

An Act

HOUSE BILL 26-1210

BY REPRESENTATIVE(S) Bacon and Mabrey, Brown, Clifford, Froelich, Garcia, Lindsay, Martinez, Mauro, Nguyen, Rutinel, Sirota, Smith, Story, Titone, Willford, Woodrow, Zokaie, Joseph, Lieder, Velasco, Duran, Jackson, McCormick, Paschal;
also SENATOR(S) Weissman and Jodeh, Cutter, Lindstedt, Marchman, Sullivan, Wallace, Benavidez, Gonzales J., Hinrichsen, Kipp, Kolker, Coleman.

CONCERNING LIMITING THE USE OF INTIMATE PERSONAL DATA TO MAKE
INFERENCES THAT IMPACT A PERSON'S FINANCIAL POSITION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 6-1-105, **add** (1)(ssss) as follows:

6-1-105. Unfair or deceptive trade practices - definitions.

(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(ssss) VIOLATES PART 19 OF THIS ARTICLE 1.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SECTION 2. In Colorado Revised Statutes, **add** part 19 to article 1 of title 6 as follows:

PART 19
PROHIBITING INDIVIDUALIZED PRICE
AND WAGE SETTING USING SURVEILLANCE DATA

6-1-1901. Definitions.

AS USED IN THIS PART 19, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BIOMETRICS" HAS THE SAME MEANING AS "BIOMETRIC IDENTIFIER", AS DEFINED IN SECTION 6-1-1303, AND INCLUDES BIOMETRIC IDENTIFIERS ASSOCIATED WITH A WORKER.

(2) "CONSUMER" HAS THE MEANING SET FORTH IN SECTION 6-1-732 (1)(d).

(3) "INDIVIDUALIZED" MEANS SPECIFIC TO OR INFERRED ABOUT AN INDIVIDUAL OR GROUP, BAND, CLASS, OR TIER OF INDIVIDUALS WITH PARTICULAR PERSONAL CHARACTERISTICS, ONLINE BEHAVIORS, OR BIOMETRICS.

(4) (a) "INDIVIDUALIZED PRICE SETTING" MEANS USING A PWSA OR THE OUTPUT OF A PWSA IN DETERMINING A PRICE OFFERED TO A CONSUMER.

(b) "INDIVIDUALIZED PRICE SETTING" DOES NOT INCLUDE THE USE OF LOCATION DATA OR AN INTERNET PROTOCOL ADDRESS SOLELY FOR THE PURPOSE OF DETERMINING THE JURISDICTION WHERE AN INDIVIDUAL IS LOCATED IF THE LOCATION DATA OR INTERNET PROTOCOL ADDRESS IS USED SOLELY FOR THE PURPOSE OF:

(I) LIMITING OFFERED PRODUCTS OR SERVICES TO THOSE AVAILABLE IN THAT JURISDICTION;

(II) DISPLAYING PRICES IN THE APPROPRIATE CURRENCY;

(III) CALCULATING JURISDICTION-SPECIFIC TAXES; OR

(IV) COMPLYING WITH JURISDICTION-SPECIFIC DISCLOSURE OR OTHER REGULATORY REQUIREMENTS.

(c) "INDIVIDUALIZED PRICE SETTING" DOES NOT INCLUDE ANY CREDIT DECISION OR ACTION INVOLVING EVALUATION OF CREDITWORTHINESS, INCLUDING, WITHOUT LIMITATION, THE APPLICATION FOR CREDIT, THE EXTENSION OR GRANTING OF CREDIT, THE DETERMINATION OF ACCOUNT TERMS, OR THE REFUSAL TO EXTEND CREDIT OR TO ENTER INTO A FINANCIAL TRANSACTION WITH A SPECIFIC CONSUMER, BY THE TRUE LENDER THAT IS AN ENTITY WITH A LICENSE, CERTIFICATE, OR CHARTER ISSUED BY THE UNITED STATES OR ANY STATE, DISTRICT, TERRITORY, OR COMMONWEALTH OF THE UNITED STATES, AND THAT:

