

119TH CONGRESS
1ST SESSION

S. 3387

To prohibit certain uses of automated decision systems to inform individualized prices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8 (legislative day, DECEMBER 4), 2025

Mr. GALLEGO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit certain uses of automated decision systems to inform individualized prices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “One Fair Price Act
5 of 2025”.

6 **SEC. 2. PROHIBITION ON SURVEILLANCE-BASED PRICE**
7 **SETTING.**

8 (a) SURVEILLANCE-BASED PRICE SETTING.—

9 (1) IN GENERAL.—Subject to paragraphs (2)
10 and (3), it shall be unlawful for a person to offer or

1 charge different prices to different consumers for the
2 same, or a substantially similar, product or service
3 using, informed by, or based on, in whole or in part,
4 surveillance data.

5 (2) SAFE HARBOR.—

6 (A) IN GENERAL.—The following shall not
7 be considered surveillance-based price setting
8 for purposes of paragraph (1) if the conditions
9 of subparagraph (B) are met:

10 (i) A difference in price that is based
11 solely on reasonable costs associated with
12 providing the product or service to dif-
13 ferent consumers.

14 (ii) A bona fide discount that is of-
15 fered to any member of a broadly defined
16 group, including teachers, active duty per-
17 sonnel, veterans, senior citizens, or stu-
18 dents.

19 (iii) A bona fide discount that is of-
20 fered to any consumer who affirmatively
21 and knowingly enrolls in a loyalty program.

22 (B) CONDITIONS FOR EXCEPTION.—The
23 conditions described in this subparagraph are
24 the following:

1 (i) Any basis for a difference in rea-
2 sonable costs associated with providing a
3 product or service to different consumers is
4 disclosed to the consumer prior to pur-
5 chase.

6 (ii) Any eligibility condition or criteria
7 for receiving or earning a bona fide dis-
8 count is clearly and conspicuously dis-
9 closed.

10 (iii) Any bona fide discount is offered
11 uniformly to any consumer who meets the
12 disclosed eligibility conditions or criteria.

13 (iv) Any surveillance data used solely
14 to offer or administer a bona fide discount
15 is not used for any other purpose, includ-
16 ing profiling, targeted advertising, or indi-
17 vidualized price setting.

18 (v) Any loyalty program that allows a
19 user to accrue and exchange points, cred-
20 its, or any similar nonmonetary system of
21 value for a product or service does not
22 charge a different price for those points,
23 credits, or similar nonmonetary system of
24 value to different consumers for the same
25 or substantially similar product or service.

1 (3) INAPPLICABILITY TO INSURANCE OR CRED-
2 IT PRODUCTS.—The prohibition under paragraph (1)
3 shall not apply to the business of insurance or any
4 credit product.

5 (b) ENFORCEMENT BY THE COMMISSION.—

6 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
7 TICES; UNFAIR METHODS OF COMPETITION.—A vio-
8 lation of subsection (a) or a regulation promulgated
9 under such subsection shall be treated as a violation
10 of a rule defining an unfair or deceptive act or prac-
11 tice under section 18(a)(1)(B) of the Federal Trade
12 Commission Act (15 U.S.C. 57a(a)(1)(B)) and as a
13 violation of section 5(a) of the Federal Trade Com-
14 mission Act (15 U.S.C. 45(a)) regarding unfair
15 methods of competition.

16 (2) POWERS OF THE COMMISSION.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (C), the Commission shall enforce
19 subsection (a) and any regulation promulgated
20 under such subsection in the same manner, by
21 the same means, and with the same jurisdic-
22 tion, powers, and duties as though all applicable
23 terms and provisions of the Federal Trade
24 Commission Act (15 U.S.C. 41 et seq.) were in-
25 corporated into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Ex-
2 cept as provided in subparagraph (C), any per-
3 son who violates such subsection or a regulation
4 promulgated under such subsection shall be
5 subject to the penalties and entitled to the
6 privileges and immunities provided in the Fed-
7 eral Trade Commission Act.

8 (C) COMMON CARRIERS, NONPROFIT ORGA-
9 NIZATIONS, AND AIR CARRIERS.—Notwith-
10 standing section 4, 5(a)(2), or 6 of the Federal
11 Trade Commission Act (15 U.S.C. 44, 45(a)(2),
12 46) or any jurisdictional limitation of the Com-
13 mission, the Commission shall also enforce sub-
14 section (a) or a regulation promulgated under
15 subsection (a), in the same manner provided in
16 subparagraphs (A) and (B), with respect to—

17 (i) common carriers subject to the
18 Communications Act of 1934 (47 U.S.C.
19 151 et seq.) and all Acts amendatory
20 thereof and supplementary thereto;

21 (ii) organizations not organized to
22 carry on business for their own profit or
23 that of their members; and

(iii) air carriers and foreign air carriers subject to the Federal Aviation Act of 1958.

