

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[Second Reprint]

## ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 4085 and 4523**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 28, 2026

The Assembly Budget Committee reports favorably and with committee amendments Assembly Bill Nos. 4085 and 4523 (2R) ACS.

As amended and reported, the committee substitute makes it an unlawful practice and a violation of the consumer fraud act for a person to use surveillance pricing or any other pricing strategy that determines or varies the sale price of groceries and other foodstuffs based, in whole or in part, on personal data. This provision would take effect one year after the date of enactment.

The committee substitute does not prohibit any person from offering a different price on groceries and other foodstuffs based upon:

(1) reasonable costs associated with providing groceries and other foodstuffs to different consumers, provided that a price is not changed more than once in a 24-hour period;

(2) bona fide discounts for which eligibility conditions or criteria are publicly and conspicuously disclosed and uniformly offered based upon those conditions or criteria, and to which any member of a broadly defined group including, but not limited to, a group of teachers or veterans, is eligible; or

(3) bona fide discounts offered, under certain circumstances, as part of a loyalty program, including loyalty programs that allow the accrual or exchange of points, credits, or any similar nonmonetary system of value, or loyalty programs that offer discounts, rebates, or coupons to individual consumers based on their purchases and loyalty programs that include pricing benefits offered by another person. As amended, the committee substitute provides that personal data used to offer a difference in price on groceries and other foodstuffs is not to be used for any other purpose without the consumer's consent.

The committee substitute establishes a one-year moratorium on the new use of electronic shelf labels in this State. Upon the expiration of the moratorium, the new use of electronic shelf labels is permitted, provided its use is in compliance with current law or promulgated regulation, unless the Legislature enacts a law to the contrary. The provisions of the committee substitute do not prohibit a person from

purchasing, installing, or deploying new electronic shelf labels solely for the purpose of repairing or replacing existing electronic shelf labels that were in operation at the same place of business prior to the effective date of the moratorium.

Before and during the moratorium, the New Jersey Innovation Authority in the Department of the Treasury, in consultation with the Division of Consumer Affairs, is required to conduct a study on the use of electronic shelf labels. The study is to examine, at a minimum, the effects of electronic shelf labels and the impact of electronic shelf labels on surveillance pricing. The committee substitute requires the New Jersey Innovation Authority to submit, no later than six months before the expiration of the moratorium, the study's findings and conclusions in a report, together with any recommendations for legislative or administrative action to the Governor and to the Legislature.

The committee substitute provides that the provisions of the substitute do not apply to the pricing, advertisement, offer, or sale of food or beverages by an establishment primarily engaged in the preparation and sale of food or beverages for immediate consumption, whether the food or beverages are consumed on or off the premises.

As amended, the Attorney General may bring a civil action to enjoin an act or practice that is in violation of the provisions of the committee substitute, enforce compliance, and obtain actual monetary damages incurred from the violation, as well as any other restitution, penalties, or relief the court may deem appropriate.

A violation of the consumer fraud act is punishable by a monetary penalty of not more than \$10,000 for a first offense and not more than \$20,000 for any subsequent offense. In addition, violations may result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.

#### COMMITTEE AMENDMENTS:

The committee amended the substitute to:

(1) clarify permitted circumstances for offering a different price on groceries and other foodstuffs, including having all members of the loyalty program receive pricing benefits in accordance with uniform terms and conditions;

(2) clarify that to the extent a person employs personal data to offer a difference in price on groceries and other foodstuffs, that personal data is not to be used for any other purpose without the consumer's consent;

(3) clarify that the Attorney General may bring a civil action on behalf of residents of this State in any court of competent jurisdiction to obtain for each negligent or greater violation, in addition to any other penalty provided by law, actual monetary damages incurred from the violation. Previously, the committee substitute provided that the Attorney General may bring a civil action to obtain for each negligent or greater violation actual monetary damages incurred from the violation, or \$50,000, whichever is greater; and

(4) make other clarifying and technical changes.