STATE OF NEW YORK

9396

2025-2026 Regular Sessions

IN ASSEMBLY

December 19, 2025

Introduced by M. of A. SOLAGES -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to establishing the protecting consumers and jobs from discriminatory pricing act

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

Section 1. Short title. This act shall be known and may be cited as the "Protecting Consumers and Jobs from Discriminatory Pricing Act".

§ 2. Legislative findings. The legislature finds and declares that:

1. It is the policy of the state of New York to protect consumers from discriminatory pricing schemes in whatever iteration they appear or evolve. Advancements in algorithms, in artificial intelligence, and in electronic shelving technology have created commercial and retail environments where it is possible to set pricing for a product or service based on personal or protected data. Currently, there are no prohibitions on companies using such data to set prices; this gap in the law presents a distinct potential for companies to violate consumer privacy rights and create discriminatory results.

While offering goods at different prices due to customer demand is not new, there are subtle and important differences between price optimization and discriminatory pricing schemes like personalized algorithmic pricing and surveillance pricing, in which companies exploit the personal and protected data of consumers to maximize profits. It is in the interest of the state to regulate any technologies or business models that stifle competition through the monetization of consumers' personal information.

2. The state of New York further finds that business models in personalized algorithmic or surveillance pricing will lead to the elimination of numerous jobs, putting the livelihood of many workers at risk. Protecting these jobs will further benefit consumers who are part of this economic ecosystem. It will also add to the growth of the state's

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

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economy and job market. Thus, by enacting rules around personalized algorithmic and surveillance pricing, the state of New York can protect these jobs and promote the growth of jobs in the future.

§ 3. The general business law is amended by adding a new section 349-a-1 to read as follows:

§ 349-a-1. Discriminatory pricing. 1. The following terms shall have the following meanings for the purposes of this section:

(a) "Algorithm" means a computational process that uses a set of rules to define a sequence of operations including but not limited to artificial intelligence systems and facial-recognition software.

(b) "Consumer" means a natural person who is seeking or solicited to purchase, lease or receive a good or service not for resale in the ordinary course of the natural person's trade or business, but for personal, family or household use.

(c) "Consumer data" means any data that identifies or could reasonably be linked, directly or indirectly, with a specific natural person or device, excluding location data.

(d) "Dynamic and surveillance pricing" means pricing that fluctuates depending on conditions where algorithmic or artificial intelligence models retrain or recalibrate on information in near real-time, excluding promotional pricing offers, loyalty program benefits or other temporary discounts or changes to pricing related to retention of existing customers.

(e) "Surveillance pricing" means offering or setting a customized price for a good or service for a specific consumer or group of consumers, based, in whole or in part, on covered 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 information about a consumer's behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.

(f) "Electronic shelving labels" (ESLs) means electronic and wireless paper (E-paper) displays that present product and pricing information.

(g) "Food retail establishment" means a retail store that is either: (1) over fifteen thousand square feet in size and sells primarily household foodstuff for offsite consumption including fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or prepared foods (other household supplies or products are secondary to the primary purpose of food sales); or (2) over eighty-five thousand square feet and with ten percent of their sales floor area dedicated to the sale of non-taxable merchandise including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods and/or prepared foods.

(h) "Drug retail establishment" means a retail store that sells a variety of prescription and nonprescription medicines and miscellaneous items, including drugs, pharmaceuticals, sundries, fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, prepared foods, and other merchandise.

(i) "Non-digital presentation of price" means (1) A sign which offers the unit price for one or more brands or sizes of a given commodity; or (2) A sticker, stamp, sign, label, or tag, affixed to the shelf upon which the commodity is displayed; and (3) A sticker, stamp, sign, label, or tag, affixed to the consumer commodity itself. If a single sign or

tag does not provide the unit price information for more than one brand or size of a given commodity, then the following information shall be provided: i. the identity; ii. the brand name; iii. the quantity of the packaged commodity if more than one package size per brand is displayed; iv. the total sale price; and v. the price per appropriate unit. Where a sign providing unit price information for one or more sizes or brands of a given commodity is used, the sign shall be located centrally as close as practical to all items to which the sign refers, and the unit price information displayed thereon shall be presented in a clear, distinct, and non-deceptive manner.