(D) RULEMAKING.—

(i) IN GENERAL.—The Commission may promulgate in accordance with section 553 of title 5, United States Code, such rules as may be necessary to carry out this section, including guidance regarding how to comply with subsection (a).

(ii) SMALL BUSINESS CONCERNS.—

The Commission shall consider rules necessary to carry out this Act as having a significant economic impact on a substantial number of small entities for purposes of chapter 6 of title 5, United States Code (commonly referred to as the “Regulatory Flexibility Act”).

(E) AUTHORITY PRESERVED.—Nothing in this Act may be construed to limit the authority of the Commission under any other provision of law.

(c) ACTIONS BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general of a State, or an official or agency of

1 a State, has reason to believe that an interest of the
 2 residents of such State has been or is threatened or
 3 adversely affected by the engagement of any person
 4 in an act or practice in violation of subsection (a)
 5 or a regulation promulgated under such subsection,
 6 the attorney general of the State, may as *parens*
 7 *patriae*, bring a civil action on behalf of the resi-
 8 dents of the State in an appropriate State court or
 9 an appropriate district court of the United States
 10 to—

11 (A) enjoin such act or practice;

12 (B) enforce compliance with such sub-
 13 section or such regulation;

14 (C) obtain, for each violation, the greater
 15 of—

16 (i) the actual monetary damages in-
 17 curred from the violation; or

18 (ii) \$3,000; or

19 (D) obtain, for each violation, any other
 20 restitution, penalties, and other legal or equi-
 21 table relief as the court may deem appropriate.

22 (2) RULE OF CONSTRUCTION.—For purposes of
 23 bringing a civil action under this subsection, nothing
 24 in this Act shall be construed to prevent an attorney
 25 general, official, or agency of a State from exercising

the powers conferred on the attorney general, official, or agency by the laws of such State to conduct investigations, administer oaths and affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(d) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—An individual who has been injured by a person in violation of subsection (a) or a regulation promulgated under such subsection may bring a civil action against such person in an appropriate State court or an appropriate district court of the United States to—

(A) enjoin the violation;

(B) obtain, for each violation, the greater of—

(i) the actual monetary damages incurred from the violation; or

(ii) \$3,000; or

(C) obtain, for each violation, any other restitution, penalties, and other legal or equitable relief as the court may deem appropriate.

(2) WILLFUL VIOLATIONS.—If the court finds that the defendant acted willfully in committing a violation described in paragraph (1), the court may, in its discretion, increase the amount of the award

1 to an amount equal to not more than 3 times the
 2 amount available under paragraph (1)(B).

3 (3) PRIMA FACIE CASE; REBUTTAL.—

4 (A) PRIMA FACIE CASE.—In any pro-
 5 ceeding commenced pursuant to paragraph (1),
 6 the defendant shall be presumed to be in viola-
 7 tion of subsection (a) if the plaintiff can dem-
 8 onstrate that—

9 (i) two or more individuals were of-
 10 fered different prices by the defendant for
 11 the same, or a substantially similar, prod-
 12 uct or service during the same, or a sub-
 13 stantially similar, period of time; or

14 (ii) one individual was offered dif-
 15 ferent prices by the defendant for the
 16 same, or a substantially similar, product or
 17 service during the same, or a substantially
 18 similar, period of time while using different
 19 means of viewing the price.

20 (B) BURDEN OF REBUTTING PRIMA FACIE
 21 CASE.—The defendant may rebut the presump-
 22 tion described in subparagraph (A) by dem-
 23 onstrating that the alleged difference in price
 24 was—

- 1 (i) not informed, in whole or in part,
 2 by surveillance data; or
 3 (ii) fully explained by the safe harbors
 4 described in subsection (a)(2).

5 (4) COSTS AND ATTORNEY'S FEES.—The court
 6 shall award to a prevailing plaintiff in an action
 7 under this subsection the litigation costs of such ac-
 8 tion and reasonable attorney's fees, as determined
 9 by the court.

10 (5) LIMITATION.—An action may be com-
 11 menced under this subsection not later than 5 years
 12 after the date on which the individual first discov-
 13 ered or had a reasonable opportunity to discover the
 14 violation.

15 (6) NONEXCLUSIVE REMEDY.—Bringing a civil
 16 action under this subsection shall be in addition to
 17 any other remedy available to the individual bringing
 18 such civil action.

19 (7) INVALIDITY OF PRE-DISPUTE ARBITRATION
 20 AND JOINT ACTION WAIVERS.—Notwithstanding
 21 chapter 1 of title 9, United States Code (commonly
 22 known as the “Federal Arbitration Act”), or any
 23 other provision of law, a pre-dispute arbitration
 24 agreement or pre-dispute joint action waiver between
 25 a person in violation of subsection (a) and an indi-

vidual is not valid or enforceable for purposes of the individual bringing a civil action against such person under this subsection.

