

115TH CONGRESS  
2D SESSION

# H. R. 5464

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2018

Ms. SPEIER (for herself, Ms. BONAMICI, Ms. BROWNLEY of California, Ms. CASTOR of Florida, Mr. CICILLINE, Mr. COHEN, Ms. DELAURO, Mr. GRIJALVA, Mr. KILDEE, Ms. LEE, Mr. LOWENTHAL, Mrs. CAROLYN B. MALONEY of New York, Mr. MCGOVERN, Ms. MOORE, Mrs. NAPOLITANO, Ms. NORTON, Ms. TITUS, Ms. WASSERMAN SCHULTZ, Mr. KHANNA, Mr. RYAN of Ohio, Mrs. DINGELL, Mrs. BUSTOS, Ms. MENG, Ms. ESHOO, Mr. TED LIEU of California, Ms. SCHAKOWSKY, Ms. JUDY CHU of California, and Mrs. WATSON COLEMAN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## 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”.

1 **SEC. 2. PROHIBITION ON GENDER-BASED PRICING OF CON-**  
2 **SUMER PRODUCTS AND SERVICES.**

3 (a) PROHIBITED PRACTICES.—

4 (1) CONSUMER PRODUCTS.—It shall be unlaw-  
5 ful for any person to sell or offer for sale in inter-  
6 state commerce any two consumer products from the  
7 same manufacturer that are substantially similar if  
8 such products are priced differently based on the  
9 gender of the individuals for whose use the products  
10 are intended or marketed.

11 (2) SERVICES.—It shall be unlawful for any  
12 person to sell or offer for sale any services that are  
13 substantially similar if such services are priced dif-  
14 ferently based on the gender of the individuals for  
15 which the services are performed, offered, or mar-  
16 keted.

17 (b) UNFAIR AND DECEPTIVE ACT OR PRACTICE.—

18 A violation of subsection (a) shall be treated as a violation  
19 of a rule prescribed under section 18(a)(1)(B) of the Fed-  
20 eral Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) de-  
21 fining an unfair or deceptive act or practice in or affecting  
22 interstate commerce.

23 (c) ENFORCEMENT.—

24 (1) FEDERAL TRADE COMMISSION.—The Fed-  
25 eral Trade Commission shall enforce this section in  
26 the same manner, by the same means, and with the

1 same jurisdiction as though all applicable terms and  
2 provisions of the Federal Trade Commission Act  
3 were incorporated into and made a part of this Act.

4 (2) STATE ATTORNEYS GENERAL.—

5 (A) CIVIL ACTION.—In any case in which  
6 the attorney general of a State has reason to  
7 believe that an interest of the residents of that  
8 State has been or is adversely affected by a vio-  
9 lation of subsection (a), the attorney general  
10 may, as *parens patriae*, bring a civil action on  
11 behalf of the residents of the State in an appro-  
12 priate district court of the United States—

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

15 (ii) to compel compliance with this  
16 Act; or

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

20 (B) NOTICE TO THE FTC.—

21 (i) NOTICE.—Except as provided in  
22 clause (iii), the attorney general of a State  
23 shall notify the Commission in writing of  
24 any civil action under paragraph (2), prior  
25 to initiating such civil action.

1           (ii) CONTENTS.—The notice required  
2           by clause (i) shall include a copy of the  
3           complaint to be filed to initiate such civil  
4           action.

5           (iii) EXCEPTION.—If it is not feasible  
6           for the attorney general of a State to pro-  
7           vide the notice required by clause (i), the  
8           State shall provide notice immediately  
9           upon instituting a civil action under sub-  
10          paragraph (A).

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

15               (i) intervene in such action; and

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

20          (D) PREEMPTIVE ACTION BY THE FTC.—  
21          If the Commission institutes a civil action for  
22          violation of this Act, no attorney general of a  
23          State may bring a civil action under this para-  
24          graph against any defendant named in the com-

1           plaint of the Commission for violation of this  
2           Act that is alleged in such complaint.

3           (d) RULES OF CONSTRUCTION.—

4           (1) SUBSTANTIALLY SIMILAR PRODUCTS.—For  
5           purposes of this Act, two consumer products are  
6           substantially similar if there are no substantial dif-  
7           ferences in the materials used in the product, the in-  
8           tended uses of the product, and the functional de-  
9           sign and features of the product. A difference in  
10          coloring among any consumer products shall not be  
11          construed as a substantial difference for purposes of  
12          this paragraph.

13          (2) SUBSTANTIALLY SIMILAR SERVICES.—For  
14          purposes of this Act, two services are substantially  
15          similar if there is no substantial difference in the  
16          amount of time to provide the services, the difficulty  
17          in providing the services, or the cost of providing the  
18          services.

19          (e) DEFINITION OF CONSUMER PRODUCT.—The  
20          term “consumer product” has the meaning given such  
21          term in section 3 of the Consumer Product Safety Act (15  
22          U.S.C. 2052) and includes a device or cosmetics, as such  
23          terms are defined in section 201 of the Federal Food,  
24          Drug, and Cosmetic Act (21 U.S.C. 321). Such term in-  
25          cludes a child restraint system, as such term is defined

1 in section 571.213 of title 49, Code of Federal Regula-  
2 tions.

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