

April 7, 2026

The Honorable Ash Kalra  
Chair, Assembly Judiciary Committee  
California State Assembly  
1020 N Street, Room 104  
Sacramento, CA 95814



**RE: AB 2564 (WARD) SURVEILLANCE PRICING – OPPOSE**

Dear Chair Kalra:

On behalf of the California Retailers Association (CRA), I write to respectfully express our **OPPOSITION** to **AB 2564 (Ward)**. While we share the goal of ensuring transparency and protecting consumer privacy, this bill risks significant unintended consequences for both consumers and businesses and is unnecessary given California’s existing legal framework.

The bill’s expansive definition of “surveillance pricing,” tied to the use of “electronic surveillance technology,” risks sweeping in routine and widely accepted retail practices, including the use of basic customer interaction data to offer discounts, coupons, and loyalty rewards.<sup>1</sup> These are practices that consumers value and expect, and that often result in lower prices, not higher ones.

Fundamentally, this bill’s requirements would be operationally unworkable. By effectively requiring retailers to disclose all available discounts and eligibility criteria, **AB 2564** would undermine standard business practices such as limited time offers, targeted promotions, and loyalty programs. Retailers routinely offer thousands of individualized promotions based on purchase history or engagement - information that consumers knowingly provide and benefit from. Requiring these to be publicly posted in real time is not only impractical but would also expose competitively sensitive pricing strategies, reducing incentives to offer discounts at all.

The bill’s key exception for discounts depends on eligibility criteria that are “publicly disclosed,” yet this phrase is nowhere defined in the bill. In California law, this term appears only in the False Claims Act and the Uniform Trade Secrets Act, each with distinct and divergent caselaw interpretations.<sup>2</sup> Retailers offer standard promotions such as win-back offers, cart-abandonment incentives, and re-engagement emails routinely do not publish eligibility criteria because those criteria are dynamic and competitively sensitive. This undefined standard will not deter predatory pricing; it will generate plaintiff’s litigation over ordinary, consumer-friendly discounting.

Perhaps most concerning, **AB 2564** risks harming the very consumers it intends to protect. Under the bill’s framework, any price difference is presumptively prohibited and subject to a private right of action, placing the burden on retailers to affirmatively prove each and every discount meets an exception. The cumulative civil penalties are severe: up to \$12,500 per consumer interaction, up to three times that amount for intentional violations, plus disgorgement of all related revenues. Critically, the bill expressly states that these penalties are cumulative and do not limit rights under any other law.<sup>3</sup> A single targeted promotional email sent to 50,000 loyalty members, a routine practice for virtually every retailer, could theoretically generate tens of millions of dollars in cumulative penalties even where no consumer was harmed, no price was increased, and no data was misused.

---

<sup>1</sup>AB 2564 (Ward), § 1, subd. (f) (defining “surveillance pricing”). See Baker McKenzie, [Golden State Update: California Targets “Surveillance Pricing.”](#) (Mar. 9, 2026).

<sup>2</sup>The phrase “publicly disclosed” is used in California law in the False Claims Act, Cal. Gov’t Code § 12652(d)(3)(B), and the Uniform Trade Secrets Act, Cal. Civ. Code § 3426.1(b)(2), in distinct contexts with different interpretive case law. AB 2564 provides no definition.

<sup>3</sup>AB 2564, § 1, subd. (e) (“the rights, remedies, and penalties established by this title are cumulative and shall not be construed to limit any other rights, remedies, or penalties available under any other law”). See also Paul, Weiss, *supra* note 5 (civil penalties of up to \$12,500 per consumer or transaction, tripled for intentional violations, plus disgorgement of all related revenues).

California already has the most comprehensive consumer privacy and pricing protections in the nation. The California Consumer Privacy Act (CCPA), as amended by the California Privacy Rights Act (CPRA), provides consumers with robust rights to control how their personal information is collected, used, and shared, including the ability to opt out, limit use, access, correct, and delete their data. In addition, longstanding statutes such as the Unfair Competition Law, False Advertising Law, and the Consumer Legal Remedies Act (CLRA) already prohibit deceptive, misleading, and unfair pricing practices. These laws provide clear authority for enforcement when issues arise.<sup>4</sup>

Compounding this problem, **AB 2564** conflicts internally with the CCPA. The CCPA already establishes specific consent and disclosure standards governing retailer loyalty and rewards programs, including a requirement for prior opt-in consent, a clear description of material terms, and revocability at any time.<sup>5</sup> **AB 2564** would impose a different, inconsistent set of requirements on top of those existing standards, placing retailers in the untenable position of navigating two conflicting statutory frameworks simultaneously, with no little to no guidance on how to comply. This is not a gap-filling exercise - it is a direct collision with a voter-approved privacy law.

Moreover, the bill applies only to sellers of goods, while excluding service-based industries where dynamic and personalized pricing is demonstrably more prevalent because they sell a “product” that is essentially perishable or time-specific. Retailers of goods, on the other hand, sell items that are non-perishable or slowly perishable, generally restockable, are capable of being sold in the future by that retailer if they are not sold immediately and, most importantly, most likely are offered for sale by a competitor down the street or a mouse click away. That’s why retailers of goods rely on customer loyalty, trust and repeat purchasing to drive long-term customer engagement – a relationship they have zero incentive to risk by engaging in unfair pricing practices. This bill would turn this dynamic on its head and entirely exempt airlines, hotels, ride-share platforms, and streaming services, the sectors most prominently cited in the FTC’s surveillance pricing report and in the House Committee on Oversight’s current investigation.<sup>6</sup> Singling out goods retailers while exempting these service industries is not public policy that drives affordability, it creates an unequal regulatory burden with no principled basis and raises serious equal protection concerns about selective industry regulatory targeting.

Finally, **AB 2564** shifts away from California’s established approach to privacy, one that empowers consumers with choice and control, and instead inserts the state into dictating how businesses price products and engage with customers. This represents a fundamental policy shift with far-reaching implications that extend well beyond the stated intent of the bill.

For these reasons, CRA must respectfully oppose **AB 2564**. We look forward to continuing to work with the author and the Committee to ensure that California’s policies both protect consumers and preserve access to savings, choice, and competitive markets.

Respectfully,



**Ryan Allain**

Vice President, Government Relations  
California Retailers Association

---

<sup>4</sup>California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et seq.; California Privacy Rights Act of 2020 (Prop. 24). See also Cal. Bus. & Prof. Code §§ 17200, 17500; Cal. Civ. Code § 1750 et seq.

<sup>5</sup>Cal. Civ. Code § 1798.125(b)(3) (requiring prior opt-in consent for financial incentive programs, a clear description of material terms, and revocability at any time). See also California Chamber of Commerce et al., Coalition Opposition Letter re AB 446 (Ward), <https://www.nfib.com/wp-content/uploads/2025/05/AB-446-Updated-Asm-Judiciary-Coalition-Oppose-.pdf> (May 2, 2025).

<sup>6</sup>FTC, Surveillance Pricing Report (2024); House Committee on Oversight and Government Reform, Investigation Letters re Surveillance Pricing (Mar. 5, 2026).