

**Title:** *Fair Access to Markets and Retail Pricing Neutrality Act*

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## SECTION 1. SHORT TITLE

This Act may be cited as the “Fair Access to Markets and Retail Pricing Neutrality Act.”

## SECTION 2. FINDINGS AND PURPOSE

### (a) Findings

Congress finds that:

1. Competitive markets require equal access to goods and services and depend upon transparent, non-discriminatory commercial terms for similarly situated purchasers.
2. Discrimination in pricing or commercial terms based on bargaining leverage, buyer identity, or negotiated status, rather than objective cost or functional role, distorts competition and inhibits entry and survival of small businesses.
3. Hidden rebates, slotting allowances, off-schedule credits, preferential logistics arrangements, and other back-end financial considerations can subvert nominal pricing and undermine market neutrality.
4. Personalized and algorithmic pricing practices may reduce transparency, impair informed consumer choice, and facilitate unequal pricing for similarly situated consumers within a region.
5. Competitive neutrality requires that similarly situated purchasers receive materially equivalent terms within defined purchasing tiers and defined geographic regions.

### (b) Purpose

The purpose of this Act is to:

6. Restore competitive neutrality in wholesale and retail markets;
7. Require uniform pricing within purchasing tiers and defined geographic regions for substantially identical products;
8. Prohibit leverage-based preferential pricing and off-schedule financial consideration;
9. Require transparency and consumer choice regarding personalized and algorithmic pricing in retail markets;
10. Provide enforceable remedies and administrative standards to prevent circumvention and retaliation.

## TITLE I — FAIR ACCESS TO WHOLESALE AND RETAIL MARKETS

## SECTION 3. SCOPE OF APPLICATION

### (a) Applicability

This Title applies to commercial sales of goods as goods within interstate commerce.

### (b) Sale of Goods as Goods

For purposes of this Title, a transaction is a sale of goods as goods when:

1. The good is sold as a standalone product;
2. The good is offered with an independently stated price; and

3. The good is transferred to the purchaser without material incorporation into a separately contracted service at the time of sale.

(c) Exclusion for Service-Integrated Transactions

This Title does not apply to goods that are:

4. Incorporated into a service contract;
5. Bundled with labor, installation, fabrication, repair, or construction; and
6. Not offered for resale as standalone goods to a purchasing tier or to the public.

(d) Hybrid and Showroom Sales

If an entity engaged primarily in services offers goods for resale as standalone goods with independently stated pricing, such standalone sales are subject to this Title.

(e) Anti-Evasion

No entity may structure a transaction primarily to avoid application of this Title by artificial bundling or unbundling of goods and services.

## SECTION 4. DEFINITIONS

For purposes of this Act:

1. Purchasing Tier means a class of purchasers defined by functional role in the supply chain, including:
  - o Retail consumer;
  - o Service-integrated purchaser (including contractors incorporating goods into a service);
  - o Independent reseller;
  - o Distributor/wholesaler;
  - o Manufacturer/industrial purchaser.
2. Defined Geographic Region means a commercially reasonable distribution area, proposed by a seller and subject to review under this Act, based on objective factors including infrastructure, logistics feasibility, transportation cost differentials, and population density.
3. Similarly Situated means purchasers that:
  - o Perform the same functional role within the supply chain;
  - o Operate within the same defined geographic region;
  - o Meet identical objective qualification criteria established under the seller's published tier standards or published service standards; and
  - o Seek to purchase substantially identical products under comparable commercial terms.
4. Uniform Tier Pricing means identical base unit pricing for substantially identical products offered to all similarly situated purchasers within the same purchasing tier and defined geographic region.
5. Substantially Identical Product means a product that is materially similar in composition, function, design, utility, and intended consumer use, and that is not altered primarily to evade uniform pricing obligations.
6. Materially Equivalent Terms means pricing, payment discounts, financing terms, logistics arrangements, marketing support, service levels, and related commercial terms that are offered uniformly to similarly situated purchasers within the same purchasing tier and defined geographic region.
7. Preferential Pricing means any pricing or effective-price variation within a purchasing tier and defined geographic region that is not permitted under this Act, including

variation created through rebates, allowances, credits, waivers, or other off-schedule financial consideration.