(I) IS A MORTGAGE BROKER, AS DEFINED IN SECTION 5-3.5-101; OR

(II) IS A TRUE LENDER AND EITHER:

(A) A MORTGAGE LOAN ORIGINATOR, MORTGAGE COMPANY, OR MORTGAGE LENDER, AS DEFINED IN SECTION 12-10-702;

(B) A FINANCIAL INSTITUTION AS DEFINED IN SECTION 11-101-401;
OR

(C) A SAVINGS AND LOAN, FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR FEDERAL CREDIT UNION.

(c.5) AN INSTITUTION SPECIFIED IN SUBSECTION (4)(c)(II) OF THIS SECTION IS NOT THE TRUE LENDER OF A LOAN IF A DIFFERENT PERSON HOLDS THE PREDOMINANT ECONOMIC INTEREST IN THE LOAN, EITHER DIRECTLY OR INDIRECTLY, OR IF THE LOAN ARRANGEMENTS WERE STRUCTURED IN A MANNER DESIGNED TO EVADE THE OPERATION OF THIS ARTICLE 1.

(d) "INDIVIDUALIZED PRICE SETTING" DOES NOT INCLUDE ACTIONS BY AN INSURER, AS DEFINED IN SECTION 10-1-102 (13), OR A FRATERNAL BENEFIT SOCIETY, AS DESCRIBED IN SECTION 10-14-102, THAT ARE SUBJECT TO THE REQUIREMENTS OF SECTION 10-3-1104.9 AND ANY RULES ADOPTED BY THE COMMISSIONER OF INSURANCE PURSUANT TO SECTION 10-3-1104.9.

(5) (a) "INDIVIDUALIZED WAGE SETTING" MEANS USING A PWSA OR THE OUTPUT OF A PWSA IN DETERMINING A WAGE OFFERED TO A WORKER.

(b) "INDIVIDUALIZED WAGE SETTING" DOES NOT INCLUDE:

(I) A PERSON'S DECISION NOT TO HIRE AN INDIVIDUAL WHO HAS NOT PREVIOUSLY WORKED FOR OR THROUGH THE PERSON OR THE PERSON'S AFFILIATES OR SUBSIDIARIES; OR

(II) PAY EQUITY STUDIES, COMPENSATION REVIEWS, OR OTHER ACTIVITIES NECESSARY TO COMPLY WITH FEDERAL AND STATE ANTIDISCRIMINATION AND PAY EQUITY LAWS.

(6) "LOYALTY, MEMBERSHIP, OR REWARDS PROGRAM" MEANS A LOYALTY, REWARDS, OR CLUB CARD PROGRAM ESTABLISHED FOR THE GENUINE PURPOSE OF PROVIDING BENEFITS TO CONSUMERS WHO VOLUNTARILY PARTICIPATE IN THAT PROGRAM, REGARDLESS OF WHETHER THOSE BENEFITS ARE PROVIDED DIRECTLY BY A BUSINESS OR THROUGH A LOYALTY PROGRAM PARTNER. AS USED IN THIS SUBSECTION (6), "LOYALTY PROGRAM PARTNER" MEANS A THIRD PARTY THAT PROVIDES LOYALTY, MEMBERSHIP, OR REWARDS PROGRAM BENEFITS TO CONSUMERS WHO CONSENT TO PARTICIPATE IN A LOYALTY, MEMBERSHIP, OR REWARDS PROGRAM OFFERED BY A DIFFERENT SELLER.

(7) "ONLINE BEHAVIORS" MEANS AN INDIVIDUAL'S ACTIONS, HABITS, PREFERENCES, AFFILIATIONS, ASSOCIATIONS, FINANCIAL CIRCUMSTANCES, OR INTERESTS THAT ARE OBSERVABLE, MEASURABLE, OR INFERRED THROUGH DIGITAL, ONLINE, OR ELECTRONIC OBSERVATION OR SURVEILLANCE OF A CONSUMER OR WORKER, INCLUDING ASSOCIATIONS WITH, SIMILARITIES TO, OR DIFFERENCES FROM A GROUP, BAND, CLASS, OR TIER OF OTHER INDIVIDUALS.

