

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

(a) "Algorithm" means a computational automated process that uses a set of rules 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.

(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 on conditions.

(f) "Personalized algorithmic pricing" means dynamic pricing set by an algorithm that uses personal data as defined in this section.

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

2. Any 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".

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.

(c) A financial institution as defined in subsection (f) of section eight hundred one of the financial services 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.

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.

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