8. Covered Logistics Service means carriage, delivery, freight, parcel shipment, warehousing, or fulfillment services offered for compensation.
9. Published Rate Schedule means a publicly accessible schedule of charges, thresholds, eligibility criteria, and service conditions stated in objective measurable terms and applied uniformly to similarly situated purchasers.

## SECTION 5. UNIFORM PRICING REQUIREMENT

### (a) Uniform Pricing Within Tier and Region

A seller engaged in commerce shall offer uniform base unit pricing to all similarly situated purchasers within the same purchasing tier and defined geographic region for substantially identical products.

### (b) Prohibited Bases for Price Variation

Production volume shall not constitute a permissible basis for price variation within a purchasing tier.

### (c) Prohibited Bases for Price Variation

Purchasing volume shall not constitute a permissible basis for price variation within a purchasing tier.

### (d) Materially Equivalent Terms

Financing terms, payment discounts, logistics arrangements, marketing support, service levels, and other commercial terms must be materially equivalent for similarly situated purchasers within the same purchasing tier and defined geographic region, except as expressly permitted under this Act.

### (e) No Off-Schedule Logistics Preferences

No buyer-specific logistics preference, rebate, waiver, or credit may be offered outside a published rate schedule.

## SECTION 6. PERMISSIBLE COST DIFFERENTIATION

### (a) Permitted Cost-Based Adjustments

A seller may apply cost-based adjustments to pricing or terms within a purchasing tier and defined geographic region only to the extent such adjustments are:

1. Objective and verifiable;
2. Documented in records sufficient to demonstrate the basis for the adjustment; and
3. Formula-based and uniformly applied to all similarly situated purchasers.

### (b) Examples of Permitted Cost Categories

Permitted cost-based adjustments may include:

4. Custom packaging setup costs;
5. Custom labeling setup costs;
6. Documented transportation or handling costs directly attributable to delivery method or delivery location;
7. Documented production configuration costs necessary to produce a materially distinct product variant that is not substantially identical under this Act.

### (c) Uniform Application Requirement

If a seller offers a cost-based adjustment for any category described in subsection (b), the

seller must apply the same method of calculation and the same eligibility criteria to all similarly situated purchasers.

(d) Minimum Order and Delivery Method

A seller or distributor may impose minimum order sizes or delivery-method requirements (including full-truck requirements) only if:

8. The requirement is stated in objective measurable terms and applied uniformly to similarly situated purchasers;
9. Any associated fee is applied uniformly to similarly situated purchasers; and
10. The requirement is not structured primarily to confer selective advantage to particular purchasers.

(e) Covered Logistics Services — Published Schedule Exception

A provider of a covered logistics service may offer different rates or service conditions based on objective operational criteria (including hub drop-off requirements, shipment preparation requirements, pickup vs. delivery method, delivery frequency, package specifications, route density, or minimum shipment size) only if:

11. Such criteria and rates are contained in a Published Rate Schedule;
12. The same Published Rate Schedule is available to any purchaser that meets the criteria;
13. No purchaser receives any discount, waiver, rebate, credit, or preferential term outside the Published Rate Schedule; and
14. Eligibility is not defined by purchaser identity, market power, negotiated status, or competitive threat.

## SECTION 7. PROHIBITED CONDUCT

It shall be unlawful for any seller, distributor, wholesaler, manufacturer, retailer, or provider of covered logistics services to:

1. Provide volume-based discounts in base unit pricing within a purchasing tier and defined geographic region;
2. Provide preferential pricing or materially different terms within a tier and region based on buyer identity, purchasing leverage, negotiated status, or market power;
3. Provide or accept any off-schedule rebate, allowance, slotting fee, marketing payment, credit, waiver, or other financial consideration that alters the effective price or materially alters terms within a tier and region;
4. Provide or accept negotiated logistics preferences outside a Published Rate Schedule;
5. Create or apply purchasing tiers or defined geographic regions primarily to evade uniform pricing requirements or to confer preferential advantage;
6. Retaliate against a purchaser for asserting rights under this Act, filing a complaint, cooperating with an investigation, or participating in enforcement proceedings, as further prohibited under Section 10(d).