(8) "PERSONAL CHARACTERISTICS" INCLUDES PERSONAL DATA, AS DEFINED IN SECTION 6-1-1303 (17)(a), INCLUDING PUBLICLY AVAILABLE INFORMATION; SENSITIVE DATA, AS DEFINED IN SECTION 6-1-1303 (24); GENETIC INFORMATION, AS DEFINED IN SECTION 10-3-1104.6 (2)(c); AND BOTH MUTABLE AND IMMUTABLE QUALITIES, FEATURES, ATTRIBUTES, OR TRAITS OF AN INDIVIDUAL.

(9) "PRICE" MEANS THE AMOUNT CHARGED TO A CONSUMER IN RELATION TO A TRANSACTION, INCLUDING ALL RELATED COSTS AND FEES AND OTHER MATERIAL TERMS OF THE TRANSACTION THAT HAVE A DIRECT BEARING ON THE AMOUNT PAID BY THE CONSUMER.

(10) "PRICE OR WAGE SETTING ALGORITHM" OR "PWSA" MEANS ANY TECHNOLOGY, SOFTWARE, PROGRAM, MACHINE-BASED SYSTEM, OR COMPUTATIONAL PROCESS THAT:

(a) USES STATISTICAL MODELING, DATA ANALYTICS, ARTIFICIAL INTELLIGENCE, OR OTHER DATA PROCESSING TECHNIQUES TO ANALYZE SURVEILLANCE DATA; AND

(b) IS A SUBSTANTIAL FACTOR IN SETTING, OFFERING, OR DETERMINING A PRICE OR A WAGE OFFERED TO AN INDIVIDUAL.

(11) "SUBSTANTIAL FACTOR" MEANS MORE THAN A DE MINIMIS OR INCIDENTAL FACTOR THAT INFORMS THE PRICE OR WAGE OFFERED TO AN INDIVIDUAL.

(12) (a) "SURVEILLANCE DATA" MEANS DATA OBTAINED THROUGH OBSERVATION, INFERENCE, OR SURVEILLANCE OF A CONSUMER OR WORKER THAT IS RELATED TO PERSONAL CHARACTERISTICS, ONLINE BEHAVIORS, OR BIOMETRICS OF THE INDIVIDUAL OR A GROUP, BAND, CLASS, OR TIER TO WHICH THE INDIVIDUAL BELONGS.

(b) "SURVEILLANCE DATA" INCLUDES INFORMATION GATHERED, PURCHASED, OR OTHERWISE ACQUIRED.

(13) "WAGE" MEANS THE MATERIAL TERMS OFFERED TO A WORKER IN EXCHANGE FOR LABOR, INCLUDING THE AMOUNT TO BE PAID FOR THE LABOR, WHETHER PAID BY TIME RATE, PIECE RATE, SALARY, BONUSES, COMMISSIONS, AND OTHER INCENTIVES AND TASK ASSIGNMENTS THAT HAVE A DIRECT IMPACT ON EARNINGS.

(14) (a) "WORKER" MEANS AN INDIVIDUAL PERFORMING WORK FOR WAGES OR OTHER COMPENSATION AND INCLUDES AN EMPLOYEE, AS DEFINED IN SECTION 8-4-101, AND ANY OTHER INDIVIDUAL PERFORMING WORK ON BEHALF OF OR FOR THE BENEFIT OF AN EMPLOYER OR OTHER PERSON.

(b) "WORKER" DOES NOT INCLUDE A WORKER ENGAGED BY:

(I) THE FEDERAL GOVERNMENT;

(II) A PUBLIC ENTITY, AS DEFINED IN SECTION 24-10-103 (5); OR

(III) THE STATE, AS DEFINED IN SECTION 24-10-103 (7).

