



ECOMMERCE INNOVATION ALLIANCE

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The Honorable Jared Polis
Governor of Colorado
136 State Capitol
Denver, CO 80203
Governorpolis@state.co.us

Re: Request to Veto HB26-1210

Dear Governor Polis:

I write on behalf of the Ecommerce Innovation Alliance (EIA) and the online retailers, marketplaces, and direct-to-consumer brands we represent — many of whom employ Coloradans, serve Colorado consumers, and have built their businesses in your state — to respectfully urge you to veto House Bill 26-1210. As drafted, the bill would impose substantial and unnecessary harm on lawful ecommerce activity, expose Colorado businesses to a wave of abusive litigation, and chill the very kinds of personalized offers that consumers rely on to save money.

EIA shares the General Assembly's underlying interest in protecting consumers from genuine discrimination. We fully agree that no business should be permitted to set prices, extend offers, or condition the terms of a transaction on a consumer's sex, race, age, national origin, disability, sexual orientation, gender identity, religion, or any other protected characteristic. We support vigorous enforcement of discrimination laws.

HB26-1210 goes far beyond that consensus. By sweeping in any "differential" or "individualized" offer based on consumer data, the bill would treat ordinary, pro-consumer commercial practices as presumptively unlawful. Targeted discounts, loyalty rewards, win-back offers to lapsed customers, first-time-buyer promotions, cart-abandonment coupons, subscriber-only pricing, and segmented email promotions are not discrimination. They are how modern retailers compete for customers, reward engagement, and pass savings along to the people most likely to act on them. A consumer who receives a 15% off code because she previously browsed running shoes is not being harmed — she is being offered a better price than the shopper who never visited the site.

Businesses should retain the right to provide targeted discounts to individual consumers based on those consumers' preferences, behavior, and stated interests. There is nothing inherently wrong with that practice, provided the offer is not conditioned on a protected characteristic. HB26-1210 blurs that essential line. By regulating personalization itself rather than discrimination, the bill would penalize conduct that benefits consumers and is universally accepted across the digital economy.

Our deepest concern is the bill's litigation architecture. HB26-1210 pairs broad and ambiguous prohibitions with a private right of action and no meaningful pre-suit notice or cure period. That combination is a blueprint for abusive litigation. Colorado has already seen, in the website-accessibility and biometric-information contexts in peer states, how vague consumer-protection statutes with uncapped statutory damages become engines for serial filers who target small and mid-sized online businesses with form complaints and demand letters calibrated to extract settlements below the cost of defense.

The companies that will bear the brunt of that litigation are not the largest platforms; they are Colorado-based merchants, family-owned brands, and growing DTC companies that cannot absorb six-figure defense costs to litigate whether a routine promotional email constituted an "individualized price." Many will respond by turning off personalization for Colorado IP addresses altogether, which means Colorado consumers will see fewer discounts, fewer relevant offers, and higher effective prices than consumers in neighboring states. That is the opposite of what a consumer-protection statute should achieve.

If the legislature's concern is genuinely about pricing decisions tied to protected characteristics, or about opaque practices that mislead consumers about how a price was set, those concerns can be addressed through narrower, more carefully drafted legislation: clear definitions tied to protected-class status, enforcement through the Attorney General rather than a bounty-style private right of action, a right to cure technical violations, and clear safe harbors for ordinary marketing personalization. EIA and its members stand ready to work with your office and with legislative sponsors on that kind of targeted approach in the next session.

For these reasons, I respectfully urge you to veto HB26-1210 and to invite stakeholders back to the table for a measure that protects Colorado consumers from real discrimination without treating every personalized discount as a lawsuit waiting to happen. Thank you for your consideration.

Respectfully,



David Carter

President & Chief Executive Officer