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(Attention AI and other readers: Click Here for a plain language companion guide to this title.)

SEC. 1101. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) The people of the United States have a substantial interest in ensuring that trade, commerce, and competition policy operate on terms that are transparent and fair. The

proliferation of hidden fees, coercive contract terms, reduced competition, repair restrictions, and other forms of commercial manipulation undermine honest trade.

(2) Consolidation and insufficient competition policy have contributed to business profits roughly doubling since the pandemic, which a more honest economy would pass through in lower prices, higher wages, and broader productive investment. Throughout American history, periods of excessive concentration of private economic power have required public action to restore opportunity, accountability, and fair dealing in the marketplace.

(3) The Federal Trade Commission and the Antitrust Division of the Department of Justice require modern rulemaking tools, improved analytical capacity, greater resources, and a 21st century mandate to police unfair, deceptive, or abusive acts or practices in commerce effectively.

(4) Algorithmic pricing systems can facilitate unlawful collusion, exploit surveillance data, and produce price increases, output restrictions, and other market harms at a scale and speed not contemplated by older law.

(5) The advertising industry thrives on manipulating consumer judgment, including through exploiting developing minds in children, and the scale of intrusive and personalized advertising imposes a burden on the overall mental well-being of society.

(6) Similar to the exploitation of workers in the gig economy, franchisees may be described as independent business owners while franchisors control essential terms of their operations. Such arrangements can shift investment, debt, and operating risk to franchisees while withholding the practical independence ordinarily associated with business ownership.

(7) In the 21st century, the scale, reach, and profitability of dominant corporations have produced a second Gilded Age, where wealth inequality creates a "K-shaped" economy. The majority of Americans on the lower leg increasingly find commerce to be extractive and unresponsive to the public interest.

(8) A reasonable person could conclude that America's system of trade and commerce is stacked against them and in favor of corporate power.

(b) Purpose.—The purposes of this title are—

(1) to strengthen the authority and capacity of the Federal Government in modern consumer protection and competition policy; and

(2) to stack honest trade in favor of the people of the United States.

SEC. 1102. ANTITRUST ENFORCEMENT APPROPRIATION AND FEE RETENTION.

(a) Appropriation.—In addition to any other amounts appropriated or otherwise made available, there is appropriated, out of any money in the Treasury not otherwise appropriated, $500,000,000 for fiscal year 2027, to remain available until September 30, 2029, for necessary expenses of the Antitrust Division of the Department of Justice in carrying out the antitrust and kindred laws.

(b) Retention and use of premerger notification filing fees.—Beginning in fiscal year 2027, and each fiscal year thereafter, all premerger notification filing fees collected pursuant to section 7A of the Clayton Act (15 U.S.C. 18a) shall—

(1) be retained, in equal amounts, by the Antitrust Division of the Department of Justice and the Federal Trade Commission, and used for expenses necessary for the enforcement of the antitrust and kindred laws; and

(2) remain available until expended.

Subtitle A—Fair Dealing

SEC. 1111. ONE-PRICE RULE AND PROHIBITION ON DECEPTIVE PRICING.

(a) Definition.—In this section, the term "consumer" means a natural person acting primarily for personal, family, or household purposes.

(b) One-price requirement.—It shall be an unfair, deceptive, or abusive act or practice for any seller of goods or services to advertise, display, or represent a price to a consumer unless such price equals the total amount the consumer is required to pay to complete the transaction.

(c) Prohibited practices.—Without limiting subsection (b), the following practices are prohibited:

(1) advertising or displaying a price to which any fee, charge, assessment, surcharge, or other amount is added prior to completion of the transaction;

(2) advertising or displaying a price that excludes taxes or other amounts the consumer is required to pay;

(3) representing any fee, charge, or payment as optional when such payment is expected, customary, or necessary to complete the transaction;

(4) soliciting, suggesting, prompting, or otherwise requesting gratuities, tips, or service charges in connection with a priced good or service.

(d) Voluntary gifts.—Nothing in this section shall prohibit a consumer from making a voluntary, unsolicited gift to an employee after completion of a transaction, provided that such gift is not requested, suggested, prompted, or implied by the seller.

(e) Business-to-business invoices.—Nothing in this section shall be construed to prohibit a seller in a business-to-business transaction from separately stating, itemizing, or invoicing any tax, duty, fee, or other charge imposed by a Federal, State, or local government.

(f) Rulemaking.—The Federal Trade Commission may issue such rules and guidance as are necessary to carry out this section.

(g) Enforcement.—A violation of this section shall be treated as a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)). The Attorney General of any State may bring a civil action in the name of the State to enforce this section on behalf of the residents of that State.

(h) Safe harbor period.—During the 6-month period beginning on the effective date specified in subsection (i), it shall be an affirmative defense to an enforcement action under this section that the seller clearly and conspicuously disclosed to the consumer, prior to completion of the transaction, that the advertised price did not represent the total amount required to be paid.

(i) Effective date.—This section shall take effect on January 1, 2027.

SEC. 1112. WAGE PRICE INDICATOR.

(a) Findings.—Congress finds the following:

(1) Because of inflation, the display of prices solely in nominal United States dollars can make it more difficult for consumers to compare the real burden of major purchases over time.

(2) A standardized supplemental indicator tied to the annual basic wage can help consumers distinguish between changes in nominal prices and changes in affordability relative to wages.

(3) Requiring such an indicator initially only for higher-priced goods and services can improve consumer understanding while permitting phased implementation.

(b) Definitions.—

(1) Basic wage.—The term "basic wage" means the annual amount calculated under section 1398c of title 42, United States Code.

(2) Commission.—The term "Commission" means the Federal Trade Commission.

(c) Wage price indicator required.—Beginning January 1, 2028, any person that advertises, displays, or offers a price subject to section 1111 in excess of $4,990 shall, in addition to the nominal price in United States dollars, clearly and conspicuously display in close proximity to such nominal price a wage price indicator for such good or service.

(d) Wage price indicator calculated.—The wage price indicator for a good or service is equal to the nominal price of the good or service divided by one-thousandth of the basic wage, with the resulting quotient rounded to the nearest 0.01.

(e) Format.—

(1) A wage price indicator shall not be preceded by a dollar sign or other currency symbol and shall not be presented in a manner that suggests that it is denominated in United States dollars or other legal tender.

(2) A wage price indicator shall be accompanied by the words "Wage Price Indicator", except that the Commission may by rule permit the use of a standardized abbreviation or label that clearly distinguishes the indicator from a nominal price.

(f) Rulemaking.—The Commission may promulgate rules necessary to carry out this section, including rules—

(1) prescribing formatting, labeling, and placement requirements for the wage price indicator;

(2) lowering the threshold in subsection (c), if the Commission determines that broader use would materially assist consumers in comparing prices in real terms without imposing unreasonable compliance burdens; and

(3) publishing tables, calculators, or other compliance guidance to facilitate calculation and display of the wage price indicator.

(g) Rule of construction.—Nothing in this section shall be construed to prohibit any person from displaying a wage price indicator for any good or service not subject to subsection (c), if such display otherwise complies with this section and any regulations promulgated under this section.

(h) Enforcement.—A violation of this section shall be treated as a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)). The Attorney General of any State may bring a civil action in the name of the State to enforce this section on behalf of the residents of that State.

SEC. 1113. COMBATTING AUTO RETAIL SCAMS.

(a) Incorporation of specified regulations.—The provisions of the final rule promulgated by the Federal Trade Commission, entitled "Combating Auto Retail Scams Trade Regulation Rule," as published in the Federal Register on January 4, 2024 (89 Fed. Reg. 590), are incorporated into this Act and shall be treated as though such provisions are set forth in this subsection.

(b) Effect of incorporation.—The provisions incorporated under subsection (a) may be altered only by means of an Act of Congress. To the extent that any provision of such regulations does not conform with any other statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act shall govern.

(c) Definition of regulation.—In this section, the term "regulation" means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch.

SEC. 1114. PROHIBITION ON BEST PRICE CLAUSES.

(a) Definitions.—In this section:

(1) Adverse action.—The term "adverse action" means any action that materially disadvantages a business user, including by increasing fees or commissions, degrading rank, search placement, access to data, access to application programming interfaces, access to fulfillment or logistics, or by delaying payments, suspending, delisting, or terminating the business user.

(2) Best price clause.—The term "best price clause" means any contract term, policy, algorithmic practice, or other requirement of an online marketplace, whether express or implied, that directly or indirectly prevents a business user from offering or providing the same product or service to any customer through any other channel at a price more favorable than the price offered through such online marketplace.

(3) Business user.—The term "business user" means any person that offers, sells, licenses, advertises, provides, or otherwise makes available a product or service to end users through an online marketplace.

(4) Commission.—The term "Commission" means the Federal Trade Commission.

(5) Covered platform operator.—The term "covered platform operator" means a person that owns or controls an online marketplace and that—

(A) in not fewer than 3 months during the most recently completed 12-month period—

(i) has at least 1,000,000 United States-based monthly active users on the online marketplace; or

(ii) has at least 1,000 United States-based monthly active business users on the online marketplace; or

(B) is owned or controlled by a person with gross revenues in the United States during the most recently completed 12-month period, or a market capitalization, greater than $50,000,000.

(6) Online marketplace.—The term "online marketplace" means a digital platform that facilitates transactions between 2 or more unaffiliated third parties for the sale, lease, or exchange of goods or services, and that establishes, enforces, or materially influences the terms under which such transactions occur.

(b) Prohibition.—It shall be unlawful for a covered platform operator to—

(1) impose, enforce, or attempt to impose or enforce any best price clause;

(2) take any adverse action against a business user because the business user offers a different price, or different terms or conditions, through any other channel; or

(3) restrict or deter a business user from—

(A) communicating to any customer, through any channel, the price, terms, or conditions at which the business user offers the same product or service through any other channel; or

(B) directing or referring a customer to any other channel for the purchase, license, or acquisition of the same product or service.

(c) Anti-circumvention rule.—It shall be unlawful for a covered platform operator to circumvent or attempt to circumvent subsection (b) through any policy or practice that has the purpose or effect of achieving substantially the same outcome as a violation of subsection (b).

(d) Voidness.—Any best price clause is void and unenforceable as against public policy.

(e) Enforcement by the Commission.—

(1) Rulemaking authority.—The Commission may promulgate rules relative to this section in accordance with section 553 of title 5, United States Code, including rules to prevent evasion or circumvention of the prohibitions imposed by this section.

(2) In general.—Violation of this section, or any regulation promulgated under paragraph (1), shall be treated as a violation under section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) regarding unfair, deceptive, or abusive acts or practices. The Commission shall enforce this section in the same manner, by the same means, and with the same

jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(3) Intervention.—On receiving notice pursuant to subsection (f)(3)(A), the Commission may intervene in the action that is the subject of the notice. If the Commission intervenes in such action, it shall have the authority—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(4) Amicus curiae.—The Commission may appear as *amicus curiae* in any action brought under subsection (f).

(5) Authority preserved.—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(f) State enforcement.—

(1) In general.—In any case in which the attorney general of a State has reason to believe that a violation of this section is adversely affecting business users of that State, the attorney general may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this section;

(C) obtain damages, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) Exception.—In any case in which an action is instituted under subsection (e), no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint.

(3) Notification.—

(A) When filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) The requirements of subparagraph (A) must be met prior to filing of the action, unless it is not feasible to do so, in which case they must be met at the same time as the action is filed.

(g) Rule of construction.—Nothing in this section shall be construed to require a covered platform operator to set, impose, or control prices charged by a business user in any channel.

SEC. 1115. DEFENSE PROCUREMENT PAYMENT AND PRICING INTEGRITY.

(a) Definitions.—In this section:

(1) Allowable costs.—The term "allowable costs" means costs determined to be allowable under section 31.201-2 of the Federal Acquisition Regulation, or any successor regulation, including any applicable cost principle, agency supplement, or contract term.

(2) Contractor return.—The term "contractor return" means any amount, however characterized, paid to a contractor or subcontractor above allowable costs.

(3) Cost or pricing data.—The term "cost or pricing data" has the meaning given in section 3701 of title 10, United States Code.

(4) Covered contract.—The term "covered contract" means any contract, subcontract, other transaction agreement, or contract modification funded in whole or in part through national defense budget function 050, other than a firm-fixed-price contract awarded through full and open competition for a commercial product or commercial service.

(5) Prime contractor.—The term "prime contractor" means a person or entity that enters into a direct contractual relationship with the Federal Government for the procurement of property or services.

(6) Progress payment.—The term "progress payment" means a payment made by the Federal Government to a contractor prior to completion of performance, based on costs incurred or work in progress.

(7) Secretary.—The term "Secretary" means the Secretary of Defense.

(8) Subcontractor.—The term "subcontractor" means a person or entity that enters into a contractual relationship with a prime contractor to furnish supplies or services for performance of a Federal contract.

(b) Reinstatement of paid cost rule.—

(1) A prime contractor may not submit an invoice, voucher, or request for reimbursement to the Federal Government for subcontractor costs unless such costs have been paid in cash or cash equivalent to the subcontractor.

(2) Paragraph (1) shall apply to all cost-reimbursement contracts, incentive contracts, and any other contract type designated by the Secretary by regulation.

(c) Truthful pricing reforms.—

(1) Commercial defined.—Section 3701 of title 10, United States Code, is amended by adding at the end:

"(3) Commercial product or commercial service.—

"(A) In general.—The term 'commercial product' or 'commercial service' means a product or service that—

"(i) is sold in substantial quantities to the general public or to multiple nongovernmental entities;

"(ii) is offered and sold under materially similar terms and conditions to nongovernmental buyers; and

"(iii) has a price that is primarily established through competitive market forces independent of Federal procurement.

"(B) Exclusions.—A product or service shall not be considered commercial if—

"(i) the Federal Government is the predominant or sole purchaser;

"(ii) the product or service has been materially modified to meet Federal or military-unique requirements; or

"(iii) the price offered to the Federal Government is based primarily on prior Government contracts rather than nongovernmental sales.".

(2) Threshold reduced.—Section 3702 of title 10, United States Code, is amended as follows:

(A) In subsection (a)(1)(A), by striking "$10,000,000" and inserting "$750,000".

(B) In subsection (a)(2), by striking "$10,000,000" and inserting "$750,000".

(C) In subsection (a)(3)(A)(i), by striking "$10,000,000" and inserting "$750,000".

(D) In subsection (a)(3)(A)(ii), by striking the second period at the end.

(E) In subsection (a)(3)(B)(i)(III), by striking "$5,000,000" and inserting "$750,000".

(F) In subsection (a)(4), by striking "$2,000,000" and inserting "$750,000".

(3) Restoring price competition.—Section 3703(a)(1)(A) of title 10, United States Code, is amended by striking "adequate price competition" and inserting "competition that results in at least 2 or more responsive and viable competing bids".

(4) Pre-definition determinations not valid.—Section 3703(d)(1) of title 10, United States Code, is amended by inserting after "determination made" the phrase "after the date of enactment of the POPULIST Act".

(5) Transitional disclosure for certain covered contracts.—

(A) In general.—In the case of any prime contract, subcontract, or modification entered into after June 30, 2026, and before the date of enactment of this Act, for which certified cost or pricing data would have been required if the amendments made by paragraph (2) had been in effect on the date of award, the offeror, contractor, or subcontractor shall, not later than 60 days after the date of enactment of this Act, submit to the appropriate contracting officer or higher-tier contractor the cost or pricing data that would have been required under section 3702 of title 10, United States Code, as amended by this Act, together with a certification that such data are accurate, complete, and current as of the date of submission.

(B) Consequence of noncompliance.—

(i) A person's failure to submit the cost or pricing data required under subparagraph (A) shall create a rebuttable presumption that the price of the contract, subcontract, or modification was not fair and reasonable, and the head of the agency shall take 1 or more of the following actions—

(I) withhold progress payments or other amounts otherwise due under the contract;

(II) treat the failure as a basis for a price reduction;

(III) assess a civil penalty not to exceed 15 percent of the contract, subcontract, or modification in question; or

(IV) take any other appropriate contractual remedy.

(ii) The rebuttable presumption under clause (i) that the price of the contract, subcontract, or modification was not fair and reasonable may be rebutted through submission of the required cost or pricing data.

(C) Rule of construction.—Submission under subparagraph (A) shall not by itself constitute an admission of liability, fraud, or defective pricing, but failure to submit may be considered in determining whether a price adjustment, recoupment, or other remedy is appropriate.

(d) Limitation on contractor returns.—

(1) Limitation.—No covered contract may provide for aggregate contractor return in excess of—

(A) 10 percent of the estimated costs used to establish the price of the covered contract or the allowable costs incurred under the covered contract, excluding contractor return; or

(B) 15 percent of the estimated costs used to establish the price of the covered contract or the allowable costs incurred under the covered contract, excluding contractor return, for experimental, developmental, or research work.

(2) Award and incentive fees.—No award fee, incentive fee, performance fee, or similar payment may be paid under a covered contract unless—

(A) the payment is based on objective, measurable performance criteria established before award;

(B) the contractor has met cost, schedule, quality, safety, and delivery requirements;

(C) the payment does not cause aggregate contractor return to exceed the limitation under paragraph (1); and

(D) the contracting officer makes a written determination supporting the payment.

(3) Pass-through charges.—No contractor return may be paid on work performed by a subcontractor unless the prime contractor or higher-tier subcontractor provides documented added value other than general administrative oversight.

(e) No evasion.—It shall be unlawful for any person to knowingly evade or attempt to evade any provision of this section, including by entering into an agreement or contract, engaging in a transaction, or structuring an entity.

(f) Enforcement and remedies.—

(1) Any amount paid in violation of this section shall be subject to recoupment by the Federal Government.

(2) A prime contractor, subcontractor, or other person that knowingly violates subsection (b), (c), (d), or (e) shall be subject to suspension or debarment from Federal contracting for not less than 5 years.

(3) Any person who knowingly submits false or incomplete cost or pricing data shall be subject to the penalties applicable under section 1001 of title 18, United States Code.

(g) Regulations.—

(1) Not later than January 1, 2027, the Secretary shall promulgate regulations to implement this section.

(2) Such regulations shall prioritize prompt subcontractor payment, reduction of government-financed risk transfer, and enhanced pricing transparency.

SEC. 1116. ONLINE MARKETPLACE DISTRIBUTOR CLARIFICATION.

(a) Definitions.—Section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) is amended by adding at the end the following:

"(18) Online marketplace.—The term 'online marketplace' means a digital platform that—

"(A) actively facilitates transactions for the sale of consumer products between 2 or more unaffiliated third parties, including by integrating payment systems or making consumer product recommendations; and

"(B) has gross revenues in the United States during the most recently completed 12-month period, or a market capitalization, greater than $1,000,000,000.

"(19) Online marketplace operator.—The term 'online marketplace operator' means any person that owns or controls an online marketplace.".

(b) Distributor.—Section 3(a)(8) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(8)) is amended by adding at the end the following: "The term includes an online marketplace operator, with respect to a consumer product sold or offered for sale to a consumer in the United States through an online marketplace owned or controlled by the operator.".

(c) De minimis exemption authority.—Section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) is amended by adding at the end the following new subsection:

"(c) The Commission may, by rule, exempt online marketplace operators of limited scale if the Commission determines that inclusion of such operators would impose a burden disproportionate to the resulting protection of the public.".

SEC. 1117. CLICK-TO-CANCEL AND NEGATIVE OPTION RULE CODIFICATION.

(a) Incorporation of specified regulations.—The provisions of the final rule promulgated by the Federal Trade Commission, entitled "Negative Option Rule", as published in the Federal Register on November 15, 2024 (89 Fed. Reg. 90476), including the amendments revising part 425 of title 16, Code of Federal Regulations, and retitling such part as the "Rule Concerning Recurring Subscriptions and Other Negative Option Programs", are incorporated into this Act and shall be treated as though such provisions are set forth in this section.

(b) Effect of incorporation.—To the extent that any provision of such regulations does not conform with any other statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act shall govern.

(c) Rule of construction.—Nothing in this section shall be construed to prohibit the Federal Trade Commission from promulgating, maintaining, or enforcing requirements that provide equal or greater protection to consumers with respect to recurring subscriptions, automatic renewals, free-trial conversion offers, continuity plans, prenotification negative option plans, or any other negative option feature, except that the Commission may not by rule or guidance weaken, narrow, or create exemptions from the protections incorporated under subsection (a) unless expressly authorized by an Act of Congress enacted after the date of enactment of this Act.

(d) State protections not precluded.—Nothing in this section shall be construed to supersede, alter, affect, or preempt any Federal, State, Tribal, or local law, regulation, order, guidance, or interpretation that affords any consumer greater protection than the protections provided under this section or the regulations incorporated under it.

Subtitle B—Competition Policy Modernization

SEC. 1121. ROBINSON-PATMAN ACT REORGANIZATION.

The Robinson-Patman Act (15 U.S.C. 13) is amended by striking the existing text and inserting the following—

"(a) Price; selection of customers.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price if all of the following conditions are met:

"(A) The discrimination is between different purchasers of—

"(i) commodities of like grade and quality; or

"(ii) functionally equivalent services;

"(B) (i) Either or any of the purchases involved in such discrimination are in commerce; and

"(ii) such commodities or services are sold for use, consumption, or resale within—

"(I) the United States;

"(II) any Territory thereof;

"(III) the District of Columbia; or

"(IV) any insular possession or other place under the jurisdiction of the United States; and

"(C) The effect of such discrimination may be substantially—

"(i) to lessen competition or tend to create a monopoly in any line of commerce; or

"(ii) to injure, destroy, or prevent competition—

"(I) with any person who—

"(aa) grants such discrimination; or

"(bb) knowingly receives the benefit of such discrimination; or

"(II) with customers of a person described in subclause (I).

"(2) Safe harbors.—It shall not be unlawful under this subsection for—

"(A) differentials resulting from differing methods or quantities in the cost of manufacture, sale, or delivery of such commodities or services which are—

"(i) direct;

"(ii) verifiable;

"(iii) transaction-specific; and

"(iv) causally linked

"to such purchasers with respect to such sale or provision;

"(B) persons engaged in selling goods, services, wares, or merchandise in commerce to select their own customers in bona fide transactions and not in restraint of trade; or

"(C) price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods or services concerned, such as but not limited to—

"(i) actual or imminent deterioration of perishable goods;

"(ii) obsolescence of seasonal goods;

"(iii) distress sales under court process; or

"(iv) sales in good faith in discontinuance of business in the goods concerned.

"(3) Quantity limits.—

"(A) Authority.—The Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise such limits as it finds necessary, with respect to particular commodities or classes of commodities.

"(B) Standard.—The Commission may exercise the authority under subparagraph (A) where it finds that purchasers available in greater quantities are so few as to render differentials on account of such quantities unjustly discriminatory or promotive of monopoly in any line of commerce.