6-1-1902. Prohibition against individualized price or wage setting - publication of procedures.

(1) Individualized price setting.

(a) A PERSON SHALL NOT ENGAGE IN INDIVIDUALIZED PRICE SETTING.

(b) A PERSON HAS NOT ENGAGED IN INDIVIDUALIZED PRICE SETTING IF THE PERSON CAN DEMONSTRATE THAT:

(I) DIFFERENTIAL PRICES ARE JUSTIFIED BASED ON DIFFERENCES IN COST IN PROVIDING A GOOD OR SERVICE TO DIFFERENT CONSUMERS, INCLUDING BASED ON CONSUMER SELECTIONS, RIDE OR DELIVERY DISTANCE, OR RIDE OR DELIVERY TIME;

(II) DIFFERENTIAL PRICES ARE JUSTIFIED BY TEMPORAL DIFFERENCES, INCLUDING PRICE FLUCTUATIONS BASED ON SUPPLY AND DEMAND;

(III) A PUBLIC DISCOUNTED PRICE IS OFFERED ON EQUAL TERMS PURSUANT TO PUBLICLY DISCLOSED ELIGIBILITY CRITERIA TO:

(A) ALL CONSUMERS WHO MEET THE PUBLICLY DISCLOSED ELIGIBILITY CRITERIA, INCLUDING CRITERIA RELATED TO VOLUME PURCHASES, SIGNING UP FOR A MAILING LIST, REGISTERING FOR PROMOTIONAL COMMUNICATIONS, OR PARTICIPATING IN A PROMOTIONAL EVENT; OR

(B) ALL MEMBERS OF A BROADLY DEFINED AND PUBLICLY RECOGNIZED GROUP OF CONSUMERS, INCLUDING TEACHERS, ACTIVE OR RETIRED MILITARY PERSONNEL, SENIOR CITIZENS, STUDENTS, OR RESIDENTS OF A CERTAIN AREA BASED ON PUBLICLY DISCLOSED ELIGIBILITY CRITERIA;

(IV) A DISCOUNTED PRICE IS OFFERED ON EQUAL TERMS PURSUANT TO PUBLICLY DISCLOSED TERMS AND CONDITIONS TO ALL MEMBERS, ENROLLEES, OR PARTICIPANTS IN A LOYALTY, MEMBERSHIP, OR REWARDS PROGRAM;

(V) DIFFERENTIAL PRICES ARE OFFERED OR PROVIDED TO A

CONSUMER AS A GOOD FAITH CREDIT, REFUND, REBATE, OR DISCOUNT BELOW THE PRICE PREVIOUSLY OFFERED TO THE CONSUMER IN RESPONSE TO:

(A) A CONSUMER'S COMPLAINT, INQUIRY, OR EXPRESSION OF DISSATISFACTION REGARDING A GOOD OR SERVICE;

(B) A SERVICE DISRUPTION, ERROR, OR OTHER FAILURE TO DELIVER A GOOD OR SERVICE AS PROMISED OR EXPECTED;

(C) A BILLING DISPUTE OR DISCREPANCY;

(D) A REQUEST FOR ACCOUNT RETENTION OR CANCELLATION; OR

(E) OTHER CUSTOMER SERVICE INTERACTIONS IN WHICH THE PERSON PROVIDES A CREDIT, REFUND, REBATE, OR DISCOUNT BELOW THE PRICE PREVIOUSLY OFFERED TO THE CONSUMER TO ADDRESS A CONSUMER'S CONCERNS, TO MAINTAIN THE CONSUMER RELATIONSHIP, OR TO RETAIN CONSUMERS;

(VI) DIFFERENTIAL PRICES ARE OFFERED PURSUANT TO THE FOLLOWING ESTABLISHED NEED-BASED DISCOUNT PROGRAMS THAT ARE PUBLICLY DISCLOSED AND STRUCTURED TO PROVIDE REDUCED PRICING OR FINANCIAL ASSISTANCE BASED ON OBJECTIVE ELIGIBILITY CRITERIA RELATED TO INCOME OR FINANCIAL NEED:

