

STATE OF NEW YORK

8616--A

2025-2026 Regular Sessions

IN SENATE

December 12, 2025

Introduced by Sens. GIANARIS, MAY, BRISPORT, BROUK, CLEARE, COMRIE, FAHY, GONZALEZ, HARCKHAM, HINCHEY, JACKSON, KRUEGER, LIU, MAYER, MYRIE, RAMOS, C. RYAN, SERRANO, SKOUFIS, SUTTON -- 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 -- 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:

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

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

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

13 While offering goods at different prices due to customer demand is not
14 new, there are subtle and important differences between price optimiza-
15 tion and discriminatory pricing schemes like personalized algorithmic
16 pricing and surveillance pricing, in which companies exploit the
17 personal and protected data of consumers to maximize profits. It is in
18 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.

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1 models that stifle competition through the monetization of consumers'
2 personal information.

3 2. The state of New York further finds that business models in person-
4 alized algorithmic or surveillance pricing will lead to the elimination
5 of numerous jobs, putting the livelihood of many workers at risk.
6 Protecting these jobs will further benefit consumers who are part of
7 this economic ecosystem. It will also add to the growth of the state's
8 economy and job market. Thus, by enacting rules around personalized
9 algorithmic and surveillance pricing, the state of New York can protect
10 these jobs and promote the growth of jobs in the future.

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

13 § 349-a-1. Discriminatory pricing. 1. The following terms shall have
14 the following meanings for the purposes of this section:

15 (a) "Algorithm" means a computational process or system that applies
16 one or more sets of rules, including rules generated by a natural person
17 or by a computational process or system, to generate outputs based on
18 inputs and/or to define a sequence of operations.

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

23 (c) "Consumer data" means any data that identifies or could reasonably
24 be linked, directly or indirectly, with a consumer or consumer's device.
25 Consumer data includes all data obtained through technological methods,
26 systems, or tools, including, but not limited to, sensors, cameras,
27 device tracking, biometric monitoring, or other forms of observation or
28 data collection, that are capable of gathering covered information about
29 a consumer, including but not limited to the consumer's behavior, char-
30 acteristics, belongings, possessions, location, or other attributes of
31 the consumer, whether in physical or digital environments.

32 (d) "Dynamic pricing" means pricing that fluctuates automatically
33 depending on conditions based completely or in part on one or more algo-
34 rithms, excluding price fluctuations based solely on bona fide custom-
35 discounts or changes to pricing related to retention of existing custom-
36 ers.

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

39 (f) "Food retail establishment" means a retail store that is either:
40 i. over fifteen thousand square feet in size and sells primarily house-
41 hold foodstuff for offsite consumption including fresh produce, meats,
42 poultry, fish, deli products, dairy products, canned foods, dry foods,
43 beverages, baked foods and/or prepared foods (other household supplies
44 or products are secondary to the primary purpose of food sales); or ii.
45 over eighty-five thousand square feet and with ten percent of their
46 sales floor area dedicated to the sale of non-taxable merchandise
47 including the sale of fresh produce, meats, poultry, fish, deli
48 products, dairy products, canned foods, dry foods, beverages, baked
49 foods and/or prepared foods.

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

55 (h) "Entity" means any natural person, firm, organization, partner-
56 ship, association, corporation, or any other entity domiciled or doing

business 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" i. 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.

ii. 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; (1) the identity; (2) the brand name; (3) the quantity of the packaged good if more than one package size per brand is displayed; (4) the total sale price; and (5) the price per appropriate unit.

iii. 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 different 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 the general business law and 16 CFR Part 233.

(n) "Bona fide custom discount" means i. 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.

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 clauses one, two and three of subparagraph i 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 establishment or drug retail establishment to engage in surveillance pricing. This prohibition does not limit any food retail establishment or drug retail establishment and/or any business from providing consumers a bona fide discount or bona fide custom discount.

(d) Where a food retail establishment or drug retail establishment has actual knowledge that it has collected data of a minor under the age of seventeen, such establishment shall cease processing such data, and delete all information associated with the individual within the establishment's possession or control as soon as reasonably practicable, except to the extent necessary to comply with the establishment's legal obligations.

(e) 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:

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

ii. 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:

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.

(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 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

1 not more than ten thousand dollars for each violation, with each day of
2 a continuing violation constituting a separate and distinct offense. In
3 connection with any such application, the attorney general is authorized
4 to take proof and make a determination of the relevant facts and to
5 issue subpoenas in accordance with the civil practice law and rules. All
6 penalties collected under this section shall be deposited into a dedi-
7 cated consumer and worker protection fund to support enforcement, educa-
8 tion and remedies for affected individuals.

9 (c) The provisions of this section may be enforced concurrently by the
10 director of a municipal consumer affairs office, or by the town attor-
11 ney, city corporation counsel, or other lawfully designated enforcement
12 officer of a municipality or local government, and all monies collected
13 thereunder shall be retained by such municipality or local government.

14 (d) Nothing in this section shall in any way limit or restrict any
15 rights or remedies which are otherwise available under law to the attor-
16 ney general.

17 § 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.

21 § 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.

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

34 § 7. 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.