Westlaw Today

Seattle enacts ban on algorithmic price discrimination

By Brian D. Buckley, Darwin P. Roberts, Marisa L. Berlinger, Esq., and Ariana Nilchian, Esq., Morgan, Lewis & Bockius LLP*

OCTOBER 28, 2026

Key takeaways

- Seattle's Fair Pricing and Transparency ordinance prohibits covered retailers from using electronic surveillance technology and consumer data to set or modify prices.
- Covered retailers include grocery businesses with 20 or more retail locations globally, mixed-use grocery businesses with at least 10,000 square feet of sales-floor area devoted to groceries, and certain delivery service providers with 100 or more employees worldwide.
- The ordinance requires covered retailers to (1) disclose the eligibility criteria for discounted prices and (2) retain specified pricing and consumer-data records for three years. Missing records may create a rebuttable presumption of a violation.
- The ordinance creates a private right of action for individuals and classes of persons injured by a violation and authorizes municipal enforcement, with civil penalties, potential liquidated damages, attorney fees and costs, and equitable relief.

"Algorithmic-based price discrimination" is defined broadly to include setting, altering, or manipulating prices based in whole or in part on monitoring, tracking, or automated analysis of consumer behavior, location, demographic characteristics, biometric data, or other personal information.

The Seattle City Council has passed a new Fair Pricing and Transparency ordinance aimed at restricting the use of consumer data and algorithms to charge different consumers different prices for groceries and certain essential goods.

The ordinance creates a new Chapter 7.35 of the Seattle Municipal Code and imposes new pricing, disclosure, and recordkeeping requirements, as well as private and public civil enforcement mechanisms. The ordinance's substantive requirements take effect September 1, 2027.

Seattle's Fair Pricing and Transparency ordinance (CB 121267) follows increased legislative and regulatory scrutiny of the use of algorithms and consumer data in retail pricing. The ordinance acknowledges recent federal, state, and local regulatory activity and cites a January 2025 Federal Trade Commission (FTC) report examining the use of consumer data and algorithmic tools to segment consumers and inform pricing, promotions, and discounts.

In its legislative findings, the Seattle City Council expressed concerns about the potential effects of certain data-driven pricing practices — known as surveillance pricing, individualized pricing, or algorithmic price discrimination — that use consumer data to profile or predict consumer behavior, particularly in the grocery sector.

Against this backdrop, the ordinance restricts use of information about a particular consumer (such as purchasing behavior, location, demographics, and other personal data) in an effort to maintain transparency, equitable access to groceries, and consumer privacy, and authorizes enforcement action to incentivize compliance by covered businesses.

Algorithmic-based price discrimination

The ordinance prohibits covered retailers from using "algorithmic-based price discrimination" to modify the price of specified goods. "Algorithmic-based price discrimination" is defined broadly to include setting, altering, or manipulating prices based in whole or in part on monitoring, tracking, or automated analysis of consumer behavior, location, demographic characteristics, biometric data, or other personal information.[1]

The ordinance contains several express exclusions from the definition of "algorithmic-based price discrimination," including certain price differences based on delivery costs or store location, manufacturer- or third-party-funded coupons, and specified discounts offered through loyalty, membership, or rewards programs.

Thomson Reuters is a commercial publisher of content that is general and educational in nature, may not reflect all recent legal developments and may not apply to the specific facts and circumstances of individual transactions and cases. Users should consult with qualified legal counsel before acting on any information published by Thomson Reuters online or in print. Thomson Reuters, its affiliates and their editorial staff are not a law firm, do not represent or advise clients in any matter and are not bound by the professional responsibilities and duties of a legal practitioner. Nothing in this publication should be construed as legal advice or creating an attorney-client relationship. The views expressed in this publication by any contributor are not necessarily those of the publisher.

Thomson Reuters™

Certain discounts based on prior purchase history are also permitted when offered to tiers or groups of loyalty program members, rather than on an individualized basis, subject to restrictions on the use of purchase history and other personal information.[2]

Covered retailers

The ordinance applies to three categories of "covered retailers": (1) grocery businesses with 20 or more retail locations globally; (2) mixed-use grocery businesses with at least 10,000 square feet of sales-floor area devoted to groceries; and (3) delivery service providers operating in Seattle with 100 or more employees worldwide that facilitate delivery or online ordering from grocery businesses, mixed-use grocery businesses, or warehouses to consumers in Seattle.[3]

The availability of class claims, coupled with per-aggrieved-party civil penalties and attorney fees, may create significant litigation exposure for covered retailers, particularly where a challenged pricing practice affects large numbers of consumers.