(A) HOSPITAL DISCOUNTED CARE;

(B) SLIDING SCALE FEES; OR

(C) CHARITY CARE OR MEDICAL FINANCIAL ASSISTANCE POLICIES;

(VII) THE PERSON AND CONSUMER HAVE A SUBSCRIPTION OR OTHER CONTINUOUS AGREEMENT THAT INCLUDES A MONTHLY OR OTHER RECURRING PRICE THAT WAS NOT INFORMED BY A PWSA; OR

(VIII) A REFUSAL TO EXTEND CREDIT ON SPECIFIC TERMS OR THE REFUSAL TO ENTER INTO A FINANCIAL TRANSACTION WITH A SPECIFIC CONSUMER IS BASED ON DATA PROVIDED IN A CONSUMER REPORT COVERED BY THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681 ET SEQ., OR REQUIRED TO BE PROVIDED AS PART OF THE APPLICATION FOR THE

FINANCIAL TRANSACTION.

(2) Individualized wage setting.

(a) A PERSON SHALL NOT ENGAGE IN INDIVIDUALIZED WAGE SETTING.

(b) A PERSON HAS NOT ENGAGED IN INDIVIDUALIZED WAGE SETTING IF THE PERSON CAN DEMONSTRATE THAT:

(I) THE PERSON OFFERS INDIVIDUALIZED WAGES BASED SOLELY ON DATA SPECIFIC TO THE INDIVIDUAL WORKER THAT IS DIRECTLY RELATED TO:

(A) WORKER SENIORITY; OR

(B) THE TASKS THE WORKER WAS HIRED TO PERFORM, INCLUDING DATA ASSOCIATED WITH A WORKER'S PERFORMANCE OR GENERATION OF NEW BUSINESS; AND

(II) THE PERSON DISCLOSES IN PLAIN LANGUAGE BEFORE HIRING A WORKER TO PERFORM WORK, AND TO ALL WORKERS WHOSE WAGES ARE SET IN WHOLE OR IN PART THROUGH A PRICE OR WAGE SETTING ALGORITHM, WHAT DATA IS CONSIDERED AND HOW THE PRICE OR WAGE SETTING ALGORITHM CONSIDERS THE DATA. TO THE EXTENT THESE DISCLOSURES DUPLICATE DISCLOSURES REQUIRED UNDER EQUAL PAY, WAGE AND HOUR, OR OTHER EXISTING LAWS, A PERSON'S OBLIGATIONS UNDER THIS SUBSECTION (2)(b)(II) MAY BE FULFILLED BY COMPLYING WITH APPLICABLE LAW.

(3) Publication of procedures. A PERSON THAT USES A PRICE OR WAGE SETTING ALGORITHM SHALL DEVELOP AND PUBLISH REASONABLE PROCEDURES:

(a) TO ENSURE THE ACCURACY OF ALL DATA CONSIDERED BY THE PRICE OR WAGE SETTING ALGORITHM;

(b) FOR WORKERS TO REQUEST AND RECEIVE INFORMATION REGARDING WHAT DATA IS CONSIDERED BY THE PRICE OR WAGE SETTING ALGORITHM AND HOW THE PRICE OR WAGE SETTING ALGORITHM CONSIDERS THE DATA WHEN SETTING PARTICULAR WAGES; AND

(c) TO ALLOW A WORKER TO CORRECT OR CHALLENGE THE ACCURACY OF DATA CONSIDERED BY THE PRICE OR WAGE SETTING ALGORITHM.

6-1-1903. Rule-making authority.

THE ATTORNEY GENERAL MAY ADOPT RULES AS NECESSARY FOR THE PURPOSE OF IMPLEMENTING AND ENFORCING THIS PART 19.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO