

119TH CONGRESS
2D SESSION

S. _____

To prohibit retail food stores from price gouging and engaging in surveillance-based price setting practices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. LUJÁN (for himself and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To prohibit retail food stores from price gouging and engaging in surveillance-based price setting practices, 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 “Stop Price Gouging
5 in Grocery Stores Act of 2026”.

6 SEC. 2. PROHIBITION ON PRICE GOUGING.

7 (a) PROHIBITION.—An operator of a retail food store
8 may not sell or offer for sale an item at a grossly excessive
9 price.

1 (b) AFFIRMATIVE DEFENSE.—An operator of a retail
2 food store does not sell or offer for sale an item at a gross-
3 ly excessive price in violation of subsection (a) if the retail
4 food store demonstrates to the Commission that the in-
5 crease in the price of the item involved is directly attrib-
6 utable to additional costs that are—

11 (c) REQUIRED GUIDANCE.—Not later than 180 days
12 after the date of the enactment of this Act, the Commis-
13 sion shall promulgate, pursuant to section 553 of title 5,
14 United States Code, regulations with respect to violations
15 of subsection (a) that shall include guidelines on what con-
16 stitutes (for purposes of this Act)—

17 (1) a market;

18 (2) a grossly excessive price for an item; and

19 (3) an excessive price for an item.

20 (d) DEFINITION OF GROSSLY EXCESSIVE PRICE.—

21 (1) IN GENERAL.—For purposes of subsection
22 (a) and the guidelines required by subsection (c), the
23 Commission shall define the term “grossly excessive
24 price” using any metric it deems appropriate.

11 SEC. 3. PROHIBITION ON SURVEILLANCE-BASED PRICE 12 SETTING.

13 (a) PROHIBITION.—An operator of a retail food store
14 may not engage in surveillance-based price setting, includ-
15 ing by—

21 (2) using an electronic shelf label to change the
22 price of an item for a consumer based on the per-
23 sonal information of such consumer.

24 (b) GENERAL EXCEPTIONS.—An operator of a retail
25 food store does not engage in surveillance-based price set-

1 ting in violation of subsection (a) if the retail food store
2 demonstrates to the Commission that each of the following
3 conditions are met:

4 (1) A difference in the price of an item is based
5 solely on reasonable costs associated with providing
6 the item to different consumers.

7 (2) A discounted price of an item is offered to
8 members of a particular group that relates to occu-
9 pation, age, military service, student status, or other
10 factors approved by the Commission, based on pub-
11 licly disclosed eligibility criteria.

12 (3) Any discount or reward with respect to an
13 item is offered uniformly to all consumers who meet
14 the disclosed eligibility criteria.

15 (4) Any personal information is used solely to
16 offer or administer the discount or reward and is not
17 used for any other purpose, including targeted ad-
18 vertising and surveillance-based price setting.

19 (c) EXCEPTIONS FOR USE OF BIOMETRIC DATA.—
20 Notwithstanding subsection (a), an operator of a retail
21 food store may use biometric data of an adult consumer
22 if such consumer chooses to voluntarily verify the identity
23 of such consumer by providing such biometric data, if such
24 retail food store—

1 (1) informs the consumer or the legally author-
2 ized representative of the consumer in writing that
3 such biometric data is being collected, stored, or
4 used by such retail food store;

5 (2) informs the consumer or the legally author-
6 ized representative of the consumer in writing of the
7 specific purpose and length of term for which such
8 biometric data is being collected, stored, and used;

9 (3) informs the consumer or the legally author-
10 ized representative of the consumer in writing of the
11 specific circumstances under which biometric data is
12 shared with law enforcement;

13 (4) receives a written release executed by the
14 consumer or the legally authorized representative of
15 the consumer for the collection, storage, or use of
16 such biometric data; and

17 (5) does not sell such biometric data to, or
18 share such biometric data with, any third party.

19 SEC. 4. REQUIRED DISCLOSURE OF USE OF FACIAL REC-
20 OGNITION TECHNOLOGY.

21 (a) REQUIREMENT.—A retail food store that uses fa-
22 cial recognition technology at such retail food store shall
23 notify consumers of such retail food store, in plain and
24 simple language, about such use and the intended purpose
25 of such technology and use through clear and conspicuous

1 signage placed at the main entrance to the retail food
2 store.

