

AB 446 Senate Approps Amends Redline: [DRAFT]

KEY:

- Most recent committee amends (Senate Judic) visible in ~~red and strikethrough for deletions~~ and *blue italics for additions*.
- Cal Chamber's comments/track changes in track changes.

GOALS:

- Maintain author's goal of prohibiting targeted price increases on individual consumers or groups of consumers
- Avoid conflicts with the CCPA related to requirements for disclosure, consent, and enforcement. As part of that, enforcement of should parallel to the CCPA as it relates to data usage, instead of a private litigants or potentially inconsistent local enforcement.
- Prevent the bill from making businesses litigate to defend discounts by removing discounts from the scope of the bill.

SECTION 1.

Part 5.6 (commencing with Section 7200) is added to Division 4 of the Civil Code, to read:

PART 5.6. SURVEILLANCE PRICING

7200.

For purposes of this part, the following definitions apply:

(a) “Aggregate consumer information” means information that relates to a group or category of consumers, from which individual consumer identities have been removed, that is not linked or reasonably linkable to any consumer or household, including via a device.

(b) “Covered information” means either personally identifiable information or aggregate consumer information.

(c)

(a) “Person” means a natural person or an entity, including, but not limited to, a corporation, partnership, association, trust, limited liability company, cooperative, or other organization.

(b) “Personally identifiable information” shall have the same meaning as “personal information” as defined in paragraph (1) of subdivision (v) of Section 1798.140 of the Civil Code and any regulations promulgated thereunder.

(c) “Surveillance pricing” means offering or setting a higher **price** for a good or service for a specific consumer or group of consumers, based, in whole or in part, on **covered personally identifiable** information collected through **electronic surveillance** technology. “Surveillance pricing” includes the use of technological methods, systems, or tools, including, but not limited to, sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection, that are capable of gathering **covered personally identifiable** information about a consumer’s behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.

7202.

(a) Except as provided in subdivision (b), a person shall not engage in surveillance pricing.

(b) A person does not engage in surveillance pricing if any of the following apply:

(1) The difference in price is based solely on costs associated with providing the good or service to different consumers.



(6) The person operates as an **insurer complying with insurance institution as defined in** Section 791.02 of the Insurance Code and the pricing is in connection with that activity. Nothing in this part shall be construed to allow an insurance company to engage in conduct that violates any provision of Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1 of the Insurance Code, approved by the electors on November 8, 1988, as Proposition 103, and the laws it makes applicable to insurance companies.

(c) (1) A person is not in violation of this part if the **pricing or specific terms of extending credit, the** refusal to extend credit on specific terms, or the refusal to enter into a transaction with a specific consumer, is based on information contained in a consumer report, as defined in Section 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(d)).

(2) A person is not in violation of this part if the **pricing or specific terms of extending credit, the** refusal to extend credit on specific terms, or the refusal to enter into a transaction with a specific commercial enterprise, is based on information contained in a commercial credit report, as defined in Section 1785.42.

7204.

Any violation of this part shall be solely enforceable by the California Privacy Protection Agency and the Attorney General pursuant to Civil Code Section 1798.199.10 et seq.

7208.

Any waiver of this part is against public policy and is void and unenforceable.

7209.

The rights, remedies, and penalties established by this part are cumulative and shall not be construed to supersede the rights, remedies, or penalties established under other laws, including, but not limited to, Chapter 6 (commencing with Section 12940) of Part 2.8 of Division 3 of Title 2 of the Government Code and Section 51 of the Civil Code.



SEC. 2.

The Legislature finds and declares that this act furthers the purposes and intent of the California Privacy Rights Act of 2020.