(e) JOINT STUDY AND REPORT.—

(1) STUDY.—Not later than 1 year after the date of enactment of this section, the Office of Advocacy of the Small Business Administration (in this subsection referred to as the “Office of Advocacy”), in consultation with the Commission, shall conduct a joint study to evaluate the impact of this Act on—

(A) small business concerns; and

(B) promoting competition between large and small business enterprises.

(2) REPORT.—Not later than 180 days after the Office of Advocacy completes the study under paragraph (1), the Commission and the Office of Advocacy shall submit to Congress a report on such study, including any relevant findings and recommendations resulting from such study.

(f) DEFINITIONS.—In this section:

(1) BONA FIDE DISCOUNT.—The term “bona fide discount” means an offered price that is lower than the genuine price at which a product or service is widely offered to the public on a regular basis for a reasonably substantial period of time and not for

1 the purpose of establishing a fictitious price to en-
2 able the subsequent offer of a reduction.

3 (2) BUSINESS OF INSURANCE; CREDIT.—The
4 terms “business of insurance” and “credit” have the
5 meaning given such terms in section 1002 of the
6 Consumer Financial Protection Act of 2010 (12
7 U.S.C. 5481).

8 (3) COMMISSION.—The term “Commission”
9 means the Federal Trade Commission.

10 (4) GENETIC INFORMATION.—The term “ge-
11 netic information” has the meaning given such term
12 in section 2791(d) of the Public Health Service Act
13 (42 U.S.C. 300gg–91(d)).

14 (5) PERSONAL INFORMATION.—The term “per-
15 sonal information” means any quality, feature, at-
16 tribute, or trait of an individual, including any im-
17 mutable characteristic (such as race and eye color),
18 mutable characteristic (such as address, weight, citi-
19 zenship, family, or parenthood status), genetic infor-
20 mation, and any other information that could rea-
21 sonably be linked, directly or indirectly, with a par-
22 ticular individual or household.

23 (6) PRE-DISPUTE ARBITRATION AGREEMENT.—
24 The term “pre-dispute arbitration agreement”

1 means any agreement to arbitrate a dispute that has
 2 not arisen at the time of making the agreement.

3 (7) PRE-DISPUTE JOINT ACTION WAIVER.—The
 4 term “pre-dispute joint action waiver” means an
 5 agreement, including as part of a pre-dispute arbi-
 6 tration agreement, that would prohibit, or waive the
 7 right of, one of the parties to the agreement to par-
 8 ticipate in a joint, class, or collective action in a ju-
 9 dicial, arbitral, administrative, or other forum, con-
 10 cerning a dispute that has not arisen at the time of
 11 making the agreement.

12 (8) PRICE.—The term “price” means the
 13 amount charged or offered to a consumer in relation
 14 to a transaction, including any related cost and fee
 15 and any other material term of the transaction that
 16 has direct bearing on the amount paid by the con-
 17 sumer or the value of the product or service offered
 18 or provided to the consumer.

19 (9) SMALL BUSINESS CONCERN.—The term
 20 “small business concern”—

21 (A) has the meaning given such term in
 22 section 3 of the Small Business Act (15 U.S.C.
 23 632); and

24 (B) shall not include a small business con-
 25 cern involved in developing, training, or selling

1 a product or service for the primary purpose of
 2 aiding a business to determine a price.

3 (10) SURVEILLANCE DATA.—The term “surveil-
 4 lance data”—

5 (A) means data that is related to the per-
 6 sonal information, behavior, or biometrics of an
 7 individual; and

8 (B) includes data gathered, purchased, or
 9 otherwise acquired.

10 **SEC. 3. APPLICATION OF PROHIBITION ON SURVEILLANCE-**
 11 **BASED PRICE SETTING TO AIR CARRIERS**
 12 **AND TICKET AGENTS.**

13 (a) IN GENERAL.—Section 41712 of title 49, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

16 “(d) PROHIBITION ON SURVEILLANCE-BASED PRICE
 17 SETTING.—It shall be an unfair or deceptive practice
 18 under subsection (a) for an air carrier, foreign air carrier,
 19 or ticket agent to engage in surveillance-based price set-
 20 ting, as described in section 2(a) of the One Fair Price
 21 Act of 2025.”.

22 (b) NO PREEMPTION OF CONSUMER PROTECTION
 23 CLAIMS.—Section 41713(b)(4) of title 49, United States
 24 Code, is amended by adding at the end the following:

1 “(D) NO PREEMPTION OF SURVEILLANCE-
2 BASED PRICE SETTING CLAIMS.—Nothing in
3 subparagraphs (A) through (C) may be con-
4 strued—

5 “(i) to preempt, displace, or supplant
6 any action for civil damages or injunctive
7 relief based on a violation of section 2(a)
8 of the One Fair Price Act of 2025; or

9 “(ii) to restrict the authority of any
10 government entity, including an attorney
11 general of a State, from bringing a legal
12 claim on behalf of the citizens of the State
13 with respect to any such violation.”.

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