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SENATE BILL 223

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

Heather Berghmans

AN ACT

RELATING TO SURVEILLANCE-BASED DISCRIMINATION; ENACTING THE
SURVEILLANCE-BASED PRICE DISCRIMINATION ACT; PROHIBITING
SURVEILLANCE-BASED PRICE DISCRIMINATION; AUTHORIZING THE
ATTORNEY GENERAL TO PROMULGATE RULES FOR THE USE OF AUTOMATED
SYSTEMS WHEN MAKING PRICE DECISIONS; PROVIDING FOR CIVIL
REMEDIES; PRESCRIBING PRIVATE RIGHTS OF ACTION; PRESCRIBING
CIVIL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Surveillance-Based Price Discrimination Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Surveillance-Based Price Discrimination Act:

A. "consumer" means a person who obtains,
maintains, uses, purchases, leases or has goods, services or

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1 real or personal property or the personal representative of
2 that person;

3 B. "de-identified data" means data that does not
4 identify and cannot reasonably be used to infer information
5 about, or otherwise be linked to, an identified or identifiable
6 person or a device linked to the person;

7 C. "individualized" means specific to or inferred
8 about a person or group, band, class or tier of persons with
9 particular personal information;

10 D. "insurer" means a person engaged as principal,
11 indemnitor, surety or contractor in the business of making
12 contracts of insurance;

13 E. "personal information" means any information,
14 including unique identifiers, that is linked or reasonably
15 linkable, alone or in combination with other information, to an
16 identified or identifiable person or a device that identifies
17 or is linked or reasonably linkable to a person. "Personal
18 information" does not include de-identified data;

19 F. "price" means the amount charged to a consumer
20 in relation to a transaction, including all related costs and
21 fees and other material terms of the transaction that have a
22 direct bearing on the amount paid by the consumer or the value
23 of the good or service offered or provided to the consumer;

24 G. "surveillance data" means data obtained through
25 observation, inference or surveillance of a consumer that is

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1 related to personal information of the person or a group, band,
2 class or tier in which the person belongs; and

3 H. "surveillance-based price discrimination" means
4 offering or setting an individualized price for a good or
5 service for a specific consumer or group of consumers based in
6 whole or in part on personal information.

7 SECTION 3. [NEW MATERIAL] SURVEILLANCE-BASED PRICE
8 DISCRIMINATION--PROHIBITION.--

9 A. A person shall not engage in surveillance-based
10 price discrimination.

11 B. A person has not engaged in surveillance-based
12 price discrimination if the person can demonstrate that:

13 (1) differential prices are justified based on
14 differences in cost in providing a good or service to different
15 consumers;

16 (2) differential prices reflect discounts
17 offered to all consumers on equal terms in a manner consistent
18 with applicable antidiscrimination laws in which:

19 (a) the terms of the discount are
20 available and accessible to consumers and the public;

21 (b) discounts reward membership in a
22 particular group, including active members of the military,
23 veterans, teachers, students or seniors; and

24 (c) eligibility for the discount is
25 based on information affirmatively and voluntarily provided by

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1 the consumer to the person offering the discount; or

2 (3) the person operates as an insurer engaged
3 as principal and as indemnitor, surety or contractor in the
4 business of entering into contracts of insurance.

5 C. A person has not engaged in surveillance-based
6 price discrimination if the person can demonstrate that a
7 refusal to extend credit at specific terms or the refusal to
8 enter into a transaction with a specific consumer is based on
9 data provided in a consumer report covered by the federal Fair
10 Credit Reporting Act.

11 D. A person has not engaged in surveillance-based
12 price discrimination by using de-identified data if the person
13 that possesses the data:

14 (1) takes reasonable physical, administrative
15 and technical measures to ensure that the data cannot be
16 associated with an individual person or be used to re-identify
17 a person or device that identifies or is linked or reasonably
18 linkable to an individual;

19 (2) publicly commits to process the data only
20 in a de-identified fashion and not attempt to re-identify the
21 data; and

22 (3) contractually obligates any recipients of
23 the data to satisfy the criteria set forth in Paragraphs (1)
24 and (2) of this subsection.

25 E. The attorney general shall adopt rules as

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1 necessary for the purpose of implementing and enforcing the
2 Surveillance-Based Price Discrimination Act.

3 SECTION 4. [NEW MATERIAL] VIOLATION OF SURVEILLANCE-BASED
4 PRICE DISCRIMINATION ACT--ENFORCEMENT--COSTS--PRIVATE RIGHT OF
5 ACTION.--

6 A. A person that violates the Surveillance-Based
7 Price Discrimination Act engages in an unfair or deceptive
8 trade practice pursuant to the Unfair Practices Act.

9 B. The attorney general or a district attorney may
10 bring a civil action on behalf of the state against a person
11 that violates the Surveillance-Based Price Discrimination Act
12 to seek the imposition of civil penalties.

13 C. A violation of the Surveillance-Based Price
14 Discrimination Act constitutes a separate violation with
15 respect to each transaction involved.

16 D. In an action brought under the Surveillance-
17 Based Price Discrimination Act, if the court finds that a
18 person is willfully using or has willfully used a method, an
19 act or a practice declared unlawful by the Unfair Practices
20 Act, the attorney general or a district attorney, upon petition
21 to the court, may recover, on behalf of the state of New
22 Mexico, a civil penalty of not more than ten thousand dollars
23 (\$10,000) per violation.

24 E. The attorney general or a district attorney
25 shall be awarded costs and attorney fees in all actions in

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1 which the attorney general or the district attorney
2 successfully enforces the Surveillance-Based Price
3 Discrimination Act.

4 F. In addition to other remedies provided at law or
5 in equity, a person aggrieved by a violation of the
6 Surveillance-Based Price Discrimination Act may bring a civil
7 action on behalf of the person or a group of similarly situated
8 persons to restrain further violations and to recover damages,
9 costs and reasonable attorney fees, including the greater of:

10 (1) the amount of actual damages sustained,
11 including prejudgment interest of eight percent per year from
12 the date on which the claim pursuant to the Surveillance-Based
13 Price Discrimination Act accrued;

14 (2) three thousand dollars (\$3,000) for each
15 violation of the Surveillance-Based Price Discrimination Act,
16 with each violation constituting a separate violation with
17 respect to each consumer or transaction involved; or

18 (3) three times the amount of actual damages
19 sustained if it is established by clear and convincing evidence
20 that the person violating the Surveillance-Based Price
21 Discrimination Act engaged in bad-faith conduct or
22 intentionally violated that act.