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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R.

To prohibit certain uses of algorithmic decision systems to inform individualized prices for food, groceries, and agricultural commodities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. PAPPAS introduced the following bill; which was referred to the Committee on _____

A BILL

To prohibit certain uses of algorithmic decision systems to inform individualized prices for food, groceries, and agricultural commodities, 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 “Lower Grocery Prices
5 Act”.

1 **SEC. 2. PROHIBITION ON SURVEILLANCE-BASED PRICE**
2 **SETTING FOR FOOD, GROCERIES, AND AGRI-**
3 **CULTURAL COMMODITIES.**

4 (a) SURVEILLANCE-BASED PRICE SETTING.—

5 (1) GENERAL PROHIBITION.—A person may not
6 engage in surveillance-based price setting for food,
7 groceries, or agricultural commodities. If each condi-
8 tion in paragraph (2) is met, any of the following is
9 not surveillance-based price setting:

10 (A) A difference in price is based solely on
11 reasonable costs associated with providing the
12 good or service to different consumers.

13 (B) A discounted price is offered to mem-
14 bers of a broadly defined group, including
15 teachers, veterans, senior citizens, or students,
16 based on publicly disclosed eligibility criteria.

17 (C) A discounted price is offered through
18 a loyalty, membership, or rewards program that
19 consumers affirmatively enrolled in, including
20 signing up for a mailing list, registering for
21 promotional communication, or participating in
22 a promotional event.

23 (2) ADDITIONAL CONDITIONS FOR EXCEP-
24 TION.—The conditions in this paragraph are the fol-
25 lowing:

1 (A) Any eligibility criteria or condition for
2 receiving or earning the discount or reward is
3 clearly and conspicuously disclosed.

4 (B) Any discount or reward is offered uni-
5 formly to all consumers who meet the disclosed
6 eligibility criteria.

7 (C) Any surveillance data is used solely to
8 offer or administer the discount or reward and
9 is not used for any other purpose, including
10 profiling, targeted advertising, or individualized
11 price setting.

12 (3) REQUIREMENT TO PUBLISH PROCE-
13 DURES.—Not later than 180 days before the date on
14 which a person intends to engage in any of the ac-
15 tions described in subparagraphs (A) through (C) of
16 paragraph (1), that person shall make publicly avail-
17 able, in a conspicuous and accessible format, reason-
18 able procedures that include the following:

19 (A) A process for ensuring the accuracy of
20 all data considered by the automated decision
21 system.

22 (B) A procedure that allows a consumer to
23 correct or challenge the accuracy of data con-
24 sidered by the automated decision system.

1 (C) Disclosure to consumers what data is
2 considered and how automated decision-making
3 considers the data when setting particular
4 prices.

5 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
6 SION.—

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

17 (2) POWERS OF COMMISSION.—The Federal
18 Trade Commission shall enforce subsection (a) and
19 any regulation promulgated under such subsection in
20 the same manner, by the same means, and with the
21 same jurisdiction, powers, and duties as though all
22 applicable terms and provisions of the Federal Trade
23 Commission Act (15 U.S.C. 41 et seq.) were incor-
24 porated into and made a part of this Act. Any per-
25 son who violates such subsection or a regulation pro-

1 mulgated under such subsection shall be subject to
2 the penalties and entitled to the privileges and im-
3 munities provided in the Federal Trade Commission
4 Act.

5 (3) COMMON CARRIERS AND NONPROFIT ORGA-
6 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or
7 6 of the Federal Trade Commission Act (15 U.S.C.
8 44; 45(a)(2); 46) or any jurisdictional limitation of
9 the Federal Trade Commission, the Federal Trade
10 Commission shall also enforce subsection (a) or a
11 regulation promulgated under subsection (a), in the
12 same manner provided in paragraphs (1) and (2),
13 with respect to—

14 (A) common carriers subject to the Com-
15 munications Act of 1934 (47 U.S.C. 151 et
16 seq.) and all Acts amendatory thereof and sup-
17 plementary thereto; and

18 (B) organizations not organized to carry
19 on business for their own profit or that of their
20 members.

21 (4) AUTHORITY PRESERVED.—Nothing in this
22 section may be construed to limit the authority of
23 the Commission under any other provision of law.

24 (c) ACTIONS BY STATES.—

1 (1) IN GENERAL.—In any case in which the at-
2 torney general of a State, or an official or agency of
3 a State, has reason to believe that an interest of the
4 residents of such State has been or is threatened or
5 adversely affected by an act or practice in violation
6 of subsection (a) or a regulation promulgated under
7 such subsection, the State, as *parens patriae*, may
8 bring a civil action on behalf of the residents of the
9 State in an appropriate State court or an appro-
10 priate district court of the United States to—

11 (A) enjoin such act or practice;

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

14 (C) obtain, per violation, the greater of—

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

17 (ii) \$3,000; or

18 (D) obtain any restitution, penalties, and
19 any other legal or equitable relief on behalf of
20 residents as the court may deem just and prop-
21 er.

22 (2) RULE OF CONSTRUCTION.—For purposes of
23 bringing a civil action under this subsection, nothing
24 in this section may be construed to prevent an attor-
25 ney general, official, or agency of a State from exer-

1 cising the powers conferred on the attorney general,
2 official, or agency by the laws of such State to con-
3 duct investigations, administer oaths and affirma-
4 tions, or compel the attendance of witnesses or the
5 production of documentary and other evidence.

