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IN SENATE

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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:

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 from an entity domiciled in New York state**.

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

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(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~~] affirmatively and knowingly provided or shared by a consumer and used:

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

(ii) to assess local supply and demand conditions.

(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, including generally available reductions in price from the reference price based on bulk purchases or subscriptions. Entities and service providers 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. Such bona fide discount may include but is not limited to clearly and conspicuously posted promotional periods, end-of season sales, flash sales, early-bird sales, inventory based pricing, price matching policies, and rebates, to the extent that such discount is generally available without the utilization of personal data.

(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 offered and clearly and conspicuously disclosed to all members in a given local geographic market, or commonly used distribution channels of such loyalty program pursuant to publicly disclosed terms and conditions. Such loyalty, membership or rewards programs may include tiers of bona fide discounts based on prior purchase history data provided that the tiers are clearly and conspicuously disclosed and that such prior purchase history data is not paired, combined, or cross-referenced with any other personal data except enrollment in the loyalty, membership or rewards 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, or individuals belonging to a class of consumers based on date of birth

or anniversary of membership in a loyalty program, provided affirmatively and knowingly by the consumer and is not derived or inferred by the entity from any other data, provided the basis of the discount is clearly and conspicuously disclosed to all members of the defined class of consumers;

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

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

(A) based solely on a consumer's prior purchase history, including goods or services purchased, timing or frequency of purchases including first-time or subsequent purchases, returns or cancellations, 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; or

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

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

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

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

(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 an entity that operates 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 entity that acts on behalf of another entity that is 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 or service using surveillance pricing, directly or indirectly, to a consumer. Nothing in this section shall be interpreted to affect prices or discounts except to prohibit surveillance pricing.

(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 unless such discount is offered uniformly to any consumer who meets the disclosed eligibility conditions or criteria.

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 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~~] An entity or service provider's use of personal data to set or adjust the price or terms of a good or service based in whole or in part on an evaluation of creditworthiness, including the pricing of credit, extension or granting of credit, or the refusal to extend credit based on data provided in a consumer report as defined by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

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

(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~~] In the case of a service provider acting on behalf of an entity subject to this subdivision, the service provider unless the service provider shows reckless disregard of the entity's prohibited conduct.

4. [~~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.~~] Enforcement. (a) Where a violation of this section is alleged to have occurred, the attorney general may apply in the name of the people of the state of New York to a court of competent jurisdiction, on notice of five days, for an order enjoining or restraining commission or continuance of the alleged unlawful acts. In any such proceeding, the court shall order restitution and damages to aggrieved parties, where appropriate, and impose a civil penalty in an amount not to exceed five thousand dollars for the first violation, twenty thousand dollars for each subsequent violation, which shall accrue to the state of New York to be used exclusively by the attorney general for the enforcement of consumer protection.

(b) 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.

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

5. Rules and regulations. 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.