"(C) Effect.—Upon the establishment of quantity limits under this paragraph, this subsection shall not be construed to permit differentials based on differences in quantities greater than those so fixed and established.

"(b) Burden of rebutting prima-facie case of discrimination.—

"(1) Burden.—Upon proof being made, at any hearing on a complaint under this section, that a violation of subsection (a)(1) has occurred, the Commission is authorized to issue an order terminating the discrimination unless the person charged shall affirmatively show justification such as provided by subsection (a)(2) or paragraph (2).

"(2) Meeting competition.—A seller may rebut a prima-facie case made in this subsection by showing that their lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

"(c) Payment or acceptance of commission, brokerage, or other compensation.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof.

"(2) Exception.—Paragraph (1) shall not apply where—

"(A) the compensation is paid solely for services rendered in connection with the sale or purchase of goods, wares, or merchandise; and

"(B) such services are rendered either—

"(i) to the other party to the transaction; or

"(ii) to an agent, representative, or other intermediary that is acting in fact for or on behalf of, or is subject to the direct or indirect control of, the person by whom such compensation is paid.

"(d) Payment for services or facilities for processing or sale.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, to

"(A) pay or contract for the payment of anything of value

"(B) to or for the benefit of a customer of such person

"(C) as compensation or in consideration for services or facilities—

"(i) furnished by or through such customer; and

"(ii) in connection with the processing, handling, sale, or offering for sale—

"(I) any products or commodities manufactured, sold, or offered for sale by such person.

"(2) Proportional availability.—Paragraph (1) shall not apply where such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

"(e) Furnishing services or facilities for processing, handling, etc.—

"(1) Prohibition.—It shall be unlawful for any person engaged in commerce to—

"(A) discriminate in favor of one purchaser; and

"(B) against another purchaser or purchasers—

"(i) of a commodity bought for resale;

"(ii) with or without processing;

"(C) by contracting to furnish or furnishing, or by contributing to the furnishing of—

"(i) services or facilities

"(ii) furnished in connection with the processing, handling, sale, or offering for sale—

"(I) such commodity described in subparagraph (B)(i).

"(2) Proportional availability.—Paragraph (1) shall not apply where such services or facilities are made available on proportionally equal terms to all purchasers competing in the distribution of such commodity.

"(f) Knowingly inducing or receiving discriminatory price.—It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.".

SEC. 1122. SHERMAN ACT AMENDMENTS.

(a) Section 2 of the Sherman Act (15 U.S.C. 2) is amended—

(1) by striking "Every" and inserting "(a) Every"; and

(2) by adding at the end the following:

"(b) (1) In any case alleging a violation of this section or section 1 in which a plaintiff establishes by a preponderance of the evidence (including direct evidence) the existence of substantial market power or the anticompetitive or otherwise detrimental effects of particular practices, a

plaintiff need neither define the scope of a relevant market nor establish the share of such a market controlled by the defendant.

"(2) In any case alleging a violation of this section or section 1 in which the defendant relies on alleged procompetitive effects to justify the conduct of the defendant, the defendant shall establish by clear and convincing evidence that—

"(A) the procompetitive effects of the conduct clearly outweigh the anticompetitive effects of the conduct; and

"(B) the defendant could not obtain substantially similar procompetitive effects through commercially reasonable alternatives that would involve materially lower competitive risks.

"(3) Nothing in this subsection may be construed to prevent a court from considering evidence relating to the definition of a proposed relevant market in evaluating the merits of a claim.".

(b) Section 4 of the Sherman Act (15 U.S.C. 4) is amended—

(1) by striking "The several" and inserting "(a) The several"; and

(2) by adding at the end the following:

"(b) It is the policy of the United States that the principal standard for evaluating the permissibility of practices under this Act is the protection of economic competition within the United States.

"(c) In any action brought by the United States or the Federal Trade Commission alleging a violation of this Act, if the United States or the Federal Trade Commission establishes such a violation, the court shall order disgorgement of all profits earned by the defendant as a result of the conduct constituting that violation, except upon a showing of extraordinary good cause.

"(d) In any action brought by the United States or the Federal Trade Commission in which a violation of section 2 is established, the court shall, in addition to any other remedy or penalty provided by law, order relief that—

"(1) unfetters the affected market or markets from the harm caused by the violation;

"(2) terminates any monopoly unlawfully acquired or maintained through the violation; and

"(3) eliminates any practice likely to result in a future violation of section 2 by the defendant.".

(c) Federal Trade Commission authority.—Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as amended by this Act, is further amended by adding at the end the following:

"(p) Civil action for Sherman Act violations.—

"(1) In general.—The Commission may commence a civil action in a district court of the United States against any person, partnership, or corporation for a violation of subsection (a)(1) respecting an unfair method of competition that constitutes a violation of section 1 or 2 of the Sherman Act (15 U.S.C. 1, 2).

"(2) Relief.—In an action under paragraph (1), the Commission may seek, and the court may grant, any relief authorized under this Act, the Sherman Act (15 U.S.C. 1 et seq.), or the Clayton Act (15 U.S.C. 12 et seq.), including relief under section 4(c) or (d) of the Sherman Act.".

SEC. 1123. CLAYTON ACT AMENDMENTS.

(a) Policy of competition.—Section 1 of the Clayton Act (15 U.S.C. 12) is amended—

(1) in subsection (a)—

(A) by designating the 3 undesignated paragraphs as paragraphs (1) through (3), respectively; and

(B) by adding at the end the following:

"(4) The term 'market power' in this Act means the ability of a person, or a group of persons acting in concert, to profitably impose terms or conditions on counterparties, including terms regarding price, quantity, product or service quality, or other terms affecting the value of consideration exchanged in the transaction, that are more favorable to the person or group of persons imposing them than what the person or group of persons could obtain in a competitive market."; and

(2) by adding at the end the following:

"(c) It is the policy of the United States that the principal standard for evaluating the permissibility of practices under this Act is the protection of economic competition within the United States.".

(b) Prejudgment interest.—Section 4 of the Clayton Act (15 U.S.C. 15) is amended by striking subsection (a) and inserting the following:

"(a) Except as provided in subsection (b), any person injured in that person's business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover—

"(1) threefold the damages sustained by such person;

"(2) the cost of suit, including a reasonable attorney's fee; and

"(3) simple interest on threefold the damages sustained by that person for the period beginning on the date of service of that person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment.".

(c) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first 5 undesignated paragraphs—

(A) by inserting "or a monopsony" after "monopoly" each place that term appears;

(B) by striking "substantially to lessen" and "to lessen substantially" each place that such terms appear and inserting "to create an appreciable risk of materially lessening"; and

(C) redesignating such paragraphs as subsections (a) through (e), respectively;

(2) in subsection (c) (as redesignated) by striking "the substantial" and inserting "an appreciable risk of materially";

(3) by amending the 6th undesignated paragraph to read as follows:

"(f) Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, the Federal Energy Regulatory Commission, the Surface Transportation Board, or the Secretary of Agriculture under any statutory provision vesting such power in such agency or Secretary."; and

(4) by adding at the end the following:

"(g) In determining whether an acquisition may create an appreciable risk of materially lessening competition or tend to create a monopoly or monopsony, a court shall consider whether either the acquiring person or the acquired person or assets prevents, limits, or disrupts coordinated interaction among competitors in a relevant market, or has a reasonable probability of doing so absent the acquisition.

"(h) Where a preponderance of the evidence (including direct evidence) is adduced to demonstrate that the effect of an acquisition may be to create an appreciable risk of materially lessening competition or to tend to create a monopoly or a monopsony, a plaintiff need neither establish market shares nor the concentration of any particular market.

"(i) No acquisition shall be presumed not to create an appreciable risk of materially lessening competition or tend to create a monopoly or monopsony only because the parties to the acquisition do not compete directly against one another at the time of the acquisition.

"(j) A statutory reference to a line of commerce shall not be construed to require the definition of a relevant market or the establishment of market shares or market concentration.".

(d) Premerger notification and public comment.—

(1) Section 7A of the Clayton Act (15 U.S.C. 18a), as amended by section 416 of this Act, is further amended—

(A) in the undesignated matter following subsection (a)(2)(B)(ii)(III), by adding at the end the following: "In the case of any transaction involving a person, partnership, or corporation designated as a dominant digital firm under section 10A of the Federal Trade Commission Act, the person, partnership, or corporation shall file notification as required by this section.";

(B) in subsection (d)(1) to read as follows—

"(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws,

and shall include, at a minimum, the categories of information required by the Hart-Scott-Rodino premerger notification rules as published in the Federal Register on November 12, 2024 (89 Fed. Reg. 89216), including disclosures relating to transaction structure, competitive overlaps, prior acquisitions, and labor market impacts; and";

(C) in subsection (e) by adding at the end the following—

"(3) Large transactions.—In the case of any proposed acquisition described in subsection (j)(1), the Federal Trade Commission or the Assistant Attorney General shall require the submission of additional information or documentary material under this subsection after the close of the public comment period."; and

(D) by inserting after subsection (i) the following—

"(j) Public comment for covered transactions.—

"(1) In general.—For any proposed acquisition subject to this section in which the value of the transaction equals or exceeds $1,000,000,000, the Federal Trade Commission and the Assistant Attorney General shall open a public comment docket during the waiting period.

"(2) Discretionary authority.—The Federal Trade Commission and the Assistant Attorney General may open a public comment docket for any other proposed acquisition where the agencies determine that the transaction may have substantial impacts on competition, labor markets, consumers, or the public interest.

"(3) Public summaries and funding disclosure.—In connection with any public comment docket under this subsection, the agencies shall publish an agency-prepared public summary of the proposed transaction describing the nature of the transaction and the principal competitive, economic, and labor-related issues raised, without disclosing confidential business information, and any study, analysis, or report submitted for consideration in such docket shall disclose any direct or indirect funding sources or financial sponsorship.".

(2) Confidentiality.—Nothing in this section shall be construed to alter the confidentiality protections provided under section 7A(h) of the Clayton Act, except that agency-prepared public summaries and disclosures required under subsection (j)(3) shall not be treated as confidential.

(e) Exclusionary conduct.—

(1) In general.—The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting after section 26 (15 U.S.C. 26a) the following:

"Sec. 26A. Exclusionary conduct.

"(a) Definitions.—In this section:

"(1) Exclusionary conduct.—

"(A) In general.—The term 'exclusionary conduct' means conduct that—

"(i) materially disadvantages 1 or more actual or potential competitors; or

"(ii) tends to foreclose or limit the ability or incentive of 1 or more actual or potential competitors to compete.

"(B) Limitations.—

"(i) Intellectual property.—Applying for or enforcing a patent, trademark, or copyright, unless such applications or enforcement actions are baseless or made in bad faith or in violation of a legal obligation, shall not alone constitute exclusionary conduct, but such actions may be considered as part of a course of conduct that constitutes exclusionary conduct.

"(ii) Conduct required by law.—Conduct that is necessary to comply with Federal or State law shall not alone constitute exclusionary conduct, but such actions may be considered as part of a course of conduct that constitutes exclusionary conduct.

"(2) Market power.—The term 'market power' means the ability of a person, or a group of persons acting in concert, to profitably impose terms or conditions on counterparties, including terms regarding price, quantity, product or service quality, or other terms affecting the value of consideration exchanged in the transaction, that are more favorable to the person or group of persons imposing them than what the person or group of persons could obtain in a competitive market.

"(b) Violation.—

"(1) In general.—It shall be unlawful for a person, acting alone or in concert with other persons, to engage in exclusionary conduct that presents an appreciable risk of harming competition.

"(2) Unfair method of competition.—A violation of paragraph (1) shall also constitute an unfair method of competition under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

"(c) Presumption.—

"(1) In general.—Except as provided in paragraph (2), exclusionary conduct shall be presumed to present an appreciable risk of harming competition and shall be a violation of subsection (b)(1) if the exclusionary conduct is undertaken, with respect to a relevant market, by a person or by a group of more than 1 person acting in concert that—

"(A) has a market share of greater than 50 percent as a seller or a buyer in the relevant market; or

"(B) otherwise has significant market power in the relevant market.

"(2) Exception.—Paragraph (1) shall not apply if the defendant establishes, by a preponderance of the evidence, that—

"(A) distinct procompetitive benefits of the exclusionary conduct in the relevant market eliminate the risk of harming competition presented by the exclusionary conduct;

"(B) 1 or more persons, not including any person participating in or facilitating the exclusionary conduct, have entered or expanded their presence in the market with the effect of eliminating the risk of harming competition posed by the exclusionary conduct; or

"(C) the exclusionary conduct does not present an appreciable risk of harming competition.

"(d) Considerations.—If the presumption in subsection (c) does not apply, the determination of whether exclusionary conduct presents an appreciable risk of harming competition shall be based on the totality of the circumstances, which may include consideration of—

"(1) the extent to which any distinct procompetitive benefits of the exclusionary conduct substantially eliminate the risk of harming competition presented by the exclusionary conduct; and

"(2) whether 1 or more persons, not including any person participating in or facilitating the exclusionary conduct, have entered or expanded their presence in the market, substantially eliminating the risk of harming competition presented by the exclusionary conduct.

"(e) Limitations.—Although the following circumstances may constitute evidence of a violation of subsection (b)(1), such violation does not require finding—

"(1) that the unilateral conduct of the defendant altered or terminated a prior course of dealing between the defendant and a person subject to the exclusionary conduct;

"(2) that the defendant treated persons subject to the exclusionary conduct differently than the defendant treated other persons;

"(3) that any price of the defendant for a product or service was below any measure of the costs to the defendant of providing the product or service;

"(4) that a defendant with significant market power in a relevant market has recouped or is likely to recoup the losses it incurred or incurs from below-cost pricing for products or services in the relevant market;

"(5) that the conduct of the defendant makes no economic sense apart from its tendency to harm competition;

"(6) that the risk of harming competition presented by the conduct of the defendant or any resulting actual harm to competition have been quantified or proven with quantitative evidence; or

"(7) that when a defendant operates a multi-sided platform business, the conduct of the defendant presents an appreciable risk of harming competition on more than 1 side of the multi-sided platform.

"(f) Civil penalties.—Any person who violates subsection (b)(1) shall be liable to the United States for a civil penalty, which may be recovered in a civil action brought by the Attorney General of the United States, of not more than the greater of—

"(1) 15 percent of the total United States revenues of the person for the previous calendar year; or

"(2) 30 percent of the United States revenues of the person in any line of commerce affected or targeted by the unlawful conduct during the period of the unlawful conduct.

"Sec. 26B. Civil penalties.

"(a) Civil penalty for violation of section 26A.—The Federal Trade Commission may commence a civil action in a district court of the United States against any person, partnership, or corporation that violates section 26A(b)(1) to recover a civil penalty, which shall accrue to the United States, in an amount not more than the greater of—

"(1) 15 percent of the total United States revenues of the person, partnership, or corporation for the previous calendar year; or

"(2) 30 percent of the United States revenues of the person, partnership, or corporation in any line of commerce affected or targeted by the unlawful conduct during the period of the unlawful conduct.

"(b) Commission litigation authority.—Except as otherwise provided in section 16(a)(3) of the Federal Trade Commission Act (15 U.S.C. 56(a)(3)), the Federal Trade Commission shall have authority to commence or defend, and supervise the litigation of, any civil action authorized under subsection (a) and any appeal of such action in its own name by any of its attorneys designated by it for such purpose. The Federal Trade Commission shall inform the Attorney General of the exercise of such authority, and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

"(c) No duplicate penalty.—A person may not be required to pay more than 1 civil penalty under section 26A(f) and this section for the same violation.".

(2) Enforcement guidelines.—

(A) Initial guidelines.—Not later than July 1, 2027, the Attorney General and the Federal Trade Commission shall issue joint guidelines outlining policies, practices, and analytical techniques relating to agency enforcement under section 26A of the Clayton Act, as added by paragraph (1), with the goal of promoting transparency and deterring violations of such section 26A.

(B) Updates.—The Attorney General and the Federal Trade Commission shall update the joint guidelines issued under subparagraph (A), as needed to reflect current agency policies and practices, but not less frequently than once every 5 years.

(C) Public notice and comment.—

(i) Guidelines.—Before issuing guidelines under subparagraph (A) or (B), the Attorney General and the Federal Trade Commission shall publish proposed guidelines in draft form and provide public notice and opportunity for comment for not less than 60 days after the date on which the guidelines are published.

(ii) Inapplicability of rulemaking provisions.—Section 553 of title 5, United States Code, shall not apply to the guidelines issued under this paragraph.

SEC. 1124. PROHIBITION ON ABUSIVE ACTS OR PRACTICES.

(a) Abusive acts or practices.—Title 15, United States Code, is amended—

(1) in sections 45, 45a, 45b, 45c, 45d, 45f, 52, 57b, 57b-1, 57b-2b, 69a, 69h, 70c, 70d, by striking "unfair or deceptive" each place it appears and inserting "unfair, deceptive, or abusive"; and

(2) in section 45—

(A) by adding at the end of subsection (n) the following:

"This subsection shall apply only to unfair acts or practices and shall not apply to deceptive or abusive acts or practices."; and

(B) by inserting after subsection (n) the following:+

"(o) Abusive acts or practices.—For purposes of this section, the Commission shall have authority to declare an act or practice abusive if the act or practice—

"(1) materially interferes with the ability of a person to understand a material term, condition, or reasonably foreseeable consequence of conduct, a transaction, or an arrangement offered in or affecting commerce; or

"(2) takes unreasonable advantage of—

"(A) a lack of understanding on the part of a person of the material risks, costs, conditions, or effects of such conduct, transaction, or arrangement;

"(B) the inability of a person to protect the interests of the person in selecting, accessing, or using a good, service, platform, or market; or

"(C) the reasonable reliance by a person on another person to act in the interests of the person.".

(b) Rule of construction.—Nothing in the addition of the term "abusive" to the Federal Trade Commission Act (15 U.S.C. 45 et seq.) shall be construed to—

(1) narrow or limit the scope of conduct previously prohibited as unfair or deceptive acts or practices; or

(2) impair the applicability of judicial precedent interpreting unfair or deceptive acts or practices under this section.

(c) Conforming references.—Any reference in Federal law to an "unfair or deceptive act or practice" under section 5 of the Federal Trade Commission Act, or to conduct treated as an unfair or deceptive act or practice under section 5 or section 18 of such Act, shall be deemed to include an abusive act or practice.

SEC. 1125. PROHIBITION ON TYING ARRANGEMENTS BY DOMINANT FIRMS.

(a) In general.—The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting after section 3 the following:

"Sec. 3A. Prohibition on tying arrangements by dominant firms.

"(a) Definitions.—In this section:

"(1) Distinct products or services.—The term 'distinct products or services' means products or services for which separate demand exists. Separate demand includes separate offering, separate pricing, separate billing, separate licensing, separate contracting, industry practice, or practical separate acquisition. Products or services shall not be treated as indistinct solely because they are complementary, interoperable, integrated, or bundled together by the same person.

"(2) Dominant firm.—The term 'dominant firm' means a person that—

"(A) possesses monopoly power or dominant market power;

"(B) has a market share of greater than 30 percent with respect to a product or service that is the subject of a tying product or service purchase condition;

"(C) (i) controls a platform, marketplace, operating system, payment system, or other intermediary or access point through which business users or consumers obtain, distribute, access, or pay for a product or service subject to such person's tying product or service purchase condition; and

"(ii) at any month during either of the previous 2 calendar years, had at least 50,000,000 United States–based monthly active users or at least 100,000 United States–based monthly active business users;

"(D) during either of the previous 2 calendar years, had annual revenue or market capitalization greater than $100,000,000,000; or

"(E) is designated as a dominant firm under subsection (d).

"(3) Tying arrangement.—The term 'tying arrangement' means any of the following conduct in commerce, where such conduct materially impairs practical commercial choice or may substantially lessen competition:

"(A) a tying product or service purchase condition that a person purchase, lease, license, use, or distribute another distinct product or service from the person imposing the condition or from an affiliated person;

"(B) a tying product or service purchase condition that a person not purchase, lease, license, use, or distribute a competing product or service from another person;

"(C) offering, pricing, licensing, distributing, or providing 2 or more distinct products or services together under materially more favorable terms that pressure purchase of the combined offering; or

"(D) imposing a material disadvantage on a person, including product or service degradation, withholding of interoperability, discrimination in ranking or placement, discriminatory pricing, or other adverse treatment, as a consequence of such person ceasing to comply with a condition described in subparagraph (A) or (B), or for refusal to agree to such condition.

"(4) Tying product or service purchase condition.—The term 'tying product or service purchase condition' means a condition on the sale, lease, license, distribution, use, access, or terms of a distinct product or service which is used to induce additional activity in or affecting commerce.

"(b) Prohibition.—It shall be unlawful for any dominant firm, directly or indirectly, in or affecting commerce, to engage in a tying arrangement.

"(c) Defenses.—It shall be an affirmative defense, on which the defendant bears the burden of proof by a preponderance of the evidence, that the challenged conduct—

"(1) is reasonably necessary to achieve cybersecurity, privacy, safety, or technical-integrity objectives;

"(2) is narrowly tailored, and no materially less restrictive alternative would reasonably achieve such objective; and

"(3) does not materially impair practical commercial choice or substantially lessen competition to a degree that is disproportionate to such objective.

"(d) Designation.—

"(1) Official designation.—

"(A) In general.—Subject to subparagraph (C), the Commission shall officially designate a person that meets the requirements under subparagraph (B), (C), or (D) of subsection (a)(2) as a dominant firm by publishing the designation in the Federal Register.

"(B) Duration of designation.—The designation of a person as a dominant firm under subparagraph (A) shall apply indefinitely, regardless of whether there is a change in control or ownership of the person, unless the Commission removes the designation under paragraph (2).

"(C) Rules.—The Commission may, as the Commission determines appropriate, promulgate rules to—

"(i) adjust a numeric threshold in subsection (a)(2), provided that the Commission may not adjust any numeric threshold below the value in the applicable subparagraph; or

"(ii) define additional characteristics that a person must have in order to be designated as a dominant firm under subparagraph (A).

"(2) Removal of designation.—

"(A) Request.—If a person designated as a dominant firm under paragraph (1) ceases to meet the qualifications for such designation, the person may submit to the Commission a request for removal of the designation, together with evidence that the person no longer so qualifies.

"(B) Determination.—

"(i) In general.—Not later than 120 days after receiving a request under subparagraph (A), the Commission shall determine whether to grant the request and, if the Commission grants the request, remove the person from the public list under subsection (e)(1).

"(ii) Denied requests.—A denial under clause (i) of a request submitted under subparagraph (A) shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

"(e) Public list.—

"(1) In general.—The Commission shall maintain and periodically update on its website a public list of persons that the Commission has identified as dominant firms under this section.