3 (b) LIMITATION.—For purposes of this section, the
4 term “retail food store” does not include an online entity.

5 **SEC. 5. PROHIBITION ON ELECTRONIC SHELF LABELS.**

6 (a) PROHIBITION.—An operator of a retail food store
7 larger than 10,000 square feet—

8 (1) may not use an electronic shelf label or any
9 digital shelf display technology in such retail food
10 store; and

11 (2) shall use a non-digital presentation of the
12 price of each item in such retail food store.

13 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion may be construed to prohibit a retail food store from
15 providing a consumer, based on the purchase history of
16 such consumer, a discounted or promotional price in ac-
17 cordance with the conditions described in section 3(b).

18 (c) LIMITATION.—For purposes of this section, the
19 term “retail food store” does not include an online entity.

20 **SEC. 6. ENFORCEMENT.**

21 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
22 SION.—

23 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
24 TICES.—A violation of section 2(a), 3(a), 4(a), or
25 5(a) (or a regulation promulgated under such sec-

1 tion) shall be treated as a violation of a rule defining
2 an unfair or deceptive act or practice prescribed
3 under section 18(a)(1)(B) of the Federal Trade
4 Commission Act (15 U.S.C. 57a(a)(1)(B)) and as a
5 violation of section 5(a) of such Act (15 U.S.C.
6 45(a)) regarding unfair methods of competition.

20 (3) AUTHORITY PRESERVED.—Nothing in this
21 Act shall be construed to limit the authority of the
22 Commission under any other provision of law.

1 mines necessary to carry out the provisions of this
2 Act.

3 (b) ACTIONS BY STATES.—

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

15 (A) enjoin such act or practice;
16 (B) enforce compliance with such section
17 (or such regulation);

18 (C) obtain, for each such violation, the
19 greater of—

20 (i) the actual monetary damages in-
21 curred from the violation; or

22 (ii) \$3,000; or

23 (D) obtain any restitution, penalties, and
24 other legal or equitable relief as the court may
25 deem just and proper.

9 (c) PRIVATE RIGHT OF ACTION.—

15 (A) enjoin the violation;

16 (B) subject to paragraph (2), obtain, for
17 each such violation, the greater of—

18 (i) the actual monetary damages in-
19 curred from the violation; or
20 (ii) \$3 000; or

21 (C) obtain any restitution, penalties, and
22 other legal or equitable relief as the court may
23 deem just and proper.

24 (2) WILLFUL OR KNOWING VIOLATIONS.—If the
25 court finds that the defendant acted willfully or

1 knowingly in committing a violation described in
2 paragraph (1), the court shall increase the amount
3 of the award to an amount that is 3 times the
4 amount available under paragraph (1)(B).

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

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

1 **SEC. 7. PREEMPTION OF DIRECTLY CONFLICTING STATE**2 **LAWS.**

3 (a) IN GENERAL.—Nothing in this Act may be con-
4 strued to preempt, displace, or supplant any State law,
5 except to the extent that a provision of State law conflicts
6 with a provision of this Act, and then only to the extent
7 of the conflict.

8 (b) GREATER PROTECTION UNDER STATE LAW.—

9 For purposes of this section, a provision of State law does
10 not conflict with a provision of this Act if such provision
11 of State law provides additional protections to consumers
12 protected under this Act with respect to price gouging,
13 surveillance-based price setting, collecting personal infor-
14 mation, or using facial recognition technology in retail
15 food stores.

16 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

17 There is authorized to be appropriated for the fiscal
18 year 2026 \$5,000,000 (to remain available until Sep-
19 tember 30, 2032) to carry out this Act.

20 **SEC. 9. DEFINITIONS.**

21 In this Act:

22 (1) BIOMETRIC DATA.—The term “biometric
23 data” means data generated by automatic measure-
24 ments, including data gathered through the use of
25 facial recognition technology, or other representa-

1 tions of the biological characteristics of a consumer,
2 including—

- 3 (A) fingerprints;
- 4 (B) voice prints;
- 5 (C) iris or retina scans;
- 6 (D) gait; and
- 7 (E) other unique biological patterns.

