

STATE OF NEW YORK

8623--B

Cal. No. 835

2025-2026 Regular Sessions

IN SENATE

December 19, 2025

Introduced by Sens. MAY, BROUK, GIANARIS, KAVANAGH, SEPULVEDA -- 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 -- again 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:

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

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

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

LBD14235-06-6

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

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

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

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

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

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

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

40 (1) to a consumer who affirmatively and knowingly enrolls in a loyal-
41 ty, membership or rewards program, including but not limited to by sign-
42 ing up for a mailing list, registering for promotional communication, or
43 participating in a promotional event, provided the discount is offered
44 and clearly and conspicuously disclosed to all members in a given local
45 geographic market, or commonly used distribution channels of such loyal-
46 ty program pursuant to publicly disclosed terms and conditions. Such
47 loyalty, membership or rewards programs may include tiers of bona fide
48 discounts based on prior purchase history data provided that the tiers
49 are clearly and conspicuously disclosed and that such prior purchase
50 history data is not paired, combined, or cross-referenced with any other
51 personal data except enrollment in the loyalty, membership or rewards
52 program;

53 (2) that is based on a consumer's voluntary self-identification with a
54 broadly defined class of consumers including, but not limited to, mili-
55 tary veterans, active duty personnel, seniors, teachers, or employees,
56 or individuals belonging to a class of consumers based on date of birth

1 or anniversary of membership in a loyalty program, provided affirmative-
2 ly and knowingly by the consumer and is not derived or inferred by the
3 entity from any other data, provided the basis of the discount is clear-
4 ly and conspicuously disclosed to all members of the defined class of
5 consumers;

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

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

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

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

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

39 (iii) Nothing herein shall prevent an entity from notifying the
40 consumer of a bona fide custom discount, or automatically applying a
41 bona fide custom discount where the entity has knowledge of a consumer's
42 eligibility for such a discount, provided that entity does not change
43 the reference price. Where an entity provides a bona fide custom
44 discount automatically, such entity shall notify the consumer of their
45 eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (b) ~~[Any financial institution or affiliate of a financial institu-~~
47 ~~tion, all as defined in 15 U.S.C. 6809, to the extent that the financial~~
48 ~~institution or affiliate is subject to Title V of the Gramm Leach Bliley~~
49 ~~Act (15 U.S.C. § 6801, et seq., as amended) and the rules and implement-~~
50 ~~ing regulations promulgated thereunder]~~ An entity or service provider's
51 use of personal data to set or adjust the price or terms of a good or
52 service based in whole or in part on an evaluation of creditworthiness,
53 including the pricing of credit, extension or granting of credit, or the
54 refusal to extend credit based on data provided in a consumer report as
55 defined by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et
56 seq.

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

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

12 4. [~~Where the attorney general shall have reason to believe that there~~
13 ~~is an alleged violation of this section based upon, among other things,~~
14 ~~a consumer report of an alleged violation, the attorney general, in the~~
15 ~~name of the people of the state of New York, shall dispatch a cease and~~
16 ~~desist letter to the entity at issue, specifying the alleged violation~~
17 ~~or violations and the remedies to cure the violations within a desig-~~
18 ~~nated timeline. Where, after receipt of the cease and desist letter and~~
19 ~~the expiration of such designated timeline, the entity continues to~~
20 ~~violate this section, an application may be made by the attorney general~~
21 ~~in the name of the people of the state of New York to a court or justice~~
22 ~~having jurisdiction by a special proceeding to issue an injunction, and~~
23 ~~upon notice to the respondent of not less than five days, to enjoin and~~
24 ~~restrain the continuance of such violations, and if it shall appear to~~
25 ~~the satisfaction of the court or justice that the respondent has, in~~
26 ~~fact, violated this section, an injunction may be issued by such court~~
27 ~~or justice, enjoining and restraining any further violation, without~~
28 ~~requiring proof that any person has, in fact, been injured or damaged~~
29 ~~thereby. Whenever the court shall determine that a violation of this~~
30 ~~section has occurred, the court may impose a civil penalty of not more~~
31 ~~than one thousand dollars for each violation.~~] Enforcement. (a) Where a

32 violation of this section is alleged to have occurred, the attorney
33 general may apply in the name of the people of the state of New York to
34 a court of competent jurisdiction, on notice of five days, for an order
35 enjoining or restraining commission or continuance of the alleged unlaw-
36 ful acts. In any such proceeding, the court shall order restitution and
37 damages to aggrieved parties, where appropriate, and impose a civil
38 penalty in an amount not to exceed five thousand dollars for the first
39 violation, twenty thousand dollars for each subsequent violation, which
40 shall accrue to the state of New York to be used exclusively by the
41 attorney general for the enforcement of consumer protection.

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

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

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

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

55 § 2. Severability. If any clause, sentence, paragraph, subdivision,
56 section, or part of this act shall be adjudged by any court of competent

1 jurisdiction to be invalid, such judgment shall not affect, impair, or
2 invalidate the remainder thereof, but shall be confined in its operation
3 to the clause, sentence, paragraph, subdivision, section, or part there-
4 of directly involved in the controversy in which such judgment shall
5 have been rendered. It is hereby declared to be the intent of the legis-
6 lature that this act would have been enacted even if such invalid
7 provisions had not been included herein.

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