

STATE OF NEW YORK

9349--B

2025-2026 Regular Sessions

IN ASSEMBLY

December 17, 2025

Introduced by M. of A. TORRES, SHIMSKY, GONZALEZ-ROJAS, REYES, GLICK, LEVENBERG, TAPIA, ZINERMAN, O'PHARROW, SIMON, LASHER, SANTABARBARA, LEE, STECK, ROMERO, BORES, McMAHON, CONRAD, CRUZ, P. CARROLL, ZACCARO, MORENO, SHRESTHA, RAGA, SAYEGH, FORREST, GRIFFIN, CLARK, COOK, WOERNER, HEVESI, KAY, DAVILA, KELLES, GIBBS, LAVINE, KASSAY, BURROUGHS, ROSENTHAL, BURDICK, DE LOS SANTOS, LUNSFORD, SEAWRIGHT, BICHOTTE HERMELYN, GALLAGHER, HYNDMAN, BURKE, JACOBSON, CUNNINGHAM, TAYLOR, ALVAREZ, JACKSON, SIMONE -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to prohibiting the use of surveillance pricing

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 349-a of the general business law, as added by
2 section 1 of part X of chapter 58 of the laws of 2025, is amended to
3 read as follows:
4 § 349-a. Pricing. 1. Definitions. As used in this section, the follow-
5 ing terms shall have the following meanings:
6 (a) "Algorithm" means a computational [~~automated~~] process or system
7 that [~~uses a set~~] applies one or more sets of rules, including rules
8 generated by a natural person or by a computational process or system,
9 to generate outputs based on inputs and/or to define a sequence of oper-
10 ations.
11 (b) "Clear and conspicuous disclosure" means disclosure in the same
12 medium as, and provided on, at, or near and contemporaneous with every

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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1 advertisement, display, image, offer or announcement of a price for
2 which notice is required, using lettering and wording that is easily
3 visible and understandable to the average consumer.

4 (c) "Consumer" means a natural person who is seeking or solicited to
5 purchase, lease or receive a good or service for personal, family or
6 household use in New York state or from an entity domiciled in New York
7 state.

8 (d) "Personal data" means any data that identifies or could reasonably
9 be linked, directly or indirectly, with a specific consumer or device.
10 "Personal data" shall not include location data that is [~~used by a for-~~
11 ~~hire vehicle as defined in section 19-502 of the administrative code of~~
12 ~~the city of New York or as otherwise defined in local law or rule, or a~~
13 ~~transportation network company vehicle as defined in section sixteen~~
14 ~~hundred ninety-one of the vehicle and traffic law, solely to calculate~~
15 ~~the fare based on mileage and trip duration between the passenger's~~
16 ~~pickup and drop-off locations] affirmatively and knowingly provided or
17 shared by a consumer and used:~~

18 (i) for the purpose of calculating trip duration and mileage costs
19 associated with location-based service, such as transportation, deliv-
20 ery, and courier logistics; or

21 (ii) to assess local supply and demand conditions.

22 (e) "Dynamic pricing" means pricing that fluctuates [~~dependent~~] auto-
23 atically depending on conditions based completely or in part on one or
24 more algorithms, excluding price fluctuations based solely on bona fide
25 custom discounts.

26 (f) [~~"Personalized algorithmic~~] "Surveillance pricing" means [dynamic
27 pricing set by an algorithm that uses personal data as defined in this
28 section] pricing set completely or in part by an algorithm that uses
29 personal data to offer different prices to different customers for the
30 same goods or services and does not include bona fide custom discounts.

31 (g) "Bona fide discount" means a genuine reduction in price that is
32 referred to as such to consumers, including generally available
33 reductions in price from the reference price based on bulk purchases or
34 subscriptions. Entities and service providers may reasonably interpret
35 the term "bona fide discount" to mean a genuine reduction from a contem-
36 poraneous or recent reference price that is established absent of decep-
37 tive, abusive and unfair practices as required by section three hundred
38 forty-nine of this article and 16 CFR 233. Such bona fide discount may
39 include but is not limited to clearly and conspicuously posted promo-
40 tional periods, end-of season sales, flash sales, early-bird sales,
41 inventory based pricing, price matching policies, and rebates, to the
42 extent that such discount is generally available without the utilization
43 of personal data.