6 (d) PRIVATE RIGHT OF ACTION.—

7 (1) IN GENERAL.—A person injured by an act
8 or practice in violation of subsection (a) or a regula-
9 tion promulgated under such subsection may bring
10 in an appropriate State court or an appropriate dis-
11 trict court of the United States—

12 (A) to enjoin the violation;

13 (B) to obtain, for each violation, the great-
14 er of—

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

17 (ii) \$3,000; or

18 (C) to obtain, for each violation, any other
19 restitution, penalties, and other legal or equi-
20 table relief as the court may deem just and
21 proper.

22 (2) WILLFUL VIOLATIONS.—If the court finds
23 that the defendant acted willfully in committing a
24 violation described in paragraph (1), the court may,
25 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) COSTS AND ATTORNEY'S FEES.—The court
4 shall award to a prevailing plaintiff in an action
5 under this subsection the costs of such action and
6 reasonable attorney's fees, as determined by the
7 court.

8 (4) LIMITATION.—An action may be com-
9 menced under this subsection not later than 5 years
10 after the date on which the person first discovered
11 or had a reasonable opportunity to discover the vio-
12 lation.

13 (5) NONEXCLUSIVE REMEDY.—The remedy pro-
14 vided by this subsection shall be in addition to any
15 other remedies available to the person.

16 (6) INVALIDITY OF PRE-DISPUTE ARBITRATION
17 AND JOINT ACTION WAIVERS.—Notwithstanding
18 chapter 1 of title 9, United States Code (commonly
19 known as the “Federal Arbitration Act”), or any
20 other provision of law, a pre-dispute arbitration
21 agreement or pre-dispute joint action waiver between
22 a person engaged in the commerce of food, grocery,
23 or agricultural commodities and a consumer is not
24 valid or enforceable for purposes of this section.

25 (e) DEFINITIONS.—In this section:

1 (1) AUTOMATED DECISION SYSTEM.—The term
2 “automated decision system”—

3 (A) means a system, software, or process
4 that uses computation, the result for which is
5 used to assist or approximate human decision-
6 making; and

7 (B) includes a system, software, or process
8 derived from machine learning, statistics, or
9 other data processing or artificial intelligence
10 techniques.

11 (2) COMMISSION.—The term “Commission”
12 means the Federal Trade Commission.

13 (3) GENETIC INFORMATION.—The term “ge-
14 netic information”—

15 (A) means, with respect to an individual,
16 information about—

17 (i) any genetic test;

18 (ii) the genetic tests of any family
19 member; and

20 (iii) the manifestation of a disease or
21 disorder in any family member;

22 (B) includes, with respect to an individual,
23 any request for, or receipt of, genetic services,
24 or participation in clinical research which in-

1 cludes genetic services, by the individual or any
2 family member of the individual; and

3 (C) does not include information about the
4 sex or age of the individual.

5 (4) PERSONAL INFORMATION.—The term “per-
6 sonal information” means any quality, feature, at-
7 tribute, or trait of an individual, including any im-
8 mutable characteristic (such as race and eye color),
9 mutable characteristic (such as address, weight, citi-
10 zenship, family, or parenthood status), and any
11 other information that could reasonably be linked,
12 directly or indirectly, with a particular person or
13 household.

14 (5) PRE-DISPUTE ARBITRATION AGREEMENT.—
15 The term “pre-dispute arbitration agreement”
16 means any agreement to arbitrate a dispute that has
17 not arisen at the time of making the agreement.

18 (6) PRE-DISPUTE JOINT ACTION WAIVER.—The
19 term “pre-dispute joint action waiver” means an
20 agreement, including as part of a pre-dispute arbi-
21 tration agreement, that would prohibit, or waive the
22 right of, one of the parties to the agreement to par-
23 ticipate in a joint, class, or collective action in a ju-
24 dicial, arbitral, administrative, or other forum, con-

1 cerning a dispute that has not arisen at the time of
2 making the agreement.

3 (7) PRICE.—The term “price” means the
4 amount charged or offered to a consumer in relation
5 to a transaction, including any related cost and fee
6 and any other material term of the transaction that
7 has direct bearing on the amount paid by the con-
8 sumer or the value of the good or service offered or
9 provided to the consumer.

10 (8) SURVEILLANCE-BASED PRICE SETTING.—
11 The term “surveillance-based price setting” means
12 using an automated decision system to offer or in-
13 form a customized price for a good or service for a
14 specific person or consumer, or group of people or
15 consumers, based, in whole or in part, on surveil-
16 lance data.

17 (9) SURVEILLANCE DATA.—The term “surveil-
18 lance data”—

19 (A) means data obtained through observa-
20 tion, inference, or surveillance of an individual
21 that is related to personal information, genetic
22 information, behavior, or biometrics of the indi-
23 vidual or a group, band, class, or tier in which
24 the individual belongs; and

1 (B) includes information gathered, pur-
2 chased, or otherwise acquired.

3 (f) PREEMPTION OF DIRECTLY CONFLICTING STATE
4 LAWS.—

5 (1) IN GENERAL.—Nothing in this section may
6 be construed to preempt, displace, or supplant any
7 State law, except to the extent that a provision of
8 State law conflicts with a provision of this section.

9 (2) GREATER PROTECTION UNDER STATE
10 LAW.—For the purposes of this section, a provision
11 of State law does not conflict with a provision of this
12 section if such State law provides additional protec-
13 tions with respect to individuals protected under this
14 section with respect to surveillance-based wage set-
15 ting or the collection of surveillance data.