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SENATE BILL 1998

By Lamar

AN ACT to amend Tennessee Code Annotated, Title 47 and Title 53, relative to consumer protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-3501. Legislative findings.

The general assembly finds and declares the following:

(1) It is the policy of this state to protect consumers from predatory pricing schemes in whatever iteration they appear or evolve. Advancements in algorithms, in artificial intelligence, and in electronic shelving technology have created commercial and retail environments where it is possible to set pricing for a product or service based on personal or protected data. Currently, there are no prohibitions on companies using personal or protected data to set prices; the use of personal or protected data to set prices presents a distinct potential for companies to violate consumer privacy rights and may result in discrimination;

(2) While offering goods at different prices due to customer demand is not new, there are subtle and important differences between price optimization and dynamic pricing or surveillance pricing. It is in the interest of this state and its consumers that technologies or business models which can impact consumers or competition by the monetization of a person's personal information be regulated by such a policy; and

(3) This state further finds that business models in dynamic pricing or surveillance pricing have results that will lead to the elimination of numerous

jobs, the existence of which are relied upon by the communities of this state for the livelihood of its citizens and, by the state directly for economic growth. Protection of these jobs will further protect consumers who are part of this economic ecosystem, and will add to the growth of this state's economy and job market. By enacting rules around dynamic, personalized algorithmic, or surveillance pricing, this state can protect these jobs and promote the growth of jobs in the future.

47-18-3502. Definitions.

As used in this part:

(1) "Algorithm" means a computational process that uses a set of rules to define a sequence of operation, including, but not limited to, artificial intelligence systems and facial-recognition software;

(2) "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;

(3) "Consumer" means a person who is seeking or solicited to purchase, lease, or receive a good or service not for resale in the ordinary course of the person's trade or business, for personal, family, or household use;

(4) "Consumer data":

(A) Means any data that identifies or could reasonably be linked, directly or indirectly, with a specific person or device; and

(B) Does not include location data;

(5) "Dynamic pricing":

(A) Means pricing that fluctuates dependent on conditions where algorithmic or artificial intelligence models retrain or recalibrate on information in near real-time; and

(B) Does not include promotional pricing offers, loyalty program benefits, or other temporary discounts or changes to pricing related to retention of existing customers;

(6) "Electronic shelving labels" means electronic and wireless paper displays that present product and pricing information;

(7) "Food retail establishment" means a retail store that is:

(A) Over fifteen thousand (15,000) square feet in size and sells primarily household foodstuff for offsite consumption, including fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods, and for which the sale of other household supplies or products is secondary to the primary purpose of food sales; or

(B) Over eighty-five thousand (85,000) square feet and for which ten percent (10%) or more of the establishment's sales floor area is dedicated to the sale of foodstuff, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods;

(8) "Nondigital presentation of price" means:

(A) A sign that offers the unit price for one (1) or more brands or sizes of a given commodity;

(B) A sticker, stamp, sign, label, or tag, affixed to the shelf upon which the commodity is displayed; or

(C) A sticker, stamp, sign, label, or tag, affixed to the commodity itself;

(9) "Person" means a natural human individual;

(10) "Personalized algorithmic pricing" means dynamic pricing or surveillance pricing derived from or set by an algorithm that uses consumer data that may vary among consumers or groups of consumers;

(11) "Protected class data" means information about an individual person or groups of persons that directly, in combination, or by implication, identifies a characteristic that is legally protected from discrimination under the laws of this state or federal law, including, but not limited to, ethnicity, national origin, age, disability, sex, sexual orientation, gender identity and expression, pregnancy outcomes, and reproductive health care; and

(12) "Surveillance pricing":

(A) Means offering or setting a customized price for a good or service for a specific consumer or group of consumers, based, in whole or in part, on covered information collected through electronic surveillance technology; and

(B) Includes the use of technological methods, systems, or tools, including, but not limited to, sensors, cameras, device tracking, biometric monitoring, or other forms of observation or data collection, that are capable of gathering covered information about a consumer's behavior, characteristics, location, or other personal attributes, whether in physical or digital environments.

47-18-3503. Food retail establishment practices.

(a)

(1) A food retail establishment larger than fifteen thousand (15,000) square feet shall:

(A) Not use electronic shelving labels (ESLs) or any digital shelf display technology; and

(B) Use a nondigital presentation of price.

(2) Subdivision (a)(1) does not prohibit a food retail establishment from providing to a consumer, based on previous purchase history, a discount, promotional price, or loyalty program benefit.

(b) A food retail establishment shall not:

(1) Use personalized algorithmic pricing;

(2) Notwithstanding § 47-18-3305, collect or use the data of a person who has not yet attained seventeen (17) years of age for targeted advertising or personalized algorithmic pricing; or

(3) Use protected class data in setting a price for, offering, marketing, or selling any good or service, if:

(A) The use of that data has the effect of withholding or denying any of the accommodations, advantages, and privileges accorded to others; or

(B) The price for such good or service is different from the price offered to other persons or groups based in whole or in part on the use of protected class data.

47-18-3504. Pricing signage.

(a) If a single sign or tag does not provide the unit price information for more than one (1) brand or size of a given commodity, then the following information must be provided:

(1) The identity;

(2) The brand name;

(3) The quantity of the packaged commodity, if more than one (1) package size per brand is displayed;

(4) The total sale price; and

(5) The price per appropriate unit.

(b) Where a sign providing unit price information for one (1) or more sizes or brands of a given commodity is used, the sign must be located centrally as close as practical to all items to which the sign refers, and the unit price information displayed thereon must be presented in a clear, distinct, and nondeceptive manner.

47-18-3505. Application.

This part does not apply to:

(1) Financial services, including, but not limited to, financial institutions, financial institution affiliates, broker-dealers, registered investment advisors, and entities that provide consumer credit products such as credit cards, personal loans, and mortgages; or

(2) An insurer licensed, regulated, or otherwise authorized to do business in this state under the insurance law, including any persons, agents, or affiliates acting on behalf of such insurer.

47-18-3506. Enforcement and penalties.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. A violation of this part constitutes an unfair or deceptive act or practice affecting trade or commerce and is subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act of 1977; provided, that notwithstanding § 47-18-108, a court may order

payment to this state of a civil penalty of not more than seven thousand five hundred dollars ($7,500) per violation of this part.

(b) This section does not limit the rights or remedies that are otherwise available under law to the attorney general and reporter or any other person authorized to bring an action under this part.

SECTION 2. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following as new subdivisions:

( ) Violating § 47-18-3503;

( ) Violating § 47-18-3504;

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the code commission is requested to include the headings in any compilation or publication containing this act.

SECTION 5. This act takes effect July 1, 2026, the public welfare requiring it, and applies to conduct occurring on or after that date.