44 (h) (i) "Bona fide custom discount" means a bona fide discount
45 consistent with federal, state, and local anti-discrimination laws
46 offered by an entity:

47 (1) to a consumer who affirmatively and knowingly enrolls in a loyal-
48 ty, membership or rewards program, including but not limited to by sign-
49 ing up for a mailing list, registering for promotional communication, or
50 participating in a promotional event, provided the discount is offered
51 and clearly and conspicuously disclosed to all members in a given local
52 geographic market, or commonly used distribution channels of such loyal-
53 ty program pursuant to publicly disclosed terms and conditions. Such
54 loyalty, membership or rewards programs may include tiers of bona fide
55 discounts based on prior purchase history data provided that the tiers
56 are clearly and conspicuously disclosed and that such prior purchase

1 history data is not paired, combined, or cross-referenced with any other
2 personal data except enrollment in the loyalty, membership or rewards
3 program;

4 (2) that is based on a consumer's voluntary self-identification with a
5 broadly defined class of consumers including, but not limited to, mili-
6 tary veterans, active duty personnel, seniors, teachers, or employees,
7 or individuals belonging to a class of consumers based on date of birth
8 or anniversary of membership in a loyalty program, provided affirmative-
9 ly and knowingly by the consumer and is not derived or inferred by the
10 entity from any other data, provided the basis of the discount is clear-
11 ly and conspicuously disclosed to all members of the defined class of
12 consumers;

13 (3) except in the case of the operator of an online marketplace, that
14 is based solely on a consumer's prior purchase history, including goods
15 or services purchased, timing or frequency of purchases including first-
16 time or subsequent purchases, returns or cancellations, with such
17 specific entity, provided that (A) such prior purchase history data is
18 not paired, combined, or cross-referenced with any other consumer data
19 except the fact of enrollment in a loyalty, membership or rewards
20 program; and (B) that the entity clearly and conspicuously discloses its
21 use of prior purchase history data; or

22 (4) that is, in the case of the operator of an online marketplace,
23 provided the online marketplace clearly and conspicuously discloses its
24 use of prior purchase history data:

25 (A) based solely on a consumer's prior purchase history, including
26 goods or services purchased, timing or frequency of purchases including
27 first-time or subsequent purchases, returns or cancellations, with the
28 same independent, third-party entity offering the good or service to
29 which the bona fide discount is applied, provided that such prior
30 purchase history data is not paired, combined, or cross-referenced with
31 any other personal data, including but not limited to data held by such
32 operator of such online marketplace related to any other third-party
33 entities, and such operator's own transaction data where such operator
34 also offers goods and services; or

35 (B) based on a consumer's prior purchase history, including goods or
36 services purchased, timing or frequency of purchases including first-
37 time purchase, returns or cancellations, collected through the online
38 marketplace to offer a one-time discount from the reference price to new
39 customers of a particular independent, third-party entity on that online
40 marketplace, provided the consumer's prior purchase history data is not
41 used to set or change the reference price for any goods and services to
42 which the discount may be applied.

43 (ii) "Bona fide custom discount" does not include any reduction in
44 reference price based on personal data other than personal data identi-
45 fied in subparagraph (i) of this paragraph.

46 (iii) Nothing herein shall prevent an entity from notifying the
47 consumer of a bona fide custom discount, or automatically applying a
48 bona fide custom discount where the entity has knowledge of a consumer's
49 eligibility for such a discount, provided that entity does not change
50 the reference price. Where an entity provides a bona fide custom
51 discount automatically, such entity shall notify the consumer of their
52 eligibility.

