

LFC Requester: _____

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2-7-26 *Check all that apply:*
Bill Number: SB-223 Original Correction
 Amendment Substitute

Sponsor: Heather Berghmans **Agency Name and Code** AODA 264
Short Title: CONSUMER INFO & DATA PROTECTION ACT **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY26 | FY27 | | |
| | | | |
| | | | |

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY26 | FY27 | FY28 | | |
| | | | | |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY26 | FY27 | FY28 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|-------------------|---------------------------|---------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 223 enacts the Surveillance-Based Price Discrimination Act, prohibiting the use of personal information or surveillance-derived data to set individualized prices for goods or services. The bill defines “personal information,” “surveillance data,” and “surveillance-based price discrimination,” and provides limited exceptions for cost-based pricing differences, publicly available discounts offered on equal terms, insurers operating under existing insurance law, and credit decisions made pursuant to the federal Fair Credit Reporting Act. The bill also establishes requirements for the use of de-identified data and authorizes the Attorney General to adopt rules governing automated pricing systems.

A violation of the Act constitutes an unfair or deceptive trade practice under the Unfair Practices Act and may be enforced by the Attorney General, district attorneys, or private parties. Civil penalties of up to \$10,000 per willful violation may be imposed, with each transaction treated as a separate violation. The bill creates a private right of action allowing an aggrieved consumer to recover actual damages with 8% prejudgment interest, statutory damages of \$3,000 per violation, or treble damages for intentional or bad-faith conduct, along with costs and reasonable attorney fees.

FISCAL IMPLICATIONS

Senate Bill 223 will require the Office of the Attorney General to promulgate rules governing the use of data-driven and surveillance-related systems in pricing decisions. Developing these rules will require staff time, technical review, and administrative support, resulting in some additional expense that the agency will need to absorb within existing resources.

District attorneys may also experience fiscal impact. Senate Bill 223 authorizes civil enforcement actions that differ from the criminal and juvenile matters that make up most DA caseloads. Offices may require training on civil procedure, evidentiary standards, and enforcement responsibilities specific to Senate Bill 223, and may need to allocate staff time to evaluate potential violations and determine whether civil action is appropriate.

The bill does not create new programs or require new appropriations, but both the Attorney General and district attorneys will need to incorporate these responsibilities into current operations.

SIGNIFICANT ISSUES

Senate Bill 223 establishes a new civil enforcement authority for district attorneys, but the underlying conduct—surveillance-based price discrimination—will be difficult to identify, investigate, and prove. The bill relies heavily on technical definitions such as “personal information,” “surveillance data,” and “individualized price,” all of which involve data practices that occur within private business systems not typically accessible to law enforcement without civil discovery.

District attorneys will face practical challenges in determining whether a business is using personal or surveillance-derived data to set prices. These practices are often embedded in proprietary software, vendor platforms, or algorithmic tools that require technical understanding to evaluate. Offices may need training and guidance to recognize potential violations and to understand what evidence is necessary to establish a case under Senate Bill 223.

Even when a potential violation is identified, enforcement will require civil litigation skills that are not part of most DA offices’ routine work. Evaluating pricing models, reviewing data sources,

and responding to defenses based on statutory exceptions may require staff time, technical consultation, and familiarity with civil discovery. District attorneys will need to determine how to integrate these responsibilities into existing workloads and enforcement priorities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Promulgating rules will require assignment of that to a team and will require considerable effort in research, writing and manpower for the Attorney General.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status Quo

AMENDMENTS