

117TH CONGRESS  
1ST SESSION

# H. R. 3853

To prohibit the pricing of consumer products and services that are substantially similar if such products or services are priced differently based on the gender of the individuals for whose use the products are intended or marketed or for whom the services are performed or offered.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

Ms. SPEIER (for herself, Ms. LOIS FRANKEL of Florida, Mr. EVANS, Ms. LEE of California, Ms. WASSERMAN SCHULTZ, Ms. TITUS, Mr. GARCÍA of Illinois, Ms. KELLY of Illinois, Mrs. LAWRENCE, Mr. BEYER, Mr. RASKIN, Ms. MOORE of Wisconsin, Mr. LOWENTHAL, Mr. MCGOVERN, Ms. JACKSON LEE, Mrs. BUSTOS, Mr. SOTO, Mr. REED, Mr. FITZPATRICK, Ms. CHU, Ms. NORTON, Ms. OMAR, Mrs. HAYES, Mrs. CAROLYN B. MALONEY of New York, Ms. BONAMICI, Mrs. DINGELL, Ms. BROWNLEY, Mr. LAWSON of Florida, Mrs. BEATTY, Mr. GRIJALVA, Ms. OCASIO-CORTEZ, Mr. JOHNSON of Georgia, Ms. VELÁZQUEZ, Mr. CICILLINE, Mr. RYAN, Mrs. WATSON COLEMAN, Mr. POCAN, Ms. TLAIB, Ms. JAYAPAL, Mr. LIEU, Ms. MENG, Mr. HARDER of California, Ms. ROYBAL-ALLARD, Mr. CARSON, Ms. CASTOR of Florida, and Ms. DEAN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit the pricing of consumer products and services that are substantially similar if such products or services are priced differently based on the gender of the individuals for whose use the products are intended or marketed or for whom the services are performed or offered.

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 “Pink Tax Repeal Act”.

5 **SEC. 2. PROHIBITION ON GENDER-BASED PRICING OF CON-**  
6 **SUMER PRODUCTS AND SERVICES.**

7 (a) PROHIBITED PRACTICES.—

8 (1) CONSUMER PRODUCTS.—It shall be unlaw-  
9 ful for any person to sell or offer for sale in inter-  
10 state commerce any two consumer products from the  
11 same manufacturer that are substantially similar if  
12 such products are priced differently based on the  
13 gender of the individuals for whose use the products  
14 are intended or marketed.

15 (2) SERVICES.—It shall be unlawful for any  
16 person to sell or offer for sale any services that are  
17 substantially similar if such services are priced dif-  
18 ferently based on the gender of the individuals for  
19 which the services are performed, offered, or mar-  
20 keted.

21 (b) ENFORCEMENT BY THE COMMISSION.—

22 (1) UNFAIR AND DECEPTIVE ACT OR PRAC-  
23 TICE.—A violation of subsection (a) shall be treated  
24 as a violation of a rule prescribed under section  
25 18(a)(1)(B) of the Federal Trade Commission Act

1 (15 U.S.C. 57a(a)(1)(B)) defining an unfair or de-  
2 ceptive act or practice in or affecting interstate com-  
3 merce.

4 (2) POWERS OF THE COMMISSION.—The Fed-  
5 eral Trade Commission shall enforce this section in  
6 the same manner, by the same means, and with the  
7 same jurisdiction, powers, and duties as though all  
8 applicable terms and provisions of the Federal Trade  
9 Commission Act were incorporated into and made a  
10 part of this Act.

11 (3) PRIVILEGES AND IMMUNITIES.—Any person  
12 who violates subsection (a) shall be subject to the  
13 penalties and entitled to the privileges and immuni-  
14 ties provided in the Federal Trade Commission Act  
15 (15 U.S.C. 41 et seq.).

16 (4) AUTHORITY PRESERVED.—Nothing in this  
17 section shall be construed to limit the authority of  
18 the Commission under any other provision of law.