## SECTION 8. EXCLUSIVE SUPPLY

(a) Permissible Exclusivity

An exclusive supply agreement is permissible if the seller does not simultaneously offer the same product, within the same purchasing tier and defined geographic region, to other purchasers.

(b) Anti-Evasion Rule

Exclusive supply agreements shall not be used as a device to avoid uniform pricing obligations

for substantially identical products.

An agreement shall be treated as non-exclusive for purposes of this Act if materially similar products are offered to other purchasers at differential pricing in a manner that would otherwise be prohibited.

## SECTION 9. ENFORCEMENT AUTHORITY

### (a) Primary Enforcement

The Federal Trade Commission (FTC) shall have primary authority to administer and enforce this Act.

The Commission may:

1. Investigate potential violations;
2. Require the production of documents and information;
3. Issue subpoenas and compel testimony consistent with applicable law;
4. Promulgate implementing regulations, including standards for tier and region filings, recordkeeping, and compliance certification;
5. Initiate civil enforcement proceedings in federal court; and
6. Seek injunctive relief, equitable relief, civil penalties, and other remedies authorized by this Act.

### (b) Department of Justice

The Attorney General may initiate civil enforcement actions and may initiate criminal proceedings for willful violations when referred by the FTC or when otherwise authorized by law.

### (c) FTC Public Registry

The FTC shall establish and maintain a publicly accessible online registry that includes, at minimum:

7. Approved purchasing tier designations filed under this Act;
8. Approved defined geographic regions filed under this Act;
9. Published Rate Schedules for covered logistics services required under this Act; and
10. Public compliance certifications required under Section 16.

Covered entities shall update registry filings within 30 days of any material change.

### (d) FTC Compliance Guidance and Public Education

Within 180 days of enactment, and updated as necessary thereafter, the FTC shall publish:

11. Plain-language compliance manuals;
12. Illustrative examples of compliant and non-compliant conduct;
13. Guidance regarding reporting, complaints, and enforcement; and
14. Publicly accessible educational materials, including multimedia resources, explaining rights and obligations under this Act.

The FTC shall maintain secure reporting mechanisms, including an anonymous reporting pathway, consistent with Section 12 (Whistleblower Protection).

## SECTION 10. CIVIL REMEDIES, PENALTIES, AND PRIVATE ENFORCEMENT

### (a) Civil Remedies

Any person who violates this Act shall be subject to:

1. Injunctive relief to stop or prevent violations;
2. Disgorgement of profits derived from the violation;
3. Treble damages for economic harm caused to an injured party; and
4. Declaratory relief where appropriate.

(b) Civil Penalties

In addition to remedies under subsection (a), a violator shall be subject to civil penalties not to exceed \$50,000 per transaction or per day of continuing violation, as determined by the court, taking into account:

5. The magnitude of economic harm;
6. The duration of the violation;
7. Whether the conduct was knowing or willful;
8. Whether the conduct formed part of a pattern or practice; and
9. Any concealment or destruction of records.

(c) Executive and Senior Management Civil Liability

Senior officers, directors, senior managers, or controlling persons who authorize, direct, or knowingly permit violations may be held jointly and severally liable for civil penalties and disgorgement.

(d) Anti-Retaliation Against Purchasers

No seller may terminate supply, refuse to contract, impose adverse commercial terms, threaten economic harm, or otherwise retaliate against a purchaser for:

10. Asserting rights under this Act;
11. Filing a complaint with the FTC;
12. Providing information or cooperating with an investigation; or
13. Participating in proceedings under this Act.

Retaliation constitutes a separate violation subject to enhanced penalties.

(e) Private Right of Action

Any person or business directly harmed by a violation of this Act may bring a civil action in federal court.

A prevailing plaintiff may recover:

14. Treble damages;
15. Injunctive relief;
16. Disgorgement where appropriate; and
17. Attorney's fees and costs pursuant to Section 19.

