their algorithms use personal data to differentiate prices, assess whether existing loyalty and customized-discount programs satisfy the bill’s detailed conditions, and restrict data collection and sharing that could facilitate prohibited pricing. These obligations are likely to generate implementation and administrative costs, particularly for retailers operating on thin margins. To the extent businesses pass those costs through, reduce discounts, or discontinue beneficial personalized promotions, the legislation could ultimately increase prices or otherwise reduce value for the consumers it is intended to protect.

Dynamic pricing lowers consumer prices for consumers who need it most

In many cases, dynamic pricing can result in consumers receiving lower, more competitive prices for various goods and services. Price comparison and monitoring tools help consumers consider more products and get the best deals at any given time, increasing competitive pressures on suppliers. These tools can lead to targeted discounts for consumers, allowing them access to better deals.¹⁷

¹⁰ See, National Bureau of Economic Research Working Papers, Aviv Nevo and Catherine Wolfram, *Prices and Coupons for Breakfast Cereals* (Feb. 1999), at 4, https://www.nber.org/system/files/working_papers/w6932/w6932.pdf.

¹¹ OECD, Algorithmic Competition, *OECD Competition Policy Roundtable Background Note* (2023) at 11, www.oecd.org/daf/competition/algorithmic-competition-2023.pdf; Danish Competition and Consumer Authority, *Prisalgoritmer - og deres betydning for konkurrencen* (Pricing algorithms - and their significance for competition) (2021), at 4, <https://www.kfst.dk/media/vecpmmxu/prisalgoritmer.pdf> (The Danish Competition and Consumer Authority (DCCA) found that the number of job postings asking for staff with skills related to price algorithms in Denmark more than tripled between 2007 and 2018); UK Competition and Markets Authority (CMA), *Pricing algorithms Economic working paper on the use of algorithms to facilitate collusion and personalised pricing* (Oct. 8, 2018), at 19, https://assets.publishing.service.gov.uk/media/5bbb2384ed915d238f9cc2e7/Algorithms_econ_report.pdf (The CMA found that there was evidence of increasing use of pricing algorithms in offline markets, such as large supermarkets and the retail sale of gasoline).

¹² See, e.g. KSolves, *Dynamic Pricing in Hospitality: Optimize Room Rates with Real-Time Data* (Mar. 12, 2025), <https://www.ksolves.com/blog/machine-learning/dynamic-pricing-in-hospitality>; The Globe and Mail, *Airlines increasingly using dynamic pricing for everything from luggage to legroom* (Jul. 25, 2023), <https://www.theglobeandmail.com/investing/personal-finance/household-finances/article-airlines-dynamic-pricing-baggage-rate>.

¹³ See, e.g. Pricefx, *Ticketmaster’s Dynamic Pricing: What it is and How it Works* (Jul. 17, 2024), <https://www.pricefx.com/learning-center/ticketmasters-dynamic-pricing-what-it-is-and-how-it-works>.

¹⁴ See, e.g. CBC News, *Uber started using “algorithmic pricing” in Canada. Is that a good or bad thing?* (Oct. 14, 2024), <https://www.cbc.ca/news/business/uber-algorithmic-pricing-canada-1.7350399>.

¹⁵ OECD, *Executive Summary of the Roundtable on Algorithmic Competition* (Jun. 14, 2023), at 3, [https://one.oecd.org/document/DAF/COMP/M\(2023\)1/ANN4/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2023)1/ANN4/FINAL/en/pdf).

¹⁶ *Id.*

¹⁷ See, e.g., OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, Background Note by the Secretariat, “Personalised Pricing in the Digital Era” (Nov. 28, 2018), at 7, [https://one.oecd.org/document/DAF/COMP\(2018\)13/en/pdf](https://one.oecd.org/document/DAF/COMP(2018)13/en/pdf); Consumers Council of Canada, “Dynamic Pricing – Can consumers achieve the benefits they expect” (2017), at 14, https://www.consumerscouncil.com/wp-content/uploads/sites/19/2020/03/809323_ccc_dynamic_pricing_final_report_web.pdf.

Dynamic pricing allows businesses to signal important information about the relative availability of products and to offer customized pricing based on specific consumer needs. Airlines have long relied on dynamic pricing to provide significant benefits for consumers.¹⁸ For example, the marginal cost of an extra seat on a half-empty flight is close to zero. Selling that seat for \$89 to a price-sensitive student who would never pay \$289 is pure surplus for both sides. Dynamic pricing tools may increase consumer welfare because products are more efficiently allocated to consumers on the inelastic portion of the demand curve—those who place the highest value on the product.¹⁹

Studies have shown that consumers and the broader economy tend to benefit from dynamic pricing so long as the equilibrium quantity increases with its use.²⁰ Additionally, in a recent lawsuit against a similar law in New York, the National Retail Federation (NRF) noted that algorithms enable firms to respond flexibly to supply and demand fluctuations, reducing prices overall.²¹ The NRF also notes that many programs (like coupons, loyalty rewards, and cart-abandonment offers) are merely alternative, scaled-up forms of dynamic pricing.²²

Stigmatizing these tools effectively turns beneficial promotions into liabilities, ultimately discouraging their use. As companies are unable to meaningfully respond to fluctuations, these costs would ultimately be borne disproportionately by lower-income consumers, who are most likely to receive price reductions from dynamic pricing tools.²³

S 8623/A 9349 Would Likely Harm Competition

Overregulation of these tools will not lead to lower prices; it will likely lead to fewer deals, increased waste, and reduced competition. A more balanced approach that focuses on transparency and fairness is the best way to protect consumers without stifling the local economy.

The use of dynamic pricing to engage in anticompetitive conduct that excludes competitors or exploits a dominant firm's market position, including price gouging and discrimination, is already illegal and addressed under existing state and federal laws.²⁴ Duplicative legislation is

¹⁸ OECD, "Executive Summary of the Roundtable on Algorithmic Competition" (Jun. 14, 2023), at 3, [https://one.oecd.org/document/DAF/COMP/M\(2023\)1/ANN4/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2023)1/ANN4/FINAL/en/pdf).

¹⁹ See e.g., Kevin R. Williams, *The Welfare Effects of Dynamic Pricing: Evidence from Airline Markets*, Yale University, Cowles Foundation for Research in Economics, Discussion Paper no. 2103U3, (Aug. 2017, updated Aug. 2021), at 36 <https://cowles.yale.edu/sites/default/files/2022-09/d2103-u3.pdf>. Notably, dynamic pricing for price-sensitive consumers is not a new phenomenon. For example, long before algorithms, brick-and-mortar retailers relied on paper coupons. Clipping a 25-cent cereal coupon signaled the shopper had a more elastic demand curve—willing to hunt for savings—so the manufacturer could lower a price for that subgroup without cutting the shelf price everyone else saw.

²⁰ See, e.g., Trevor Wagener, *Why New York's Algorithmic Pricing Disclosure Act Misses the Mark* (Jul. 22, 2025), <https://ccianet.org/articles/why-new-yorks-algorithmic-pricing-disclosure-act-misses-the-mark/>; Cody Taylor, *The Case for Algorithmic Pricing: Consumer Welfare, Market Efficiency, and Policy Missteps*, Mercatus Center, (May 14, 2025), <https://www.mercatus.org/research/policy-briefs/case-algorithmic-pricing-consumer-welfare-market-efficiency-and-policy>.

²¹ Chain Drug Review, *NRF files lawsuit to stop New York's algorithmic pricing disclosure law* (Jul. 3, 2025), <https://chaindrugreview.com/nrf-files-lawsuit-to-stop-new-yorks-algorithmic-pricing-disclosure-law/>.

²² Supermarket News, *National Retail Federation sues New York over algorithmic pricing law*, Jul. 7, 2025), <https://www.supermarketnews.com/legislation-regulatory-news/national-retail-federation-sues-new-york-over-algorithmic-pricing-law>.

²³ Trevor Wagener, *Personalized Discounts, Public Gains: The Welfare Case for Algorithmic Pricing* (Jul. 8, 2025), <https://ccianet.org/articles/personalized-discounts-public-gains-the-welfare-case-for-algorithmic-pricing>.

²⁴ See, e.g., Sherman Antitrust Act § 2, 15 U.S.C. § 2; Clayton Act § 2, 15 U.S.C. § 13; Federal Trade Commission Act § 5, 15 U.S.C. § 45; N.Y. Gen. Bus. Law § 340 (McKinney 2026) (the "Donnelly Act").



unnecessary and can create legal uncertainty for businesses, reducing their willingness to innovate and compete and ultimately leaving consumers worse off.

Amending S 8623/A 9349 to Avoid Chilling Competition and Innovation

CCIA recommends S 8623/A 9349 be amended to clarify that “surveillance pricing” is limited to prohibiting increases in individualized pricing relative to a baseline price. Such an approach would help distinguish individualized price increases from price differences attributable to the costs of providing goods to consumers, such as taxes or delivery costs. A narrowly defined definition of “surveillance pricing” would avoid unfairly penalizing retailers for common pricing practices, such as offering time-of-day discounts (e.g., perishable food items discounted near closing).

Firms often rely on consumer data to enhance products and provide better value to consumers. This is becoming increasingly important as new technologies help firms analyze large amounts of data to optimize prices and increase customer satisfaction.²⁵ S 8623/A 9349’s proposed definition of “surveillance data” is overly broad and risks prohibiting common business practices that companies rely on to quickly respond to changes in demand.

Beyond the substantive concerns regarding dynamic pricing tools, the inclusion of a private right of action in S 8623/A 9349 risks inviting a wave of costly and often frivolous litigation. Unlike enforcement by state regulators, who are equipped to balance consumer protection with economic stability, private lawsuits empower plaintiffs’ attorneys to pursue expensive settlements for technical errors that may not have caused actual consumer harm. To maintain a fair and predictable regulatory environment, CCIA recommends amending S 8623/A 9349 to ensure its enforcement is handled exclusively by the attorney general. The risks of ruinous liability findings and high legal defense costs are particularly salient for small and medium businesses. This can stifle the local business climate, as businesses may be forced to pass costs on to consumers or to forgo dynamic pricing innovations that drive local competitiveness.

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For these reasons, CCIA respectfully urges the Governor to oppose S 8623/A 9349 unless amended, and to work with the business community to ensure that dynamic pricing continues to serve as a tool for consumer savings and market health. We appreciate your consideration of these comments and stand ready to provide additional information as New York lawmakers consider this legislation.

Recommended Amendments for a Path Forward

To address these fundamental flaws while ensuring transparency and properly addressing the issues the bill seeks to target, CCIA urges adopting the following amendments:

- **Target the Harm:** Narrow the definition of “Surveillance data” to focus exclusively on individualized price increases.
- **Establish a “Baseline Price:”** Define a clear reference point (the price generally available to the public in a region, excluding loyalty or club-member pricing) so that

²⁵ CCIA, Understanding AI: A Guide To Sensible Governance (Jun. 26, 2023), at 2, <https://ccianet.org/library/understanding-ai-guide-to-sensible-governance/>.



businesses and regulators can objectively determine when a price has actually increased for a specific user.

- **Specify Kinds of Price Increases:** An “individualized price increase” should mean a price for a good or service that is above the baseline price and is set for a consumer based on personal data, and should not include price differences based on costs associated with providing the good or service to different consumers, (such as price changes attributable to inventory, supply chain, order fulfillment, taxes, shipping, or delivery); or non-individualized factors such as current market demand, public competitor pricing, or time-of-day.
- **Clarify Enforcement is Handled Exclusively by the Attorney General:** This will help maintain a fair and predictable regulatory environment, avoiding the risk of ruinous liability findings and high legal costs, particularly for small and medium-sized businesses.

Sincerely,

Kyle J. Sepe
State Policy Manager, Northeast Region
Computer & Communications Industry Association