"(2) Omission not dispositive.—Omission from the public list under paragraph (1) shall not by itself establish that a person is not a dominant firm.

"(f) Enforcement.—

"(1) Federal Trade Commission.—A violation of this section shall constitute an unfair method of competition under section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)). The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms of the Federal Trade Commission Act were incorporated into and made a part of this section.

"(2) Relation to other law.—Nothing in this section shall be construed to limit any other claim or authority otherwise available under the antitrust laws or the Federal Trade Commission Act.".

SEC. 1126. WHISTLEBLOWER PROTECTIONS AND INCENTIVES.

(a) Civil whistleblower protections.—The Clayton Act is amended by inserting after section 27 (15 U.S.C. 26b) the following:

"Sec. 27A. Anti-retaliation protection for civil whistleblowers.

"(a) Definitions.—In this section:

"(1) Applicable antitrust laws.—The term 'applicable antitrust laws' means section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2, and 3) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

"(2) Covered individual.—The term 'covered individual' means an employee, contractor, subcontractor, or agent of an employer.

"(3) Employer.—The term 'employer' means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

"(4) Federal Government.—The term 'Federal Government' means—

"(A) a Federal regulatory or law enforcement agency; or

"(B) any Member of Congress or committee of Congress.

"(5) Person.—The term 'person' has the same meaning as in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

"(b) Whistleblower protections for employees, contractors, subcontractors, and agents.—

"(1) In general.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

"(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the applicable antitrust laws; or

"(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the applicable antitrust laws.

"(2) Limitation on protections.—Paragraph (1) shall not apply to any covered individual if—

"(A) the covered individual planned and initiated a violation or attempted violation of the applicable antitrust laws;

"(B) the covered individual planned and initiated a violation or attempted violation of a criminal law in conjunction with a violation or attempted violation of the applicable antitrust laws; or

"(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Federal Government of a violation of the applicable antitrust laws.

"(c) Enforcement action.—

"(1) In general.—A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (b) may seek relief under subsection (d) by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) Procedure.—

"(A) In general.—A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) Exception.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to any individual named in the complaint and to the employer.

"(C) Burdens of proof.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

"(D) Statute of limitations.—A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than 180 days after the date on which the violation of this section occurs.

"(E) Civil actions to enforce.—If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in section 42121(b) of title 49, United States Code, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

"(d) Remedies.—

"(1) In general.—A covered individual prevailing in any action under subsection (c)(1) shall be entitled to all relief necessary to make the covered individual whole.

"(2) Compensatory damages.—Relief under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney's fees.

"(e) Other protections preserved.—Nothing in this section shall be deemed to diminish any protection, privilege, or remedy of any covered individual under any Federal or State law, or under any collective bargaining agreement.".

(b) Criminal whistleblower incentives.—The Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (15 U.S.C. 1 note) is amended by inserting after section 216 (15 U.S.C. 7a–3) the following:

"Sec. 217. Criminal antitrust whistleblower incentives.

"(a) Definitions.—In this section:

"(1) Antitrust laws.—The term 'antitrust laws' means section 1 or 3 of the Sherman Act (15 U.S.C. 1 and 3).

"(2) Collected proceeds.—The term 'collected proceeds' means any sanctions, fines, penalties, or awards obtained in any covered enforcement action, whether by judgment, settlement, or a deferred prosecution agreement.

"(3) Covered enforcement action.—The term 'covered enforcement action' means any criminal action brought by the Attorney General under the antitrust laws that results in collected proceeds exceeding $1,000,000.

"(4) Original information.—The term 'original information' means information that—

"(A) is derived from the personal knowledge of a whistleblower;

"(B) is not known to the Attorney General or the Department of Justice from any other source, unless the whistleblower is the original source of the information;

"(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information; and

"(D) is not already required to be disclosed to the Department of Justice or another Federal agency.

"(5) Related action.—The term 'related action', when used with respect to any covered enforcement action brought by the Attorney General, means any criminal action brought by another United States entity that is based upon the original information provided by a whistleblower that led to the successful enforcement action by the Attorney General.

"(6) Whistleblower.—The term 'whistleblower' means any individual who provides information relating to a violation of the antitrust laws to the Department of Justice, in a manner established by the Department of Justice.

"(b) Awards.—

"(1) In general.—In a covered enforcement action, or related action, the Attorney General, subject to subsection (c), may pay an award or awards to a whistleblower who voluntarily provided original information to the Department of Justice that led to the successful enforcement of the covered enforcement action, or related action, in an amount not less than 10 percent and not more than 30 percent, in total, of what has been collected of the criminal fine imposed in the covered enforcement action or related action under the antitrust laws.

"(2) Payment.—Any amount paid under paragraph (1) shall be paid from the criminal fine collected in the covered enforcement action.

"(c) Determination of amount of award; denial of award.—

"(1) Determination of amount of award.—

"(A) Discretion.—The determination of the amount of an award made under subsection (b) shall be at the discretion of the Attorney General.

"(B) Criteria.—In determining the amount of an award made under subsection (b), the Attorney General shall take into consideration—

"(i) the significance of the information provided by the whistleblower to the success of the covered enforcement action;

"(ii) the degree of assistance and cooperation provided by the whistleblower in a covered enforcement action;

"(iii) the interest of the Department of Justice in deterring criminal violations of the antitrust laws by making awards to whistleblowers who provide information that leads to successful covered enforcement actions; and

"(iv) such additional relevant factors as the Attorney General may establish.

"(2) Denial of award.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Department of Justice, a member, officer, or employee of—

"(i) any branch, agency, or instrumentality of the Federal Government; or

"(ii) any law enforcement organization;

"(B) to any whistleblower who is convicted of a criminal violation related to the covered enforcement action for which the whistleblower otherwise could receive an award under this section;

"(C) to any whistleblower who was an originator or leader of or who coerced any other party to participate in the activity giving rise to liability under the antitrust laws in the covered enforcement action for which the whistleblower otherwise could receive an award under this section;

"(D) to any whistleblower who fails to provide timely, truthful, continuing, and complete cooperation to the Department of Justice relating to the original information or intentionally withholds information relating to the original information;

"(E) to any whistleblower who commits, participates in, or attempts to commit or participate in any crimes after disclosing the original information to the Department of Justice;

"(F) to any whistleblower who fails to submit information to the Department of Justice in such form as the Department may require, or fails to report relevant information to the Department known to the whistleblower when the whistleblower first reported the information to the Department;

"(G) to any whistleblower who planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws; or

"(H) to any whistleblower who engages in conduct that would disqualify the whistleblower if the whistleblower were a leniency applicant under the Leniency Program of the Antitrust Division.

"(d) Representation.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(e) Appeals.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Attorney General. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Attorney General. The court shall review the determination made by the Attorney General in accordance with section 706 of title 5, United States Code.".

Subtitle C—Restricting Algorithmic Pricing

SEC. 1131. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) Prices for essential goods and services, including groceries, rent, residential housing, utilities, and health care, have increased substantially in recent years, contributing to widespread economic hardship for households across the United States.

(2) Algorithmic pricing systems influence prices in markets where these increases have occurred, including food staples, residential rents, and other essential goods and services.

(3) Practices that artificially raise, align, or stabilize prices among competitors are unlawful when conducted directly through human communication, and the use of an algorithmic intermediary does not alter the unlawful nature of such conduct.

(4) Certain pricing algorithms rely on nonpublic competitor data or function as shared systems across multiple competing firms, thereby replicating or magnifying forms of price coordination that would violate long-standing antitrust prohibitions if engaged in through direct interaction.

(5) Algorithmic pricing systems used in concentrated markets can produce supracompetitive prices even without explicit agreements among competitors, undermining the competitive process that Congress has sought to protect for generations.

(6) Individualized pricing based on surveillance data enables discrimination among consumers, exploits behavioral vulnerabilities, and imposes higher prices on those least able to pay.

(7) Transparency, accountability, and oversight are necessary to ensure that algorithmic pricing systems do not facilitate coordination, manipulation, discrimination, or reductions in output.

(8) It is necessary for Congress to update Federal law to ensure that the principles of fair competition established over the past century remain effective in the digital and algorithmic era.

(b) Purpose.—The purpose of this subtitle is to—

(1) prohibit the use of shared or collusive pricing algorithms that incorporate nonpublic competitor data or perform coordinating functions among competitors;

(2) prohibit surveillance-based individualized pricing and other discriminatory algorithmic pricing practices; and

(3) provide enforcement mechanisms to ensure fair pricing, protect consumers, and preserve competitive markets.

SEC. 1132. DEFINITIONS.

(a) For purposes of this subtitle:

(1) Antitrust laws.—The term "antitrust laws"—

(A) has the meaning given that term in section 1 of the Clayton Act (15 U.S.C. 12); and

(B) includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(2) Automated decision system.—The term "automated decision system"—

(A) means a system, software, or process that uses computation, the result of which is used to assist or approximate human decision making; and

(B) includes a system, software, or process derived from machine learning, statistics, or other data processing or artificial intelligence techniques.

(3) Bona fide discount.—The term "bona fide discount" means an offered price that is lower than the genuine price at which a product or service is widely offered to the public on a regular basis for a reasonably substantial period of time and not for the purpose of establishing a fictitious price to enable the subsequent offer of a reduction.

(4) Business of insurance; credit.—The terms "business of insurance" and "credit" have the meaning given such terms in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

(5) Commercial terms.—The term "commercial terms" means—

(A) level of service;

(B) availability;

(C) output, including quantities of products produced or distributed or the amount or level of service provided; or

(D) rebates or discounts made available.

(6) Commission.—The term "Commission" means the Federal Trade Commission.

(7) Common pricing algorithm.—The term "common pricing algorithm" means any pricing algorithm that is used, licensed, supplied, deployed, or otherwise made available to 2 or more persons that compete in the same market or a related market, and that is designed, marketed, offered, or used to coordinate, align, or stabilize prices or commercial terms among such persons, irrespective of whether the algorithm's outputs to each user are identical.

(8) Distribute; distribution; distributing.—The terms "distribute", "distribution", and "distributing" include selling, licensing, providing access to, or otherwise making available by any means, including through a subscription or the sale of a service.

(9) Essential goods and services.—The term "essential goods and services" means goods and services necessary for health, safety, subsistence, or ordinary participation in economic and civic life, including groceries, residential housing, utilities, and health care, and such other goods and services as the Commission may designate by rule.

(10) Genetic information.—The term "genetic information" has the meaning given such term in section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)).

(11) Individualized price.—The term "individualized price" means a price or commercial term offered to a specific individual or household that differs from the price or commercial term offered contemporaneously to similarly situated buyers for the same good or service.

(12) Nonpublic competitor data.—The term "nonpublic competitor data" means data that consists of, is derived from, or otherwise reflects another person's nonpublic pricing or commercial information, where such other person competes in the same market or a related market, whether or not such data is attributable to a specific competitor and whether or not such data is anonymized.

(13) Nonpublic pricing or commercial information.—The term "nonpublic pricing or commercial information" means information regarding a person's prices or commercial terms that is not publicly available or readily accessible to the public.

(14) Person.—The term "person" has the meaning given that term in section 1 of the Clayton Act (15 U.S.C. 12).

(15) Personal information.—The term "personal information" means any quality, feature, attribute, or trait of an individual, including any immutable characteristic, any mutable characteristic, genetic information, and any other information that could reasonably be linked, directly or indirectly, with a particular individual or household.

(16) Price.—The term "price" means the amount of money or other thing of value, whether tangible or not, expected, required, or given in payment for any product or service.

(17) Pricing algorithm.—The term "pricing algorithm" means any computational process, including a computational process derived from machine learning or other artificial intelligence techniques, that processes data to recommend or set a price or commercial term that is in or affecting interstate or foreign commerce.

(18) Surveillance-based price setting.—The term "surveillance-based price setting" means using an automated decision system to offer or inform a customized price for a good or service for a specific person or consumer, or group of people or consumers, based, in whole or in part, on surveillance data.

(19) Surveillance data.—The term "surveillance data"—

(A) means data obtained through observation of an individual that is related to the personal information, behavior, biometrics, or other characteristics of the individual or of any group or category in which the individual belongs; and

(B) includes data gathered, purchased, inferred, derived, or otherwise acquired.

SEC. 1133. PROHIBITION ON COLLUSIVE PRICING ALGORITHMS.

(a) In general.—It shall be unlawful for a person to use or distribute any pricing algorithm that—

(1) uses, incorporates, or was trained with nonpublic competitor data;

(2) is a common pricing algorithm; or

(3) receives from another person nonpublic pricing or commercial information, if the person using or distributing the pricing algorithm knows or has reason to know that the pricing algorithm is a common pricing algorithm.

(b) Presumption of collusion.—With respect to the use of a pricing algorithm that would violate subsection (a), there shall be a presumption for purposes of section 1 of the Sherman Act (15 U.S.C. 1) that the defendant entered into an agreement, contract, combination, or conspiracy in restraint of trade, and for purposes of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) that the defendant has engaged in an unfair method of competition if the plaintiff establishes that—

(1) the defendant distributed the pricing algorithm to 2 or more persons—

(A) with the intent that such algorithm be used as a common pricing algorithm; or

(B) such algorithm was used by such 2 or more persons as a common pricing algorithm; or

(2) the defendant knew or had reason to know that the pricing algorithm was a common pricing algorithm; and

(A) provided to the pricing algorithm, or to a person affiliated with the pricing algorithm, nonpublic pricing or commercial information; or

(B) used the pricing algorithm to set or recommend a price or commercial term of a product or service.

(c) Rebuttal.—The presumption under subsection (b) shall not apply to a defendant if the defendant did not develop or distribute the pricing algorithm and the defendant demonstrates by clear and convincing evidence that the defendant did not have actual knowledge, and could not reasonably have known, that the pricing algorithm violated subsection (a).

(d) Joint and several liability.—In a civil case in which the presumption under subsection (b) is applicable, any person that distributed the pricing algorithm and knew, or could reasonably have known, that the pricing algorithm violated subsection (a) shall be jointly and severally liable for any violation of section 1 of the Sherman Act (15 U.S.C. 1) or section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

(e) Relation to antitrust laws.—Nothing in this section shall impair or limit the applicability of the antitrust laws.

(f) Effective date.—This section shall take effect on the date that is 90 days after the date of enactment of this Act.

SEC. 1134. PROHIBITION ON SURVEILLANCE-BASED PRICE SETTING.

(a) In general.—It shall be unlawful for a person engaged in commerce to offer or charge different prices to different consumers for the same, or a substantially similar, product or service using, informed by, or based on, in whole or in part, surveillance data.

(b) Exceptions.—The following shall not be considered surveillance-based price setting for purposes of subsection (a):

(1) A difference in price that is based solely on reasonable costs associated with providing the product or service to different consumers, if the basis for such difference is disclosed to the consumer prior to purchase.

(2) A bona fide discount that is offered to any member of a broadly defined group, including teachers, active duty personnel, veterans, senior citizens, or students, if—

(A) any eligibility condition or criteria is clearly and conspicuously disclosed;

(B) such discount is offered uniformly to any consumer who meets the disclosed eligibility conditions or criteria; and

(C) any surveillance data used solely to offer or administer a bona fide discount is not used for any other purpose, including profiling, targeted advertising, or individualized price setting.

(3) A bona fide discount that is offered to any consumer who affirmatively and knowingly enrolls in a loyalty program, if—

(A) the conditions described in subparagraphs (A), (B), and (C) of paragraph (2) are met; and

(B) a loyalty program that allows a user to accrue and exchange points, credits, or any similar nonmonetary system of value for a product or service does not charge a different price for those points, credits, or similar nonmonetary system of value to different consumers for the same or substantially similar product or service.

(4) The offering or charging of different prices with respect to the business of insurance or any credit product.

SEC. 1135. ESSENTIAL GOODS AND SERVICES; RULEMAKING.

(a) In general.—Not later than January 1, 2028, the Commission shall promulgate rules governing the use of pricing algorithms with respect to essential goods and services.

(b) Scope.—Rules promulgated under this section shall identify and prohibit unfair, deceptive, or abusive acts or practices, and unfair methods of competition, involving the use of pricing algorithms with respect to essential goods and services.

(c) Factors.—In promulgating rules under this section, the Commission shall consider whether the use of a pricing algorithm—

(1) increases or aligns prices or commercial terms without a legitimate cost-based or other nonpretextual justification;

(2) reduces output, availability, or access;

(3) exploits acute demand, lack of substitutes, or consumer vulnerability;

(4) relies on surveillance data, nonpublic competitor data, or a coordinating function among competitors; or

(5) otherwise threatens competition, consumer protection, or fair access to essential goods and services.

SEC. 1136. TRANSPARENCY AND PRICING ALGORITHMS.

(a) Transparency in pricing algorithms.—

(1) In general.—Any person that has $5,000,000 or more in annual revenue that uses a pricing algorithm to recommend or set a price or commercial term shall clearly disclose, before the customer purchases the relevant product or service, that the price or commercial term is set or recommended by a pricing algorithm.

(2) Additional disclosures.—

(A) Price discrimination.—A disclosure under paragraph (1) shall state if the pricing algorithm sets or recommends different prices or commercial terms for different customers seeking identical or nearly identical products or services.

(B) Third-party algorithm.—If applicable, a disclosure under paragraph (1) shall—

(i) state that the pricing algorithm was developed or distributed by a person other than the person making the disclosure; and

(ii) provide the identity of the person that developed or distributed the pricing algorithm.

(3) Additional disclosures for individualized pricing.—Any person that uses a pricing algorithm to set or recommend an individualized price shall maintain and make publicly available, in a clear and accessible manner—

(A) reasonable procedures to ensure the accuracy of any data used by the pricing algorithm for individualized price setting;

(B) a process by which a consumer may correct or challenge the accuracy of data used by the pricing algorithm for individualized price setting; and

(C) a disclosure of the categories of data considered by the pricing algorithm and the manner in which such data may affect the individualized price.

(b) Competition law enforcement audit.—

(1) In general.—A person using or distributing a pricing algorithm, upon a written request by the Attorney General or the Commission, shall, not later than 30 days after the date of the

written request, or any later date approved by the Attorney General or the Commission, respectively, provide to the Attorney General or the Commission, respectively, a written report on each pricing algorithm identified in the request.

(2) Report contents.—Each report under paragraph (1) shall include—

(A) information on whether the person is responsible for the development or distribution of the pricing algorithm, or whether a third party is responsible for the development or distribution of the pricing algorithm, including the identity and contact information of any other person responsible for the development or distribution of the pricing algorithm;

(B) information on whether the pricing algorithm autonomously sets prices or commercial terms and whether there is human review of any recommendation or decision of the pricing algorithm;

(C) an explanation of the rules or processes that the pricing algorithm uses to set or recommend prices or commercial terms;

(D) a description of all data the pricing algorithm uses to set or recommend prices or commercial terms, including data used to train the pricing algorithm;

(E) all sources and collection processes, including the frequency of collection, of any data that the pricing algorithm uses to set or recommend prices or commercial terms;

(F) whether the pricing algorithm engages in price discrimination by setting or recommending different prices or commercial terms for different customers seeking identical or nearly identical products or services, and if so, the factors used in differentiating among such customers; and

(G) any changes made to the pricing algorithm between the date of receipt of the request under paragraph (1) and the date of certification under paragraph (3).

(3) Certification of report.—The chief executive officer, chief economist, chief technology officer, or a corporate officer of similar authority of a person, or, if the person has no such officer, an individual with equivalent responsibility and authority, shall certify, under penalty of perjury, the accuracy of a report submitted under paragraph (1).

(4) Confidentiality.—All information submitted in a report under paragraph (1) shall be treated as confidential and shall be considered to be privileged and confidential trade secrets and commercial or financial information exempt under section 552(b)(4) of title 5, United States Code, from being made available to the public under section 552(a) of such title.

(5) Information sharing.—

(A) In general.—A report under paragraph (1) may be shared—

(i) between the Department of Justice and the Commission; and

(ii) with the National Institute of Standards and Technology for technical assistance in understanding the report.

(B) Limitation.—The National Institute of Standards and Technology shall not disclose the contents of a report shared under subparagraph (A) or the analysis of the report to any person, except the Department of Justice or the Commission, whichever sought the technical assistance.

(6) Rules of construction.—Nothing in this subsection shall—

(A) limit the ability of the Commission or the Attorney General to issue a civil investigative demand, issue a subpoena, seek discovery in the course of litigation, or otherwise obtain information through other means available under law; or

(B) restrict the use of information submitted in a report under paragraph (1) in a formal investigation, enforcement action, litigation, trial, or other proceeding, in accordance with applicable confidentiality procedures.

(c) FTC study.—Not later than 2 years after the date of enactment of this Act, the Commission shall publish the results of a study of the use of pricing algorithms, including information on—

(1) the prevalence of pricing algorithms;

(2) the frequency of the use of pricing algorithms to engage in price discrimination;

(3) the potential for persons to use pricing algorithms to engage in behavior that increases prices, reduces output, lowers quality, deters innovation, or otherwise harms the competitive process outside of the price-fixing context;

(4) the potential benefits or efficiencies of pricing algorithms;

(5) any industries, sectors, or markets in which pricing algorithms may warrant additional oversight or regulation to protect competition and consumers; and

(6) recommendations for additional legislation, regulation, or rulemaking relating to competition and consumer protection issues arising from the use of pricing algorithms.

SEC. 1137. ENFORCEMENT.

(a) Treatment under Federal Trade Commission Act and antitrust laws.—Any violation of this subtitle, or any regulation promulgated under this subtitle, shall be treated as—

(1) a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) as an unfair, deceptive, or abusive act or practice and as an unfair method of competition;

(2) a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a); and

(3) where applicable, a violation of section 1 of the Sherman Act (15 U.S.C. 1).

(b) Federal enforcement.—

(1) In general.—The Federal Trade Commission and the Attorney General shall enforce this subtitle, and any regulation promulgated under this subtitle, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and

provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the antitrust laws were incorporated into and made a part of this subtitle.

(2) Commission jurisdiction.—Notwithstanding section 4, 5(a)(2), or 6 of the Federal Trade Commission Act (15 U.S.C. 44, 45(a)(2), 46), or any other jurisdictional limitation of the Commission, the Commission shall also enforce this subtitle, and any regulation promulgated under this subtitle, with respect to—

(A) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

(B) organizations not organized to carry on business for their own profit or that of their members; and

(C) air carriers and foreign air carriers subject to subtitle VII of title 49, United States Code.

(c) State enforcement.—

(1) In general.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of such State has been or is threatened or adversely affected by a violation of this subtitle or a regulation promulgated under this subtitle, the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate State court or an appropriate district court of the United States to—

(A) enjoin such violation;

(B) enforce compliance with this subtitle or such regulation;

(C) obtain damages, restitution, civil penalties, or other appropriate relief; and

(D) obtain reasonable costs and attorneys' fees.