Private enforcement does not preclude concurrent enforcement by the FTC or Department of Justice.

## SECTION 11. CRIMINAL LIABILITY FOR KNOWING AND WILLFUL EVASION

(a) Covered Persons

This section applies to any officer, director, senior manager, or controlling person of a covered entity, including any person with authority over pricing, contracting, tier/region designation, logistics terms, compliance certifications, or record retention.

(b) Misdemeanor — First Offense

Any covered person who knowingly and willfully, with intent to evade or defeat the purposes of this Act, engages in any of the following conduct shall be guilty of a misdemeanor:

1. Concealment: Conceals or directs concealment of preferential pricing, off-schedule rebates/allowances, or buyer-specific logistics preferences prohibited by this Act;
2. Artificial tiering/regioning: Creates, approves, or directs the creation of artificial purchasing tiers or defined geographic regions primarily to confer preferential advantage or to evade uniform pricing requirements;
3. Falsification: Causes the falsification of records required to be retained under this Act, including pricing schedules, tier/region filings, logistics schedules, audit logs, or certifications;
4. False certifications: Signs, submits, or directs the submission of a materially false compliance certification required under this Act;
5. Retaliation: Retaliates or directs retaliation against a whistleblower or purchaser protected under this Act.

A misdemeanor under this subsection is punishable by a fine not to exceed \$250,000 for an individual, imprisonment for not more than one year, or both.

(c) Felony — Subsequent Offense

Any covered person convicted under subsection (b) who thereafter commits a subsequent knowing and willful violation of subsection (b) shall be guilty of a felony punishable by a fine not to exceed \$1,000,000, imprisonment for not more than five years, or both.

(d) Mens Rea Limitation

Criminal liability shall not attach to negligent conduct or good-faith interpretive errors. Criminal liability under this section requires proof beyond a reasonable doubt of knowing and willful conduct.

## SECTION 12. WHISTLEBLOWER PROTECTION AND INCENTIVES

### (a) Protected Activity

No covered entity may discharge, demote, suspend, threaten, harass, blacklist, or in any manner discriminate against any employee, contractor, supplier, purchaser, or agent because such person:

1. Provided information to the FTC, DOJ, or other lawful authority regarding a potential violation;
2. Initiated, testified in, assisted with, or participated in an investigation or proceeding under this Act; or
3. Refused to participate in conduct the person reasonably believes violates this Act.

### (b) Anonymous Reporting

The FTC shall maintain secure reporting channels, including an anonymous reporting mechanism, for whistleblowers to submit information regarding potential violations.

### (c) Remedies for Retaliation

A person prevailing on a retaliation claim shall be entitled to:

4. Reinstatement (where applicable);
5. Double back pay with interest;
6. Compensatory damages;
7. Attorney's fees and costs pursuant to Section 19; and
8. Any other relief the court deems appropriate.

### (d) Whistleblower Awards

The FTC may award monetary incentives to whistleblowers whose original information

leads to the successful imposition of civil penalties, disgorgement, or criminal conviction under this Act, subject to FTC rules designed to protect confidentiality and prevent abuse.

## SECTION 13. DEFINED GEOGRAPHIC REGION — DESIGNATION AND FTC AUTHORITY

### (a) General Principle

Uniform pricing and materially equivalent terms shall be assessed within a Defined Geographic Region. Regions must reflect commercially reasonable distribution boundaries and shall not be structured to evade compliance.

### (b) Seller-Designated Regions

1. A seller may designate one or more regions for purposes of compliance.
2. Each designation shall be documented and filed with the FTC in a form prescribed by rule.
3. Region filings shall be made publicly available through the FTC registry under Section 9(c), subject to protection of legitimate confidential business information consistent with FTC rule.

### (c) Objective Criteria

A region designation must be supported by one or more objective factors, including:

4. Distribution infrastructure and accessibility;
5. Transportation cost differentials;
6. Population density and market concentration;
7. Warehouse or fulfillment network boundaries;
8. Logistical feasibility of delivery; and
9. Established industry-standard distribution zones.

