STATE OF NEW YORK

9396--A

2025-2026 Regular Sessions

IN ASSEMBLY

December 19, 2025

Introduced by M. of A. SOLAGES, ZINERMAN, R. CARROLL, LASHER, DAVILA, BRONSON, FORREST, BORES, CRUZ, DINOWITZ, GALLAGHER, RAGA, RAMOS, CUNNINGHAM, LEE, RIVERA, MORENO, SIMON, CLARK, TORRES, GONZALEZ-ROJAS, RAJKUMAR, REYES, HEVESI, BENEDETTO -- 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

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

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

LBD14248-02-6

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 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 or system that applies one or more sets of rules, including rules generated by a natural person or by a computational process or system, to generate outputs based on inputs and/or to define a sequence of operations.

(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 consumer or consumer's device. Consumer data includes all data obtained through 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, including but not limited to the consumer's behavior, characteristics, belongings, possessions, location, or other attributes of the consumer, whether in physical or digital environments.

(d) "Dynamic pricing" means pricing that fluctuates automatically depending on conditions based completely or in part on one or more algorithms, excluding price fluctuations based on bona fide custom discounts or changes to pricing related to retention of existing customers.

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

(f) "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.

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

(h) "Entity" means any natural person, firm, organization, partnership association, corporation, or any other entity domiciled or doing busi-

ness in New York state. A single entity may have one or more food retail establishments or drug retail establishments.

(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 good or set of goods; or (2) A sticker, stamp, sign, label, or tag, affixed to the shelf upon which the goods are displayed; and (3) A sticker, stamp, sign, label, or tag, affixed to the consumer good itself. If a single sign or tag does not provide the unit price information for more than one brand or size of a given good or set of goods, then the following information shall be provided: i. the identity; ii. the brand name; iii. the quantity of the packaged good 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 good 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) "Surveillance pricing" means pricing set completely or in part by an algorithm that uses consumer data to offer different prices to consumers for the same goods or services and does not include bona fide custom discounts.

(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.

(m) "Bona fide discount" means a genuine reduction in price that is referred to as such to consumers. Entities may reasonably interpret bona fide discount to mean a genuine reduction from a contemporaneous or recent reference price that is established absent of deceptive, abusive and unfair practices as required by section three hundred forty-nine of this article and 16 CFR 233.

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

(1) to a consumer who affirmatively and knowingly enrolls in a loyalty, membership or rewards program, including by signing up for a mailing list, registering for promotional communication, or participating in a promotional event, provided the discount is given to all members of such loyalty program;

(2) based on a consumer's voluntary self-identification with a broadly defined class of consumers including, but not limited to, military veterans, active duty personnel, seniors, teachers, or employees, provided freely and knowingly by the consumer for the sole purpose of receiving the discount, and is not derived or inferred by the entity from any other data; or

(3) based solely on a consumer's prior purchase history with that specific entity, provided that such purchase data is not paired, combined, or cross-referenced with any other consumer data; and

(4) bona fide custom discount does not include any reduction or change in reference price based on personal data other than personal data identified in subparagraphs (1), (2), and (3) of this paragraph.

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.

(b) The use of ESLs or any digital shelf display technology in food retail establishments and in drug retail establishments to display surveillance pricing is prohibited.

(c) It is unlawful, for any reason, for any food retail or drug retail establishment to engage in surveillance pricing. This prohibition does not limit any food retail or drug retail establishment and/or any business from providing consumers a bona fide discount or bona fide custom discount.

(d) No food retail establishment 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.

3. Nothing in this section shall apply to:

(a) Any financial institution or affiliate of a financial institution, all as defined in 15 U.S.C. 6809, to the extent that:

(1) the financial institution or affiliate is subject to Title V of the Gramm Leach Bliley Act (15 U.S.C. § 6801, et seq., as amended) and the rules and implementing regulations promulgated thereunder; and

(2) the good or service the financial institution or affiliate offers or provides is based in whole or in part on the consumer's credit risk based on the consumer's personal data.

(b) 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.

4. (a) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding 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 provision of this section, 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 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.

§ 4. Construction. This act shall be liberally construed to effectuate its purposes. This section shall not be construed to limit any other criminal or civil liability such entity may be subject to under

law. Courts are hereby authorized to reform the provisions of this act in order to preserve the maximum lawful effect thereof.

§ 5. Severability. If any clause, sentence, paragraph, subdivision, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein. Courts are hereby authorized to reform the provisions of this act in order to preserve the maximum lawful effect thereof.

§ 6. This act shall take effect immediately.