(2) Rule of construction.—Nothing in this subsection shall be construed to prevent a State attorney general from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(d) Private cause of action.—

(1) In general.—Any person injured by a violation of this subtitle or a regulation promulgated under this subtitle may bring a civil action in an appropriate State court or an appropriate district court of the United States to—

(A) enjoin such violation;

(B) recover damages, including treble damages where appropriate;

(C) obtain restitution or other equitable relief; and

(D) recover reasonable attorneys' fees and litigation costs.

(2) Special rule for claims under section 1134.—In any action under paragraph (1) alleging a violation of section 1134(a)—

(A) the plaintiff establishes a prima facie violation by demonstrating that—

(i) 2 or more individuals were offered different prices by the defendant for the same, or a substantially similar, product or service during the same, or a substantially similar, period of time; or

(ii) 1 individual was offered different prices by the defendant for the same, or a substantially similar, product or service during the same, or a substantially similar, period of time while using different means of viewing the price; and

(B) the defendant may rebut the prima facie showing under subparagraph (A) by demonstrating that the alleged difference in price was—

(i) not informed, in whole or in part, by surveillance data; or

(ii) fully explained by the exceptions described in section 1134(b).

(3) Limitation.—An action under this subsection may be commenced not later than 5 years after the date on which the person first discovered or had a reasonable opportunity to discover the violation.

(e) Remedies cumulative.—The remedies provided under this section are in addition to, and not in lieu of, any other remedies available under Federal or State law.

(f) No preemption of stricter State law.—Nothing in this subtitle shall be construed to preempt any State law that provides equal or greater protection against anticompetitive conduct, unfair methods of competition, or unfair, deceptive, or abusive acts or practices.

Subtitle D—Right to Repair

SEC. 1141. SHORT TITLE AND FINDINGS.

(a) Short title.—This subtitle may be cited as the "Right to Repair Act".

(b) Findings.—Congress finds the following:

(1) The Federal Trade Commission has extensively studied the ability of customers to repair the products they own and found that products have become increasingly difficult to repair due to manufacturer-imposed repair restrictions, including physical barriers, the unavailability of parts, manuals, tools, and diagnostic software, and the use of software locks and pairing technologies.

(2) Manufacturers often profit more from product replacement or steering consumers toward authorized repair networks than from permitting independent repair, creating incentives to restrict repair markets.

(3) The Federal Trade Commission's 2021 "Nixing the Fix" Report found limited evidence supporting claims that independent repair presents heightened safety, cybersecurity, liability, or quality risks.

(4) Expanded competition in repair and parts markets offers lower prices for repairs, extends product lifespan, reduces electronic waste, and generates economic opportunities for independent repair businesses and local communities.

(5) The right to repair a product is integral to property rights, enabling owners to choose independent repair providers or to repair products themselves.

(6) Repair restrictions disproportionately harm small businesses, low-income households, and family farms, and reduce the availability of timely and affordable repairs in rural areas.

(7) Many modern products depend on software and applications to operate, and failure to provide software updates can render products insecure, inoperable, or unrepairable, undermining product longevity and leaving consumers without the ability to meaningfully compare durability at the time of purchase.

(8) It advances the public interest to ensure access to cost-effective repair and to prevent manufacturers from using technological or contractual mechanisms to impair competition in repair markets.

SEC. 1142. DEFINITIONS.

(a) Definitions.—In this subtitle:

(1) Aftermarket part.—The term "aftermarket part" means a part made by a person other than the manufacturer of a covered product and not identified by the manufacturer's brand, trade, or corporate name.

(2) All-terrain vehicle.—The term "all-terrain vehicle" means any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering, excluding prototypes intended exclusively for research and development unless offered for sale.

(3) Authorized repair provider.—The term "authorized repair provider" means any person that has an arrangement with a manufacturer to offer diagnostic, maintenance, or repair services for a covered product, or the manufacturer itself when performing such services.

(4) Commission.—The term "Commission" means the Federal Trade Commission.

(5) Covered product.—The term "covered product" means digital electronics equipment, a digital electronics-enabled implement of agriculture, an all-terrain vehicle, a motor vehicle, a heavy-duty vehicle, or a powered mobility assistance device, but does not include industrial safety equipment.

(6) Digital electronics equipment.—The term "digital electronics equipment" means any product that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product, not including an all-terrain vehicle, motor vehicle, heavy-duty vehicle, or digital electronics-enabled implement of agriculture.

(7) Digital electronics-enabled implement of agriculture.—The term "digital electronics-enabled implement of agriculture" means equipment designed for agricultural

purposes, used exclusively by the owner in agricultural operations, and dependent for its functioning, in whole or in part, on digital electronics embedded in or attached to the product.

(8) Documentation.—The term "documentation" means any manual, diagram, reporting output, service code description, schematic, security code or password, or similar information, in electronic or tangible format, including updates, provided by a manufacturer to an authorized repair provider for diagnosis, maintenance, or repair.

(9) Embedded software.—The term "embedded software" means any programmable software instruction delivered with or loaded onto a covered product, or a part of a covered product, to allow the covered product or part to operate or communicate with other computer hardware, including any relevant patch and fix that the manufacturer makes for purposes of diagnosis, maintenance, or repair.

(10) Fair and reasonable terms.—The term "fair and reasonable terms" means—

(A) in general, such terms are not—

(i) conditioned on becoming or remaining an authorized repair provider or entering into any arrangement with the manufacturer; or

(ii) conditioned on a substantial obligation or restriction that is not reasonably necessary for enabling the owner or independent repair provider to engage in diagnosis, maintenance, or repair; and

(B) (i) for parts, that replacement parts are available at costs and terms equal to the most favorable costs and terms offered to an authorized repair provider, accounting for discounts, rebates, delivery, functionality restoration, rights of use, or other incentives; and when the authorized repair provider is the manufacturer, the price shall reflect the actual cost of manufacture or procurement, preparation, and delivery, exclusive of research and development costs;

(ii) for documentation, that documentation is made available at no charge, except for reasonable costs of copying and sending printed materials;

(iii) for tools and data, that proximity access and remote access are made available at no charge and without impediments to efficient and timely access or use to diagnose, maintain, or repair, and to enable full functionality of the covered product, except for reasonable actual costs of manufacturing or sending a physical tool.

(11) Firmware.—The term "firmware" means a software program or set of instructions programmed on a covered product, or on a part for such covered product, that allows the covered product or part to communicate within the covered product or part or with other device hardware.

(12) Heavy-duty vehicle.—The term "heavy-duty vehicle" means any vehicle with a gross vehicle weight rating of more than 14,000 pounds.

(13) Independent repair provider.—The term "independent repair provider" means any person who diagnoses, maintains, or repairs a covered product and is not an authorized repair provider.

(14) Industrial safety equipment.—The term "industrial safety equipment" means digital electronics equipment used solely in workplace settings or by firefighters to prevent serious injury or death, and regulated by a federal safety regulation requiring that the equipment maintain intended health and safety functions after repair.

(15) Maintenance.—The term "maintenance" means operations necessary to keep a covered product performing its intended function and in fully working order.

(16) Manufacturer.—The term "manufacturer" means a person engaged in selling, leasing, or otherwise supplying a covered product manufactured by or on behalf of itself.

(17) Motor vehicle.—The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured for use on public streets, roads, and highways, excluding vehicles that may be operated only on a rail line or heavy-duty vehicles.

(18) OEM part.—The term "OEM part" means a part made or sold by the manufacturer of a covered product or identified by the manufacturer's brand, trade, or corporate name.

(19) Owner.—The term "owner" means—

(A) any person who owns or leases a covered product;

(B) the United States, any executive agency (as defined in section 105 of title 5, United States Code), and any State or political subdivision thereof with respect to any covered product they purchase or lease; and

(C) any officer, employee, or servicemember of an entity described in subparagraph (B), when acting within the scope of official duties to diagnose, maintain, or repair such covered product.

(20) Part.—The term "part" means any replacement part or assembly of parts, including OEM parts and aftermarket parts, whether new or used, that is used or usable to replace an original part that is not functioning properly.

(21) Powered mobility assistance device.—The term "powered mobility assistance device" means—

(A) a motorized wheeled device designed for use by an individual with a physical disability; and

(B) a wearable robotic device designed to augment and enhance the physical ability of an individual to walk.

(22) Proximity access.—The term "proximity access" means access to onboard computer systems and electronic systems of a digital electronics-enabled implement of agriculture, all-terrain vehicle, heavy-duty vehicle, motor vehicle, or powered mobility assistance device, provided through a physical connection, short-range wireless protocol, or combination of such methods.

(23) Remote access.—The term "remote access" means access, with the owner's authorization, via long-range wireless systems to onboard computer systems and electronic systems required to diagnose, maintain, or repair a digital electronics-enabled implement of

agriculture, all-terrain vehicle, heavy-duty vehicle, motor vehicle, or powered mobility assistance device.

(24) Repair.—The term "repair" means any act needed to restore a covered product to working order.

(25) Software updates.—The term "software updates" means necessary software patches, upgrades, or modifications needed to remedy identified cybersecurity or functionality problems and enable continued functioning.

(26) Tool.—The term "tool" means any software program, hardware implement, or other apparatus, including updates, made available by a manufacturer to an authorized repair provider to perform diagnosis, maintenance, repair, programming, pairing, provisioning, calibration, or any function required for full product operation.

SEC. 1143. RIGHT TO REPAIR.

(a) Documentation, parts, and tools.—A manufacturer must make available to owners and independent repair providers, on fair and reasonable terms, the documentation, parts, embedded software, firmware, and tools necessary to diagnose, maintain, and repair a covered product. The requirements of this subsection continue after the last date the product model or type was manufactured:

(1) for at least 5 years for products with a wholesale price of not less than $50 and not more than $250;

(2) for at least 10 years for products with a wholesale price above $250;

(3) for at least 30 years for a digital electronics-enabled implement of agriculture, an all-terrain vehicle, a heavy-duty vehicle, or a motor vehicle; and

(4) for as long as such documentation, parts, and tools are made available to an authorized repair provider.

(b) Software updates.—A manufacturer must provide software updates at no cost to the owner. The requirements of this subsection continue after the last date the product model or type was manufactured:

(1) for at least 5 years for products with a wholesale price of not less than $50 and not more than $250;

(2) for at least 10 years for products with a wholesale price above $250;

(3) for at least 30 years for a digital electronics-enabled implement of agriculture, an all-terrain vehicle, a heavy-duty vehicle, or a motor vehicle; and

(4) for as long as software updates are made available to an authorized repair provider.

(c) Obligations.—The obligations of subsections (a)(3) and (b)(3) do not apply to products manufactured prior to 2016.

(d) Disclosure of support periods.—A manufacturer must clearly and conspicuously disclose to potential purchasers the duration of documentation, parts, tools, and software update support.

(e) Publicly available process.—A manufacturer must maintain a publicly available process by which an owner or independent repair provider may request and obtain documentation, parts, tools, embedded software, firmware, and other materials required to be made available under this subtitle, including clear instructions for submitting such requests and for obtaining such materials.

(f) Proximity and remote access.—A manufacturer must provide owners and independent repair providers—

(1) proximity access to read data, write data, and execute commands for diagnosis, maintenance, or repair; and

(2) remote access to read data to the same extent provided to an authorized repair provider.

(g) Prohibited conduct.—It shall be unlawful for a manufacturer to—

(1) require the use of manufacturer-approved parts;

(2) degrade, reduce, or end functionality following repair by an owner or independent repair provider;

(3) disparage aftermarket parts or independent repairs without adequate substantiation;

(4) require a subscription or post-sale payment to use a product or its features unless clearly disclosed at point of sale;

(5) impose any impediment to part replacement or repair, including pairing codes, cryptographic locks, authorization routines, or other security-related measures that materially impede diagnosis, maintenance, replacement, or repair; except as provided in paragraph (6); or

(6) in the case of a covered product that contains an electronic security lock or other security-related function, fail to make available, in a timely manner and on fair and reasonable terms, any documentation, part, embedded software, firmware, or other tool needed to disable the lock or function, and to reset the lock or function when disabled in the course of diagnosis, maintenance, or repair; provided that such items may be made available through an appropriate secure data release system.

(h) Prohibited contract terms.—A contract or agreement is void and unenforceable if it purports to:

(1) waive, limit, or require arbitration of protections or remedies under this section; or

(2) modify or restrict diagnosis, maintenance, or repair in any manner inconsistent with this section.

(i) Intellectual property.—Nothing in this subtitle requires a manufacturer to divulge a trade secret, disclose source code, or license intellectual property except as needed for repair.

(j) Manufacturer liability.—A manufacturer in compliance with this section is not liable for damage resulting from repair, maintenance, or modification conducted by an owner or independent repair provider unless the manufacturer violates a duty of care or breaches a warranty.

SEC. 1144. ENFORCEMENT.

(a) Enforcement by the Commission.—

(1) Rulemaking authority.—The Commission may promulgate rules, in accordance with section 553 of title 5, United States Code, as necessary to carry out this subtitle, including rules to clarify the requirements of section 1143 and to prevent evasion or circumvention of the obligations imposed by this subtitle.

(2) In general.—Violation of section 1143, or any regulation promulgated under paragraph (1), shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair, deceptive, or abusive acts or practices. The Federal Trade Commission shall enforce this subtitle in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subtitle.

(3) Penalties.—Any person who violates section 1143, or any regulation promulgated under paragraph (1), shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this subtitle.

(4) Intervention.—On receiving notice pursuant to subsection (b)(3)(A), the Commission may intervene in the action that is the subject of the notice. If the Commission intervenes in such action, it shall have the authority—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(5) Amicus curiae.—The Commission may appear as *amicus curiae* in any action brought under subsection (b) or subsection (c).

(6) Authority preserved.—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(b) State enforcement.—

(1) In general.—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 threatened or adversely affected by a violation of section 1143, or regulation promulgated under subsection (a)(1), the attorney general may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with such section or regulation;

(C) obtain damages, restitution, or other compensation on behalf of residents of the State;

(D) obtain civil penalties subject to paragraph (5); or

(E) obtain such other relief as the court may consider to be appropriate.

(2) Exception.—In any case in which an action is instituted by or on behalf of the Commission for violation of section 1143, or any regulation promulgated under subsection (a)(1), no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint in such action.

(3) Notification.—

(A) When filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) The requirements of subparagraph (A) must be met prior to filing of the action, unless it is not feasible to do so, in which case they must be met at the same time as the action is filed.

(4) Construction.—For purposes of bringing any civil action under subsection (b), nothing in this subtitle shall be construed to prevent an attorney general of a State from exercising the powers conferred by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations;

(C) compel the attendance of witnesses or the production of documentary and other evidence; or

(D) prevent a State from exercising additional enforcement authority under State law that provides equal or greater protection than this subtitle.

(5) Penalties.—The maximum civil monetary penalty for violations subject to civil penalties under this subsection shall be the same as the maximum civil penalty amount for violations of unfair or deceptive trade practices under the Federal Trade Commission Act, as periodically published by the Commission pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, and any corresponding rules (16 CFR 1.98).

(c) Enforcement by persons and entities.—

(1) Civil actions.—A person injured by a violation of section 1143 or regulations promulgated under subsection (a)(1) may bring a civil action in any court of competent jurisdiction to enjoin such violation or to recover damages.

(2) No exhaustion.—A plaintiff is not required to exhaust administrative remedies before bringing an action under this subsection.

(3) Notification.—A plaintiff must provide notice to the Commission as described in subsection (b)(3).

(4) Injunctive relief.—A court may issue temporary, preliminary, or permanent injunctive relief to prevent or restrain a violation of section 1143 or regulations promulgated under subsection (a)(1).

(5) Damages.—A prevailing plaintiff may recover—

(A) the greater of—

(i) actual monetary loss; or

(ii) double the purchase price of the product;

(B) in the case of a willful or knowing violation, the court may increase the amount recoverable under subparagraph (A) to an amount not to exceed the greater of—

(i) 3 times the actual monetary loss; or

(ii) 3 times the purchase price of the product; and

(C) reasonable attorney's fees and costs.

(6) Limitations period.—An action under this subsection may be brought not later than 2 years after the date on which the plaintiff discovered, or by the exercise of reasonable diligence should have discovered, the violation, but in no event later than 5 years after the date of the violation.

(d) Venue.—An action under this section may be brought in any district where the defendant is an inhabitant, may be found, or transacts business.

SEC. 1145. RELATION TO STATE LAW.

(a) Rule of construction.—Nothing in this subtitle shall be construed to preempt, displace, or limit the authority of a State to enforce or adopt requirements relating to the diagnosis, maintenance, or repair of a covered product that provide equal or greater protection than section 1143 or any regulations promulgated under section 1144(a)(1).

(b) State consumer protection laws.—A violation of section 1143, or regulations promulgated under section 1144(a)(1), may also be enforced under any State law that prohibits unfair, deceptive, or abusive acts or practices, to the extent such State law is consistent with this subtitle.

SEC. 1146. AMENDMENTS TO THE MAGNUSON-MOSS WARRANTY ACT.

(a) Civil penalties for violations of the anti-tying rule.—Section 2302 of title 15, United States Code, is amended—

(1) in the introductory text of subsection (c)—

(A) by striking "his" and inserting "their";

(B) by striking "or service (other than an article or service" and inserting ", service, part, accessory, tool, diagnostic service, or repair provider (unless"; and

(2) by inserting after subsection (e) the following:

"(f) Civil penalties.—

"(1) Any warrantor who violates subsection (c) shall be subject to a civil penalty not to exceed the maximum penalty for unfair or deceptive acts or practices established under section 5(m)(1)(A) of the Federal Trade Commission Act.

"(2) Each consumer product for which the warrantor conditions a written or implied warranty in violation of subsection (c) shall constitute a separate violation.

"(3) The Commission may enforce this subsection in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.".

(b) Rulemaking authority.—The Federal Trade Commission may promulgate regulations necessary to implement and enforce this section.

SEC. 1147. AMENDMENT TO THE DIGITAL MILLENNIUM COPYRIGHT ACT.

(a) Repair exemption.—Section 1201 of title 17, United States Code, is amended by inserting after subsection (k) the following:

"(l) Repair exemption.—

"(1) Notwithstanding subsections (a) and (b), it is not a violation of this section for a person, for the purpose of diagnosis, maintenance, or repair of a lawfully acquired product, software program, digital service, or system that contains or depends on a work protected under this title, or any component thereof, to—

"(A) circumvent a technological measure that effectively controls access to a work protected under this title; or

"(B) manufacture, import, offer to the public, provide, or otherwise traffic in a technology, product, service, device, component, or part thereof.

"(2) Nothing in this subsection permits the unauthorized access, deletion, or alteration of personal data stored on a device or machine.

"(3) Nothing in this subsection authorizes the distribution of copyrighted works other than as necessary to enable diagnosis, maintenance, or repair.

"(4) The exemption under this subsection applies regardless of whether the Librarian of Congress has issued a corresponding exemption under subsection (a)(1)(C).

"(m) Bad-faith threats prohibited.—

"(1) A person may not knowingly assert, threaten to assert, or communicate a claim under this chapter against a person engaging in conduct exempt from the prohibitions in this section, if the person knows or should know that the claim lacks a legal basis.

"(2) A person who violates paragraph (1) shall be liable to the United States for a civil penalty not to exceed $50,000 for each violation, in addition to any other remedies available under law.

"(3) A person who is subjected to a violation of paragraph (1) may bring a civil action in any court of competent jurisdiction for actual damages, statutory damages not to exceed $50,000 per violation, attorney's fees, and injunctive relief.

"(4) Each separate assertion, threat to assert, or communication of a claim under this chapter in violation of paragraph (1) shall constitute a separate violation.

"(5) Nothing in this subsection shall be construed to limit the authority of the Federal Trade Commission or a State attorney general to enforce this subsection as an unfair or deceptive act or practice under section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) or any analogous State law.".

(b) Effective dates.—

(1) Subsection (l) of section 1201 of title 17, United States Code, shall take effect upon enactment and shall apply to all acts of diagnosis, maintenance, or repair occurring on or after that date and to all proceedings pending on or after that date.

(2) Subsection (m) of section 1201 shall take effect on the date that is 30 days after enactment and shall apply only to assertions, threats to assert, or communications made on or after that date.

SEC. 1148. DESIGN PATENT REPAIR SAFE HARBOR AND BAD-FAITH THREATS.

(a) Table of contents amendment.—The table of contents for chapter 29 of title 35, United States Code, is amended by inserting after the item relating to section 299 the following:

"300A. Repair safe harbor.

"300B. Bad-faith threats prohibited.".

(b) Defense reference.—Section 282(b)(4) of title 35, United States Code, is amended to read as follows:

"(4) Any other fact or act made a defense by this title, including the repair safe harbor under section 300A.".

(c) Conforming amendment.—Section 289 of title 35, United States Code, is amended by adding at the end the following: "No remedy under this section or under section 283 or 284 shall be available for conduct involving a repair part that meets the safe harbor under section 300A.".

(d) Repair safe harbor and bad-faith threats.—Chapter 29 of title 35, United States Code, is amended by inserting after section 299 the following:

"Sec. 300A. Repair safe harbor.

"(a) Definitions.—

"(1) Repair part.—The term 'repair part' means a component or part of a product, whether sold separately or as part of a repair service, that is used exclusively for diagnosis, maintenance, or repair and not for the production of a new article.

"(2) Product.—The term 'product' means any article of manufacture to which a patent for a design applies.

"(b) Safe harbor criteria.—It shall not be an act of infringement of a patent for a design to manufacture, import, offer to the public, sell, or otherwise provide a repair part for a product or any component thereof, if—

"(1) the repair part is functionally necessary to restore the product to the appearance or form in which it was manufactured; or

"(2) the repair part's appearance must match the original design to fit, align, attach, or otherwise function properly with the product or its component parts.

"(c) Limitations.

"(1) The manufacture, importation, or sale of a repair part consistent with this section is not reconstruction of a patented article.

"(2) Nothing in this section permits the use of a trademark, trade dress, logo, or other source-identifying mark of the patent owner without authorization, or permits conduct likely to cause confusion as to source, sponsorship, or approval.

"Sec. 300B. Bad-faith threats prohibited.

"(a) Prohibition.—A person may not knowingly assert, threaten to assert, or communicate a claim of infringement of a patent for a design if the person knows or should know that the claim lacks a legal basis.

"(b) Civil penalties.—A person who violates subsection (a) shall be liable to the United States for a civil penalty not to exceed $50,000 for each violation, in addition to any other remedies available under law.

"(c) Private cause of action.—A person subjected to a violation of subsection (a) may bring a civil action in any court of competent jurisdiction for actual damages, statutory damages not to exceed $50,000 per violation, attorney's fees, and injunctive relief.

"(d) Separate violations.—Each separate assertion, threat to assert, or communication of a claim of infringement in violation of subsection (a) shall constitute a separate violation.