A region designation shall not be based solely on buyer identity, market power, purchasing volume, negotiated status, or competitive threat.

### (d) FTC Review and Written Determination

10. The FTC shall promulgate rules establishing uniform standards for region designation.
11. The FTC shall review filings for compliance and issue a written determination upon challenge or upon its own review.
12. The FTC may reject, require modification of, or condition approval of any region designation that is unreasonably narrow, artificially fragmented, purchaser-specific, or structured to confer preferential advantage.

### (e) Presumption of Reasonableness

A region designation is presumed reasonable if it is documented, consistent with logistical cost structures, and applied uniformly to all similarly situated purchasers. The presumption may be rebutted upon evidence of circumvention or discriminatory intent.

### (f) Prohibition on Micro-Region Manipulation

No seller may create excessively narrow or purchaser-specific regions, redraw boundaries primarily to avoid compliance, or apply inconsistent region definitions to similarly situated purchasers.

## SECTION 14. PURCHASING TIER — DESIGNATION AND FTC AUTHORITY

### (a) General Principle

Uniform pricing and materially equivalent terms apply within each Purchasing Tier and region.

Purchasing tiers must reflect functional roles and shall not be structured to evade compliance.

(b) Seller-Designated Tiers

1. A seller may designate one or more purchasing tiers for purposes of compliance.
2. Each tier designation shall be documented and filed with the FTC in a form prescribed by rule.
3. Tier filings shall be made publicly available through the FTC registry under Section 9(c).

(c) Functional Criteria

Purchasing tiers must be based upon functional distinctions, including:

4. Retail consumer;
5. Service-integrated purchaser (contractor incorporating goods into a service contract);
6. Independent reseller;
7. Distributor/wholesaler; and
8. Manufacturer/industrial purchaser.

A tier designation shall not be based solely on purchasing volume, buyer identity, market share, negotiated status, or competitive threat.

(d) FTC Review and Written Determination

9. The FTC shall promulgate rules establishing uniform standards for tier designation.
10. The FTC shall review tier filings and may reject or modify tiers that artificially segment similarly situated purchasers, create de facto volume tiers, or lack objective functional justification.

(e) Presumption of Reasonableness

A tier designation is presumed reasonable if it reflects a clear functional distinction, is applied uniformly, and does not incorporate purchasing volume as a qualifying criterion.

The presumption may be rebutted by evidence of circumvention or discriminatory intent.

(f) Prohibition on Artificial Tier Fragmentation

No seller may create purchaser-specific tiers, establish tiers primarily to confer preferential advantage, or redefine tiers to evade the purposes of this Act.

**SECTION 15. SUBSTANTIALLY IDENTICAL PRODUCTS; ANTI-CIRCUMVENTION; ADMINISTRATIVE DETERMINATION**

(a) Substantially Identical Product Standard

A product shall be deemed substantially identical when:

1. It performs the same primary functional purpose;
2. It is materially similar in composition, design, or utility;
3. It is marketed for substantially the same consumer use; and
4. Differences in labeling, packaging, trade dress, or formulation do not materially alter consumer function or intended use.

(b) Cosmetic Differentiation Insufficient

A product shall not be considered distinct solely by reason of:

5. Brand labeling changes;
6. Packaging modifications;
7. Formula adjustments;
8. Nominal renaming;
9. Exclusive labeling arrangements; or

10. Differences not resulting in a materially distinct consumer function or utility.
  - (c) Anti-Circumvention  
It shall be unlawful to structure, redesign, rebrand, repackage, or relabel a product primarily for the purpose of evading uniform pricing requirements under this Act. Evidence of circumvention may include internal communications, parallel pricing structures, rapid relabeling following compliance obligations, or lack of commercially meaningful differentiation.
  - (d) FTC Primary Determination
11. The FTC shall have primary authority to determine whether products are substantially identical under this Act.
12. Prior to seeking judicial enforcement on a substantial-identity dispute, the FTC shall issue a written administrative determination.
13. The affected entity shall have the right to submit argument and supporting documentation.
  - (e) One Administrative Reconsideration
14. An entity adversely affected by a final administrative determination may request one formal reconsideration within the FTC.
15. The FTC shall issue a written decision addressing the grounds raised.
16. Only after exhaustion of this administrative remedy may the entity seek judicial review.
  - (f) Judicial Review Standard  
Judicial review of the FTC's final determination under this section shall be limited to whether the determination was arbitrary, capricious, or contrary to law.

