Surveillance Pricing

What It Is, How It Works, and Why It Matters for New Mexico Consumers

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What Is Surveillance Pricing?

The practice of using your personal data to charge you a different price than another consumer for the exact same product, at the exact same time, from the exact same seller.

Companies track your location, browsing history, purchase patterns, device type, estimated income, and even your mouse movements on a webpage to build a profile and set **your** price.

This is not the same as:

- **Dynamic/market pricing** Prices changing based on supply and demand (e.g., hotel rooms during peak season)
- **Loyalty programs** Discounts available to all members on equal terms
- **Coupons or promo codes** Publicly available discounts anyone can use
- **Senior, military, or student discounts** Group-based pricing available to all qualifying individuals

Source: FTC Surveillance Pricing Study (Jan. 2025); Consumer Reports Kroger Investigation (May 2025)

What Data Are Sellers Using?

1. **Location Data**
   ZIP code, GPS, proximity to competitors

2. **Browsing History**
   What you searched, how many times you looked at a product

3. **Device Information**
   iPhone vs. Android, Mac vs. PC, newer vs. older device

4. **Purchase History**
   Past spending patterns, brand preferences, return frequency

5. **Inferred Demographics**
   Estimated income, household size, credit worthiness

6. **Behavioral Signals**
   Time of day, urgency indicators, checkout speed

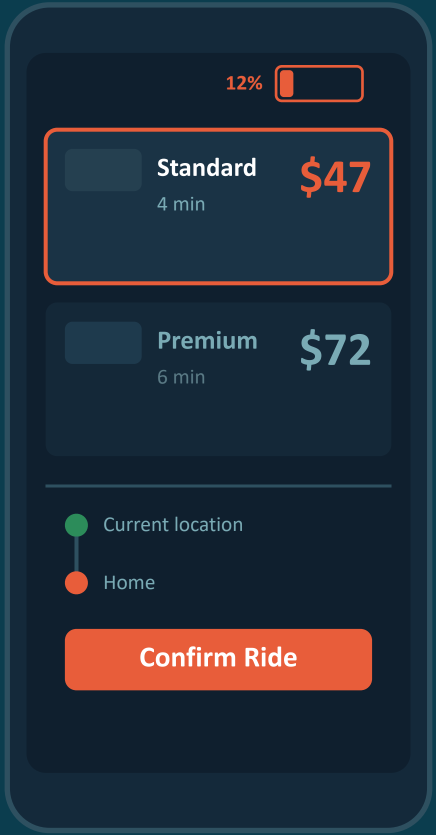
Captive Consumers: Ride-Hailing

Your phone battery is at 12% after spending the night at Zozobra.

You need a ride home. Before your phone dies.

You are less likely to wait for a better price.

So you are offered a higher price.



Uber's former head of economic research admitted the company tracks battery levels and found riders with low batteries are more willing to accept surge pricing.

Source: Consumer Reports Uber/Lyft Investigation (June 2026)

How It Works

A June 2026 Consumer Reports investigation tested 174 riders across 18 states.

The median price difference for the same ride, at the same time, was 42.4%.

Two riders requesting the same trip, same pickup, same destination, same minute:

12% Rider A

Phone nearly dead

Frequent rider, high spend history

No time to comparison shop

Price shown: $47

87% Rider B

Fully charged phone

Occasional rider

Can wait or compare apps

Price shown: $28

Sources: Consumer Reports Uber/Lyft Investigation (June 2026)

Captive Consumers: Airlines

Two New Mexicans shopping for the same ABQ to Denver flight:

Consumer A

Searched 5 times this week

iPhone, Albuquerque ZIP code

Browsed competitor fares

Price shown: $487

Consumer B

First time searching

Older Android, Los Lunas ZIP

No competitor browsing

Price shown: $312

Not a hypothetical: JetBlue

In April 2026, a JetBlue customer posted that the price of a ticket jumped $230 in one day.