"(e) Enforcement by Federal Trade Commission and State attorneys general.—Nothing in this section shall be construed to limit the authority of the Federal Trade Commission or a State attorney general to enforce this section as an unfair or deceptive act or practice under section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) or any analogous State law.".

(e) Effective dates.—

(1) Section 300A of title 35, United States Code, shall take effect upon enactment and shall apply to any manufacture, import, offer to the public, sell, or other provision of a repair part occurring on or after that date and to all proceedings pending on or after that date.

(2) Section 300B shall take effect on the date that is 30 days after enactment and shall apply only to assertions, threats to assert, or communications made on or after that date.

SEC. 1149. APPLICATION TO DEFENSE PROCUREMENT.

(a) Definitions.—Notwithstanding section 1142, the following definitions shall apply for the purposes of this section:

(1) Covered product.—The term "covered product" includes any product, system, component, or software procured by or for the Department of Defense, including through classified, noncommercial, or other Federal procurement authorities.

(2) Independent repair provider.—The term "independent repair provider" includes a servicemember or Department of Defense civilian employee performing diagnosis, maintenance, or repair of a covered product owned or leased by the United States in the scope of official duties.

(b) Right-to-repair.—As a condition of entering into or renewing a contract for the procurement of a covered product by the Department of Defense, a manufacturer or contractor shall comply with the requirements of section 1143 with respect to such covered product.

(c) Data, tools, and documentation.—Compliance under subsection (b) shall include the provision, on fair and reasonable terms, of all data, documentation, parts, tools, and software updates necessary to diagnose, maintain, or repair a covered product throughout its expected service life.

(d) Intellectual property consistency.—Compliance with this section shall not be deemed to require the disclosure of classified information or to override applicable export control laws, but intellectual property rights may not be asserted to restrict diagnosis, maintenance, or repair otherwise permitted under this subtitle.

(e) National security exception.—The Secretary of Defense may waive the requirements of this section with respect to a specific covered product upon a written determination, submitted to the congressional defense committees, that compliance would pose a substantial risk to national security and that no reasonable alternative exists.

(f) Rule of construction.—Nothing in this section shall be construed to expand or limit enforcement authority, remedies, or causes of action under sections 1144 or 1147 beyond their express terms.

Subtitle E—Empowering the FTC

PART I—FTC AUTHORITY AND CAPACITY

SEC. 1151. APPROPRIATION OF ONE BILLION DOLLARS FOR THE FTC.

(a) Appropriation.—In addition to any other amounts appropriated or otherwise made available, there is appropriated, out of any money in the Treasury not otherwise appropriated, $1,000,000,000 for fiscal year 2027, to remain available until September 30, 2029, for necessary expenses of the Federal Trade Commission in carrying out the antitrust and kindred laws.

(b) Use of funds.—Amounts made available under subsection (a) shall be used to carry out the duties and authorities of the Commission under this Act, including, but not limited to, the following:

(1) investigate and enforce prohibitions on unfair, deceptive, or abusive acts or practices;

(2) enforce antitrust laws, including prohibitions on anticompetitive mergers and collusive conduct;

(3) implement, administer, and enforce regulations including those governing algorithmic pricing, surveillance practices, and digital markets;

(4) conduct rulemaking, audits, and market studies authorized under the Federal Trade Commission Act; and

(5) hire and retain technical, economic, and legal staff, including data scientists, engineers, and competition economists.

(c) Rule of construction.—Nothing in this section shall be construed—

(1) to limit Congress from appropriating amounts in excess of subsection (a); or

(2) to include amounts collected by the Commission through civil penalties, fines, fees, restitution, or disgorgement.

SEC. 1152. ESTABLISHMENT OF SUBSTANTIVE RULEMAKING AUTHORITY.

(a) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended—

(1) by striking the section header and inserting "Unfair, deceptive, or abusive acts or practices rulemaking authority."; and

(2) by striking the existing text and inserting the following—

"(a) Substantive rulemaking authority.—The Commission is authorized to promulgate substantive rules for carrying out this Act and, to the extent not otherwise specifically provided by law, any other Act administered by the Commission, including rules that define, interpret, or prohibit unfair methods of competition and unfair, deceptive, or abusive acts or practices.

"(b) Relationship to section 5.—Rules promulgated under this section may define, specify, or prohibit conduct that constitutes a violation of section 5 of this Act, and such rules may be issued without regard to whether such conduct has previously been addressed through adjudication.

"(c) Force and effect of law.—A rule promulgated under this section shall have the force and effect of law, and a violation of such rule shall be treated as a violation of this Act.

"(d) Scope of application.—Rules promulgated under this section may apply to classes of persons, classes of conduct, classes of industries, or classes of markets, and may be economy-wide in scope.

"(e) Procedure and judicial review.—Except as otherwise expressly provided by law, rules promulgated under this section shall be issued in accordance with section 553 of title 5, United States Code, and shall be subject to judicial review under chapter 7 of title 5, United States Code. No procedure in addition to those specified in the preceding sentence shall be required for the promulgation of a rule under this section.

"(f) Rule of construction.—Nothing in this section shall be construed to limit the Commission's authority under any other provision of this Act or other applicable law, or to require the Commission to proceed exclusively by rulemaking or exclusively by adjudication.".

(b) Conforming amendment.—Any reference in Federal law to a rule promulgated under section 18 of the Federal Trade Commission Act, or to rulemaking procedures under such section, shall be deemed to refer to a rule promulgated under section 18 of such Act as amended by this section.

SEC. 1153. CONFIRMATION OF AUTHORITY.

Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as amended by this Act, is further amended by inserting after subsection (a)(4) the following—

"(5) Clarification of unfair methods of competition.—

"(A) Independent authority.—The authority of the Commission under this section to prevent unfair methods of competition is independent of, and not limited by, the scope, standards, requirements, or judicial interpretations of the Sherman Act, the Clayton Act, or the Robinson-Patman Act.

"(B) Covered conduct.—Unfair methods of competition may include conduct that violates the letter or the spirit of the antitrust laws, including conduct that tends to undermine competitive conditions, facilitate market concentration, entrench dominant positions, exclude rivals, or distort competitive processes, whether or not such conduct independently constitutes a violation of any other antitrust law.

"(C) Rule of construction.—Nothing in this paragraph shall be construed to require the Commission to establish all elements of a violation under any other antitrust law, or to limit the Commission's authority to identify and prohibit unfair methods of competition through rulemaking or adjudication under this Act.".

SEC. 1154. CONSUMER AWARENESS.

(a) Consumer awareness.—The Federal Trade Commission shall establish and maintain a publicly accessible internet website that—

(1) provides information in clear and plain language regarding—

(A) protections, obligations, prohibitions, and remedies under laws enforced by the Federal Trade Commission, including protections, obligations, prohibitions, and remedies established or amended by the POPULIST Act;

(B) the compliance obligations of persons subject to such laws; and

(C) how consumers, workers, small businesses, and other affected persons may submit complaints, reports, or requests for assistance to the Federal Trade Commission; and

(2) includes educational materials for small businesses and other persons subject to laws enforced by the Federal Trade Commission to assist with compliance with those laws.

(b) Updates.—The Federal Trade Commission shall update the website required under subsection (a) as necessary to reflect changes in law, guidance, or enforcement.

SEC. 1155. PERMANENT AUTHORIZATION OF U.S. SAFE WEB ACT.

(a) Repeal of sunset.—Section 13 of the U.S. SAFE WEB Act of 2006 (Public Law 109–455; 15 U.S.C. 44 note) is repealed.

(b) Permanent effect.—Notwithstanding section 13 of Public Law 109–455 (as in effect before the date of enactment of this Act), the U.S. SAFE WEB Act of 2006 (Public Law 109–455) and the amendments made by that Act shall continue in effect as permanent provisions of law.

(c) Ratification and validation.—For the avoidance of doubt, any action taken, assistance provided, disclosure made, or information obtained, used, or shared by the Federal Trade Commission in reliance on the authorities enacted by the U.S. SAFE WEB Act of 2006 during the period beginning October 1, 2020, and ending October 20, 2020, is hereby ratified, approved, and confirmed as if the authorities had remained continuously in effect during such period.

(d) Rule of construction.—Nothing in this section shall be construed to expand or limit any authority of the Federal Trade Commission beyond making permanent the authorities provided by the U.S. SAFE WEB Act of 2006 and validating actions described in subsection (c).

SEC. 1156. OFFICE OF COMPETITION ADVOCATE.

(a) Definitions.—In this section:

(1) Agency.—The term "agency" has the meaning given the term in section 551 of title 5, United States Code.

(2) Chair.—The term "Chair" means the Chair of the Commission.

(3) Commission.—The term "Commission" means the Federal Trade Commission.

(4) Covered company.—The term "covered company" means any company that has, at any time, been required to make a filing under section 7A of the Clayton Act (15 U.S.C. 18a).

(5) Office.—The term "Office" means the Office of the Competition Advocate established under subsection (b).

(b) Establishment.—There is established within the Federal Trade Commission the Office of the Competition Advocate.

(c) Competition Advocate.—

(1) In general.—The head of the Office shall be the Competition Advocate, who shall—

(A) report directly to, and be under the supervision of, the Chair, but the Chair shall not prevent or prohibit the Competition Advocate from initiating, carrying out, or completing any of their duties under this section;

(B) be appointed by the Chair with the approval of the Commission, including at least 1 Commissioner who is not a member of the same political party as the Chair, from among individuals having experience in advocating for the promotion of competition; and

(C) serve a term of 7 years and shall not be removable except upon a unanimous vote of the Commission.

(2) Compensation.—The annual rate of pay for the Competition Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chair of the Commission.

(3) Limitation on service.—An individual who serves as the Competition Advocate may not be employed by the Commission—

(A) during the 2-year period ending on the date of appointment as Competition Advocate; and

(B) during the 5-year period beginning on the date on which the person ceases to serve as the Competition Advocate.

(d) Staff of Office.—The Commission shall allocate funds from the Commission budget to the Office of the Competition Advocate sufficient for the Competition Advocate to retain or employ such counsel, research staff, and service staff necessary to carry out the functions, powers, and duties of the Office.

(e) Duties and powers.—The Competition Advocate shall—

(1) recommend processes or procedures that will allow the Federal Trade Commission and the Antitrust Division of the Department of Justice to improve the ability of each agency to solicit reports from consumers, small businesses, and workers about possible anticompetitive practices or adverse effects of concentration;

(2) provide recommendations to other agencies about agency actions that may have anticompetitive effects and the potential harm to competition;

(3) provide recommendations to other agencies about agency actions that may have procompetitive effects and the potential benefit to competition;

(4) publish periodic reports on—

(A) the effects of remedies required by the Department of Justice or the Federal Trade Commission in consent decrees;

(B) the effects of law enforcement actions, whether successful or not, including settlements, preliminary injunctions, court-mandated remedies, or any other remedy imposed by a court or agreed to by the Department of Justice or Federal Trade Commission;

(C) the effects of a decision by the Department of Justice or the Federal Trade Commission to allow any merger or transaction to move forward without a consent decree or bringing a law enforcement action;

(D) the effects of decisions and opinions issued by State and Federal courts related to the antitrust laws on competition and the future enforcement of the antitrust laws; and

(E) the effects of other agency actions, including rulemakings, on competition;

(5) provide recommendations to the Federal Trade Commission and Department of Justice about the effectiveness of policy statements, guidelines, or practices to improve the enforcement of the antitrust laws;

(6) report any evidence the Competition Advocate obtains that any person, partnership, or corporation has engaged in transactions or conduct that may constitute a violation of the antitrust laws, or any settlement, agreement, or consent decree related to a potential violation of the antitrust laws, to the Commission, which may institute further investigation, initiate enforcement proceedings, or refer such evidence to the Attorney General;

(7) request such information or assistance as may be necessary for carrying out the duties and powers described in this subsection from any agency or unit thereof, including the Commission. The head of any agency shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the agency from which the information is requested, furnish to the Competition Advocate such information or assistance;

(8) have discretion to decide whether to release the recommendations of the Competition Advocate publicly;

(9) have access to all information and data collected and retained by the Office of Market Analysis and Data; and

(10) submit all recommendations or reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) Subpoena authority.—

(1) In general.—The Competition Advocate may either accept voluntary submissions of periodic and other reports from any covered company, or compel the production of such a report by subpoena for the purpose of carrying out its duties and powers under subsection (e).

(2) Independent subpoena authority.—Upon a finding that a covered company will not submit, or has not submitted, a sufficient report voluntarily, the Competition Advocate may, under its own independent authority, and notwithstanding any jurisdictional limitations in the Federal Trade Commission Act applicable to the Commission's investigative authority, compel the submission of a periodic or other report from any covered company by issuing a subpoena.

(3) Enforcement.—The Competition Advocate shall have independent authority to bring an action in any appropriate Federal court to enforce any subpoena issued under this subsection.

(4) Written finding.—Before issuing a subpoena to collect the information described in paragraph (1), the Competition Advocate shall make a written finding that—

(A) the data is required to carry out the functions of the Competition Advocate; and

(B) the information is not available from a public source, from the covered company on a voluntary basis, or another agency.

(5) Mitigation of report burden.—Before requiring the submission of a report from any covered company, the Competition Advocate shall—

(A) coordinate with other agencies or authorities; and

(B) whenever possible, rely on information available from such agencies or authorities.

(6) Confidentiality.—Information reported to or otherwise obtained by the Competition Advocate shall be subject to the same confidentiality requirements and protection applicable to information reported to or otherwise obtained by the Commission.

(g) Post-proceeding data.—Section 7A of the Clayton Act (15 U.S.C. 18a), as amended by section 1123(d) of this Act, is further amended by adding at the end the following:

"(m) Post-proceeding data.—

"(1) In general.—Each person who resolves a proceeding brought under the antitrust laws by the Federal Trade Commission or the United States by entering into an agreement or by final judgment in a Federal or administrative court regarding an acquisition with respect to which notification is required under this section shall, on an annual basis during the 5-year period beginning on the date on which the agreement is entered into or the final judgment is entered, as applicable, file with the Federal Trade Commission or the Assistant Attorney General, as applicable, and the Competition Advocate, information sufficient for the Federal Trade Commission or the United States, as applicable, to assess the competitive impact of the acquisition, including—

"(A) the pricing, availability, and quality of any product or service, or inputs thereto, in any market, that was covered by the agreement or final judgment;

"(B) the source, and the resulting magnitude and extent, of any cost-saving efficiencies or any benefits to consumers or trading partners that were claimed as a benefit of the acquisition, and the extent to which any cost savings were passed on to consumers or trading partners; and

"(C) the effectiveness of any divestitures or any conditions placed on the acquisition in fully restoring competition.

"(2) Inclusion in resolution.—The requirement to provide the information described in paragraph (1) shall be included in an agreement or final judgment described in that paragraph.

"(3) Rulemaking.—The Federal Trade Commission, with the concurrence of the Assistant Attorney General, by rule in accordance with section 553 of title 5, United States Code, and consistent with the purposes of this subsection—

"(A) shall require that the information described in paragraph (1) be in such form and contain such documentary material and information relevant to an acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to assess the competitive impact of the acquisition under paragraph (1); and

"(B) may—

"(i) define the terms used in this subsection;

"(ii) exempt, from the requirements of this subsection, information not relevant in assessing the competitive impact of the acquisition under paragraph (1); and

"(iii) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this subsection.

"(4) Certification.—The chief executive officer, chief financial officer, general counsel, or a corporate officer of similar authority, or, if the person has no such officer, an individual with equivalent responsibility and authority, shall certify, under penalty of perjury, the accuracy of a report under this subsection.".

SEC. 1157. OFFICE OF MARKET ANALYSIS AND DATA.

(a) Establishment.—There is established, within the Federal Trade Commission, an Office of Market Analysis and Data.

(b) Duties.—The Office of Market Analysis and Data shall, in consultation with the Bureau of Economics, assist the Federal Trade Commission in—

(1) collecting, validating, and maintaining data obtained from agencies, as defined in section 551 of title 5, United States Code, commercial data providers, publicly available data sources, any company that has, at any time, been required to make a filing under section 7A of the Clayton Act (15 U.S.C. 18a), and any data obtained by the Commission pursuant to its authority under section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)), for the purpose of carrying out the functions in paragraphs (2) through (6);

(2) preparing and publishing, in a manner that is easily accessible to the public—

(A) a concentration database;

(B) a merger enforcement database; and

(C) any other database that the Commission determines is necessary to carry out the duties of the Office;

(3) collecting and publishing data regarding concentration levels across industries and the impact and degree of antitrust enforcement;

(4) standardizing the types and formats of data reported and collected, including standards for reporting financial transaction and position data;

(5) publishing reports regarding competitive conditions and dynamics affecting markets or industry sectors, in the United States, local geographic markets, different demographic and socioeconomic groups, including the effects that market concentration, mergers and acquisitions, certain types of agreements, and other forms of business conduct have on competition, consumers, workers, innovation, the economic competitiveness of the United States, economic resilience, and national security; and

(6) publishing reports concerning the competitive effects of acquisitions, which shall include recommendations concerning appropriate enforcement action to remedy any anticompetitive effects discovered, and may include assessments of—

(A) the conditions of the relevant markets affected by the acquisition, over the period since the acquisition was consummated, including the potential impact that the acquisition has had on—

(i) the prices of goods or services, including wages in any affected labor markets;

(ii) the output and quality of goods and services;

(iii) the entry or exit of competitors;

(iv) innovation;

(v) consumer choice and product variety;

(vi) the opportunity of suppliers and vendors to sell their products or services;

(vii) coordinated interaction between competitors; and

(viii) subsequent mergers and acquisitions activity;

(B) whether the acquiring person or its successors in interest—

(i) complied with all obligations under any agreement with the Federal Trade Commission, the United States, or State law enforcement authorities to resolve a proceeding brought under the antitrust laws; and

(ii) achieved measurable, transaction-specific efficiencies, which did not arise from anticompetitive reductions of output, as a result of the acquisition; and

(C) whether any agreements with the Federal Trade Commission or the United States, or remedies imposed by a Federal court to resolve a proceeding brought under the antitrust laws regarding the acquisition, were effective in mitigating the anticompetitive effects from the acquisition.

(c) Information security.—The Commission shall ensure that data collected and maintained by the Office of Market Analysis and Data is kept secure and protected against unauthorized disclosure.

(d) Regulations.—The Commission may, under section 553 of title 5, United States Code, promulgate regulations relating to the collection and standardizing of data under subsection (b).

PART II—UNSTACKING COURT RESTRAINTS

SEC. 1161. UNSTACKING NEW YORK V. META PLATFORMS.

(a) Amendment.—Section 4C of the Clayton Act (15 U.S.C. 15c) is amended by adding at the end the following:

"(e) Timeliness of actions brought by State attorneys general.—

"(1) An action brought by a State attorney general under this section shall not be dismissed or limited on the basis of laches, acquiescence, or any other equitable doctrine premised solely on the passage of time.

"(2) For purposes of equitable defenses relating to timeliness, a State attorney general bringing an action under this section shall be treated in the same manner as the United States.

"(3) Nothing in this subsection shall be construed to alter any applicable statute of limitations expressly provided by law.".

(b) Rule of construction.—Nothing in this section shall be construed to expand or contract the substantive antitrust standards applicable to any action.

SEC. 1162. UNSTACKING AMG CAPITAL MANAGEMENT V. FTC.

(a) In general.—Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended—

(1) In subsections (a) and (b) to read as follows—

"(a) Power of Commission; jurisdiction of courts.—

"(1) Cause of action.—Whenever the Commission has reason to believe—

"(A) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title; and

"(B) that the enjoining thereof would be to the interest of the public, the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement.

"(2) Preliminary relief.—Upon proper showing a temporary injunction or restraining order shall be granted without bond pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title.

"(b) Temporary restraining orders; preliminary injunctions.—

"(1) Cause of action.—Whenever the Commission has reason to believe that any person, partnership, or corporation has violated, is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and that prohibiting or restraining such conduct would be in the interest of the public, the Commission may bring suit in a district court of the United States to enjoin any such act or practice.

"(2) Preliminary relief.—Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction shall be granted without bond, pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final. Relief under this subsection may be sought before, during, or after the initiation of an administrative proceeding under section 45.

"(3) Formal complaint required.—If no complaint is filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. The issuance or dissolution of a temporary restraining order or preliminary injunction shall not be construed to limit the authority of the court to grant permanent relief under this subsection.

"(4) Equitable relief.—In any action brought under this subsection, the court may grant, in addition to injunctive relief, any equitable relief necessary to redress violations of law enforced by the Federal Trade Commission, including restitution, disgorgement, refund of money, return of property, rescission or reformation of contracts, and any other relief the court determines appropriate to prevent unjust enrichment and to restore injured parties.

"(5) Limitations period.—

"(A) In general.—A court may not order equitable relief under this subsection with respect to any violation occurring before the period that begins on the date that is 10 years before the date on which the Commission files the suit in which such relief is sought.

"(B) Calculation.—For purposes of calculating the beginning of the period described in subparagraph (A), any time during which an individual against whom the equitable relief is sought is outside of the United States shall not be counted."; and

(2) by inserting at the end the following new subsection—

"(e) Proceedings.—

"(1) Any suit under this section may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28.

"(2) The court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought.

"(3) In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.".

(b) Applicability.—The amendments made by this section shall apply to any actions or proceedings that are pending on, or commenced on or after the date of enactment of this Act.

SEC. 1163. UNSTACKING BELL ATLANTIC V. TWOMBLY AND ASHCROFT V. IQBAL.

(a) In general.—The Clayton Act (15 U.S.C. 12 et seq.), as amended by this Act, is further amended by inserting after section 27A the following:

"Sec. 27B. Pleading in antitrust and competition actions.

"(a) Definitions.—In this section:

"(1) Antitrust laws.—The term 'antitrust laws' has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 applies to unfair methods of competition.

"(2) Covered action.—The term 'covered action' means any civil action in a United States district court arising under the antitrust laws.

"(b) Sufficiency of pleading.—A complaint in a covered action shall be sufficient if it sets forth a short and plain statement giving the defendant fair notice of the claim and the grounds upon which it rests. A complaint under this section need not plead evidentiary matter.

"(c) Sherman Act section 1 claims.—In a covered action arising under section 1 of the Sherman Act (15 U.S.C. 1), allegations of parallel conduct, together with factual allegations from which agreement may reasonably be inferred, shall be sufficient to state a claim. A complaint under this subsection need not exclude the possibility of independent action.

"(d) Construction.—In ruling on a motion to dismiss for failure to state a claim in a covered action, the court shall accept the factual allegations of the complaint as true and draw reasonable inferences in favor of the pleader. A complaint may not be dismissed on the ground that an alternative explanation appears more likely.

"(e) Other statutes.—Nothing in this section shall be construed to displace a heightened pleading standard expressly imposed by another Act of Congress.".

