COST DRIVER

April 15, 2025

TO: Members, Senate Judiciary Committee

SUBJECT: SB 259 (WAHAB) FAIR ONLINE PRICING ACT
OPPOSE/COST DRIVER– AS AMENDED APRIL 8, 2025
SCHEDULED FOR HEARING – APRIL 22, 2025

The California Chamber of Commerce and the undersigned are **OPPOSED** to **SB 259** (**Wahab**) as amended on April 8, 2025, as a **COST DRIVER** due to its significant implications for businesses that rely on dynamic or targeted algorithmic pricing models or strategies. **SB 259** would prohibit offering any price to a consumer through their online device that is generated, even in part, based on any of the following "input data": (1) the hardware or hardware state of an online device; (2) the presence or absence of any software on an online device; or (3) geolocation data of the device. We are concerned that **SB 259** seems to assume that any consideration of this type of information is inherently predatory or otherwise unfair. As a result, the bill would unfairly cause companies to overhaul their pricing models and strategies at significant cost, to the detriment of both the businesses themselves and their consumers. This threatens not only the profitability of businesses, but also potentially reduces the availability of discounts and personalized deals for consumers.

From e-commerce and travel to subscription services, food delivery, and gig economy apps, under **SB 259** businesses using algorithmic pricing would face not only technical hurdles such as excluding data sources and retraining models, but also steep compliance burdens, operational costs, and heightened legal risks. For example, businesses that need to use a customer's location to set prices – including ridesharing and food delivery apps, hotels, airlines, and grocery stores that adjust prices due to regional supply chain costs – will encounter major difficulties under **SB 259** in adapting their pricing models while managing compliance costs. And by restricting the use of these logical, justifiable, and standard pricing models, we worry that **SB 259** could inadvertently push businesses into arbitrary pricing structures that are far more susceptible to manipulation and abuse.

We appreciate that recent amendments add exceptions to recognize various legitimate uses of the geolocation data. However, these narrow exceptions may not account for all legitimate applications of geolocation data in pricing models used, today – or all potential future legitimate applications of this data that could help increase market competition with more fair and less arbitrary pricing models, tomorrow. Given the likelihood of this bill to have devesting impacts on our economy, we find it troubling that **SB 259** seeks to enact the broadest prohibitions possible with the narrowest expectations necessary – as opposed to surgically drafting narrow prohibitions that are tailored to specific, predatory or unfair pricing practices. Regardless, existing protections for this data, render **SB 259** unnecessary as discussed below.

SB 259 is unnecessary under, if not inconsistent with, existing consumer protections

First, **SB 259** would be entirely unnecessary, if not inconsistent with, California's landmark privacy statutory scheme, the California Consumer Privacy Act (CCPA). Under the CCPA, Californians have the right to opt-out (or opt-in if under 16 years of age) of the sale of their personal data, including their "geolocation" data, as well as the sharing of that data for purposes of "cross context behavioral advertising". They also have the right to limit the use and disclosure of their "precise geolocation" to that which is necessary to perform

the services or provide the goods reasonably expected by the average consumer who requests the goods or services, to perform certain business purposes authorized under the CCPA, or as authorized pursuant to regulations. (*See* Civil Code Section 1798.120.)

Notably, the CCPA's nondiscrimination section also sets forth rules that ensure consumers receive equal services and prices, even if they exercise their CCPA rights. In recognition that consumers have competing interests, however, that may at times outweigh privacy interests, the law includes a provision that preserves loyalty programs and discounts as long as certain standards are met. As affirmed by voters in 2020, the law allows a business to "offer financial incentives, including payments to consumers as compensation, for the collection of [PI], the sale or sharing of [PI], or the retention of [PI]. A business may also offer a different price, rate, level, or quality of goods or services to the consumer if that price or difference is reasonably related to the value provided to the business by the consumer's data[1]." (*See* Civil Code Section 1798.125.) **SB 259**, contrary to what the voters clearly wanted to preserve, strikes no such balance.

Market forces and existing laws already regulate how businesses set pricing

As exemplified by the CCPA's nondiscrimination statute, above, there are already significant disincentives to unfair pricing practices under existing law. In addition to that act, there are extensive laws concerning deceptive pricing, price gouging and collusion to protect against unfair pricing. And it should not be overlooked that market forces like competition also help keep business practices in check.

Specifically, in a free market, businesses must compete to survive, which drives better pricing and innovation for consumers. Start-ups disrupt markets by introducing innovative products, forcing inefficient incumbents to adapt or fail. Manufacturers provide discounts to resellers who promote their products over competitors. Loyalty programs are utilized to reward customers who consistently choose one brand over another. Companies generally compete by undercutting rivals with lower prices, improving products, and offering incentives such as rebates and exclusive reseller discounts. They shift constantly based on consumer trends, or market demand.

