



# “THE NO DISCOUNTS FOR NEW YORKERS ACTS”

One Fair Price Act (S.8623A/A.9349A) & Protecting Jobs & Discriminatory Pricing Act (S.8616A/A.9396A)

These bills ban the use of “surveillance pricing” to provide personalized pricing to consumers. We agree that companies shouldn’t be able to use surveillance pricing to charge individual consumers higher prices than the standard price. But these bills also prohibit surveillance pricing to provide consumers with lower prices and discounts.

The bill exempts some discounts, that apply uniformly to all consumers, like sales events (e.g., “25% off this weekend”), coupons distributed publicly, store-wide promotions (e.g., “buy one get one”).

## DISCOUNTS AT RISK FOR NEW YORK CONSUMERS (AVAILABLE IN 49 OTHER STATES):

DISCOUNT AT RISK	WHAT IT IS	LANGUAGE THAT PROHIBITS IT
<b>“Just for You” Personalized Savings</b> <i>Grocery stores and Retailers</i>	Saves Shoppers \$20-50/wk on groceries they already buy. Coupons are tailored to a family’s actual purchase, not products they don’t need	S8616 §(n)(3): “based solely on a consumer’s prior purchase history with that specific entity, provided that such purchase data is not paired, combined, or cross referenced with any other consumer data.”  S8623A §3(g)(ii): “all members of the program receive uniform pricing benefits and discounts.”
<b>Personalized Deals</b>	Online marketplaces offer discounts based on users’ engagement with the platform. For example, a Subscribe and Save customer receives up to 15% off when receiving 5 or more products. The online marketplace carve-out doesn’t account for these types of data-driven discounts, as it restricts discounts to prior purchase history with the same seller. It’s not clear how discounts like Subscribe and Save, which are dependent on subscriptions across multiple sellers, could continue to be offered.	S8623A § 1(h)(i)(4): “in the case of the operator of an online marketplace, based solely on a consumer’s prior purchase history with the same independent, third-party entity offering the good or service to which the bona fide discount is applied, provided that such prior purchase history data is not paired, combined, or cross-referenced with any other personal data, including but not limited to data held by such operator of such online marketplace related to any other third-party entities, and such operator’s own transaction data where such operator also offers goods and services.”
<b>Personalized Restaurant Promotions</b> <i>Third-Party Food Delivery</i>	Third party food delivery programs surfaces personalized promotional discounts — restaurants highlighted because of a member’s past cuisine preferences, order times, and neighborhood. When those surfaced promotions offer member pricing (e.g., 15% off at a restaurant you’ve ordered from before), they use a combination of purchase history and location data. Despite enrollment in a membership program, the personalized nature of which restaurants and which discount amounts are surfaced to which member violates the data combination prohibition and the uniformity requirement simultaneously, and also in the case of a promotion for a new Thai restaurant the member might like, violate the bill’s online marketplace carve-out.	See above: S8623A § 1(h)(i)(4)
<b>“We Miss You” Win-Back Offers</b> <i>Retailers, Third-Party Food Delivery</i>	Rewards consumer loyalty by offering returning customers a meaningful discount (often 20-30% off) that helps them afford purchases they may have deferred. An incentive that lower the cost of goods for shoppers who opt back in. Ex. Streaming services or newspapers all regularly offer returning subscribers discounted rates to re-subscribe: “We miss you, come back—your first 3 months for \$0.99/month.” This offers a different price than what a new or existing customer might have, and the personal data used (account history, subscription status, behavioral signals) to provide the offer is prohibited	S8623A §1(h)(i) (3) : “except in the case of the operator of an online marketplace, that is based solely on a consumer’s prior purchase history with such specific entity, provided that such prior purchase history data is not paired, combined, or cross-referenced with any other consumer data ”