Source: CBS News (Apr. 23, 2026)

Not a hypothetical: JetBlue

What happened next:

Apr 18	Customer posts on X. JetBlue tells them to clear cookies. Deletes the reply.
Apr 21	Senator Gallego and Rep. Casar send letter to JetBlue CEO demanding answers.
Apr 22	Federal class action filed (Phillips v. JetBlue) alleging surveillance pricing.
Aug 12	Congress sends letters to all 8 major airlines demanding answers by August 25.

JetBlue's responses were due yesterday, August 25, 2026.

Source: CBS News (Apr. 23, 2026); Pallone press release (Aug. 12, 2026)

Captive Consumers: Groceries

In December 2025, Consumer Reports, More Perfect Union, and Groundwork Collaborative published a landmark investigation that changed the conversation.

437
shoppers tested across four U.S. cities

23%
price difference for the same item, same store, same time

74%
of items on Instacart were offered at multiple price points

$1,200
estimated annual cost to a household of four

What happened next:

Instacart halted its AI price testing within days. The FTC issued a civil investigative demand. Retailers including Albertsons, Costco, Kroger, Safeway, and Sprouts were identified as using the system. Since then, 40+ surveillance pricing bills have been introduced across 24 states.

Source: Consumer Reports, Groundwork Collaborative, More Perfect Union (December 2025)

Same Eggs. Same Store. Five Prices.

From the Consumer Reports investigation: shoppers at the same store saw five different prices for one dozen eggs, at the same time.

1	2	3	4	5
$3.99	$4.28	$4.59	$4.69	$4.79
Shopper 1	Shopper 2	Shopper 3	Shopper 4	Shopper 5

For a typical family of four, the 20% swing from shopper 1 to shopper 5 could add an estimated $1,200 per year to grocery bills. This would represent almost a month of groceries for the average New Mexican family.

Source: Consumer Reports, Groundwork Collaborative, More Perfect Union (December 2025)

Why Companies Do This

The financial incentive is simple: charge each customer the maximum they are able/willing to pay.

Market-Based Pricing

A bag of chips is priced at $4.00 for everyone based on supply/demand.

$4 $4 $4 $4 $4

Revenue: $16

(1 shopper walks away at $4)

4 of 5 shoppers buy

Surveillance Pricing

The algorithm charges each shopper their maximum.

$7 $6 $5 $4 $3

Revenue: $25

56% more revenue, same product

All 5 shoppers buy

Real Time Price Changes

Instacart piloted digital price tags ("Carrot Tags") in physical stores that let retailers change shelf prices remotely and instantly. Their website said the tags could "test prices on in-store customers." They deleted that language after CR asked.

Source: Consumer Reports / Groundwork Collaborative Instacart Investigation (Dec. 2025)

Who Gets Hurt in New Mexico?

New Mexico's demographics make our state especially vulnerable. When personal data drives pricing, existing inequities get woven into the price tag.

Low-income New Mexicans

~18% poverty rate, consistently among the highest in the country. An invisible "data tax" on groceries is a serious issue.

Rural and tribal communities

Fewer retailers means sellers know you have limited options. In much of rural NM, there is one grocery store within driving distance.

Older adults and those with limited connectivity

Less likely to use VPNs or clear cookies. NM tribal broadband access is below 70%, compared to 90% nationally.

Unique demographics

ZIP code pricing proxies replicate discrimination.

What Do People Think?