To make these strategic decisions, businesses rely on data and use algorithmic pricing to understand market conditions and respond in real-time to competitive changes, such as by personalizing deals, offering discounts, and optimizing prices based on demand. Restricting this flexibility by prohibiting the use of certain data or technologies only impairs their ability to respond to market changes, leading to less competitive pricing and reduced consumer benefits, and leading to higher baseline prices for everyone, rather than lower prices under certain times and conditions if you allow businesses to respond to market conditions. And, because so many more small business and startups rely on dynamic pricing to compete, overregulation in this area will disfavor them over larger companies, further widening the gap between them and the companies that have fixed pricing structures.

Again, those same market forces that businesses respond to also naturally help keep businesses in check. If they were to truly engage in unfair pricing practices, they would not only risk facing backlash from their own customer base that they need to survive, but they also risk losing customers to their competition, which they cannot afford to do if they wish to thrive.

In the end, overregulating legitimate pricing mechanisms limits the ability of businesses to responds to market changes, leading to less competitive prices, and also harming small businesses who rely more heavily on dynamic pricing to compete.

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[1] "A grocery store offers a loyalty program whereby consumers receive coupons and special discounts when they provide their phone numbers. A consumer submits a request to opt-out of the sale/sharing of their [PI]. The retailer complies with their request but no longer allows the consumer to participate in the loyalty program. This practice is discriminatory unless the grocery store can demonstrate that the value of the coupons and special discounts are reasonably related to the value of the consumer's data to the business." *See* CCPA Implementing Regulations.

Unclear and impractical mandates harm businesses and cause information overload for consumers

SB 259 requires that a "conspicuous," "clickable" link be "placed adjacent to any price displayed by the person to a consumer on the consumer's online device" and specifies various requirements that the clickable link must meet. The link is clickable text that, if clicked, displays or links to a list containing any input data used to generate the price. Several practical issues are worth noting here, many of which center on issues of vagueness and impracticality. For example:

- What is adequately "conspicuous" under this bill? What is conspicuous to an observant person, or even the average person, may not be to another.
- What is "input data" for these purposes? While it can be inferred from Proposed Section 22949.82.1(a) that input data includes hardware or hardware state of the online device, the presence or absence of any software on the online device, and geolocation data of the online device, the bill does not provide a precise definition of "input data" that limits the term to those items. Moreover, what level of detail would satisfy these requirements? Must it include every minor factor that affects pricing? Every supply chain variable, demand surge or season adjustment? How often do those have to get updated?

  What protections would be in place to ensure the confidentiality of the information, let alone protect proprietary information/intellectual property? As drafted, there do not appear to be any.

  Recent amendments do not address these concerns around "input data" and in fact add a new concern by requiring access to the list of "input data" for no less than 14 calendar days. It is unclear why or for what purpose. If the input data is specific to a sales price, but the sale ended after a week, why would the input data be up for 14 days? At that point, the data will be invalid and misleading, and either require businesses to honor a price that is no longer valid or could discourage sales prices altogether (to avoid such scenarios).

  Furthermore, to the extent that the bill has broadly prohibited the use of certain data that the proponents consider illegitimate in pricing models, and without even knowing what "input data" is, it is unclear what public policy purpose would be served by requiring the disclosure of this data, especially given the potential exposure sensitive, proprietary, or otherwise confidential information that could actually undermine market competition.
- The requirement that this hyperlink be placed "adjacent to" "any price displayed by the person to a consumer on the consumer's online device" is equally vague. While recent amendments make some improvements by removing references to surcharges and fees, this does not resolve concerns in full. Take for example, any major grocery website, where a search for "fruit" might bring up thousands of results with 25-50 items on a page at time, with many those results showing items that are on sale. In each of those cases, there is often more than one price listed – the sales price and a crossed-out original or full price. Does each get its own clickable link?

Realistically, the requirements under **SB 259** will cause both a visual and information overload for customers. In that regard, the bill runs a serious risk of driving down business as website interfaces, including their user-friendliness and visual appeal, which can directly impact sales. In some cases, such as for an app-based company where these factors matter more than ever, it could feasibly make the difference between whether a business succeeds or fails.

Faced with so much detailed pricing input data for every price point will lead to information overload, resulting in less clarity and more confusion for customers, particularly given that most customers do not read fine print. To now force disclosure of raw input data may not help them better understand pricing, calling into question the tradeoff benefit of burdening businesses with required disclosures.

Because we are concerned about the impact on the ability of businesses to engage in competitive, real-time pricing adjustments, and are concerned about significant compliance costs, legal risks and potential revenue losses and negative impact to consumers, we **OPPOSE SB 259 (Wahab)** as a **COST DRIVER**.

Sincerely,

Ronak Daylami
Policy Advocate
on behalf of

American Property Casualty Insurance Association, Laura Curtis
California Chamber of Commerce, Ronak Daylami
California Credit Union League, Eileen Ricker
California Retailers Association, Ryan Allain
Civil Justice Association of California, Kyla Powell
National Association of Mutual Insurance Companies, Christian Rataj
Personal Insurance Federation of California, Allison Adey
Software Information Industry Association, Abigail Wilson
TechNet, Robert Boykin

cc: Legislative Affairs, Office of the Governor
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