



S.8623 May / A.9349 Torres

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<p>BILL</p> <p>S.8623 May / A.9349 Torres</p>
<p>SUBJECT</p> <p>"One Fair Price Act"</p>
<p>DATE</p> <p>April 28, 2026</p>
<p>OPPOSE</p>

The Business Council strongly opposes “One Fair Price Act” (S.8623 May / A.9349 Torres), which bans the use of personalized algorithmic pricing and requires disclosure of automated pricing systems, as currently written.

The Business Council shares the Legislature’s goal of protecting New Yorkers from harmful pricing practices. **However, as currently drafted, the bill would inadvertently prohibit retailers and merchants from offering personalized discounts, coupons, and loyalty rewards that benefit consumers. The Business Council urges the Legislature to refocus this bill on truly concerning behaviors: businesses that use consumer data to charge individuals higher prices.**

As New Yorkers grapple with affordability every day, the Legislature must ensure this bill does not eliminate the very tools—coupons, loyalty programs, and personalized promotions—that help consumers save money. The Business Council requests the following five targeted amendments to ensure the bill preserves access to consumer savings:

Definitional Changes to Narrow the Scope and Allow for Beneficial Pricing Discounts

As stated above, BCNYS understands the desire of the Legislature to ensure that customers are not being offered higher prices based on their consumer data.

However, as currently written, this bill would prevent businesses from offering discounts to consumers based on their consumer data. We propose establishing a definition of “baseline price,” replacing the definition of “personal data” with a new definition of “consumer data,” striking the and revising the definition of “personalized algorithmic pricing” to clearly define “surveillance pricing.” Our proposed definitions are as follows:

"Baseline price" means, with respect to a good or service, the then-current price generally made available to consumers in a given region, market, or location excluding loyalty or club member pricing, promotional offers, limited time sales, discounts, rebates, or additional fees for premium or optional features.

“Consumer data” means information that a merchant collects, stores, or uses that identifies or could reasonably be linked, directly or indirectly, with a specific natural person and that is used to determine pricing for that specific person. Consumer data does not include: (I) Aggregate or anonymized data that cannot be linked to specific individuals; (II) Transaction data used solely for inventory management, loss prevention, or operational purposes; (III) Data required for payment processing; (IV) location data used to fulfill a requested good or service, calculate operational costs, or assess supply, demand, and local marketplace conditions; or (V) Data collected solely to comply with legal obligations.

“Surveillance pricing” means offering or setting an individualized (or personalized) price increase above the baseline price for a good or service for a specific consumer based on the individual’s consumer data. Personalized algorithmic pricing does not include price differences based on (i) costs associated with providing the good or service to different consumers (e.g., price changes attributable to inventory, supply chain, order fulfillment, taxes, shipping, delivery, or healthcare payment or copay amounts set by third parties); or (ii) non-individualized factors such as current market demand, public competitor pricing, or time-of-day.

In clearly defining “surveillance pricing,” we then suggest amending Section two to simply read *“No entity shall engage in surveillance pricing.”*

Exempt Consumer Discounts & Pricing That Lowers Amount Paid by Consumer

A recent poll issued by Morning Consult surveyed 1,025 New Yorkers and found that a majority of New Yorkers (70%) oppose banning loyalty programs and coupons, even if they rely on algorithms to function. The same amount of New Yorkers also believe that mandating “uniform” discounts, as permitted in the bill (§3(e)), would mean fewer or no discounts.

Under Section 3, we propose adding a new part (e) to exempt “the application of discounts, coupons, promotional offers, rebates, limited-time sales, loyalty or club member pricing, or other reductions or incentives offered to the consumer that lower the total amount the consumer pays.”

Remove the Costly Private Right of Action

The Business Council strongly opposes the creation of any new private rights of action. Time and again, we have seen private rights of action weaponized by enterprising plaintiff’s attorneys to extort settlements from businesses of all sizes, but in particular, small businesses.

Frivolous lawsuits increase costs and exacerbate affordability issues. New York ranks #2 in states with the highest per-household tort costs. In 2022, New York households paid \$7,027 in tort costs, almost \$3,000 more than the national average, according to a recently released study by the U.S Chamber of Commerce. These costs on New York households are a direct result of the ever-growing list of private rights of action under New York law.

Add Cure Period Prior to Enforcement

To avoid unnecessary litigation for good faith errors, we request that the bill include a 45-day cure period:

“If the Attorney General has reason to believe that the interest of the residents of this State has been or is threatened or adversely affected by an act or practice of a business entity in violation of this act, the Attorney General will first issue a notice of violation to the alleged violator with a 45-day cure period. If the alleged violator cures the violation within the cure period, the Attorney General may not initiate an enforcement action for a violation of this section.”

Effective Date and Promulgation of Compliance Regulations

The 2025-2026 Final Executive Budget required any entity that utilizes “personalized algorithmic pricing” clearly display a disclosure that states “THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA.” The underlying law did not clearly define the scope (and neither does the current bill) and was met with widespread confusion amongst businesses regarding compliance. The lack of clarity, coupled with the significant compliance and technical work that go into building a system to be in compliance with the law, is costly and businesses were concerned that they would build a system based off their interpretation of what is compliant to later find out that their interpretation is wrong.

To avoid future confusion, we request that bill directs the Attorney General to promulgate regulations providing guidance on compliance, including safe harbor provisions, at least 180 days prior to the effective date. Accordingly, we request that the effective date be amended to one year after becoming law.

Without these changes, the bill risks hurting the very New Yorkers it aims to protect by eliminating everyday discounts, inviting frivolous litigation, and creating compliance chaos for businesses. Therefore, The Business Council must strongly oppose this bill in its current form. BCNYS stands ready to work with the bill’s sponsors and legislative leadership to craft legislation that curbs harmful pricing practices while preserving the consumer benefits that New Yorkers rely on.