(b) Applicability.—Section 27B of the Clayton Act shall govern notwithstanding any judicial decision interpreting Rule 8(a)(2) or Rule 9(b) of the Federal Rules of Civil Procedure to impose a contrary pleading standard in a covered action.

SEC. 1164. UNSTACKING VOLVO TRUCKS V. REEDER-SIMCO.

The Robinson-Patman Act (15 U.S.C. 13), as amended by this Act, is further amended in subsection (a) by inserting at the end the following—

"(4) Competitive injury.—For purposes of paragraph (1)(C)(ii), competition may be shown by direct or circumstantial evidence and need not be shown by proof that a purchaser described in subparagraph (C)(ii)(I)(bb) and another purchaser competed for the same customer, the same bid, or the same transaction.".

SEC. 1165. UNSTACKING UNITED STATES V. BREWBAKER.

The Sherman Act (15 U.S.C. 1 et seq.) is amended by inserting after section 1 the following:

"Sec. 1A. Bid rigging in competitive bidding processes.

"(a) Definitions.—In this section:

"(1) Actual or potential competitor.—The term 'actual or potential competitor' means a person that submitted, could submit, or was reasonably capable of submitting an independent bid in the same competitive bidding process.

"(2) Bid.—The term 'bid' means a bid, proposal, quotation, offer, or other response submitted in a competitive bidding process.

"(3) Competitive bidding process.—The term 'competitive bidding process' means any process, whether conducted by a governmental entity or a private person, through which a contract, project, concession, license, franchise, supply arrangement, or other commercial opportunity is awarded, in whole or in part, on the basis of price or other material terms in response to bids.

"(4) Bid rigging.—The term 'bid rigging' means any agreement, arrangement, or understanding between 2 or more actual or potential competitors with respect to the same competitive bidding process to—

"(A) manipulate any material term of a bid;

"(B) refrain from seriously competing, including by not submitting a bid or submitting an intentionally noncompetitive bid;

"(C) allocate the award, customer, territory, or other commercial opportunity; or

"(D) otherwise manipulate the competitive bidding process in a manner that substantially lessens competition.

"(5) Teaming arrangement.—The term 'teaming arrangement' means an arrangement between 2 or more persons that—

"(A) is disclosed in writing to the soliciting entity prior to or simultaneously with the submission of a bid;

"(B) identifies the participants and the material terms of the arrangement; and

"(C) combines complementary capabilities or capacity in order to pursue the commercial opportunity at issue.

"(b) Unlawful conduct.—It shall be unlawful for any person to knowingly enter into, participate in, or carry out bid rigging.

"(c) Effect and enforcement.—A violation of subsection (b)—

"(1) shall be conclusively deemed an unreasonable restraint of trade under section 1;

"(2) shall constitute a violation of the antitrust laws;

"(3) shall constitute an unfair method of competition under section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)); and

"(4) shall not be defeated by the fact that parties to the bid-rigging agreement also stood in a vertical relationship to each other.

"(d) Safe harbor for qualifying teaming arrangements.—

"(1) In general.—A teaming arrangement shall not violate subsection (b) if—

"(A) the teaming arrangement was reasonably necessary to pursue or perform the commercial opportunity at issue;

"(B) the teaming arrangement was not used as a pretext to suppress, distort, or eliminate competition; and

"(C) the participants could not practicably compete independently in the same competitive bidding process.

"(2) Burden of proof.—The burden of establishing paragraph (1) shall be on the person asserting the applicability of such paragraph.".

SEC. 1166. UNSTACKING SPECTRUM SPORTS, INC. V. MCQUILLAN.

Section 2 of the Sherman Act (15 U.S.C. 2), as amended by this Act, is further amended by adding at the end the following:

"(c) Attempt to monopolize.—For purposes of subsection (a), a person shall be liable for attempt to monopolize if the person engages in predatory or exclusionary conduct with the specific intent to monopolize. Proof that the person had a dangerous probability of achieving monopoly power, proof of market share, or proof of a relevant market shall not be required.".

SEC. 1167. UNSTACKING MATSUSHITA ELECTRIC V. ZENITH RADIO.

Section 1 of the Sherman Act (15 U.S.C. 1) is amended—

(1) by striking "Every contract" and inserting "(a) Every contract"; and

(2) by adding at the end the following:

"(b) Summary judgment in civil actions.—In any civil action brought under this section in which the plaintiff alleges an agreement, combination, or conspiracy in restraint of trade—

"(1) the plaintiff shall not be required at the summary judgment stage to present evidence that tends to exclude the possibility of independent action; and

"(2) the court may not grant summary judgment merely because independent action is also plausible if the evidence, viewed in the light most favorable to the nonmoving party, permits a reasonable inference of concerted action.".

SEC. 1168. UNSTACKING CREDIT SUISSE SECURITIES V. BILLING.

The Clayton Act (15 U.S.C. 12 et seq.), as amended by this Act, is further amended by inserting after section 27B the following:

"Sec. 27C. Limitations on implied immunity from the antitrust laws.

"(a) Definitions.—In this section, the term 'antitrust laws' has the meaning given such term in section 1(a) of this Act, except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

"(b) In general.—In any action or proceeding to enforce the antitrust laws with respect to conduct that is regulated under Federal statute, no court or adjudicatory body may find that the Federal statute, or any rule or regulation promulgated in accordance with the Federal statute, implicitly precludes application of the antitrust laws to the conduct unless—

"(1) a Federal agency or department actively regulates the conduct under the Federal statute;

"(2) the Federal statute does not include any provision preserving the claims or remedies under the applicable antitrust laws or under any area of law that includes the antitrust laws; and

"(3) Federal agency or department rules or regulations, adopted by rulemaking or adjudication, explicitly require or authorize the defendant to undertake the conduct.

"(c) Existing Federal regulation.—In any action or proceeding described in subsection (b), the antitrust laws shall be applied fully and without qualification or limitation, and the scope of the antitrust laws shall not be defined more narrowly on account of the existence of Federal rules, regulations, or regulatory agencies or departments, unless application of the antitrust laws is precluded or limited by—

"(1) an explicit exemption from the antitrust laws under a Federal statute; or

"(2) an implied immunity that satisfies the requirements of subsection (b).".

Subtitle F—Recognizing Advertising As a Net Negative in Society

SEC. 1171. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) Congress has long prohibited deceptive acts or practices and false advertisements in commerce, including under sections 45, 52, and 55 of title 15, United States Code;

(2) Congress has long recognized that certain forms of advertising may be restricted or prohibited when necessary to protect public health and welfare, including cigarette advertising over certain electronic media under section 1335 of title 15, United States Code;

(3) Congress has long recognized that outdoor advertising may be regulated to protect safety, recreational value, and natural beauty, including under section 131 of title 23, United States Code;

(4) the Federal tax code should not subsidize efforts to manipulate consumer attention, bias consumer judgment, or increase demand through persuasion rather than by lowering price, improving quality, or providing useful factual information;

(5) large-scale advertising imposes cognitive burdens on the public, contributes to distraction, intrudes into homes, streets, schools, and digital environments, and reduces the practical ability of individuals to avoid unwanted commercial influence;

(6) advertising that targets children and adolescents exploits developmental vulnerabilities and undermines the ability of parents and guardians to guide the development of minors without pervasive commercial interference;

(7) advertising of addictive products and services, including tobacco products, alcoholic beverages, gambling, and other products or services designated by rule, can impose substantial public health, financial, and social harms;

(8) undisclosed sponsorships, paid endorsements, product placements, and influencer promotions can conceal the commercial nature of a communication and mislead the public;

(9) when a commercial communication includes legally required disclosures, such disclosures should inform the public and should not operate as a loophole permitting the public subsidization of promotional advertising through the Federal tax code; and

(10) it is in the interest of the United States to reduce the volume of manipulative commercial advertising, to promote truthful and readily identifiable commercial communications, and to deny Federal tax subsidies for promotional expenditures.

(b) Purpose.—The purposes of this subtitle are—

(1) to deny Federal income tax deductions for advertising and promotional expenditures, except for certain narrowly defined factual nonpromotional communications;

(2) to reduce manipulative, misleading, and intrusive advertising practices;

(3) to protect children and adolescents from targeted and developmentally exploitative commercial influence;

(4) to ensure that commercial communications are truthful, identifiable, and supported by substantiation before dissemination;

(5) to provide effective remedies for misleading advertising, including corrective advertising sufficient to counteract residual false impressions; and

(6) to liberate the mental bandwidth of the American people from the heavy tax that constant advertisement places upon it.

SEC. 1172. NO DEDUCTION FOR ADVERTISING AND PROMOTION.

(a) Amendment to section 162.—Section 162 of the Internal Revenue Code of 1986 (26 U.S.C. 162) is amended by redesignating subsection (s) as subsection (t) and by inserting before subsection (t) the following:

"(s) Advertising and promotional expenditures.—

"(1) Definitions.—For purposes of this subsection:

"(A) Advertising expenditure.—The term 'advertising expenditure' means any amount paid or incurred for the creation or dissemination of a commercial communication intended to induce the purchase, lease, use, or favorable perception of any product, service, brand, business, trade name, or line of business, except that the term does not include any amount paid or incurred for a factual nonpromotional communication.

"(B) Factual nonpromotional communication.—The term 'factual nonpromotional communication' means a communication that—

"(i) is limited to 1 or more of the following:

"(I) the name, address, telephone number, email address, internet address, or hours of operation of a business;

"(II) the price, availability, objective quantity, objective dimensions, or objective technical specifications of a product or service;

"(III) a legal notice, safety warning, recall notice, operating instruction, ingredient list, label, or other disclosure expressly required by Federal, State, local, or Tribal law, or by order of a governmental authority;

"(IV) a notice regarding a job opening, procurement opportunity, or request for bids;

"(V) a communication on the premises where a product or service is offered for sale that merely identifies the business or product and states price or availability; or

"(VI) such other categories of purely factual nonpromotional communication as the Secretary may provide by regulation, in consultation with the Federal Trade Commission; and

"(ii) does not include any communication that includes—

"(I) a slogan, tagline, or brand-enhancement message;

"(II) a comparative, superiority, or preference claim;

"(III) an emotional, fear-based, or aspirational appeal;

"(IV) an endorsement, testimonial, celebrity appearance, mascot, fictional character, or influencer content;

"(V) an inducement to purchase, other than purely factual purchase instructions; or

"(VI) any other content the principal purpose of which is to persuade rather than to inform.

"(2) In general.—No deduction shall be allowed under subsection (a) for any advertising expenditure.

"(3) No alternative recovery.—No amount for which a deduction is disallowed under this subsection may be capitalized or otherwise recovered through amortization, depreciation, cost of goods sold, basis adjustment, or any other provision of this title, except to the extent expressly provided by the Secretary by regulation.

"(4) Recordkeeping.—Each taxpayer claiming that an amount was paid or incurred for a factual nonpromotional communication shall maintain such books and records as the Secretary may require, including copies of communications, contracts, invoices, and such other information as the Secretary determines appropriate.

"(5) Regulations.—The Secretary shall prescribe such regulations and other guidance as are necessary or appropriate to carry out this subsection, including regulations—

"(A) to prevent avoidance through related parties, pass-through entities, bundling, allocation, recharacterization, barter arrangements, or foreign affiliates;

"(B) to coordinate this subsection with sections 263, 263A, 274, and 482;

"(C) to provide rules for allocating amounts in the case of mixed-purpose contracts or integrated campaigns; and

"(D) to provide simplified safe harbors for small businesses.".

(b) Effective date.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2026.

SEC. 1173. TRUTH IN ADVERTISING, RECORDKEEPING, AND CORRECTIVE REMEDIES.

(a) In general.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 15 (15 U.S.C. 55) the following:

"Sec. 15A. Truthful, identified, substantiated, and nonabusive advertising.

"(a) Definitions.—For purposes of this section:

"(1) Advertisement.—The term 'advertisement' means any commercial communication, other than labeling, disseminated by any means in or affecting commerce for the purpose of inducing, or likely to induce, directly or indirectly, the purchase, lease, use, or favorable perception of any product, service, brand, business, trade name, or line of business.

"(2) Clearly and conspicuously.—The term 'clearly and conspicuously' means in a manner that is difficult to miss, readily understandable by an ordinary consumer, and presented in such form, timing, place, and manner as the Commission may require by rule.

"(3) Material connection.—The term 'material connection' means any financial or other relationship that a reasonable consumer would consider important in evaluating the credibility, independence, or weight of a representation.

"(4) Substantiation.—The term 'substantiation' means competent and reliable evidence sufficient, in light of the nature of the claim, the product or service, the benefits or consequences represented, and the audience to whom the advertisement is directed, to support an express or implied factual claim at the time such advertisement is first disseminated.

"(b) Unlawful acts or practices.—It shall be unlawful for any person to disseminate or cause to be disseminated in or affecting commerce any advertisement that—

"(1) contains an untrue statement of a material fact;

"(2) omits a material fact necessary in order to make a representation, in light of the circumstances under which the representation is made, not misleading;

"(3) contains an express or implied factual claim for which the advertiser lacked substantiation before first dissemination;

"(4) fails clearly and conspicuously to identify the person on whose behalf the advertisement is disseminated;

"(5) is formatted, styled, or presented in a manner likely to cause a reasonable consumer to mistake the advertisement for independent news, editorial, entertainment, search results, user-generated content, or other noncommercial content, unless the advertisement clearly and conspicuously discloses that it is an advertisement;

"(6) includes an endorsement, testimonial, review, product placement, influencer promotion, sponsored content, or other promotional content for which a material connection has not been clearly and conspicuously disclosed;

"(7) materially misrepresents that a review, endorsement, or testimonial reflects the independent opinion or experience of a person other than the advertiser or a person acting on behalf of the advertiser; or

"(8) employs a format, design, or representation the principal purpose or foreseeable effect of which is to defeat, obscure, or evade a disclosure required by this section.

"(c) Affirmative defense for certain disseminators.—

"(1) In general.—It shall be an affirmative defense to a violation of subsection (b) for a person that sells, places, transmits, distributes, publishes, or materially amplifies an advertisement on behalf of another person that—

"(A) before the first dissemination of the advertisement or campaign, obtained the certification required under subsection (d)(1);

"(B) did not create, develop, or materially alter the representation, claim, or disclosure at issue; and

"(C) did not have actual knowledge that the advertisement or campaign failed to comply with this section.

"(2) Inapplicability.—Paragraph (1) shall not apply to a person described in such paragraph if such person—

"(A) materially assisted in the creation or development of an untrue or misleading representation;

"(B) knew that a required disclosure was omitted, obscured, or defeated; or

"(C) disseminated the advertisement or campaign after acquiring actual knowledge that the advertisement or campaign failed to comply with this section.

"(d) Certification.—

"(1) Advertiser certification.—Before the first dissemination of an advertisement or advertising campaign, the advertiser shall provide to each person that sells, places, transmits, distributes, publishes, or materially amplifies the advertisement on behalf of the advertiser a written certification, signed by a natural person authorized to bind the advertiser, stating that—

"(A) the advertiser has reviewed the advertisement or campaign;

"(B) the advertisement or campaign does not contain any untrue statement of a material fact;

"(C) the advertisement or campaign does not omit a material fact necessary to make the statements made, in light of the circumstances under which such statements are made, not misleading;

"(D) the advertiser possessed substantiation for each express or implied factual claim at the time of first dissemination; and

"(E) the advertisement or campaign complies with the sponsor-identification and material-connection disclosure requirements of this section.

"(2) Campaign variants.—A single certification may cover substantially similar variants within the same advertising campaign if the differences among such variants do not materially alter an express or implied claim, a required disclosure, or the target audience.

"(e) Treatment under this Act.—A violation of this section, including a failure to provide a certification required under subsection (d), shall constitute an unfair, deceptive, or abusive act or practice in or affecting commerce within the meaning of section 45(a)(1) of this title.

"(f) Rules.—The Commission may promulgate such rules as are necessary or appropriate to carry out this section, including rules establishing standardized disclosure formats, reasonable procedures for campaign-level certifications, and requirements adapted to evolving methods of dissemination.

"Sec. 15B. Corrective advertising, recordkeeping, and restorative remedies.

"(a) Covered violation.—For purposes of this section, the term 'covered violation' means a violation of sections 15A, 15B, 15C, or 15D, or of any rule promulgated under such sections.

"(b) Corrective advertising.—In any administrative proceeding under section 5(b) or any civil action brought by the Commission with respect to a covered violation, the Commission or the court, as applicable, may require the dissemination of corrective advertising or other public notification reasonably calculated to—

"(1) redress injury to consumers or other persons;

"(2) counteract lingering or residual misleading impressions caused by the covered violation; and

"(3) inform persons exposed to the advertisement of the truth.

"(c) Content and placement of corrective advertising.—Corrective advertising ordered under subsection (b) may require dissemination—

"(1) in the same or substantially similar media, format, language, geographic markets, and audience segments as the advertisement or campaign that gave rise to the covered violation;

"(2) with substantially similar prominence, placement, cadence, duration, and frequency; and

"(3) in an amount reasonably calculated to achieve not fewer than 3 times the estimated impressions or reach of the advertisement or campaign that gave rise to the covered violation, unless the Commission or the court finds that a different amount is necessary to redress injury and counteract lingering or residual misleading impressions.

"(d) Recordkeeping.—

"(1) Advertisers.—Each advertiser shall retain, for not less than 3 years after the last dissemination of an advertisement or campaign, 1 specimen copy of each substantially different advertisement or campaign and such records as are reasonably sufficient to establish—

"(A) the claims made;

"(B) the substantiation possessed at the time of first dissemination;

"(C) the dates and manner of dissemination;

"(D) the audience or targeting parameters;

"(E) the geographic scope;

"(F) the estimated impressions or reach;

"(G) the amounts paid or incurred; and

"(H) the identity of each person that sold, placed, or materially amplified the advertisement.

"(2) Disseminators.—Each person that sells, places, or materially amplifies an advertisement on behalf of another person shall retain, for not less than 3 years after the last dissemination of the advertisement or campaign—

"(A) the certification required by section 15A(d);

"(B) records sufficient to identify the advertiser;

"(C) the dates and manner of dissemination;

"(D) the audience or targeting parameters;

"(E) the geographic scope; and

"(F) the estimated impressions or reach attributable to such person.

"(3) Allocation by agreement.—2 or more persons subject to this subsection may allocate responsibility for maintaining records required under this subsection by written agreement, except that no such agreement shall relieve—

"(A) an advertiser of responsibility for maintaining substantiation records; or

"(B) a disseminator of responsibility for maintaining a certification required by section 15A(d).

"(e) Treatment under this Act.—A covered violation—

"(1) shall be treated as a violation of a rule promulgated under section 18 regarding unfair, deceptive, or abusive acts or practices; and

"(2) shall constitute an unfair, deceptive, or abusive act or practice in or affecting commerce within the meaning of section 5(a)(1).

"(f) Rules.—The Commission may promulgate such rules as are necessary or appropriate to carry out this section, including rules establishing standardized recordkeeping formats.

"(g) Other relief preserved.—The remedies provided by this section are in addition to, and not in lieu of, any other remedy or authority available to the Commission or a court under this Act or any other provision of law.".

(b) Corrective advertising under section 19.—Section 19(b) of the Federal Trade Commission Act (15 U.S.C. 57b(b)), as amended by this Act, is further amended by inserting ", corrective advertising, and corrective disclosures" after "and public notification".

(c) Conforming amendment.—The table of sections in section 1 of the Federal Trade Commission Act is amended by inserting after the item relating to section 15 the following:

"15A. Truthful, identified, substantiated, and nonabusive advertising.

"15B. Corrective advertising, recordkeeping, and restorative remedies.".

(d) Effective date.—The amendments made by this section shall take effect on January 1, 2027.

SEC. 1174. RESTRICTING ADVERTISING OF ADDICTIVE PRODUCTS AND SERVICES.

(a) In general.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended by this Act, is further amended by inserting after section 15B the following:

"Sec. 15C. Special restrictions on advertising of covered addictive products and services.

"(a) Definitions.—For purposes of this section:

"(1) Advertisement.—The term 'advertisement' has the meaning given such term in section 15A(a)(1) and includes any public sponsorship, naming rights arrangement, or other public display of a brand, product, service, or trade name in connection with any athletic, musical, artistic, social, or cultural event, venue, team, league, or program.

"(2) Covered addictive product or service.—The term 'covered addictive product or service' means—

"(A) a tobacco product, as defined in section 201(rr) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr));

"(B) an alcoholic beverage, as defined in section 214(1) of title 27, United States Code;

"(C) any gambling product or service, including—

"(i) any bet or wager, as defined in section 5362(1) of title 31, United States Code;

"(ii) any lottery;

"(iii) any gambling service or gambling establishment, as defined in section 1955 of title 18, United States Code;

"(iv) any account, platform, service, or other arrangement used to place, receive, facilitate, offer, market, or settle gambling activity, whether or not such activity constitutes a bet or wager within the meaning of clause (i); and

"(v) any prediction market, as defined in section 1601 of title 26, United States Code;

"provided that the term does not include the purchase or sale of securities, any contract of insurance or indemnity, or any deposit or other transaction with an insured depository institution; and

"(D) any other product or service designated by the Commission by rule, in consultation with the Secretary of Health and Human Services, the Secretary of the Treasury, and the Attorney General, upon a finding that such product or service presents a substantial risk of addiction, compulsive use, or comparable public health, financial, or social harm.

"(3) Lawful minimum age.—The term 'lawful minimum age' means the minimum age applicable to the purchase or use of the covered addictive product or service under Federal, State, local, or Tribal law.

"(4) Naming rights arrangement.—The term 'naming rights arrangement' means any contract, license, sponsorship, or other arrangement under which the name of—

"(A) the brand name, trade name, trademark, or product name of a covered addictive product or service; or

"(B) any person for which not less than 50 percent of gross revenue is attributable to the manufacture, distribution, sale, or facilitation of covered addictive products or services,

"is used in the name of, or is publicly displayed as part of the name of, any event, venue, team, league, or program.

"(5) Point-of-sale factual communication.—The term 'point-of-sale factual communication' means a communication limited to the identity of the product or service, the seller, the price, availability, lawful age restrictions, and disclosures expressly required by Federal, State, local, or Tribal law that is—

"(A) located on the physical premises where a covered addictive product or service is lawfully offered; or

"(B) on an internet site, application, account page, or similar digital location owned or controlled by the seller or manufacturer and intentionally accessed by a person.

"(6) Targeted advertising.—The term 'targeted advertising' means dissemination of an advertisement selected for a specific person or audience on the basis of personal data, behavioral data, geolocation data, inferred interests, demographic characteristics, or prior online or offline activity, other than—

"(A) contextual placement based solely on the content of the page, application, or service then being viewed; or

"(B) ordinary physical placement of a non-digital advertisement in a geographic location not selected on the basis of personal data or inferences about identified or reasonably identifiable persons or audiences.

