

April 11, 2025

The Honorable Michael O. Moore, Chair
The Honorable Tricia Farley-Bouvier, Chair
General Court of the Commonwealth of Massachusetts
Joint Committee on Advanced Information Technology, the Internet and Cybersecurity

Dear Chair Moore, Chair Farley-Bouvier, and Members of the Committee:

EPIC writes in support of H.99 and S.47, An Act Relative To Surveillance Pricing In Grocery Stores. EPIC does recommend that the bill's definition of "biometric information" include data generated from a photo or video and other information that may be used to identify an individual.

The Electronic Privacy Information Center (EPIC) is an independent nonprofit research organization in Washington, DC, established in 1994 to protect privacy, freedom of expression, and democratic values in the information age.¹ EPIC has long advocated for comprehensive privacy laws at the state and federal levels.²

Surveillance pricing, or the practice of changing different prices for the same good based on a person's browsing history and personal information—which results in two people seeing two different prices for the same product—is unfair and invasive. Retailers use our personal data to determine the highest price we will pay for a product or service.

Surveillance pricing is fueled by overcollection and out of context processing of personal information. But this practice is exponentially more invasive when it uses biometric information. Biometric information is highly sensitive because it is unique to each individual person and,³ unlike a credit card number, it can't be changed if it's breached. This information is too sensitive to be used for surveillance pricing purposes.

Surveillance pricing is powered by the data economy. Applications, websites, wearable tech, cars, and smart devices constantly collect information about us and share this information with data brokers and advertisers to profile us. Surveillance pricing uses these profiles to deliver prices "tailored" to each individual. While this may seem like a neutral or even benevolent corporate favor to us, offering a nominal discount here or there, this practice costs consumers more money.

¹ EPIC, *About EPIC*, <https://epic.org/about/>.

² See e.g. EPIC, *The State Data Privacy Act: A Proposed Model State Privacy Bill*, <https://epic.org/the-state-data-privacy-act-a-proposed-model-state-privacy-bill/>.

³ EPIC, *Face Surveillance and Biometrics*, <https://epic.org/issues/surveillance-oversight/face-surveillance/>.

Consultants recommend surveillance pricing to their clients, promising their profits will increase 2-7% in as little to 3 to 6 months.⁴ This is a practice in which companies extract and exploit our personal information to charge us the highest price we are willing to pay. This is corporations increasing their profits while taking money out of our pockets.

Surveillance pricing unlocks an even more nefarious window when we are talking about essential products and services. Across Massachusetts and across the country, consumers are hurting. Our costs are increasing, including for absolute necessities like groceries. Companies should not be able to further exploit our personal information to charge us higher prices which is surveillance pricing's ultimate goal.

EPIC supports Bill H.99 and S.47 to prohibit our most sensitive information from being used to charge us higher and higher prices, although we would ideally like to see Massachusetts prohibit any type of personal information from being used to alter prices and expand the rule to all retailers.

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EPIC asks that you give a favorable report to H.99 and S.47 and ensure that any comprehensive privacy bill reported by the Committee includes adequate protections to ban surveillance pricing for all retailers based on any type of personal data, not only biometric data.

Sincerely,

/s/ Sara Geoghegan
Sara Geoghegan
Senior Counsel, EPIC

⁴ Justin Kloczko, *Surveillance Price Gouging*, Consumer Watchdog (Dec. 2024), <https://consumerwatchdog.org/wp-content/uploads/2024/12/Surveillance-Price-Gouging.pdf>.