The scope of the prohibition varies by covered retailer. For qualifying grocery businesses, the prohibition applies to all goods, while mixed-use grocery businesses and delivery service providers are subject to narrower product-specific restrictions.[4]

Disclosure and transparency requirements

The ordinance imposes several pricing disclosure requirements, which vary depending on the type of covered retailer and discount offered:

- Grocery businesses must clearly post the price of goods at retail locations as prescribed by law
- Covered retailers — which include grocery businesses, mixed-use grocery businesses, and delivery service providers — must clearly and conspicuously disclose online, or where a discount is offered, the eligibility criteria for certain discounted prices
- Covered retailers offering discounts based on prior purchase history must disclose the consumer tiers used and the criteria or factors for grouping consumers into each tier[5]

Failure to comply with these disclosure requirements may subject covered retailers to investigation and civil enforcement by the city attorney, including civil penalties of up to $3,000 per violation and up to $10,000 for each subsequent violation per aggrieved party, as well as other legal or equitable relief.[6]

Record retention obligations

Covered retailers must retain records documenting compliance with the ordinance for three years. Required records may include eligibility criteria for discounted prices, methods of public disclosure, use of consumers' prior purchase history and consumer tiering, and data considered in setting prices based on personal information.

Failure to retain required records creates a rebuttable presumption that the covered retailer violated the ordinance for the periods and requirements for which records are absent. The presumption may be rebutted only by clear and convincing evidence, potentially increasing the litigation and enforcement risks associated with inadequate recordkeeping.[7]

Private right of action and city enforcement

Importantly, the ordinance creates both a municipal enforcement mechanism and a private right of action for aggrieved parties.

Private right of action

The ordinance creates a private right of action for "any person or class of persons" injured by a violation of its prohibition on algorithmic-based price discrimination.

For grocery businesses, the private right of action applies only to those with 25 or more grocery establishments in Washington, a narrower threshold than the ordinance's general-coverage provision. By contrast, the private right of action applies to mixed-use grocery businesses and delivery service providers that otherwise satisfy the ordinance's definitions of those covered retailers, without an additional threshold specific to private actions.

Available remedies include attorney fees, legal or equitable relief, civil penalties of up to $3,000 per aggrieved party and $10,000 per aggrieved party for subsequent violations, and liquidated damages of up to $10,000, subject to applicable limitations. Actions generally must be brought within three years of the alleged violation.[8]

The availability of class claims, coupled with per-aggrieved-party civil penalties and attorney fees, may create significant litigation exposure for covered retailers, particularly where a challenged pricing practice affects large numbers of consumers.

Municipal enforcement action

The city attorney is separately authorized to investigate potential violations, seek judicial subpoenas, and bring civil actions to enforce the ordinance. In a municipal enforcement action, the city may seek civil penalties of up to $3,000 for each violation and up to $10,000 for each subsequent violation, attorney fees and costs, and other legal or equitable relief.[9]

Enforcement has already begun in other jurisdictions

Seattle's legislation is part of a broader trend toward regulating data-driven pricing. Maryland, New York, and California have already enacted legislation regulating consumer data-driven pricing.

Other states are considering similar measures, suggesting that businesses deploying personalized pricing technologies may increasingly confront a state-by-state patchwork of substantive restrictions, disclosure requirements, and privacy obligations.

New York and California are actively enforcing their state's legislation.

In January 2026, the New York attorney general demanded information from a grocery delivery service provider concerning its algorithmic pricing practices under New York's Algorithmic Pricing Disclosure Act.

Other states are considering similar measures, suggesting that businesses deploying personalized pricing technologies may increasingly confront a state-by-state patchwork of substantive restrictions, disclosure requirements, and privacy obligations.

The same month, the California attorney general launched an investigative sweep of businesses in the retail, grocery, and hotel sectors concerning their use of consumer personal information to set individualized prices under the California Consumer Privacy Act.

Maryland's Consumer Protection Division may follow this enforcement trend when its legislation becomes effective on October 1, 2026.

New York's algorithmic-pricing law also has faced a constitutional challenge. In *National Retail Federation v. James*,[10] a retail trade association challenged the law's required algorithmic-pricing disclosure on First Amendment compelled-speech grounds.

A federal district court dismissed the challenge, concluding that the disclosure constituted permissible factual and noncontroversial commercial speech. The case is currently on appeal to the U.S. Court of Appeals for the Second Circuit.

Although New York's current disclosure-focused law differs materially from Seattle's broader regulatory scheme, the litigation may provide an early indication of how courts approach constitutional challenges to disclosure requirements associated with algorithmic pricing.