(j) "Personalized algorithmic pricing" means dynamic and surveillance pricing derived from or set by an algorithm that uses consumer data which may vary among consumers and/or groups of consumers.

(k) "Person" means any human being or individual.

(l) "Protected class data" means information about an individual person or groups of people that directly, in combination, or by implication identifies a characteristic that is legally protected from discrimination under the laws of this state or under federal law, including but not limited to ethnicity, national origin, age, disability, predisposing genetic characteristic, sex, sexual orientation, gender identity and expression, pregnancy-related conditions, marital status, familial status, religion, and reproductive health care.

2. (a) In food retail establishments and in drug retail establishments, the use of ESLs or any digital shelf display technology shall be prohibited and a non-digital presentation of price shall be used. This prohibition does not limit any food retail or drug retail establishment and any business to provide consumers, based on previous purchase history, a discount, promotional price, or loyalty program benefit.

(b) The use of ESLs or any digital shelf display technology to display personalized algorithmic pricing or surveillance pricing is prohibited.

(c) It is unlawful, for any reason, for any food retail or drug retail establishment to engage in personalized algorithmic pricing or surveillance pricing.

(d) Data of minors under seventeen shall not be collected or used for targeted advertising or personalized algorithmic pricing under any circumstances.

(e) No food retail or drug retail establishment shall use protected class data in setting a price for, offering, marketing, or selling any good or service if any of the following are true:

(1) The use of that data has the effect of withholding or denying any of the accommodations, advantages, and privileges accorded to others.

(2) The price for such good or service is different from the price offered to other individuals or groups based in whole or in part on the use of protected class data.

(f) Nothing in this section shall apply to financial services, including but not limited to financial institutions, financial institution affiliates, broker-dealers, registered investment advisors, and entities that provide consumer credit products such as credit cards, personal loans, and mortgages.

(g) Nothing in this section shall apply to any insurer licensed, regulated, or otherwise authorized to do business in the state of New York under the insurance law, including any persons, agents, or affiliates acting on behalf of such insurer.

3. (a) Whenever there shall be a violation of any portion of this section, an application may be made by the attorney general or, where applicable, by a consumer, worker or labor organization acting on behalf

of affected individuals in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the respondent of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the respondent has, in fact, violated any portion, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby.

(b) Whenever the court shall determine that a violation of any portion of this section has occurred, the court may impose a civil penalty of not more than ten thousand dollars for each violation, with each day of a continuing violation constituting a separate and distinct offense. In connection with any such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. All penalties collected under this section shall be deposited into a dedicated consumer and worker protection fund to support enforcement, education and remedies for affected individuals.

(c) In addition to any other remedies provided in this section, any consumer, employee or labor organization, individually or on behalf of a class of similarly-situated persons, aggrieved by a violation of this section shall have a private right of action in any court of competent jurisdiction. Prevailing plaintiffs shall be entitled to recover the greater of actual damages or statutory damages of not less than five thousand dollars per violation, injunctive and declaratory relief, restitution, disgorgement of profits, and any other relief deemed appropriate by the court. In cases of willful, reckless or knowing violations, treble damages shall be awarded. Prevailing plaintiffs shall also be awarded reasonable attorney's fees, expert witness fees and costs. Nothing in this section shall in any way limit or restrict any rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section. Any waiver of the rights provided by this section is against public policy, void and unenforceable. Retaliation against any person or organization exercising rights under this section is prohibited and constitutes a separate violation.

§ 4. This act shall be liberally construed to effectuate its purposes. If a court declares any provision or application of this act to be illegal, the remaining provisions shall remain in effect. Courts are hereby authorized to reform the provisions of this act in order to preserve the maximum lawful effect thereof.

§ 5. This act shall take effect immediately.