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NetChoice
Protecting Free Speech and Free Enterprise Online

Michigan HB 6098

Letter of Opposition

June 17, 2026

House Regulatory Reform Committee

Members of the House Regulatory Reform Committee,

On behalf of NetChoice, a trade association working to make the internet safe for free enterprise and free expression, we respectfully urge the Committee to oppose HB 6098, a proposed amendment to the Michigan Consumer Protection Act that would prohibit the use of algorithmic pricing in the sale of goods. While well-intentioned, it would create serious harm to Michigan consumers, businesses, and workers through overbroad restrictions on common and beneficial commercial practices.

This Bill's Core Definition Leaves Critical Ambiguity for Compliance

HB 6098 would add a new Section 3q to the Michigan Consumer Protection Act, prohibiting "surveillance pricing," defined as a pricing system that increases the price of a good or service based on an individual's personal identifiable data, including device type, MAC address, IP address, individual cookies, geolocation, search history, or purchasing habits. The bill never specifies the baseline against which an "increase" is measured. Is the comparator the price offered to other customers, the price offered to the same customer at an earlier point in time, or some hypothetical non-personalized price that does not actually exist in the marketplace? Without a defined reference point, businesses have no reliable way to know in advance whether ordinary personalization, inventory driven pricing, or routine account based account servicing could later be characterized as an unlawful "increase."

Additionally, several of the data categories listed in the definition, such as device type, IP address, and cookies, are commonly used for purposes that have nothing to do with pricing, including fraud prevention, account security, and basic site functionality. As drafted, the bill does not distinguish between a company using an IP address to block a fraudulent transaction and a company using an IP

address to set a price, even though only one of these uses raises the concerns the bill is meant to address.

The Loyalty Program and Dynamic Pricing Carve Outs Highlight the Bill's Imprecision

This bill exempts "dynamic pricing," based on non individualized data such as date, time, or demand, and "retailer loyalty programs," which may decrease a price using personal data. These exclusions show the sponsors recognize that data driven pricing is not harmful, and that common, popular, and pro consumer programs like loyalty accounts, which have long existed by providing discounts and benefits to customers based upon collected data, deserve protection. A statute that can be read opposite ways depending on the framing of the complaint is not a workable compliance standard, and it places popular and common loyalty and rewards programs, the kind that stores across Michigan already offer, at harmful legal risk. This could inadvertently lead to Michigan businesses ending loyalty programs in the state to reduce the risk of litigation, ultimately raising costs on consumers. A retailer offering a loyalty discount necessarily creates a price differential between members and non-members. Whether that differential is described as a protected "decrease" for members or a prohibited data driven "increase" for everyone else depends entirely on how a plaintiff chooses to frame the same transaction.

The Enforcement Mechanism Creates Serious Litigation Risk

Classifying the use of algorithmic pricing under the Michigan Consumer Protection Act triggers not only Attorney General enforcement but also the Act's private right of action, which allows any consumer to sue for actual damages or $250, whichever is greater, plus attorney fees. Paired with the ambiguity in the definition itself described above, this combination invites exactly the kind of speculative, allegation driven litigation that the private right of action was not designed to encourage. By opening up Michigan retailers, both small and large, to the risk of costly litigation, the result would inevitably be passed on to shoppers, with retailers limiting discount offerings or even raising prices. A plaintiff's attorney needs only to identify a price difference correlated with one of the listed data categories to force a Michigan business to bear the cost of defending itself, regardless of whether any exploitative intent or conduct was actually involved.

Smaller businesses, which lack large legal teams, will bear this burden most heavily. Unlike large national retailers that can afford to build proprietary, closed loop pricing systems from scratch, small Michigan businesses rely on off-the-shelf third-party pricing tools to stay competitive. This bill effectively forces a

choice between abandoning those tools or facing litigation exposure — a choice that large out of state competitors, operating beyond the reach of Michigan law, will never have to make.

Conclusion

We share the sponsors' concern about genuinely predatory uses of personal data, such as charging a diabetic consumer more for medical supplies, or exploiting a desperate worker's financial circumstances to suppress wages. These are serious harms that deserve serious attention. But the remedy should be targeted at specific and demonstrable harms, not a sweeping prohibition that treats beneficial personalization as equivalent to predatory exploitation. HB 6098 would raise prices for consumers, harm Michigan businesses, and fail to protect the Michigan families it aims to protect.

We urge the Committee to oppose HB 6098. Thank you for your time and consideration.

Sincerely,

Tyler Fields
Government Affairs Associate, NetChoice[1]

NetChoice is a trade association that works to protect free expression and promote free enterprise online.

[1] The views of NetChoice expressed here do not necessarily represent the views of all NetChoice members.