

# How Calif. Algorithmic Pricing Bills Could Affect Consumers

By **Alyssa Sones** (March 25, 2025)

In the weeks leading up to the close of the February deadline to introduce legislation in California, lawmakers introduced a series of bills aimed at regulating algorithmic pricing, citing concerns about consumer fairness, discrimination and antitrust violations in California.

These bills approach regulating dynamic pricing from multiple angles, some focusing on civil remedies against discriminatory pricing while others focus on antitrust measures to address perceived industry collusion.



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As consumer goods and services companies increasingly rely on data-driven pricing processes and software, these legislative efforts could significantly reshape how businesses set prices and interact with consumers.

The efforts may end up having anti-consumer effects, as they have the potential to stop retailers from providing any discounts or price reductions to consumers.

## **The proposed bills take a multipronged approach.**

### ***Civil Remedies***

Two of the bills target personalized prices for specific individuals or consumer categories. A third pursues any use of product pricing and inventory data to change prices.

A.B. 446 aims[1] to curb personalized pricing based on individual characteristics such as race, religion, political interests, online behavior or purchase history. It prohibits setting prices based on personal data gathered through electronic surveillance and authorizes civil penalties for violations.

The bill appears to have gained some traction in the legislature based in part on its support from prominent groups like Consumer Watchdog.

S.B. 259, a placeholder bill, focuses more generally on price changes based on insights drawn from consumer information. The bill specifically implies it would address algorithmic pricing through an Unruh Civil Rights Act amendment, underscoring concerns about the ethical implications of price discrimination.

S.B. 384, the Preventing Algorithmic Price Fixing Act, would prohibit price-fixing algorithms that use historical and real-time data on prices, price changes or supply levels.

The bill would apply to any software, system or process regardless of whether it uses automations or whether the analysis is based on public or private pricing data.

### ***Antitrust Measures***

Two bills introduced in the California legislature aim to align state regulations with the stalled federal Preventing Algorithmic Collusion Act of 2024.[2]

S.B. 295 would amend California's market competition laws to broadly prohibit companies from using pricing algorithms. These are defined to include any computational process to recommend or set prices, regardless of whether it is automated.

It would apply to pricing algorithms based on any competitor data, whether the data comes from the company's own analysis of competitors' prices or from a third-party source. It threatens significant penalties and disclosure requirements against both the sellers using algorithmic pricing and third-party technology providers supplying those programs.

A.B. 325 departs from S.B. 295, which would apply to pricing algorithms that analyze any third-party pricing data. A.B. 325 would only restrict algorithmic pricing based on nonpublic competitor data.

It also more clearly distinguishes between what conduct is prohibited and how algorithmic collusion affects presumptions in antitrust cases.

### **The bills could create confusion in the courts in light of existing advertising laws.**

Antitrust laws have regulated price-fixing and collusion for decades. The new series of California bills strikes a different chord. Nearly all of the legislation as initially proposed would extend beyond collusion to restrict how individual companies set prices independently.

The early-stage bills' substantial restrictions on businesses' ability to analyze market prices could not only upend current legitimate price competition, but also directly contradict other California laws.

### ***A Litigated Rule***

Take for example California's False Advertising Law.[3] Subsection 17501 of this law specifically requires businesses to align any advertised former prices with the prevailing market price for the same or similar goods or services.[4]

Courts interpreting this heavily litigated advertising rule consistently hold that where products are offered by multiple sellers, the prevailing market price under that law includes not only a seller's own previous prices but all offer prices from all sellers within the relevant market.[5]

### ***Federal Guidance***

The bills could also jeopardize federal guidelines on comparison price advertisements. The Federal Trade Commission recognizes that businesses commonly advertise their goods through comparative pricing with phrases like "Our Price \$10, Compare at \$12" or "Retail Value \$12." [6]

In the FTC's view,[7] a business using that legitimate advertising tactic should be reasonably certain that the comparison price stays at or below the actual selling price of the product in that area.[8] At some level, companies are therefore expected to consider competitors' real offer prices when deciding how to advertise a product's value.

## ***The Broad Bills***

Strictly reading the pricing algorithm bills in light of these longstanding advertising rules raises questions about whether they will hold up to constitutional scrutiny. If passed, the proposed bills could leave businesses unable to analyze competitor prices when deciding how to advertise a product's former price of market value.

The First Amendment protects accurate and informative pricing advertisements, which help inform consumers' purchase decisions. Complying with the proposed laws may force businesses to remove that protected speech to avoid harsh government penalties for setting up a process to make sure their price advertising is accurate.

### **Sellers should watch for practical implications.**

Retailers commonly employ some form of competitor price research to adjust prices based on market prices, supply, demand and other factors. While some processes remain ad hoc and manual, others implement solutions to automate the analysis.

The proposed bills go beyond potentially discriminatory applications of those tools to restrict retailers' ability to leverage any form of algorithmic pricing when adjusting their place in the market.

Sellers should watch the development of these bills through the legislature, as their implementation could affect price advertising research that has not only become industry standard but is also, in some instances, required by law.

### **Conclusion**

In aiming to protect consumers from unethical pricing practices, California bills aimed at dynamic pricing algorithms may unintentionally stop businesses from advertising legitimate discounts to customers.

Legislators should take into account how the potential conflicts with state and federal advertising laws could create contradictory California laws, disrupt business operations and possibly lead to the provisions being blocked as unconstitutional.

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[1] Feb. 6, 2025, Assembly member Ward Introduces AB 446 to Prohibit Businesses from Engaging in Surveillance Pricing, <https://a78.asmdc.org/press-releases/20250206-assemblymember-ward-introduces-ab-446-prohibit-businesses-engaging>.

[2] See Senate Bill 3686, Preventing Algorithmic Collusion Act of 2024, introduced by Senator Amy Klobuchar, January 30, 2024, <https://www.congress.gov/bill/118th-congress/senate-bill/3686/text>.

[3] See Cal. Bus. & Prof. Code § 17500 et seq.

[4] See Cal. Bus. & Prof. Code § 17501.

[5] See, e.g., *Sperling v. Stein Mart Inc.*, 291 F. Supp. 3d 1076, 1085-87 (C.D. Cal. 2018) (analyzing whether a reference price could mislead a consumer requires "actually examining what other retailers charged for the items").

[6] 16 C.F.R. § 233.2.

[7] The FTC initiated its own study on surveillance pricing in 2024. See *FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing*, July 23, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing>. Summaries of initial study findings were released in early 2025, but the FTC has not completed its analysis of the results.

[8] 16 C.F.R. § 233.2.