STATE OF NEW YORK

8623--A

Cal. No. 835

2025-2026 Regular Sessions

IN SENATE

December 19, 2025

Introduced by Sens. MAY, GIANARIS, KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Section 349-a of the general business law, as added by section 1 of part X of chapter 58 of the laws of 2025, is amended to read as follows:

§ 349-a. Pricing. 1. **Definitions.** As used in this section, the following terms shall have the following meanings:

(a) "Algorithm" means a computational [~~automated~~] process **or system** that [~~uses a set~~] **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) "Clear and conspicuous disclosure" means disclosure in the same medium as, and provided on, at, or near and contemporaneous with every advertisement, display, image, offer or announcement of a price for which notice is required, using lettering and wording that is easily visible and understandable to the average consumer.

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

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

LBD14235-04-6

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

(e) "Dynamic pricing" means pricing that fluctuates [~~dependent~~] **automatically depending** on conditions **based completely or in part on one or more algorithms, excluding price fluctuations based solely on bona fide custom discounts**.

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

(g) "Bona fide discount" means a genuine reduction in price that is referred to as such to consumers. Entities may reasonably interpret the term "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.

(h) (i) "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 but not limited to 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) that is 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;

(3) except in the case of the operator of an online marketplace, that is based solely on a consumer's prior purchase history with such specific entity, provided that such prior purchase history data is not paired, combined, or cross-referenced with any other consumer data; or

(4) in the case of the operator of an online marketplace, based solely on a consumer's prior purchase history with the same independent, third-party entity offering the good or service to which the bona fide discount is applied, provided that such prior purchase history data is not paired, combined, or cross-referenced with any other personal data, including but not limited to data held by such operator of such online marketplace related to any other third-party entities, and such operator's own transaction data where such operator also offers goods and services.

(ii) "Bona fide custom discount" does not include any reduction or change in reference price based on personal data other than personal data identified in subparagraph (i) of this paragraph.

(i) "Reference price" means the actual amount a consumer is required to pay for any good or service, including mandatory fees or charges

necessary to receive such good or service except taxes or fees imposed by a government, that is openly and actively offered to the public in regular course of business for a reasonably substantial and recent period of time.

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

(k) "Online marketplace" means a public or semi-public website, online service, online application, mobile application or other electronically based or accessed platform through which a consumer in New York state engages in the sale, purchase, payment, storage, shipping, or delivery of a good or service that allows for, facilitates, or enables independent, third-party entities to engage in the sale, purchase, payment, storage, shipping, or delivery of a good or service to a consumer in New York state.

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

(m) "Entity" means any natural person, firm, organization, partnership, association, corporation, or any other entity domiciled or doing business in New York state.

(n) "Service provider" means any person or entity that acts on behalf of an entity subject to this section.

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

~~"THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA"~~] or service provider shall set or adjust the reference price or consumer price of a good using surveillance pricing, directly or indirectly, to a consumer.

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

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

(d) No entity or service provider shall offer a bona fide custom discount without clearly and conspicuously disclosing any eligibility conditions or criteria for receiving or earning a bona fide custom discount prior to offering the consumer such discount.

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

(f) Any entity or service provider that uses dynamic pricing to vary the price of any good or service more than once in a twenty-four hour period shall clearly and conspicuously disclose the use of such dynamic pricing, the frequency with which price changes may occur, and the conditions that factor into the current dynamic pricing.

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

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

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

(i) 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

(ii) 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.

(c) A financial institution as defined in subsection (f) of section eight hundred one of the financial services law (i) to the extent that such financial institution is subject to article eight of the financial services law and the rules and implementing regulations promulgated thereunder; and (ii) where the good or service the financial institution offers or provides is based in whole or in part on the consumer's credit risk based on the consumer's personal data.

(d) [~~A price that is offered to a consumer who has an existing subscription-based contract or subscription-based agreement for goods or services with an entity and where such price is less than the price for the same good or service set forth in the subscription-based agreement or subscription-based contract~~] Pricing required or expressly authorized by federal or state law.

(e) This section shall not affect prices or bona fide discounts set by entities except to prohibit surveillance pricing and require disclosures related to dynamic pricing in certain cases as set forth herein.

4. Enforcement. [~~Where the attorney general shall have reason to believe that there is an alleged violation of this section based upon, among other things, a consumer report of an alleged violation, the attorney general, in the name of the people of the state of New York, shall dispatch a cease and desist letter to the entity at issue, specifying the alleged violation or violations and the remedies to cure the violations within a designated timeline. Where, after receipt of the cease and desist letter and the expiration of such designated timeline, the entity continues to violate 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 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. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation.~~] (a) Any person in violation of this section shall be subject to the remedies and penalties available pursuant to section three hundred forty-nine of this article and, in addition, shall be subject to a supplemental civil penalty of not more than five thousand dollars for the first violation, and twenty thousand dollars for each subsequent violation, or the profits earned by violating this section, whichever is greater, which may be recovered in a civil action brought by the attorney general. Whenever a court determines that a violation of this section has occurred, the court may impose any other civil penalty

and/or remedy deemed appropriate by the court. Civil penalties imposed under this section and recovered by the attorney general shall be used to enforce consumer protection and data privacy.

(b) The provisions of this section may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawfully designated enforcement officer of a municipality or local government, and all monies collected thereunder shall be retained by such municipality or local government.

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

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

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

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

§ 2. 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.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.