53 (iv) Nothing herein shall prevent an entity from marketing a bona fide
54 discount to a consumer for the purposes of attracting a new customer or
55 reengaging a consumer as a customer with the entity unless such consumer
56 opts out of such communications.

1 (i) "Reference price" means the actual amount a consumer is required
2 to pay for any good or service, including mandatory fees or charges
3 necessary to receive such good or service except taxes or fees imposed
4 by a government, that is openly and actively offered to the public in
5 regular course of business for a reasonably substantial and recent peri-
6 od of time.

7 (j) "Consumer price" means the reference price with adjustments based
8 on bona fide discounts, including sales, coupons, promotions or other
9 discounts except bona fide custom discounts.

10 (k) "Online marketplace" means an entity that operates a public or
11 semi-public website, online service, online application, mobile applica-
12 tion or other electronically based or accessed platform through which a
13 consumer in New York state engages in the sale, purchase, payment, stor-
14 age, shipping, or delivery of a good or service that allows for, facili-
15 tates, or enables independent, third-party entities to engage in the
16 sale, purchase, payment, storage, shipping, or delivery of a good or
17 service to a consumer in New York state.

18 (l) "Independent, third-party entity" means any entity that engages in
19 the sale, purchase, payment, storage, shipping, or delivery of goods or
20 services to a consumer in New York state through an online marketplace.

21 (m) "Entity" means any natural person, firm, organization, partner-
22 ship, association, corporation, or any other entity domiciled or doing
23 business in New York state.

24 (n) "Service provider" means any entity that acts on behalf of another
25 entity that is subject to this section.

26 2. ~~[Any] Prohibition on certain pricing practices. (a) No entity [that~~
27 ~~sets the price of a specific good or service using personalized algo-~~
28 ~~rithmic pricing, and that directly or indirectly, advertises, promotes,~~
29 ~~labels or publishes a statement, display, image, offer or announcement~~
30 ~~of personalized algorithmic pricing to a consumer in New York, using~~
31 ~~personal data specific to such consumer, shall include with such state-~~
32 ~~ment, display, image, offer or announcement, a clear and conspicuous~~
33 ~~disclosure that states:~~

34 ~~"THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA"] or~~
35 ~~service provider shall set or adjust the reference price or consumer~~
36 ~~price of a good or service using surveillance pricing, directly or indi-~~
37 ~~rectly, to a consumer. Nothing in this section shall be interpreted to~~
38 ~~affect prices or discounts except to prohibit surveillance pricing.~~

39 (b) No entity or service provider shall advertise, promote, label or
40 publish a statement, display, image, offer or announcement using
41 surveillance pricing to a consumer.

42 (c) No entity or service provider shall collect, use, sell, retain,
43 share for valuable consideration, or disclose personal data for the
44 purpose of facilitating surveillance pricing to a consumer.

45 (d) No entity or service provider shall offer a bona fide custom
46 discount unless such discount is offered uniformly to any consumer who
47 meets the disclosed eligibility conditions or criteria.

48 3. Exceptions. Nothing in this section shall apply to:

49 (a) A person, firm, partnership, association, or corporation, or agent
50 or employee thereof, who or that is subject to the insurance law or
51 regulations promulgated thereunder.

52 (b) ~~[Any financial institution or affiliate of a financial institu-~~
53 ~~tion, all as defined in 15 U.S.C. 6809, to the extent that the financial~~
54 ~~institution or affiliate is subject to Title V of the Gramm Leach Bliley~~
55 ~~Act (15 U.S.C. § 6801, et seq., as amended) and the rules and implement-~~
56 ~~ing regulations promulgated thereunder] An entity or service provider's~~

1 use of personal data to set or adjust the price or terms of a good or
2 service based in whole or in part on an evaluation of creditworthiness,
3 including the pricing of credit, extension or granting of credit, or the
4 refusal to extend credit based on data provided in a consumer report as
5 defined by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et
6 seq.

7 ~~(c) [A financial institution as defined in subsection (f) of section~~
8 ~~eight hundred one of the financial services law]~~ Pricing required or
9 expressly authorized by federal or state law.