19 (c) STATE ATTORNEYS GENERAL.—

20 (1) CIVIL ACTION.—In any case in which the  
21 attorney general of a State has reason to believe  
22 that an interest of the residents of the State has  
23 been or is adversely affected by a violation of sub-  
24 section (a), the attorney general may, as *parens*  
25 *patriae*, bring a civil action on behalf of the resi-

dents of the State in an appropriate district court of the United States—

(A) to enjoin further violation of such subsection by the defendant;

(B) to compel compliance with such subsection; or

(C) obtain damages, restitution, or other compensation on behalf of residents of the State.

(2) NOTICE TO THE COMMISSION.—

(A) NOTICE.—Except as provided in subparagraph (C), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) not later than 10 days before initiating the civil action.

(B) CONTENTS.—The notice required by subparagraph (A) shall include a copy of the complaint to be filed to initiate such civil action.

(C) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notice required by subparagraph (A), the attorney general shall notify the Commission imme-

1           diately upon instituting a civil action under  
2           paragraph (1).

3           (3) INTERVENTION BY THE COMMISSION.—The  
4           Commission may—

5                   (A) intervene in any civil action brought by  
6           the attorney general of a State under this sub-  
7           section; and

8                   (B) upon intervening, be heard on all mat-  
9           ters arising in such civil action and file peti-  
10          tions for appeal of a decision in such action.

11          (4) INVESTIGATORY POWERS.—Nothing in this  
12          subsection may be construed to prevent the attorney  
13          general of a State from exercising the powers con-  
14          ferred on the attorney general by the laws of the  
15          State to conduct investigations, to administer oaths  
16          or affirmations, or to compel the attendance of wit-  
17          nesses or the production of documentary or other  
18          evidence.

19          (5) PREEMPTIVE ACTION BY THE COMMIS-  
20          SION.—If the Commission institutes a civil action or  
21          an administrative action for a violation of this sec-  
22          tion, the attorney general of a State may not, during  
23          the pendency of such action, bring a civil action  
24          under this subsection against any defendant named  
25          in the complaint of the Commission for the violation

1 with respect to which the Commission instituted  
2 such action.

3 (6) ACTIONS BY OTHER STATE OFFICIALS.—

4 (A) IN GENERAL.—In addition to any civil  
5 action brought by an attorney general under  
6 paragraph (1), any other consumer protection  
7 officer of a State who is authorized by the State  
8 to do so may bring a civil action under para-  
9 graph (1), subject to the same requirements  
10 and limitations that apply under this subsection  
11 to civil actions brought by an attorney general.

12 (B) SAVINGS PROVISION.—Nothing in this  
13 subsection may be construed to prohibit an au-  
14 thorized official of a State from initiating or  
15 continuing any proceeding in a court of the  
16 State for a violation of any civil or criminal law  
17 of the State.

18 (d) RULES OF CONSTRUCTION.—

19 (1) SUBSTANTIALLY SIMILAR PRODUCTS.—For  
20 purposes of this section, two consumer products are  
21 substantially similar if there are no substantial dif-  
22 ferences in the materials used in the product, the in-  
23 tended use of the product, and the functional design  
24 and features of the product. A difference in coloring  
25 among any consumer products shall not be con-

1       strued as a substantial difference for purposes of  
2       this paragraph.

3           (2) SUBSTANTIALLY SIMILAR SERVICES.—For  
4       purposes of this section, two services are substan-  
5       tially similar if there is no substantial difference in  
6       the amount of time to provide the services, the dif-  
7       ficulty in providing the services, or the cost of pro-  
8       viding the services.

9       (e) DEFINITIONS.—In this section:

10           (1) COMMISSION.—The term “Commission”  
11       means the Federal Trade Commission.

12           (2) CONSUMER PRODUCT.—The term “con-  
13       sumer product”—

14           (A) has the meaning given such term in  
15       section 3 of the Consumer Product Safety Act  
16       (15 U.S.C. 2052);

17           (B) includes a device or cosmetics, as such  
18       terms are defined in section 201 of the Federal  
19       Food, Drug, and Cosmetic Act (21 U.S.C.  
20       321); and

21           (C) includes a child restraint system, as  
22       such term is defined in section 571.213 of title  
23       49, Code of Federal Regulations.

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