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*Testimony of Representative Marc Malon introducing*

## **LD 1597, An Act to Prohibit the Use of Dynamic Pricing for Certain Consumer Goods**

*Before the Joint Standing Committee on Housing and Economic Development*

Senator Curry, Representative Gere and esteemed colleagues of the Housing and Economic Development Committee, I am Marc Malon, and I represent House District 133, which is part of the great City of Biddeford. I am here today to present **LD 1597, An Act to Prohibit the Use of Dynamic Pricing for Certain Consumer Goods**.

LD 1597 is a consumer protection bill that seeks to get ahead of a rising problem nationally before it takes hold in Maine. Dynamic pricing is the practice of causing a price for a good or a product to fluctuate based upon demand, the weather, consumer data or other similar factors including an artificial intelligence-enabled pricing adjustment. While there are certain goods and products where it is a longstanding best practice to set prices by market conditions – seafood being the most notable – and while the cost of goods and services will naturally rise and fall due to various macro-economic conditions, what we are examining here is a practice where prices are opportunistically manipulated to the detriment of the consumer.

LD 1597 prohibits an eating establishment or grocery store from setting costs using dynamic pricing. It provides that a violation of this provision is an unfair trade practice under the Maine Unfair Trade Practices Act. Importantly, the bill makes it crystal clear that its **definition of dynamic pricing does not include discounts, specials or market pricing for goods or products traditionally set by market conditions, such as seafood.**

The first question one might reasonably ask, as I did, is whether this is happening in Maine. The answer is, as far as I can tell, not yet, which is all the more reason to put safeguards in place now, particularly since it is happening with increasing frequency elsewhere in the country.

A Federal Trade Commission (FTC) report<sup>1</sup> from January of this year noted that data surveillance methods and artificial intelligence are increasingly being used to target consumers

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<sup>1</sup> <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer>

with individualized pricing. Then-FTC Chair Lina Khan, in one of her last acts in this role, advised that the “FTC should continue to investigate surveillance pricing practices because Americans deserve to know how their private data is being used to set the prices they pay and whether firms are charging different people different prices for the same good or service.”

If you refer to the electronic version of my testimony, you will find links to articles detailing how dynamic pricing is being used by corporations nationally, including by Walmart, grocery chains like Kroger and fast-food chains like Wendy’s.

LD 1597 is not a price control bill and does not seek to have the government use a heavy hand to prevent businesses from making a profit. Rather, it sets forth a reasonable safeguard against market manipulation and abusive practices that invade consumer privacy and take more money out of their pockets. It also protects small businesses which do not have access to these tools and could be placed at a disadvantage when big corporations use them to gain further dominance over the market.

I understand there is another bill being presented today addressing the same problem, sponsored by Senate President Mattie Daughtry. She and I have discussed our bills and agree that there are likely aspects of both which the committee could consider merging into one legislative vehicle. I encourage the committee to consider both to make sure that a final product is comprehensive and includes a workable enforcement provision.

Thank you for your time this late in the session. I welcome your questions.

## **Background Information**

### **FTC Surveillance Pricing 6(b) Study: Research Summaries A Staff Perspective**

- Companies that collect or obtain individualized information about their actual or potential customers can potentially use a variety of features to target prices to specific consumers and charge particular groups higher prices or use those features to generate greater profits.

<https://www.nytimes.com/2024/10/23/business/kroger-walmart-facial-recognition-prices.html>

- Digital price tags allow for dynamic price which allows sticker prices to fluctuate
- Reports of Kroger and Walmart implementing this.
- Electronic shelf labels, or E.S.L.s, show the price and unit for a product on a digital screen rather than on paper or a sticker.
- Allows corporations to maximize profit opportunistically adjusting prices during busy times of the day and inclement weather.
- Data privacy experts say it is almost impossible to know how many commercial businesses are using facial recognition technology; concerning as there is little federal regulation.

### **Surge pricing your groceries: What could go wrong? | CNN Business**

- Kroger partnering with Microsoft to add cameras to digital displays to optimize customer data and personalize offers.
- Variable pricing models give power to companies.

### **Wendy's Plans to Introduce Dynamic Pricing - The New York Times**

- Wendy's planned to invest \$30 million in dynamic pricing initiatives, allegedly to improve the customer and crew experience.






FEDERAL TRADE COMMISSION  
PROTECTING AMERICA'S CONSUMERS

For Release

# FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices

The agency details interim insights from staff perspective examining how companies track consumer behaviors to inform surveillance pricing

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January 17, 2025 |   

**Tags:** [Consumer Protection](#) | [Competition](#) | [Bureau of Consumer Protection](#) | [Technology](#) | [Privacy and Security](#) | [Consumer Privacy](#) | [Artificial Intelligence](#) | [Office of Technology](#)

The Federal Trade Commission's initial findings from its surveillance pricing market study revealed that details like a person's precise location or browser history can be frequently used to target individual consumers with different prices for the same goods and services.

The staff perspective is based on an examination of documents obtained by FTC staff's 6(b) orders sent to several companies in July aiming to better understand the shadowy market that third-party intermediaries use to set individualized prices for products and services based on consumers' characteristics and behaviors, like location, demographics, browsing patterns and shopping history.

Staff found that consumer behaviors ranging from mouse movements on a webpage to the type of products that consumers leave unpurchased in an online shopping cart can be tracked and used by retailers to tailor consumer pricing.

"Initial staff findings show that retailers frequently use people's personal information to set targeted, tailored prices for goods and services—from a person's location and demographics, down to their mouse movements on a webpage," said FTC Chair Lina M. Khan. "The FTC should continue to

investigate surveillance pricing practices because Americans deserve to know how their private data is being used to set the prices they pay and whether firms are charging different people different prices for the same good or service."

The FTC's study of the 6(b) documents is still ongoing. The staff perspective is based on an initial analysis of documents provided by Mastercard, Accenture, PROS, Bloomreach, Revionics and McKinsey & Co.

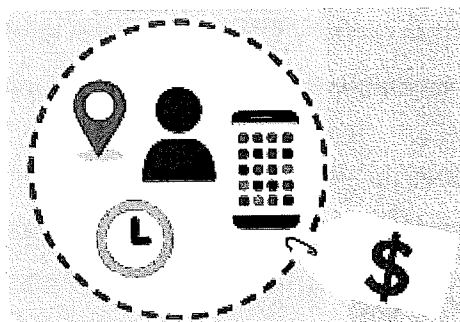
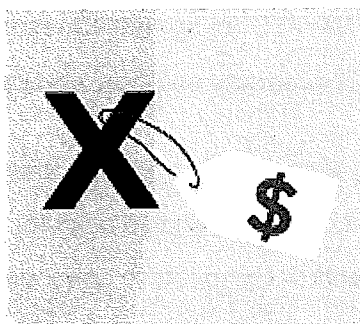
## What Goes into Surveillance Pricing?



What's the price of X?



What's the price of X for consumer C through channel Z at location L at time T?



### Price is increasingly multi-dimensional:

- ▶ Price targeting tools can be used to make pricing recommendation changes at different frequencies — from minutes to monthly.
- ▶ Different people can get different prices. Companies can determine prices for different locations, stores, customers, up to and including individual transactions.
- ▶ Companies can pursue price complexity and scale with fewer resources.

Source: Federal Trade Commission



The FTC's 6(b) study focuses on intermediary firms, which are the middlemen hired by retailers that can algorithmically tweak and target their prices. Instead of a price or promotion being a static feature

of a product, the same product could have a different price or promotion based on a variety of inputs—including consumer-related data and their behaviors and preferences, the location, time, and channels by which a consumer buys the product, according to the perspective.

The agency will only release information obtained from a 6(b) study as long as all data has been aggregated or anonymized to protect confidential trade secrets from company respondents, and therefore the staff perspective only includes hypothetical examples of surveillance pricing.

The staff perspective found that some 6(b) respondents can determine individualized and different pricing and discounts based on granular consumer data, like a cosmetics company targeting promotions to specific skin types and skin tones. The perspective also found that the intermediaries the FTC examined can show higher priced products based on consumers' search and purchase activity. As one hypothetical outlined, a consumer who is profiled as a new parent may intentionally be shown higher priced baby thermometers on the first page of their search results.

The FTC staff found that the intermediaries worked with at least 250 clients that sell goods or services ranging from grocery stores to apparel retailers. The FTC found that widespread adoption of this practice may fundamentally upend how consumers buy products and how companies compete.

As the FTC continues its work in this area, it is issuing a [request for information](#) today seeking public comment on consumers' experiences with surveillance pricing. The RFI also asks for comments from businesses about whether surveillance pricing tools can lead to competitors gaining an unfair advantage, and whether gig workers or employees have been impacted by the use of surveillance pricing to determine their compensation. Comments are due by April 17.

The Commission voted 3-2 to allow staff to issue the report. Commissioners Andrew Ferguson and Melissa Holyoak [issued a dissenting statement](#) related to the release of the initial research summaries.

The FTC has additional resources on the interim findings, including a [blog post](#) advocating for further engagement with this issue, [an issue spotlight](#) with more background and research on surveillance pricing and [research summaries](#) based on the staff review and initial insights of 6(b) study documents.

The Federal Trade Commission works to [promote competition](#), and [protect and educate consumers](#). The FTC will never demand money, make threats, tell you to transfer money, or promise you a prize. You can [learn more about consumer topics](#) and report scams, fraud, and bad business practices

online at [ReportFraud.ftc.gov](https://reportfraud.ftc.gov). Follow the [FTC on social media](#), read our [blogs](#) and [subscribe to press releases](#) for the latest FTC news and resources.

#### Press Release Reference

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[FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing](#)

## Contact Information

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