Notably, Seattle's legislation goes farther than these other states' current legislation and presents a potentially different litigation profile: in addition to municipal enforcement, Chapter 7.35 expressly authorizes private claims by certain consumers and classes and couples that right with attorney fees, statutory remedies, and an evidentiary presumption arising from inadequate recordkeeping.[11]

Implications and recommendations

Covered retailers should consider taking steps now to prepare for the ordinance's September 1, 2027 effective date, including the following:

- **Reviewing pricing and data practices:** Assess pricing algorithms, customer analytics, loyalty and discount programs, and related data practices to determine whether they fall within the ordinance's prohibitions or express exclusions
- **Assessing disclosure and recordkeeping practices:** Determine whether existing disclosure, data retention, and documentation practices will satisfy the new requirements, particularly given the rebuttable presumption that may arise from a failure to maintain required records
- **Documenting compliance determinations:** Consider documenting the basis for determinations that particular pricing, discount, or loyalty practices fall outside the ordinance's prohibitions or within an applicable exclusion
- **Coordinating multijurisdictional compliance.** Monitor developments in other states and localities and consider potentially overlapping or inconsistent requirements when developing compliance approaches.
- **Monitoring further guidance.** Track implementing rules and guidance from the City in advance of the ordinance's effective date.

Jurisdiction	Law	Effective Date	Approach	Comparison to Seattle
Maryland	Protection From Predatory Pricing Act, HB 895, Ch. 154	October 1, 2026	Prohibits food retailers and third-party delivery providers from engaging in dynamic pricing or using consumer data to set prices for consumer goods/services.	Maryland has a parallel but independently structured food-retail pricing regime.
New York	General Business Law § 349-a	November 10, 2025	Requires disclosure when personalized algorithmic pricing uses personal data.	New York regulates transparency; Seattle regulates the underlying pricing practice.
California	California Consumer Privacy Act (CCPA)	January 1, 2020	Existing privacy law may regulate how personal information is used for individualized pricing.	California does not have a dedicated surveillance pricing statute, but the CCPA may provide a comparable enforcement mechanism.

Notes:

[1] Seattle Municipal Code (SMC) 7.35.010.

[2] SMC 7.35.010.

[3] SMC 7.35.020; SMC 7.35.010.

[4] SMC 7.35.020.

[5] SMC 7.35.030.

[6] SMC 7.35.030; SMC 7.35.070.

[7] SMC 7.35.050.

[8] SMC 7.35.060.

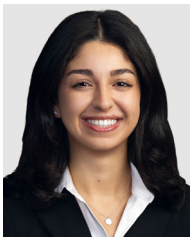
[9] SMC 7.35.070.

[10] *Nat'l Retail Fed'n v. James*, 806 F. Supp. 3d 427 (S.D.N.Y. 2025), *appeal docketed*, No. 25-2818 (2d Cir. Nov. 5, 2025).

[11] In June 2026, the New York Legislature passed A9349B/S8623B, legislation that would replace the state's disclosure-oriented approach with much more substantial restrictions on "surveillance pricing," which resembles the Seattle ordinance. The New York bill would prohibit entities and service providers from using surveillance pricing to set or adjust consumer prices and would restrict the collection, use, retention, or disclosure of personal data for that purpose (excluding certain loyalty, rewards, membership, and other bona fide discounts). It also authorizes the New York attorney general to bring a civil action seeking damages to aggrieved parties and a civil penalty in an amount not to exceed $5,000 for the first violation and $20,000 for each subsequent violation, which shall accrue to the State of New York and be used by the attorney general for enforcement purposes. The bill has not yet been signed by the governor but will take effect 180 days after it becomes law.

About the authors



(L-R) **Brian D. Buckley** is a partner at **Morgan, Lewis & Bockius LLP**. He represents companies in complex commercial litigation, including intellectual property disputes, consumer class actions, and trade secret matters. He can be reached at brian.buckley@morganlewis.com. **Darwin P. Roberts** is of counsel at the firm. He represents companies, executives, and board members in civil litigation, consumer protection disputes, and matters involving federal and state enforcement authorities. He can be reached at darwin.roberts@morganlewis.com. **Marisa L. Berlinger** is an associate at the firm and a commercial litigator with experience in complex business disputes, including employment-related litigation, commercial contracts, and consumer protection. She can be reached at marisa.berlinger@morganlewis.com. **Ariana Nilchian** is an associate at the firm who practices labor and employment law. She can be reached at arian.nilchian@morganlewis.com. The authors are based in Seattle. This article was originally published Oct. 8, 2026, on the firm's website.

Republished with permission.

This article was published on Westlaw Today on October 28, 2026.

*** © 2026 By Brian D. Buckley, Darwin P. Roberts, Marisa L. Berlinger, Esq., and Ariana Nilchian, Esq., Morgan, Lewis & Bockius LLP**

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.