

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.

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

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-

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

3 (A) to enjoin further violation of such sub-
4 section by the defendant;

5 (B) to compel compliance with such sub-
6 section; or

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

10 (2) NOTICE TO THE COMMISSION.—

11 (A) NOTICE.—Except as provided in sub-
12 paragraph (C), the attorney general of a State
13 shall notify the Commission in writing that the
14 attorney general intends to bring a civil action
15 under paragraph (1) not later than 10 days be-
16 fore initiating the civil action.

17 (B) CONTENTS.—The notice required by
18 subparagraph (A) shall include a copy of the
19 complaint to be filed to initiate such civil ac-
20 tion.

21 (C) EXCEPTION.—If it is not feasible for
22 the attorney general of a State to provide the
23 notice required by subparagraph (A), the attor-
24 ney 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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