

Regulating Protected Class Data and Algorithmically Derived Data: New York’s Algorithmic Pricing Act Takes Effect

November 7, 2025

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🔑 Key Take: *The Act emphasizes consumer transparency by requiring disclosures that are factual and non-misleading, aiming to prevent discriminatory pricing practices.*

Given the recent ruling dismissing the challenge to the New York Algorithmic Pricing Act, (the Act), ^[1] hotels should now be in compliance with the Act, which initially was to go into effect July 8, 2025. Following the legislative trend toward transparency and customer protection in pricing practices, the new law impacts businesses, including hotels, that utilize customer specific data to set personalized prices (a practice commonly referred to as “surveillance pricing”). Hotels often employ sophisticated revenue management software that rely on algorithms to optimize pricing in real time.

To inform customers that their price was determined algorithmically using their personal

data, the Act mandates the disclosure of “THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA” in a clear and conspicuous manner. For example, if a hotel’s website adjusts the room rate based on a customer’s browsing history or loyalty status, and this adjustment is made using an algorithm, the disclosure requirement would be triggered.

The Act also prohibits the use of “protected class data”^[2] (such as age, ethnicity or gender) in a way that results in discriminatory pricing. Protected class data cannot be used if (i) the use of that data has the effect of withholding or denying any of the accommodations, advantages, and privileges accorded to others or (ii) the price is different from the price offered to other individuals or groups based in whole or in part on the use of protected class data. This is intended to target AI-driven pricing systems.

Until recently, the Act’s enforcement was paused due to a legal challenge, and the New York Attorney General had agreed not to enforce or investigate violations until the litigation was resolved. On October 8, 2025, Judge Rakoff in the United States District Court for the Southern District of New York dismissed the lawsuit challenging the Act. Judge Rakoff rejected claims that the statute violated the First Amendment because it compelled speech. He held that the required disclosure is factual, “uncontroversial,” and reasonably related to the State’s interest in consumer transparency. The court held that the required disclosure is factually accurate and not misleading, and it was not relevant that a regulated entity would prefer not to make the disclosure or make a different statement on the same topic. Unless there is a stay pending appeal, which has not been entered as of the date of this publication, the Act took effect immediately.

[1] N.Y. Gen. Bus. Law § 349-A.

[2] “Protected class data” means information about an individual person or groups of people that directly, in combination, or by implication identifies a characteristic that is legally protected from discrimination under the laws of the State of New York or federal laws, including, but not limited to, ethnicity, national origin, age, disability, sex, sexual orientation, gender identity and expression, pregnancy outcomes and reproductive health care.