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

10 (3) ELECTRONIC SHELF LABEL.—The term
11 “electronic shelf label” means electronic and wireless
12 paper (E-paper) displays or digital price tags that
13 present product and pricing information.

14 (4) ELECTRONIC SURVEILLANCE TECHNOLOGY.—The term “electronic surveillance technology” means a technological method, system, or
15 other tool of surveillance used to observe, monitor,
16 or collect information related to a consumer, including sensors, cameras, device tracking, biometric
17 monitoring, facial recognition technology, or other
18 forms of observation or data collection that are capable of gathering personal information about a consumer.

24 (5) FACIAL RECOGNITION TECHNOLOGY.—The
25 term “facial recognition technology” means tech-

1 nology that facilitates or otherwise enables an auto-
2 mated or semi-automated process that—

3 (A) assists in identifying a consumer based
4 on the physical characteristics of the face of
5 such consumer; or

6 (B) logs characteristics of the face, head,
7 or body of a consumer to infer the emotion, as-
8 sociations, activities, or location of such con-
9 sumer.

10 (6) ITEM.—The term “item” means a specific
11 and distinct product, good, or commodity available
12 for sale.

13 (7) NON-DIGITAL PRESENTATION OF PRICE.—
14 The term “non-digital presentation of price”
15 means—

16 (A) a sign that offers the unit price for 1
17 or more brands or sizes of a given item;

18 (B) a sticker, stamp, sign, label, or tag af-
19 fixed to the shelf upon which the item is dis-
20 played; or

21 (C) a sticker, stamp, sign, label, or tag af-
22 fixed to the item.

23 (8) PERSONAL INFORMATION.—The term “per-
24 sonal information” means any quality, feature, at-
25 tribute, or trait of a consumer that is reasonably ca-

1 pable of being associated with, or could be reason-
2 ably linked to, directly or indirectly, a particular
3 consumer or a household of a particular consumer,
4 including—

5 (A) any immutable characteristic, includ-
6 ing race, ethnicity, and eye color;

10 (C) identifiers, including a real name,
11 alias, postal address, unique personal identifier,
12 online identifier, Internet Protocol address,
13 email address, account name, social security
14 number, driver's license number, passport num-
15 ber, and other similar identifiers;

16 (D) commercial information, including
17 records of personal property, products or serv-
18 ices purchased, obtained, or considered, and
19 other purchasing or consuming histories or ten-
20 dencies;

21 (E) biometric data;

22 (F) internet or other electronic network ac-
23 tivity information, including browsing history,
24 search history, and other information regarding

1 interaction by such consumer with a website,
2 application, or advertisement;

3 (G) geolocation data;

(H) audio, electronic, visual, thermal, olfactory, and other similar information;

6 (I) professional or employment-related in-
7 formation;

(J) educational information, including educational experience, qualifications, and affiliations;

11 (K) inferences drawn from any of the in-
12 formation described in this paragraph and used
13 to create a profile about such consumer reflect-
14 ing the preferences, characteristics, psycho-
15 logical trends, predispositions, behavior, atti-
16 tudes, intelligence, abilities, and aptitudes of
17 such consumer;

18 (L) interests, including the political, per-
19 sonal, and professional affiliation of such con-
20 sumer;

(M) financial circumstances, including personal or household wealth, income, property, debt, and credit history; and

(N) actions, habits, behaviors, and attributes of such consumer, whether in a physical or digital environment.

18 (11) PRICE.—The term “price” means the
19 amount charged to a consumer in relation to a
20 transaction, including any related cost, fee, and
21 other material term of the transaction that has a di-
22 rect bearing on the amount paid by the consumer
23 for the item sold or offered for sale to the consumer.

24 (12) RETAIL FOOD STORE.—The term "retail
25 food store" has the same meaning given the term in

1 section 3 of the Food and Nutrition Act of 2008 (7
2 U.S.C. 2012).