

119TH CONGRESS
2D SESSION

S. 3892

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

FEBRUARY 12, 2026

Mr. LUJÁN (for himself, Mr. MERKLEY, Ms. ROSEN, Mrs. GILLIBRAND, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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—

7 (1) not within the control of the retail food
8 store; and

9 (2) incurred by the retail food store in pro-
10 curing, acquiring, distributing, or providing the item.

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.

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.

7 (2) POWERS OF COMMISSION.—The Commis-
8 sion shall enforce section 2(a), 3(a), 4(a), and 5(a)
9 (and any regulations promulgated under such sec-
10 tions) in the same manner, by the same means, and
11 with the same jurisdiction, powers, and duties as
12 though all applicable terms and provisions of the
13 Federal Trade Commission Act (15 U.S.C. 41 et
14 seq.) were incorporated into and made a part of this
15 Act. Any retail food store that violates such sections
16 (or any regulations promulgated under such sec-
17 tions) shall be subject to the penalties and entitled
18 to the privileges and immunities provided in the
19 Federal Trade Commission Act.

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.

23 (4) REGULATIONS.—The Commission may pro-
24 mulgate, pursuant to section 553 of title 5, United
25 States Code, any regulations the Commission deter-

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.

1 (2) RULE OF CONSTRUCTION.—Nothing in this
2 subsection may be construed to prevent an attorney
3 general, official, or agency of a State from exercising
4 the powers conferred on the attorney general, offi-
5 cial, or agency by the laws of the State to conduct
6 investigations, to administer oaths or affirmations,
7 or to compel the attendance of witnesses or the pro-
8 duction of documentary or other evidence.

9 (c) PRIVATE RIGHT OF ACTION.—

10 (1) IN GENERAL.—A consumer injured by an
11 act or practice in violation of section 2(a), 3(a),
12 4(a), or 5(a) (or a regulation promulgated under
13 such section) may bring in an appropriate district
14 court of the United States an action to—

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).

5 (3) COSTS AND ATTORNEY'S FEES.—The court
6 shall award to a prevailing plaintiff in an action
7 under this subsection the costs of such action and
8 reasonable attorney's fees, as determined by the
9 court.

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.

18 (6) INVALIDITY OF PRE-DISPUTE ARBITRATION
19 AND JOINT ACTION WAIVERS.—Notwithstanding any
20 other provision of law, a pre-dispute arbitration
21 agreement or pre-dispute joint action waiver between
22 a retail food store and a consumer shall not be valid
23 or enforceable for purposes of this subsection.

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 TECH-
15 NOLOGY.—The term “electronic surveillance tech-
16 nology” means a technological method, system, or
17 other tool of surveillance used to observe, monitor,
18 or collect information related to an consumer, in-
19 cluding sensors, cameras, device tracking, biometric
20 monitoring, facial recognition technology, or other
21 forms of observation or data collection that are ca-
22 pable of gathering personal information about a con-
23 sumer.

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;

7 (B) any mutable characteristic, including
8 address, weight, citizenship, and family or pa-
9 rental status;

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;

4 (H) audio, electronic, visual, thermal, ol-
5 factory, and other similar information;

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

8 (J) educational information, including edu-
9 cational experience, qualifications, and affili-
10 ations;

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;

21 (M) financial circumstances, including per-
22 sonal or household wealth, income, property,
23 debt, and credit history; and

1 (N) actions, habits, behaviors, and at-
2 tributes of such consumer, whether in a phys-
3 ical or digital environment.

4 (9) PRE-DISPUTE ARBITRATION AGREEMENT.—
5 The term “pre-dispute arbitration agreement”
6 means any agreement to arbitrate a dispute that has
7 not yet arisen at the time of the making of the
8 agreement.

9 (10) PRE-DISPUTE JOINT ACTION WAIVER.—
10 The term “pre-dispute joint action waiver” means
11 an agreement, including as part of a pre-dispute ar-
12 bitration agreement, that would prohibit, or waive
13 the right of, a party to the agreement from partici-
14 pating in a joint, class, or collective action in a judi-
15 cial, arbitral, administrative, or other forum, con-
16 cerning a dispute that has not yet arisen at the time
17 of the making of the agreement.

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).

3 (13) SURVEILLANCE-BASED PRICE SETTING.—
4 The term “surveillance-based price setting” means
5 offering, setting, or informing a customized price for
6 an item for a specific consumer or group of con-
7 sumers, based, in whole or in part, on personal in-
8 formation collected through electronic surveillance
9 technology, including such information gathered,
10 purchased, or otherwise acquired.

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