"(b) Prohibition.—Except as provided in subsection (c), it shall be unlawful for any person to disseminate or cause to be disseminated in or affecting commerce—

"(1) to the general public, any advertisement for a covered addictive product or service; or

"(2) by means of targeted advertising, any advertisement for a covered addictive product or service.

"(c) Exceptions.—Subsection (b) shall not apply to—

"(1) a point-of-sale factual communication;

"(2) a label, package, insert, medication guide, patient information, or other disclosure expressly required by Federal, State, local, or Tribal law;

"(3) a communication directed solely to manufacturers, wholesalers, distributors, retailers, or other professional or commercial intermediaries and not disseminated to the general public;

"(4) a communication made available by the manufacturer or seller on an internet site, application, account page, or similar digital location owned or controlled by such manufacturer or seller if—

"(A) access is reasonably designed to be limited to persons who have attained the lawful minimum age;

"(B) the communication is not disseminated through paid placement, paid amplification, or targeted advertising; and

"(C) the communication otherwise complies with this section and section 15A; or

"(5) a response to a direct inquiry initiated by a person who has attained the lawful minimum age, if the response is provided directly to that person and is not further disseminated to the general public.

"(d) No preemption of stricter law.—Nothing in this section shall be construed to preempt or limit any Federal, State, local, or Tribal law that provides greater restrictions against the advertising of covered addictive products or services.

"(e) Relation to other authority.—Nothing in this section shall be construed to limit any authority of the Secretary of Health and Human Services, the Secretary of the Treasury, the Federal Communications Commission, the Attorney General, or any other Federal agency under any other provision of law.

"(f) Treatment under this Act.—A violation of this section shall constitute an unfair, deceptive, or abusive act or practice in or affecting commerce within the meaning of section 5(a)(1) of this Act.

"(g) Rules.—The Commission shall promulgate such rules as are necessary or appropriate to carry out this section, including rules to prevent evasion through affiliates, indirect compensation, data sharing, common branding, or nominally unpaid promotion.".

(b) Existing contracts contrary to public policy.—Any contract or arrangement in effect on the date of enactment of this Act that requires or authorizes conduct prohibited by section 15C of the Federal Trade Commission Act, as added by subsection (a), including any naming rights arrangement within the meaning of section 15C(a)(4) of such Act, shall be contrary to public policy, unlawful, and unenforceable on and after January 1, 2027.

(c) Conforming amendment.—The table of sections in section 1 of the Federal Trade Commission Act, as amended by this Act, is further amended by inserting after the item relating to section 15B the following:

"15C. Special restrictions on advertising of covered addictive products and services.".

(d) Effective date.—The amendments made by this section shall take effect on January 1, 2027.

SEC. 1175. PROHIBITION ON DIRECT-TO-CONSUMER PRESCRIPTION DRUG ADS.

(a) Findings and purpose.—

(1) It is the purpose of Congress by this section to prohibit direct-to-consumer advertising of prescription drugs, and Congress finds the following:

(A) Prescription drugs are available only by prescription because their use requires the supervision of a licensed health care professional and because consumers are generally not positioned to evaluate their risks, contraindications, appropriateness, or comparative clinical value without professional judgment;

(B) direct-to-consumer advertising of prescription drugs is permitted in only a tiny number of countries and is inconsistent with the ordinary understanding that prescription drugs should be selected on the basis of clinical need rather than mass-market persuasion; and

(C) the growth of direct-to-consumer broadcast advertising of prescription drugs in the United States followed regulatory and guidance changes that allowed such advertisements to rely on abbreviated risk presentation and adequate provision for dissemination of approved labeling, rather than requiring the full brief summary to be presented in the advertisement itself.

(2) Congress further finds that, because implementation of such a prohibition may be delayed by litigation or court order, reversing the regulatory and guidance changes is a prompt and practical method for restoring the prescription drug advertising landscape to its more pastoral pre-1997 setting.

(b) In general.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amended by adding at the end the following:

"(hh) (1) If it is a drug approved under section 505 or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), and subject to section 503(b)(1), and the holder of the approved application under section 505 or of the license under such section 351 has conducted direct-to-consumer advertising of the drug within the most recent 30-day period.

"(2) For purposes of this section, the term 'direct-to-consumer advertising', with respect to a drug subject to section 503(b)(1), means any promotional communication targeting consumers, including through television, radio, print media, digital platforms, and social media, for purposes of marketing such a drug.".

(c) Full brief summary required for consumer-directed broadcast advertisements.—Section 502(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) is amended—

(1) in the first sentence—

(A) by striking "published direct-to-consumer advertisements the following statement printed in conspicuous text" and inserting "direct-to-consumer advertising includes the following statement, clearly and conspicuously presented";

(B) by striking "except that (A)" and inserting "provided that";

(C) by striking ", and (B)" and all that follows through "title 15"; and

(2) by striking the third and fourth sentences and inserting "In the case of direct-to-consumer advertising stating the name of the drug and its conditions of use, the brief summary relating to side effects, contraindications, and effectiveness shall be presented in a clear, conspicuous, unabridged, and neutral manner.".

(d) Withdrawal of inconsistent regulations and guidance.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall revise section 202.1 of title 21, Code of Federal Regulations, and shall withdraw the guidance entitled "Consumer-Directed Broadcast Advertisements Guidance for Industry", dated August 1999, and any successor

guidance, policy statement, or enforcement policy, to the extent such regulation, guidance, policy statement, or enforcement policy is inconsistent with subsection (c). Pending completion of such revision or withdrawal, any such inconsistent provision shall have no force or effect.

(e) Effective date.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply with respect to any drug approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), regardless of when the drug was approved or licensed.

SEC. 1176. OUTDOOR ADVERTISING AND DIGITAL BILLBOARD CONTROL.

(a) In general.—Subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new chapter:

"CHAPTER 50D—OFF-PREMISES ADVERTISING STRUCTURES.

"SEC. 5000I. Definitions.

"SEC. 5000J. Imposition of tax.

"Sec. 5000I. Definitions.

"(a) Definitions.—For purposes of this chapter:

"(1) Airplane banner.—The term 'airplane banner' means any advertising sign, banner, or similar display towed or otherwise displayed from an aircraft, and visible from the ground by members of the public.

"(2) Airplane banner hour.—The term 'airplane banner hour' means each 60-minute period or fraction thereof during which an airplane banner is displayed.

"(3) Airship advertising display.—The term 'airship advertising display' means any sign, banner, screen, or other advertising display affixed to, integrated into, or otherwise displayed by a blimp, balloon, or similar lighter-than-air craft and visible from the ground by members of the public.

"(4) Airship advertising display day.—The term 'airship advertising display day' means each calendar day or fraction thereof during which an airship advertising display is displayed.

"(5) Compliant digital advertising display.—The term 'compliant digital advertising display' means—

"(A) in the case of an off-premises advertising structure subject to section 131(u) of title 23, United States Code, a digital advertising display operated in compliance with such section; and

"(B) in the case of any other taxable advertising display, a digital advertising display that—

"(i) displays only fixed messages, each of which remains unchanged for not less than 6 seconds;

"(ii) does not use animation, scrolling, flashing, intermittent lighting effects, moving imagery, or full-motion video;

"(iii) automatically adjusts brightness in response to ambient light and is not operated at a brightness that causes glare or otherwise interferes with safe travel; and

"(iv) defaults to a single static message or a dark screen if the display malfunctions.

"(6) Digital advertising display.—The term 'digital advertising display' means any taxable advertising display that uses electronic, digital, LED, LCD, projection, or similar technology to display or change text, images, or other visual matter.

"(7) Directional sign.—The term 'directional sign' means a sign that provides only directional, distance, or location information concerning a place or facility and does not contain promotional advertising matter other than the name, logo, or identifying information of such place or facility.

"(8) Display face.—The term 'display face' means each separately viewable side, surface, screen, panel, banner face, or other distinct area on which an advertising message is displayed or may be displayed, but does not include any areas used for self-promotion by the owner.

"(9) Illuminated.—The term 'illuminated' means equipped with artificial lighting, whether internal or external, that makes a display face or message visible under conditions of darkness or reduced natural light, but does not include navigation, marker, or other safety lighting required by law that does not illuminate or form part of the advertising message.

"(10) Mobile advertising display.—The term 'mobile advertising display' means any vehicle, trailer, or other mobile device used in commerce to display advertising visible from a public right-of-way, but does not include a vehicle or trailer used for self-promotion.

"(11) Mobile advertising half-day.—The term 'mobile advertising half-day' means each 240-minute period or fraction thereof during which a mobile advertising display is operated in commerce and visible from a public right-of-way.

"(12) Mobile or airborne advertising display.—The term 'mobile or airborne advertising display' means a mobile advertising display, airplane banner, or airship advertising display.

"(13) Noncompliant digital advertising display.—The term 'noncompliant digital advertising display' means any digital advertising display that is not a compliant digital advertising display.

"(14) Off-premises advertising structure.—The term 'off-premises advertising structure' means any fixed sign, display, billboard, screen, panel, or similar structure or device designed, intended, or ordinarily used in commerce to display advertising visible from a public right-of-way, but does not include—

"(A) an on-premises sign;

"(B) an official sign or notice;

"(C) a directional sign; or

"(D) a sign advertising the sale or lease of the real property on which the sign is located.

"(15) Official sign or notice.—The term 'official sign or notice' means a sign or notice erected or required by a Federal, State, local, or Tribal government, or by a public utility, for traffic control, safety, public information, or other governmental or quasi-governmental purposes.

"(16) On-premises sign.—The term 'on-premises sign' means a sign located on the same premises as the establishment, activity, goods, or services to which the sign relates and that identifies the establishment or advertises activities conducted on, or goods produced, sold, or services rendered on, the property on which the sign is located, but does not include a noncompliant digital advertising display.

"(17) Owner.—The term 'owner' means the person operating a taxable advertising display in commerce.

"(18) Public right-of-way.—The term 'public right-of-way' means any road, street, highway, sidewalk, trail, transit way, or other right-of-way open to public travel.

"(19) Self-promotion.—The term 'self-promotion' means an advertisement for goods or services, which may contain a business name, logo, and other identifying information of the owner or affiliate, which is displayed—

"(A) on a vehicle engaged in facilitating the provision of such advertised goods or services; or

"(B) by an on-premises sign.

"(20) Taxable advertising display.—The term 'taxable advertising display' means an off-premises advertising structure or a mobile or airborne advertising display.

"(21) Taxable display area.—

"(A) In general.—The term 'taxable display area' means the total number of square feet, or fraction thereof, of all display faces of an off-premises advertising structure, determined by multiplying the greatest height by the greatest width of each display face and aggregating such amounts for all such faces, whether or not the same message is displayed on more than 1 face.

"(B) Temporary disuse or exempt content disregarded.—The taxable display area shall not be reduced because, during any period, 1 or more display faces are blank or display noncommercial content, official notices, or advertising the availability of the off-premises advertising structure.

"(C) Structural changes.—If permanent changes to an off-premises advertising structure increase or decrease the square footage calculated in subparagraph (A), the taxable display area for a taxable year shall be the calculation that results in the greatest taxable display area.".

"Sec. 5000J. Imposition of tax.

"(a) In general.—There is imposed on the owner of each taxable advertising display a tax for each calendar year equal to the product of—

"(1) the base rate determined under subsection (b);

"(2) the applicable quantity determined under subsection (c); and

"(3) the applicable multiplier determined under subsection (d).

"(b) Base rate.—For purposes of subsection (a), the base rate shall be—

"(1) $7.50, in the case of an off-premises advertising structure;

"(2) $60, in the case of a mobile advertising display;

"(3) $120, in the case of an airplane banner; and

"(4) $480, in the case of an airship advertising display.

"(c) Applicable quantity.—For purposes of subsection (a), the applicable quantity shall be—

"(1) the taxable display area, in the case of an off-premises advertising structure;

"(2) the number of mobile advertising half-days during the calendar year, in the case of a mobile advertising display;

"(3) the number of airplane banner hours during the calendar year, in the case of an airplane banner; and

"(4) the number of airship advertising display days during the calendar year, in the case of an airship advertising display.

"(d) Applicable multiplier.—For purposes of subsection (a), the applicable multiplier with respect to any taxable advertising display shall be—

"(1) 9.0, in the case of a noncompliant digital advertising display;

"(2) 4.5, in the case of a compliant digital advertising display;

"(3) 1.5, in the case of an illuminated taxable advertising display that is not a digital advertising display; or

"(4) 1.0, in any other case.

"(e) Proration for certain structures.—

"(1) In general.—In the case of an off-premises advertising structure placed in service or permanently removed from service during a calendar year, the tax imposed by this section with respect to such structure shall be prorated on a monthly basis under rules prescribed by the Secretary.

"(2) Transition rule.—In the case of an off-premises advertising structure permanently removed from service before July 1, 2027, no tax shall be imposed under this chapter for calendar year 2027 with respect to such structure.

"(f) Inflation adjustment.—

"(1) In general.—In the case of any calendar year beginning after 2027, each dollar amount in subsection (b) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2026' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

"(2) Rounding.—

"(A) In the case of the dollar amount in subsection (b)(1), the amount, after adjustment under paragraph (1), shall be rounded to the nearest multiple of $0.05.

"(B) In the case of the dollar amounts in paragraphs (2), (3), and (4) of subsection (b), each such amount, after adjustment under paragraph (1), shall be rounded to the nearest whole dollar.

"(3) Publication.—Not later than December 1 of each calendar year, the Secretary shall publish the dollar amounts applicable under subsection (b) for the following calendar year.

"(g) Regulations and anti-avoidance rules.—The Secretary shall prescribe such regulations or other guidance as are necessary or appropriate to carry out this section, including regulations or other guidance—

"(1) to prevent avoidance through the use of related persons, intermediaries, temporary shutdowns, nominal noncommercial content, short-term transfers, changes in classification, changes in display characteristics, or other arrangements intended to reduce liability under this chapter;

"(2) to provide equitable rules for the treatment of mobile advertising displays that are parked, left standing, stationed, or repeatedly repositioned in substantially the same location;

"(3) to provide rules for determining when multiple display faces, structures, vehicles, banners, or devices shall be treated as a single taxable advertising display or as separate taxable advertising displays;

"(4) to provide rules for determining the taxable display area of irregularly shaped display faces and structures with multiple display faces;

"(5) to provide rules coordinating this section with section 131(u) of title 23, United States Code, and with the definitions in section 5000I; and

"(6) to provide such recordkeeping, return filing, payment, and other administrative rules as the Secretary determines appropriate.".

(b) Clerical amendment.—The table of chapters for subtitle D of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Chapter 50D. Off-premises advertising structures.".

(c) Changeable electronic signs.—Section 131 of title 23, United States Code, is amended by adding at the end the following:

"(u) Changeable electronic signs.—

"(1) In general.—A changeable electronic sign, display, or device erected or maintained pursuant to subsection (d) shall be considered consistent with this section only if—

"(A) each message remains fixed for not less than 6 seconds;

"(B) the display does not use animation, scrolling, flashing, intermittent lighting effects, moving imagery, or full-motion video;

"(C) the display automatically adjusts brightness in response to ambient light and is not operated at a brightness that causes glare, impairs the vision of a driver, or otherwise interferes with the operation of a motor vehicle;

"(D) the display defaults to a single static message or a dark screen if the display malfunctions; and

"(E) the display otherwise complies with standards prescribed by the Secretary to protect the safety of the motoring public.

"(2) Rule of construction.—A changeable electronic sign, display, or device that complies with paragraph (1) shall not be treated as containing flashing, intermittent, moving, or animated light solely because it changes from one fixed message to another at intervals permitted under paragraph (1).".

(d) Effective date.—The amendments made by this section shall apply to calendar years beginning after December 31, 2026.

SEC. 1177. PROHIBITION ON ADVERTISING TO MINORS.

(a) In general.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended by this Act, is further amended by inserting after section 15C the following:

"Sec. 15D. Prohibition on advertising to minors.

"(a) Definitions.—For purposes of this section:

"(1) Advertisement.—

"(A) In general.—The term 'advertisement' means any commercial communication disseminated through covered media in or affecting commerce for the purpose of inducing, or attempting to induce, directly or indirectly, the purchase, lease, use, or favorable perception of any product, service, brand, business, trade name, or line of business.

"(B) Exceptions.—Such term does not include—

"(i) an individual's expression of personal opinion, experience, or play, unless such expression is—

"(I) disseminated on behalf of an advertiser; or

"(II) made in exchange for commercial consideration; or

"(ii) the mere identification of the name, trade name, trademark, logo, copyright notice, or other attribution of the publisher, developer, distributor, platform, owner, or creator of the covered media, unless such identification includes—

"(I) a product claim or comparative claim;

"(II) price information;

"(III) qualitative or promotional description, including a brand slogan; or

"(IV) a call to action, including any inducement to purchase or use a product or service.

"(2) Advertising designed to appeal primarily to minors.—The term 'advertising designed to appeal primarily to minors' means an advertisement intended or reasonably likely to appeal primarily to minors. Such determination shall be based on the totality of the circumstances, including the subject matter, visual and audio content, use of animation, language, age and appearance of characters, child-oriented activities or incentives, and use of celebrities or influencers who appeal to minors.

"(3) Blurred advertising.—The term 'blurred advertising' means an advertisement that is integrated into, disguised as, or otherwise not clearly separated from the underlying content and that is disseminated in exchange for commercial consideration, including a compensated influencer promotion, product placement, advertising presented in the form of a video, post, review, game, filter, or similar content, or any other disguised commercial content.

"(4) Child-directed advertising.—The term 'child-directed advertising' means—

"(A) advertising designed to appeal primarily to minors;

"(B) blurred advertising in child-directed content; or

"(C) any advertisement disseminated before, during, after, or adjacent to child-directed content, other than sponsorship identification.

"(5) Child-directed content.—The term 'child-directed content' means content disseminated through covered media that—

"(A) is identified by the platform or creator as directed primarily to minors or as made for children; or

"(B) based on the totality of the circumstances, including the subject matter, visual and audio content, use of animation, language, age and appearance of characters, child-oriented activities or incentives, and use of celebrities or influencers who appeal to minors, or other competent and reliable empirical evidence regarding the intended or actual audience, is directed primarily to minors.

"(6) Commercial consideration.—The term 'commercial consideration' means money, free products, discounts, revenue sharing, affiliate compensation, sponsorship, product placement consideration, or any other thing of value provided, directly or indirectly, in connection with the dissemination of content.

"(7) Covered media.—The term 'covered media' means audio, audiovisual, or interactive content disseminated by electronic means, including through broadcast television, cable television, satellite television, streaming services, internet sites, applications, social media services, video-sharing platforms, podcasts, games, or similar services or platforms.

"(8) Minor.—The term 'minor' means an individual under 17 years of age.

"(9) Sponsorship identification.—The term 'sponsorship identification' means a clearly and conspicuously disclosed acknowledgment that content was funded by, paid for by, or sponsored by a sponsor, if such acknowledgment—

"(A) is limited to the name or trade name of the sponsor and a brief nonpromotional statement of support;

"(B) does not include a product claim, comparative claim, price information, qualitative or promotional description, brand slogan, call to action, or inducement to purchase or use a product or service; and

"(C) is clearly separated from the surrounding content.

"(b) Prohibited acts.—It shall be unlawful for any person to disseminate, or cause to be disseminated, in or affecting commerce any child-directed advertising.

"(c) Treatment under this Act.—A violation of this section shall constitute an unfair, deceptive, or abusive act or practice in or affecting commerce within the meaning of section 5(a)(1) of this Act.

"(d) Rules.—The Commission shall promulgate such rules as are necessary or appropriate to carry out this section, including rules establishing disclosure, formatting, separation, and identification requirements for sponsorship identification and standards for determining when content constitutes blurred advertising, child-directed content, or advertising designed to appeal primarily to minors.

"(e) Rule of construction.—Nothing in this section shall be construed to authorize any targeted advertising, surveillance advertising, or use of personal information for advertising purposes that is otherwise prohibited by this Act or any other provision of law.".

(b) Conforming amendment.—The table of sections in section 1 of the Federal Trade Commission Act, as amended by this Act, is further amended by inserting after the item relating to section 15C the following:

"15D. Prohibition on advertising to minors.".

(c) Effective date.—The amendments made by this section shall take effect on January 1, 2027.

SEC. 1178. RULEMAKING, ENFORCEMENT, AND RELATION TO OTHER LAW.

(a) In general.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended by this Act, is further amended by inserting after section 15D the following:

"Sec. 15E. Enforcement by States.

"(a) Civil action.—In any case in which the attorney general of a State, or other authorized State officer, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person that violates section 15A, 15B, 15C, or 15D, or any rule promulgated under any such section, the attorney general of the State, or other authorized State officer, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

"(1) to enjoin the violation;

"(2) to enforce compliance with this Act;

"(3) to obtain damages, restitution, refunds, corrective advertising, public notification, or other compensation or relief authorized under this Act; and

"(4) to obtain civil penalties, if authorized by law.

"(b) Notice.—Before filing an action under subsection (a), the attorney general of a State, or other authorized State officer, shall provide written notice to the Commission and shall provide the Commission with a copy of the complaint to be filed, except that if prior notice is not feasible, the attorney general of the State, or other authorized State officer, shall provide such notice immediately upon instituting the action.

"(c) Intervention by Commission.—Upon receiving notice under subsection (b), the Commission shall have the authority—

"(1) to intervene in the action;

"(2) upon intervening, to be heard on all matters arising in the action; and

"(3) to file petitions for appeal.

"(d) Preservation of State powers.—Nothing in this section shall be construed—

"(1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred by the laws of that State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence; or

"(2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

"(e) Limitation during pendency of Federal action.—No separate action may be brought under this section during the pendency of an action by the Commission or the United States against the same defendant for the same violation.

"(f) Service of process.—In an action brought under subsection (a), process may be served in any district in which the defendant is an inhabitant or may be found.

"(g) Venue.—Any action brought under subsection (a) may be brought in any district court of the United States that meets the applicable requirements of section 1391 of title 28, United States Code.".

(b) Conforming amendment.—The table of sections in section 1 of the Federal Trade Commission Act, as amended by this Act, is further amended by inserting after the item relating to section 15D the following:

"15E. Enforcement by States.".

(c) FTC rulemaking procedure.—

(1) In general.—Rules promulgated by the Commission under section 15A(f), 15B(f), 15C(g), or 15D(d) of the Federal Trade Commission Act, as added by this subtitle, shall be promulgated in accordance with section 18 of such Act (15 U.S.C. 57a), as amended by this Act.

(2) Early rulemaking authorized.—The Commission may promulgate regulations and take such other administrative actions as are necessary to implement the amendments made by this subtitle before January 1, 2027, except that no such regulation shall take effect before January 1, 2027.