## SECTION 16. IMPLEMENTATION AND PHASE-IN

### (a) Rulemaking Period

1. Within 180 days of enactment, the Federal Trade Commission shall promulgate final rules necessary to implement this Act, including:
  - o Standards and forms for tier designation filings;
  - o Standards and forms for region designation filings;
  - o Recordkeeping and audit-log requirements;
  - o Compliance certification format and filing requirements;
  - o Procedures for administrative determinations and reconsiderations under this Act.
2. During this 180-day period, enforcement actions under this Act shall be limited to willful post-enactment circumvention designed to expand or conceal prohibited conduct.
  - (b) Transitional Compliance Period
3. Covered entities shall have 365 days from enactment to bring pricing structures, terms, documentation, and filings into compliance.
4. Contracts executed prior to enactment may remain in force during the compliance period but may not be renewed or extended in violation of this Act.
5. New or renewed contracts entered after enactment must conform to this Act.
  - (c) Contract Review and Modification Authority
6. The FTC may review pre-enactment contracts extending beyond the 365-day compliance period.
7. The FTC may order modification or termination of such contracts if continuation would substantially undermine the purposes of this Act.

8. In exercising this authority, the FTC shall consider:
  - o Good-faith reliance on existing agreements;
  - o Structural capital investment made in reliance on such agreements;
  - o Potential for disproportionate economic harm;
  - o Degree of competitive distortion caused by continuation;
  - o Feasibility of modification as an alternative to termination.
- (d) Small Business Extension
9. A small business may request a compliance extension of six months upon a showing of reasonable cause.
10. No more than two such extensions may be granted.
11. Extensions shall not exceed 12 months beyond the original compliance deadline.
- (e) Public Certification of Compliance
12. Any covered entity with annual revenue exceeding \$10,000,000 shall file a public certification of compliance within 12 months of enactment.
13. Such certification shall be signed by a senior executive officer.
14. Knowingly false certification constitutes a separate violation and may trigger enhanced civil penalties and individual liability under this Act.
- (f) Administrative Capacity
- The Commission may establish a dedicated division or office as necessary to administer this Act.

## SECTION 17. FTC COMPLIANCE GUIDANCE AND PUBLIC EDUCATION

### (a) Plain-Language Guidance

Within 180 days of enactment, the FTC shall publish and maintain:

1. Plain-language compliance manuals;
2. Illustrative examples of compliant and non-compliant conduct;
3. Interpretive guidance sufficient to explain the intent and application of this Act to common commercial scenarios.

### (b) Public Education

The FTC shall provide publicly accessible educational materials explaining:

4. Small business protections and purchaser rights under Title I;
5. Consumer rights under Title II;
6. How to file complaints and submit information to the FTC;
7. How to report violations safely, including retaliation protections.

### (c) Reporting Channels

The FTC shall maintain secure reporting channels, including an anonymous reporting mechanism, consistent with Section 12 (Whistleblower Protection).

## SECTION 18. BURDEN OF PROOF AND EVIDENTIARY STANDARDS

### (a) Prima Facie Showing

A prima facie violation is established upon a showing that:

1. Two or more similarly situated purchasers within the same purchasing tier and defined geographic region were offered materially different base pricing for substantially identical products; or

2. A purchaser received off-schedule financial consideration not contained in a published rate schedule; or
3. A purchaser was subjected to materially non-equivalent terms within the meaning of this Act without a permitted, documented cost basis.

Upon such showing, the burden shifts to the seller (or service provider, as applicable) to demonstrate lawful justification.

(b) Seller's Burden of Justification

The seller must demonstrate by a preponderance of the evidence that:

4. Any variation was based on documented, objective, cost-based factors permitted under Section 6; or
5. The products are not substantially identical under Section 15; or
6. The transaction falls outside the scope of Title I under Section 3.