DISCOUNT AT RISK	WHAT IT IS	LANGUAGE THAT PROHIBITS IT
<b>Hotel Loyalty Personalized Rate Discounts</b>	Hotels send loyalty member-specific rate offers based on travel history and preferred destinations: "You've stayed with us in Midtown before — here's a 20% member rate for your next visit." The discount is calibrated to your individual history, not offered uniformly to all loyalty members. This violates the uniformity requirement. Under the bill, the only permissible loyalty rate would be a flat discount offered identically to every single member of the program, regardless of any behavioral data.	S8623A §3(g)(ii): "all members of the program receive uniform pricing benefits and discounts."
<b>Browse-Abandonment Offers</b> <i>Retailers</i>	Helps price-sensitive consumers access products they want but hesitate to purchase at full price. For instance, a shopper who views a winter coat and doesn't buy it may receive a discount. Major NY retailers use behavioral data to send personalized price-change alerts: "The item you left in your cart last week just dropped in price — here's an additional 10% off if you complete your purchase today." This combines browsing history (the cart) with an algorithmically triggered discount offered only to that consumer for that item. Under the bill, this is surveillance pricing with no plausible safe harbor: it is an algorithm, it uses personal data, and it produces a lower price for a specific consumer.	S8623A §1(f): "Surveillance pricing means pricing set completely or in part by an algorithm that uses personal data to offer different prices to different customers for the same goods or services and does not include bona fide custom discounts."  S8623A §1(h)(ii): "'Bona fide custom discount' does not include any reduction or change in reference price based on personal data other than personal data identified in subparagraph (i) of this paragraph."  S8623A §2(a): "No entity or service provider shall set or adjust the reference price or consumer price of a good using surveillance pricing, directly or indirectly, to a consumer."
<b>Rewards Program Challenges</b>	Prohibits personalized challenges because they are based on a consumers ordering behavior. Ex: Jake drinks lattes. A Coffee Rewards Program offers personalized challenges; "Buy 3 lattes this week and earn 100 bonus stars." The specific items, quantities, and deadlines are calibrated to each member's historical ordering behavior — what they buy, how often, at which locations. This is prohibited under the bill's uniformity requirement. Sorry, Jake.	S8623A §1(h)(i)(1): "to a consumer who affirmatively and knowingly enrolls in a loyalty, membership or rewards program, including but not limited to by signing up for a mailing list, registering for promotional communication, or participating in a promotional event, provided the discount is given to all members of such loyalty program."
<b>Electronic Shelving Labels</b>	Ensures consumers always see accurate, up-to-date pricing on shelves. This includes instant reflection of sales, promotions, and price drops. Paper tag systems create lag between when a sale starts and when shelf prices update, leaving shoppers uncertain about what they'll pay at checkout.	S8616 §2(a) : "In food retail establishments and in drug retail establishments, the use of ESLs or any digital shelf display technology shall be prohibited and a non-digital presentation of price shall be used."
<b>Milestone/Life Event Offers</b>	Birthday promotions, purchase-anniversary offers, and registry-linked savings are delivered on a rolling, individually triggered basis — inherently non-uniform and outside the loyalty program carve-out.	S8623A §1(h)(ii) & S8616A §1(n)(ii): "'Bona fide custom discount' does not include any reduction or change in reference price based on personal data other than personal data identified in subparagraph (i) of this paragraph."
<b>Military, Seniors, Teacher, Employee Discounts</b>	Promotions for military, seniors, teachers or employees are allowed under the bill, but only if the consumer self-identifies and knowingly asks for the discount. If a senior signs up for a Kohl's account and entered their age at the time of signing up, Kohl's can only offer them a senior discount if the consumer knowingly elects for the discount; this bill prohibits that automatic application of the discount, even though it benefits the consumer.	S8623A §1(h)(i)(2) & S8616A§1(n)(ii)(2): "that is based on a consumer's voluntary self-identification with a broadly defined class of consumers including, but not limited to, military veterans, active duty personnel, seniors, teachers, or employees, provided freely and knowingly by the consumer for the sole purpose of receiving the discount , and is not derived or inferred by the entity from any other data"

**Can New Yorkers Afford These Bills? ABSOLUTELY NOT.**

Stand Up for Lower Prices & Discounts

**REJECT The No Discounts for New Yorkers Acts!**