"Surveillance pricing is one of the biggest scams in American history." Senator Hawley (R), Senate hearing, August 2026

76%
support banning surveillance pricing

80%
say companies should not use personal data to set prices

72%
would accept smaller discounts if everyone paid the same price

Support crosses party lines:

67% Democrats

74% Independents

61% Republicans

Source: Groundwork Collaborative / Data for Progress (May 2026)

FTC Investigation

250+
companies using these tools

Industries using surveillance pricing intermediaries:

- Grocery stores
- Travel companies
- Car rental
- Financial services
- Apparel retail
- Online casinos

What the FTC found:

Tools track everything	Location, browsing history, purchase patterns, device type, mouse movements on a webpage, how far you scroll, and whether you watched a product video before closing it.
Profiles follow you across devices	Data from your phone, desktop, and in-store kiosks is merged into a single consumer profile tied to your email or a browser cookie. That profile is continuously updated.
Target is your "willingness to pay"	The FTC found that tools are designed to estimate each consumer's price sensitivity and generate targeted prices, sometimes updated minute-by-minute.
Revenue impact: 2-5% increase	Instacart acquired AI pricing company Eversight in 2022 that runs pricing experiments on shoppers without their knowledge. Eversight claimed its tool influenced $80 billion in retailer revenue.

Source: FTC Surveillance Pricing 6(b) Study: Research Summaries (January 2025), Consumer Reports Instacart Investigation (Dec. 2025)

FTC Action - August 19, 2026

The FTC voted unanimously to declare that undisclosed use of surveillance pricing likely violates federal law banning deceptive practices.

"When consumers see a listed price, they expect it to be the same price that everyone else sees, not the retailer's estimate of how much they are willing to pay based on their personal data."

FTC Chairman Andrew Ferguson (R), August 19, 2026

The FTC cited these examples:

$ Charging more for milk because data shows multiple children in the household

$ Charging more for a hotel because data shows you are traveling for a funeral

The draft enforcement policy is open for 30 days of public comment.

Source: Reuters (Aug. 19, 2026)

What Other States Are Doing

2026: Four states enacted, one vetoed, 40+ bills pending

Apr 28	Jun 4	Jun 2	Jun 17	Jul 23
Maryland HB 895	Connecticut SB 4	Colorado HB 1210	New York One Fair Price	New Jersey A4085
Food retail only	*Retail + delivery*	*VETOED*	*Broadest ban*	*Groceries, treble damages*

Also moving: California AB 2564 passed the Assembly and is on the Senate floor.

Key gaps: every enacted law has significant limitations in scope, enforcement, or both.

Maryland: Food retailers over 15,000 sq ft only. No private right of action. Long cure period.

California (pending): Covers "retailers" selling "goods" only. No services, airlines, or marketplace platforms.

New York: Broadest scope. Signed by Governor Hochul on June 17. Industry pushed to weaken enforcement provisions.

Enforcement: Lessons from Other States

	Maryland	California (pending)	New Jersey	Comprehensive Approach
AG Enforcement	✓	✓	✓	✓
Private Right of Action	✗	✗	✓	✓
Statutory/Treble Damages	✗	✗	✓	✓
Enhanced Penalties	✓	✗	$50K/viol.	✓
Covers All Industries	✗	✗	✗	✓
No Cure Period Loophole	✗	—	—	✓

New Jersey is the strongest enacted law (treble damages, $50K/violation) but still limited to groceries.
A comprehensive approach would cover all goods and services with all enforcement tools.

Colorado Case Study

Nearly 3 in 4 Coloradans had heard little or nothing about surveillance pricing before polling.

Once it was explained, support was consistent across party lines. The discount argument did not move them.

78%

support banning surveillance pricing

76%

say a ban would help the state economy

HB 26-1210 passed the Colorado House 41-23 and the Senate 19-15. With the legislature and voters in agreement, Governor Polis vetoed the bill, saying it was 'overly broad' and could discourage discounts.

Source: American Economic Liberties Project / Data for Progress (April 2026)

Arguments against Protections

Here is what the evidence says in response.

"This will kill discounts and loyalty programs"

72% of voters say they would accept smaller discounts if everyone paid the same price. Well-designed laws explicitly protect loyalty programs, coupons, group discounts, and all common discount practices.

"Existing privacy laws already handle this"

No state or federal privacy law prohibits using collected data to adjust internal pricing. You can opt out of data sharing under CCPA, but that does not stop a company from using data it already has to change what it charges you.