(c) Recordkeeping

Covered entities shall maintain records sufficient to demonstrate compliance, including:

7. Pricing schedules by tier and region;
8. Documentation supporting cost-based adjustments;
9. Published rate schedules for covered logistics services where applicable;
10. Tier and region filings;
11. Compliance certifications.

Records shall be retained for not less than five years.

(d) Presumption in Cases of Concealment

If a covered entity:

12. Fails to produce required documentation;
  13. Destroys or materially alters records; or
  14. Refuses to comply with lawful administrative inquiry;
- a rebuttable presumption arises that the practice violated this Act.

(e) Standard of Proof

15. Civil violations shall be proven by a preponderance of the evidence.
16. Criminal violations under Section 11 require proof beyond a reasonable doubt of knowing and willful conduct.

(f) Pattern or Practice

Repeated materially similar violations within a three-year period may constitute evidence of willful circumvention.

## SECTION 19. ATTORNEY'S FEES AND COSTS

(a) Discretionary Award

In any civil action brought under this Act, the court may award reasonable attorney's fees and costs to a prevailing party.

(b) Prevailing Party — Material Success

A party is prevailing only if the court determines that the party achieved material success on the principal claim or defense.

(c) Judicial Discretion Factors

In determining whether to award attorney's fees, the court shall consider:

1. Whether the non-prevailing party's position was substantially justified;
2. Whether the action or defense was asserted in good faith;

3. The relative degree of success obtained; and
4. Whether the litigation advanced the purposes of this Act.

(d) Actions Involving the Federal Trade Commission

In any action brought by or against the FTC under this Act, attorney's fees shall not be awarded against the Commission unless the court finds that the Commission acted in bad faith or without a reasonable legal basis.

## TITLE II — RETAIL PRICING TRANSPARENCY AND CONSUMER CHOICE

### SECTION 20. DEFINITIONS

For purposes of this Title:

1. Personalized Pricing means pricing for a good or service determined in whole or in part by consumer-specific data, consumer profiling, inferred attributes, or individualized behavioral or demographic factors.
2. Base Public Price means the non-personalized price made available to all consumers within a defined geographic region for the same good or service, absent individualized pricing inputs.
3. Algorithmic Pricing System means any automated, computational, or machine-assisted system that sets, modifies, recommends, or varies prices based on consumer data, consumer segmentation, time, inventory, location, or other variables.

### SECTION 21. DISCLOSURE AND BASE PUBLIC PRICE REQUIREMENT

(a) Disclosure of Personalized Pricing

Any retail seller that uses Personalized Pricing or an Algorithmic Pricing System shall provide clear and conspicuous disclosure to the consumer that the price displayed may be personalized.

(b) Base Public Price Availability

Retail sellers shall make available a Base Public Price for each good or service offered for sale within each Defined Geographic Region.

(c) Right to Purchase at Base Public Price

A consumer shall have the right to purchase the good or service at the Base Public Price within the applicable Defined Geographic Region.

(d) Equal Presentation

Where multiple price presentations are offered (including personalized pricing, coupons, membership pricing, or promotions), the seller shall not conceal the existence of the Base Public Price or make access to it unreasonably difficult.

### SECTION 22. CONSUMER OPT-OUT OF PERSONALIZED PRICING

(a) Opt-Out Right

Consumers shall have the right to opt out of Personalized Pricing without penalty.

(b) Effect of Opt-Out

Upon opt-out, the seller shall offer the consumer the Base Public Price for goods and services within the applicable Defined Geographic Region.

(c) No Degradation

A seller shall not degrade service quality, deny lawful access, impose additional non-monetary burdens, or otherwise penalize a consumer solely for exercising the opt-out right.