10 ~~(d) [A price that is offered to a consumer who has an existing~~
11 ~~subscription-based contract or subscription based agreement for goods or~~
12 ~~services with an entity and where such price is less than the price for~~
13 ~~the same good or service set forth in the subscription based agreement~~
14 ~~or subscription-based contract]~~ In the case of a service provider acting
15 on behalf of an entity subject to this subdivision, the service provider
16 unless the service provider shows reckless disregard of the entity's
17 prohibited conduct.

18 4. ~~[Where the attorney general shall have reason to believe that there~~
19 ~~is an alleged violation of this section based upon, among other things,~~
20 ~~a consumer report of an alleged violation, the attorney general, in the~~
21 ~~name of the people of the state of New York, shall dispatch a cease and~~
22 ~~desist letter to the entity at issue, specifying the alleged violation~~
23 ~~or violations and the remedies to cure the violations within a desig-~~
24 ~~nated timeline. Where, after receipt of the cease and desist letter and~~
25 ~~the expiration of such designated timeline, the entity continues to~~
26 ~~violate this section, an application may be made by the attorney general~~
27 ~~in the name of the people of the state of New York to a court or justice~~
28 ~~having jurisdiction by a special proceeding to issue an injunction, and~~
29 ~~upon notice to the respondent of not less than five days, to enjoin and~~
30 ~~restrain the continuance of such violations, and if it shall appear to~~
31 ~~the satisfaction of the court or justice that the respondent has, in~~
32 ~~fact, violated this section, an injunction may be issued by such court~~
33 ~~or justice, enjoining and restraining any further violation, without~~
34 ~~requiring proof that any person has, in fact, been injured or damaged~~
35 ~~thereby. Whenever the court shall determine that a violation of this~~
36 ~~section has occurred, the court may impose a civil penalty of not more~~
37 ~~than one thousand dollars for each violation.]~~ Enforcement. (a) Where a
38 violation of this section is alleged to have occurred, the attorney
39 general may apply in the name of the people of the state of New York to
40 a court of competent jurisdiction, on notice of five days, for an order
41 enjoining or restraining commission or continuance of the alleged unlaw-
42 ful acts. In any such proceeding, the court shall order restitution and
43 damages to aggrieved parties, where appropriate, and impose a civil
44 penalty in an amount not to exceed five thousand dollars for the first
45 violation, twenty thousand dollars for each subsequent violation, which
46 shall accrue to the state of New York to be used exclusively by the
47 attorney general for the enforcement of consumer protection.

48 (b) This section shall apply to all acts declared to be unlawful under
49 this section, whether or not subject to any other law of this state, and
50 shall not supersede, amend or repeal any other law of this state under
51 which the attorney general is authorized to take any action or conduct
52 any inquiry.

53 (c) The remedies provided by this section shall be in addition to any
54 other lawful remedy available.

1 5. Rules and regulations. The attorney general may promulgate such
2 rules and regulations as are necessary to effectuate and enforce the
3 provisions of this section.

4 6. Construction. This section shall not be construed to limit any
5 other criminal or civil liability such entity may be subject to under
6 law.

7 § 2. Severability. If any clause, sentence, paragraph, subdivision,
8 section, or part of this act shall be adjudged by any court of competent
9 jurisdiction to be invalid, such judgment shall not affect, impair, or
10 invalidate the remainder thereof, but shall be confined in its operation
11 to the clause, sentence, paragraph, subdivision, section, or part there-
12 of directly involved in the controversy in which such judgment shall
13 have been rendered. It is hereby declared to be the intent of the legis-
14 lature that this act would have been enacted even if such invalid
15 provisions had not been included herein.

16 § 3. This act shall take effect on the one hundred eightieth day after
17 it shall have become a law. Effective immediately, the addition, amend-
18 ment and/or repeal of any rule or regulation necessary for the implemen-
19 tation of this act on its effective date are authorized to be made and
20 completed on or before such effective date.