"This will hurt innovation and the economy"

These laws do not restrict dynamic pricing. Supply and demand pricing is untouched. The only thing restricted is using your personal data to set your individual price.

The Discount Question

The principle: benefits must be available to all consumers on equal terms.

Not an Issue

- Loyalty and rewards programs
- Senior, military, and student discounts
- Publicly available coupons
- Perishable goods markdowns
- Clearance and seasonal pricing
- Retention offers for canceling customers
- Tiered service levels and subscriptions

The Actual Problem

- Using your browsing history to raise the price because you looked at a product 5 times
- Charging more because your phone or ZIP code suggests a higher income
- Charging one loyalty member more than another for the same product based on their individual purchase data

The Baseline Price Problem

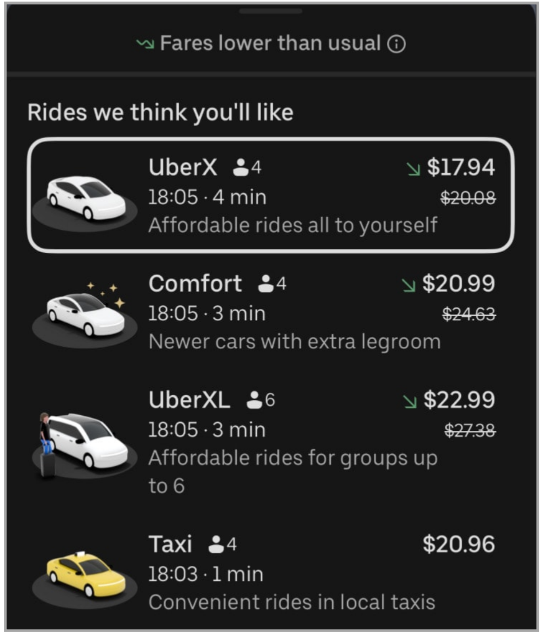
Without a clear baseline, everything can be framed as a "discount."

Without a Baseline

Company shows you $17.94 with a crossed-out original price of $20.08. You think you saved $2.14.

But another rider sees $14.50 with a crossed-out $17.94 for the same trip.

You are both shown a "discount." But you are paying 24% more.



With a Baseline

1. A "publicly posted price" is the price available to all consumers without regard to personal information.
2. This creates a clear, verifiable baseline that consumers and regulators can point to.
3. Any deviation from that baseline based on personal data is identifiable and addressable.

Source: Consumer Reports Uber/Lyft Investigation (June 2026). Screenshot from Uber app showing inflated "original" prices crossed out to create the appearance of a discount.

New Mexico's Existing Legal Framework

New Mexico already has the legal infrastructure to address this.

1. ## Unfair Practices Act (UPA)

   The UPA already prohibits deceptive and unconscionable trade practices. Surveillance pricing fits squarely within that framework. Enforcement ties into the AG's existing authority rather than creating new regulatory structures.

2. ## Consumer Private Right of Action

   Unlike Maryland (AG only) and California (public prosecutors only), New Mexico could allow individual consumers to bring claims. This creates real consumer protection, that doesn’t depend on AG capacity or interest.

3. ## NM Human Rights Act

   When pricing algorithms use data that correlates with protected classes (race, national origin, disability, age), the resulting price discrimination can replicate historical patterns of inequity. An anti-discrimination provision tied to the Human Rights Act would make using protected class data in pricing independently prohibited.

Questions for CCJ

1. How should New Mexico balance consumer protection with the legitimate needs of businesses operating in the state?
2. What enforcement mechanisms are most practical within New Mexico's existing legal framework, including the Unfair Practices Act?
3. How do we protect legitimate pricing practices like discounts and loyalty programs while addressing data-driven price discrimination?
4. What role should transparency and disclosure play? Should consumers at least know when their price is being personalized?

Thank You

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