## SECTION 23. PROHIBITED PRACTICES

It shall be unlawful for any retail seller to:

1. Conceal or fail to disclose the use of Personalized Pricing when required under Section 21;
2. Deny consumers access to the Base Public Price within a Defined Geographic Region;
3. Use consumer vulnerability indicators to increase prices, including indicators reasonably associated with financial distress, coercion susceptibility, or other vulnerability signals, as further defined by FTC rule;
4. Apply differential pricing within the same Defined Geographic Region on the basis of protected characteristics or unlawful discrimination;
5. Structure opt-out mechanisms in a manner primarily designed to defeat consumer choice through undue friction.

## SECTION 24. AUDIT AND RECORDKEEPING FOR ALGORITHMIC PRICING

### (a) Audit Log Requirement

Retail sellers employing an Algorithmic Pricing System shall maintain audit logs sufficient to demonstrate compliance with this Title, including:

1. Whether pricing for a transaction was personalized or non-personalized;
2. The Defined Geographic Region applied;
3. Whether the Base Public Price was made available and accessible;
4. Whether the consumer opted out and the effect of that opt-out.

### (b) Retention Period

Audit logs and related compliance records shall be retained for not less than five years, consistent with Section 18(c).

### (c) FTC Review

Audit logs shall be subject to review by the Federal Trade Commission under protective procedures designed to prevent public disclosure of proprietary technical methods while enabling verification of compliance.

## SECTION 25. RELATIONSHIP TO STATE LAW

### (a) Federal Baseline Standard

This Act establishes a national baseline standard governing uniform tier pricing, tier designation, region designation, and retail pricing transparency.

### (b) Conflict Preemption

No State or political subdivision may enforce any law, regulation, or requirement that directly conflicts with this Act.

A conflict exists where compliance with both federal and state law is impossible, or where state law permits conduct expressly prohibited by this Act.

### (c) State Authority for Greater Protection

Nothing in this Act shall prevent a State from enacting or enforcing laws that provide greater protection for competition or consumers, provided such laws do not authorize conduct prohibited by this Act.

### (d) No Limitation on Other Federal Law

Nothing in this Act shall limit the applicability of federal antitrust laws, consumer protection laws, or fraud statutes.

#### SECTION 26. SEVERABILITY

If any provision of this Act, or the application of any provision to any person or circumstance, is held to be invalid, unconstitutional, or unenforceable, the remainder of this Act, and the application of such provision to any other person or circumstance, shall not be affected.

It is the intent of Congress that:

1. The provisions of this Act be severable;
2. Each Title, section, subsection, and clause operate independently to the fullest extent permitted by law; and
3. Invalidity of any specific enforcement mechanism, reporting mechanism, or disclosure mechanism shall not invalidate the substantive pricing neutrality requirements of Title I or the consumer transparency requirements of Title II, to the fullest extent permitted by law.

#### SECTION 27. PERIODIC REVIEW AND REPORTING

##### (a) Five-Year Review

Not later than five years after full enforcement commences under Section 16(b)–(c), the Federal Trade Commission shall submit to Congress a report evaluating:

1. The effectiveness of this Act in promoting competitive neutrality;
2. The economic impact on small and mid-sized businesses;
3. The impact on consumer pricing transparency and consumer choice;
4. Market entry and market concentration trends in affected industries;
5. Enforcement actions undertaken and their outcomes;
6. Observed circumvention patterns and administrative rulings, if any; and
7. Recommendations for statutory refinement, if necessary.

##### (b) Ten-Year Review

Not later than ten years after full enforcement commences, the Federal Trade Commission shall submit a second report to Congress updating the findings listed in subsection (a).

##### (c) No Sunset

Nothing in this section shall be construed to terminate, suspend, or sunset the provisions of this Act.

#### SECTION 28. EFFECTIVE DATE AND CONFORMING INTERPRETATION

##### (a) Effective Date

This Act shall take effect on the date of enactment.

##### (b) Implementation and Enforcement

The rulemaking, transitional compliance, certification, and enforcement timelines set forth in Section 16 govern the timing of obligations, enforcement actions, and penalties under this Act.

##### (c) Construction

Nothing in this Act shall be construed to require any seller to offer goods for sale, to increase

production, or to expand distribution beyond its ordinary course of business; this Act governs the neutrality and transparency of pricing and terms where goods are offered for sale as goods.