H. R. 5686

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

JULY 8, 2016

Ms. Speier (for herself, Ms. Bonamici, Mr. Brady of Pennsylvania, Ms. Brownley of California, Mrs. Bustos, Ms. Castor of Florida, Ms. Judy Chu of California, Mr. Cohen, Ms. DeLauro, Ms. Esty, Mr. Israel, Mr. Kildee, Ms. Lee, Mr. Lowenthal, Mr. McGovern, Ms. Moore, Mrs. Napolitano, Ms. Norton, Mr. Ryan of Ohio, Ms. Wasserman Schultz, Mrs. Watson Coleman, Mr. Grijalva, Ms. Lofgren, and Ms. Eshoo) 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”.


SEC. 2. PROHIBITION ON GENDER-BASED PRICING OF CONSUMER PRODUCTS AND SERVICES.

(a) Prohibited Practices.—

(1) Consumer Products.—It shall be unlawful for any person to sell or offer for sale in interstate commerce any two consumer products from the same manufacturer that are substantially similar if such products are priced differently based on the gender of the individuals for whose use the products are intended or marketed.

(2) Services.—It shall be unlawful for any person to sell or offer for sale any services that are substantially similar if such services are priced differently based on the gender of the individuals for which the services are performed, offered, or marketed.

(b) Unfair and Deceptive Act or Practice.—

A violation of subsection (a) shall be treated as a violation of a rule prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) defining an unfair or deceptive act or practice in or affecting interstate commerce.

(c) Enforcement.—

(1) Federal Trade Commission.—The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the
same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

(2) STATE ATTORNEYS GENERAL.—

(A) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is adversely affected by a violation of subsection (a), the attorney general may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

(i) to enjoin further violation of this Act by the defendant;

(ii) to compel compliance with this Act; or

(iii) obtain damages, restitution, or other compensation on behalf of residents of the State.

(B) NOTICE TO THE FTC.—

(i) NOTICE.—Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing of any civil action under paragraph (2), prior to initiating such civil action.
(ii) CONTENTS.—The notice required by clause (i) shall include a copy of the complaint to be filed to initiate such civil action.

(iii) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notice required by clause (i), the State shall provide notice immediately upon instituting a civil action under subparagraph (A).

(C) INTERVENTION BY THE FTC.—Upon receiving notice required by subparagraph (B) with respect to a civil action, the Commission may—

(i) intervene in such action; and

(ii) upon intervening, be heard on all matters arising in such civil action and file petitions for appeal of a decision in such action.

(D) PREEMPTIVE ACTION BY THE FTC.—If the Commission institutes a civil action for violation of this Act, no attorney general of a State may bring a civil action under this paragraph against any defendant named in the com-
plaint of the Commission for violation of this Act that is alleged in such complaint.

(d) Rules of Construction.—

(1) Substantially similar products.—For purposes of this Act, two consumer products are substantially similar if there are no substantial differences in the materials used in the product, the intended uses of the product, and the functional design and features of the product. A difference in coloring among any consumer products shall not be construed as a substantial difference for purposes of this paragraph.

(2) Substantially similar services.—For purposes of this Act, two services are substantially similar if there is no substantial difference in the amount of time to provide the services, the difficulty in providing the services, or the cost of providing the services.

(e) Definition of Consumer Product.—The term “consumer product” has the meaning given such term in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and includes a device or cosmetics, as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). Such term includes a child restraint system, as such term is defined
1 in section 571.213 of title 49, Code of Federal Regulations.

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