(d) Enforcement notwithstanding jurisdictional exclusions.—Notwithstanding section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)), the Commission is empowered and directed to enforce sections 15A through 15E of such Act, and any rule promulgated under any such section, with respect to any person subject to such sections.

(e) Relation to other law.—Nothing in sections 15A through 15E of the Federal Trade Commission Act, as added by this subtitle, or in this subtitle, shall be construed—

(1) to preempt or limit any Federal, State, local, or Tribal law that provides equal or greater protection against deceptive, manipulative, misleading, abusive, or intrusive advertising practices; or

(2) to limit any authority of the Secretary of Health and Human Services, the Secretary of the Treasury, the Federal Communications Commission, the Attorney General, the Secretary of Transportation, or any other Federal agency under any other provision of law.

(f) Effective date.—The amendments made by this section shall take effect on January 1, 2027.

Subtitle G—Refriendlying the Skies

SEC. 1181. PROHIBITION ON SURVEILLANCE-BASED PRICE SETTING BY AIR CARRIERS AND TICKET AGENTS.

(a) In general.—Section 41712 of title 49, United States Code, is amended by adding at the end the following:

"(d) Prohibition on surveillance-based price setting.—It shall be an unfair or deceptive practice under subsection (a) for an air carrier, foreign air carrier, or ticket agent to engage in surveillance-based price setting, as prohibited under section 1134 of the POPULIST Act.".

(b) No preemption of consumer protection claims.—Section 41713(b)(4) of title 49, United States Code, is amended by adding at the end the following:

"(D) No preemption of surveillance-based price setting claims.—Nothing in subparagraphs (A) through (C) may be construed—

"(i) to preempt, displace, or supplant any action for civil damages or injunctive relief based on a violation of section 1134 of the POPULIST Act; or

"(ii) to restrict the authority of any government entity, including a State attorney general, from bringing a legal claim on behalf of the residents of the State with respect to any such violation.".

SEC. 1182. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) In general.—Chapter 461 of title 49, United States Code, is amended by inserting after section 46107 the following:

"Sec. 46107A. Enforcement by State attorneys general.

"(a) In general.—Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in a district court of the United States against a person to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

"(b) Venue.—An action under this section may be brought in the judicial district in which the person against whom the action is brought does business or in which the violation occurred.

"(c) Relief.—In a civil action under this section, the court may grant all appropriate relief, including injunctive relief and civil penalties, as authorized under this part.

"(d) Notice.—Before filing an action under subsection (a), the attorney general of a State shall provide written notice to the Secretary and the Attorney General and shall provide each such official with a copy of the complaint to be filed, except that if prior notice is not feasible, the attorney general of the State shall provide such notice immediately upon instituting the action.

"(e) Intervention by United States.—Upon receiving notice under subsection (d), the United States may intervene as of right in the action. If the United States intervenes, the United States shall have the authority—

"(1) to be heard on all matters arising in the action; and

"(2) to file a petition for appeal.

"(f) Limitation during pendency of Federal action.—No separate action may be brought or maintained under this section during the pendency of an action by the Secretary or the United States against the same defendant for the same violation.

"(g) Federal certificates and permits.—In an action under this section, a court may not suspend, revoke, modify, or transfer a certificate or permit issued under this part, except that the court may enforce compliance with a requirement, order, or term of such certificate or permit and may grant any other relief authorized under subsection (c).".

(b) Clerical amendment.—The table of contents for chapter 461 of title 49, United States Code, is amended by inserting after the item relating to section 46107 the following:

"46107A. Enforcement by State attorneys general.".

SEC. 1183. PROMOTING COMPETITION IN AVIATION REGULATION.

(a) Promoting competition.—Section 40101(d) of title 49, United States Code, is amended by adding at the end the following new paragraph:

"(8) promoting competition.".

(b) Maintaining and enhancing competition in slot allocation.—Section 40103(b)(1) of title 49, United States Code, is amended by inserting "In doing so, the Administrator shall consider the need to maintain or enhance competition in the air transportation system." after "efficient use of airspace.".

(c) Ensuring reasonable access.—

(1) In general.—Section 47107(a)(1) of title 49, United States Code, is amended to read as follows:

"(1) the airport will be available for public use—

"(A) on reasonable conditions and without unjust discrimination; and

"(B) with the airport proprietor taking all practicable steps to accommodate requests for reasonable access (as defined in subsection (z)) to terminal facilities;".

(2) Standards for reasonable access.—Section 47107 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(z) Written assurances on lease agreements.—

"(1) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that, with respect to any airport serving 0.25 percent or more of the total annual enplanements in the United States (calculated on a rolling 5-year average) and with more than 50 percent of passengers (calculated on a rolling 5-year average) handled by 2 air carriers or fewer, the airport owner shall submit to the Secretary any proposed lease, lease amendment, or lease extension (including carryover provisions) for advance approval, as well as a statement detailing how such proposed lease, lease amendment, or lease extension maintains or enhances competition in the air transportation system.

"(2) In this section, the following definitions apply:

"(A) Common use.—The term 'common use' means nonexclusive use in common by air carriers and other duly authorized users of the airport.

"(B) Reasonable access.—The term 'reasonable access' means, with respect to terminal facilities, that—

"(i) not less than 25 percent of terminal facilities at an airport are available for common use; and

"(ii) not more than 50 percent of terminal facilities are reserved for exclusive use by a single air carrier.

"(C) Terminal facilities.—The term 'terminal facilities' means facilities within the terminal of an airport, including gates, ticket counters, baggage claim areas, and baggage make up system spaces.".

(d) Competition plans.—Section 40117(d) of title 49, United States Code, is amended—

(1) in paragraph (3), by striking "and";

(2) in paragraph (4), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) beginning in fiscal year 2027, in the case of an application for a terminal project, the project will provide for reasonable access (as defined in section 47107(z)) to terminal facilities.".

(e) Competition disclosure.—Section 47107(r) of title 49, United States Code, is amended by striking paragraph (3).

SEC. 1184. CODIFICATION OF CERTAIN RULES RELATING TO AIRLINES.

(a) Incorporation of specified regulations.—The provisions of the following final regulations promulgated by the Secretary of Transportation under section 41712 of title 49, United States Code, and related statutory authorities, as published in the Federal Register, are incorporated into this Act and shall be treated as though such provisions are set forth in this subsection:

(1) The final rules entitled "Refunds and Other Consumer Protections," published in the Federal Register on April 26, 2024 (89 Fed. Reg. 32760) and August 12, 2024 (89 Fed. Reg. 65534).

(2) The final rule entitled "Clarification of Formal Enforcement Procedures for Unfair and Deceptive Practices," published in the Federal Register on June 16, 2023 (88 Fed. Reg. 39352).

(3) The final rule entitled "Defining Unfair or Deceptive Practices," published in the Federal Register on December 7, 2020 (85 Fed. Reg. 78707).

(4) The final rule entitled "Enhancing Transparency of Airline Ancillary Service Fees," published in the Federal Register on April 30, 2024 (89 Fed. Reg. 34620).

(5) The final rule entitled "Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs," published in the Federal Register on December 17, 2024 (89 Fed. Reg. 102398).

(b) Effect of incorporation.—The regulations incorporated under subsection (a) may be altered only by means of an Act of Congress. To the extent that any provision of such regulations does not conform to any other statutory provision of law enacted before the date of enactment of this Act, the provisions of this Act shall govern.

(c) Definition of regulation.—In this section, the term "regulation" means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by any officer or employee of the executive branch.

(d) (1) Requirement to issue final rule.—Not later than June 30, 2027, the Secretary of Transportation shall publish in the Federal Register a final rule addressing the subject matter of the proposed rule titled "Airline Passenger Rights," published in the Federal Register on December 11, 2024 (89 Fed. Reg. 99760), including provisions to ensure that passengers experiencing significant flight disruptions receive clear, prompt, and adequate compensation, rebooking, amenities, information, and other protections. Such final rule shall define the classes of disruptions covered, a schedule of minimum compensation obligations, and procedures for claim submission and payment.

(2) Procedure.—In promulgating the final rule under paragraph (1), the Secretary shall consider the comments previously submitted to docket number DOT-OST-2024-0062 and any additional comments received on or after the date of enactment of this Act, and ensure that the final rule is consistent with the statutory authority provided by title 49, United States Code.

SEC. 1185. SEATING YOUNG CHILDREN ADJACENT TO AN ADULT PASSENGER.

(a) In general.—Subchapter I of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

"Sec. 41730. Seating young children adjacent to an accompanying adult on aircraft.

"(a) Definitions.—In this section:

"(1) Accompanying adult.—The term 'accompanying adult' means an individual age 14 or older on the date of scheduled departure who is on the same reservation record as a young child.

"(2) Adjacent.—The term 'adjacent' means next to in the same row of the aircraft and not separated by an aisle.

"(3) Available.—The term 'available', when used with respect to seats or seat assignments, means capable of assignment by the carrier without upgrading class of service and without displacing another passenger with an assigned seat.

"(4) Class of service.—The term 'class of service' means first class, business class, premium economy, or general economy, including basic economy.

"(5) No additional cost.—The term 'no additional cost' means no added charge beyond the fare.

"(6) Young child.—The term 'young child' means an individual age 13 or under on the date of scheduled departure.

"(b) General requirement.—

"(1) An air carrier or foreign air carrier that assigns seats, or allows individuals to select seats, in advance of the date of departure of a flight shall seat each young child adjacent to an

accompanying adult, provided that adjacent seat assignments are available and an exception in subsection (f) does not apply.

"(2) An air carrier or foreign air carrier that does not assign seats or allow individuals to select seats in advance of the date of departure shall board passengers in a manner that ensures each young child is seated adjacent to an accompanying adult, provided that an exception in subsection (f) does not apply.

"(3) An air carrier or foreign air carrier may not charge a fee or impose additional cost to seat a young child adjacent to an accompanying adult within the same class of service.

"(4) Every class of service offered by an air carrier or foreign air carrier shall allow for seating of a young child adjacent to an accompanying adult.

"(5) An air carrier or foreign air carrier may not limit the availability of adjacent seats in a manner that results in an undue burden on the ability of a young child to receive an advance seat assignment adjacent to an accompanying adult.

"(c) Additional requirements for advance seating.—

"(1) An air carrier or foreign air carrier that assigns seats or allows individuals to select seats at the time of booking shall, not later than 48 hours after issuance of a ticket for each young child—

"(A) provide a seat assignment adjacent to an accompanying adult at no additional cost, if available; or

"(B) if not available, provide the accompanying adult a choice between—

"(i) a full refund of all tickets on the reservation; or

"(ii) waiting for adjacent seat assignments.

"(2) If adjacent seat assignments do not become available before boarding, the carrier shall, at the choice of the accompanying adult—

"(A) rebook the reservation on the next available flight at no additional cost; or

"(B) transport the passengers on the original flight in non-adjacent seats, if seats are available.

"(d) Remedies for violation.—An air carrier or foreign air carrier that violates subsection (b) or (c) shall, at the choice of the accompanying adult—

"(1) rebook the reservation on the next available flight at no additional cost;

"(2) provide a full refund of all tickets on the reservation and return transportation to the origination airport if applicable; or

"(3) transport the passengers on the original flight in non-adjacent seats, if seats are available.

"(e) Applicability.—The requirements of this section apply to each scheduled flight segment to or from any airport in the United States.

"(f) Exceptions.—Subsections (b) and (c) shall not apply to the extent that—

"(1) the young child does not have an accompanying adult;

"(2) the accompanying adult declines an adjacent seat offered at no additional cost;

"(3) aircraft configuration makes compliance impossible; or

"(4) an exception established by final rule of the Secretary applies.

"(g) Regulations.—The Secretary may issue regulations to implement this section.".

(b) Clerical amendment.—The analysis of chapter 417 of title 49, United States Code, is amended by inserting after the item relating to section 41729 the following:

"41730. Seating young children adjacent to an accompanying adult on aircraft.".

(c) Effective date.—Section 41730 of title 49, United States Code, as added by subsection (a), shall take effect on January 1, 2027.

(d) Repeal of FAA Extension, Safety, and Security Act of 2016 family seating provision.—Section 2309 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 42301 note) is repealed.

SEC. 1186. LIMITATIONS ON AIR CARRIER CONCENTRATION AT AIRPORTS.

(a) In general.—Subchapter I of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

"Sec. 41731. Limitations on excessive air carrier concentration at covered airports.

"(a) Covered airports.—In this section, the term 'covered airport' means an airport that—

"(1) accounts for not less than 1 percent of total annual passenger enplanements in the United States, calculated on a rolling 3-year average; or

"(2) is designated by the Secretary of Transportation as a high-concentration airport based on market dominance by 1 or more air carriers.

"(b) Concentration limitation.—Except as provided in subsection (d), it shall be unlawful for an air carrier, together with any affiliate, to operate more than 30 percent of the aggregate number of scheduled departures from and scheduled arrivals at a covered airport during any calendar year.

"(c) Measurement.—For purposes of subsection (b), the aggregate number of scheduled departures and arrivals shall be measured using publicly reported schedule data filed with the Department of Transportation, as determined by the Secretary.

"(d) Transition and waivers.—

"(1) Initial transition waiver.—The Secretary may, on a case-by-case basis and for good cause shown, waive the application of subsection (b) with respect to a covered airport until a

date not later than July 1, 2028, if the Secretary determines that additional time is necessary to permit the orderly implementation of this section. A waiver under this paragraph shall require a written compliance plan and may not be renewed or extended beyond July 1, 2028.

"(2) Essential air service waiver.—The Secretary may grant a temporary waiver of subsection (b) for a period not to exceed 2 calendar years, if the Secretary determines that—

"(A) compliance would result in significant harm to essential air service; and

"(B) the waiver includes enforceable conditions to promote entry by competing carriers.

"(3) Renewal limitation.—No waiver under paragraph (2) may be renewed more than once.

"(e) Enforcement.—A violation of this section constitutes an unfair method of competition for purposes of section 41712 of this title.

"(f) Regulations.—Not later than July 1, 2027, the Secretary shall issue regulations to carry out this section, including regulations addressing divestiture, schedule adjustments, and slot reallocation.".

(b) Clerical amendment.—The analysis of chapter 417 of title 49, United States Code, is amended by inserting after the item relating to section 41730 the following:

"41731. Limitations on excessive air carrier concentration at covered airports.".

(c) Effective date.—Except as provided in the following sentence, this section shall take effect on January 1, 2028. Subsection (f) of section 41731 of title 49, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act.

Subtitle H—Fair Franchise Relationships

SEC. 1191. SHORT TITLE, FINDINGS, AND PURPOSE.

(a) Short title.—This subtitle may be cited as the "Fair Franchise Relationships Act".

(b) Findings.—Congress finds the following:

(1) Franchise businesses represent a large and growing segment of the Nation's retail and service businesses and involve a joint enterprise between the franchisor and franchisees in which each party has a vested interest in the success of the franchised business.

(2) Prospective franchisees often lack bargaining power and invest substantial amounts of their own money, take loans that may be secured by their homes or retirement accounts or guaranteed by the Small Business Administration, and enter into long-term commercial leases and other obligations to support themselves and their families.

(3) Franchise agreements frequently reflect a profound imbalance of contractual power in favor of the franchisor and fail to give due regard to the legitimate business interests of the franchisee because the franchisor reserves one-sided and pervasive contractual authority over the franchise relationship. Franchise systems may also separate operational control from legal and financial responsibility, allowing a franchisor to prescribe the brand, methods, technology,

suppliers, fees, and other material conditions of the business while shifting capital costs, debt, and operating risk to franchisees.

(4) Franchisees may suffer substantial financial losses when a franchisor does not provide truthful or complete information regarding the franchise opportunity or does not act in good faith, with due care, or in a commercially reasonable manner in the performance of the franchise agreement. Mandatory sourcing requirements, undisclosed vendor payments, opaque advertising funds, excessive fees, territorial encroachment, arbitrary termination, and restraints on association or public discussion can further permit a franchisor to extract value from a franchisee without providing a corresponding benefit to the franchised business.

(5) Unlike an investment in securities, an investment in a franchise may lead to losses beyond the initial capital investment, and a franchisee generally cannot simply resign and leave the franchised business without substantial continuing liabilities. Traditional common-law doctrines and contractual remedies have not evolved sufficiently to protect franchisees from fraudulent or unfair practices in the sale and operation of franchise businesses.

(6) The Federal Government has a substantial interest in regulating franchising, protecting fair competition and honest trade, and ensuring that franchisors accept responsibility commensurate with the authority they possess or exercise within a franchise system.

(c) Purpose.—The purposes of this subtitle are—

(1) to promote fair business relations between franchisees and franchisors;

(2) to protect franchisees against deceptive sales practices, coercive contract terms, arbitrary treatment, and the abuse of superior economic and bargaining power, and to provide effective rights and remedies;

(3) to preserve and strengthen the ability of States to provide greater protection to franchisees; and

(4) to unstack franchise relationships by ensuring that economic and legal responsibility follows the authority and control exercised within a franchise system.

SEC. 1192. DEFINITIONS.

(a) Definitions.—In this subtitle:

(1) Affiliate.—The term "affiliate" has the meaning given the term in section 436.1(b) of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(2) Commission.—The term "Commission" means the Federal Trade Commission.

(3) Disclosure document.—The term "disclosure document" means the disclosure document required under part 436 of title 16, Code of Federal Regulations, or an offering format allowed or required by State or local law.

(4) Franchise.—The term "franchise" has the meaning given the term in section 436.1(h) of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act, but does not include a contract otherwise regulated by the Petroleum Marketing Practices Act (15 U.S.C.

2801 et seq.), except with respect to a franchise relationship that does not involve the sale of petroleum products.

(5) Franchise agreement.—The term "franchise agreement" means a contract or agreement, whether written or oral, that governs a franchise or any material aspect of a franchise relationship, including an agreement ancillary or collateral to a franchise.

(6) Franchise seller.—The term "franchise seller" has the meaning given the term in section 436.1(j) of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(7) Franchisee.—The term "franchisee" has the meaning given the term in section 436.1(i) of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(8) Franchisor.—The term "franchisor" has the meaning given the term in section 436.1(k) of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(9) Material; material fact.—The terms "material" and "material fact" include—

(A) a fact, circumstance, or set of conditions that a reasonable franchisee or prospective franchisee would consider important in making a significant decision relating to entering into, remaining in, transferring, renewing, or abandoning a franchise relationship; and

(B) a fact, circumstance, or set of conditions that has or may have a significant financial impact on a franchisor, franchisee, or prospective franchisee.

(10) Nonrenewal; nonrenew.—The terms "nonrenewal" and "nonrenew" mean that a franchisor fails or refuses to extend the franchisor-franchisee relationship at the end of the existing term of the franchise agreement, irrespective of whether the agreement contains a contractual renewal term.

(11) Offer; offering.—The terms "offer" and "offering" mean an effort to offer or dispose of, or a solicitation of an offer to buy, a franchise or an interest in a franchise for value.

(12) Outlet.—The term "outlet" means a point of sale, whether temporary or permanent, fixed or mobile, from which goods or services are offered for sale.

(13) Prospective franchisee.—The term "prospective franchisee" has the meaning given the term in section 436.1(r) of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(14) State.—The term "State" means a State, the District of Columbia, and any territory or possession of the United States.

(15) Trade secret.—The term "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that—

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SEC. 1193. FAIR FRANCHISE SALES AND DISCLOSURE.

(a) Fraudulent sales practices.—In connection with the advertising, offering, sale, or promotion of a franchise, it shall be unlawful for any person, directly or indirectly, to—

(1) employ a device, scheme, or artifice to defraud;

(2) engage in an act, practice, course of business, or pattern of conduct that operates or is intended to operate as a fraud upon a prospective franchisee; or

(3) obtain property, or assist another person to obtain property, by making an untrue statement of material fact or failing to state a material fact.

(b) Disclosure required.—Notwithstanding an exemption under section 436.8 of title 16, Code of Federal Regulations, a franchise seller shall furnish each prospective franchisee a disclosure document that complies with this subtitle and part 436 of title 16, Code of Federal Regulations, at the time and in the manner required under that part.

(c) Misrepresentations in required disclosures.—In connection with a disclosure document, notice, or report required by Federal, State, or local law, it shall be unlawful for a franchise seller, directly or indirectly, to—

(1) make an untrue statement of material fact;

(2) fail to state a material fact;

(3) fail to state a fact necessary to prevent a required statement or disclosure from being untrue or misleading;

(4) fail to furnish a prospective franchisee with all information required to be disclosed by law at the time and in the manner required; or

(5) fail, before a prospective franchisee signs a franchise agreement or makes a required payment, to disclose any material change known to the franchise seller that occurred after delivery of the disclosure document and that renders a statement in the disclosure document materially inaccurate or misleading.

(d) Historical financial performance data.—A franchisor shall include in the disclosure document historical financial performance data, including sales, expenses, and profitability data, sufficient to permit a prospective franchisee to make an informed assessment of the actual financial performance of the franchise system.

(e) Consistency of representations.—It shall be unlawful for a franchise seller to make an oral, written, visual, or electronic claim or representation to a prospective franchisee that is inconsistent with or contradicts the disclosure document or for which the franchise seller lacks a reasonable basis and written substantiation at the time the claim or representation is made.

(f) Renewal statement.—A franchise seller shall furnish a prospective franchisee with a written statement specifying prominently and in not less than 14-point type whether the proposed franchise agreement provides a renewal term and the conditions that apply to renewal.

(g) Relation to Franchise Rule.—The requirements of this section are in addition to, and not in lieu of, the requirements of part 436 of title 16, Code of Federal Regulations.

SEC. 1194. UNFAIR FRANCHISE PRACTICES AND STANDARDS OF CONDUCT.

(a) Prohibited practices.—In connection with the performance, enforcement, renewal, transfer, or termination of a franchise agreement, it shall be unlawful for a franchisor, directly or indirectly, to—

(1) engage in an act, practice, course of business, or pattern of conduct that operates as a fraud upon any person;

(2) discriminate against a franchisee by imposing a requirement not imposed on other similarly situated franchisees, unless the franchisor establishes that the distinction is reasonable, based on a legitimate business reason, and not arbitrary or intended to benefit the franchisor at the expense of the franchisee;

(3) charge a renewal fee prohibited under section 1196(b)(2);

(4) terminate, cancel, fail to renew, threaten, penalize, or otherwise take adverse action against a franchisee because the franchisee—

(A) refuses to participate in a promotional campaign that is not reasonable, implemented in good faith, and reasonably expected to promote the profitability of the franchisee's business;

(B) fails to meet a sales quota not expressly set forth in the franchise agreement;

(C) refuses to sell a product or service at a price suggested or required by the franchisor, an affiliate, or an approved supplier;

(D) refuses to operate during hours that are unprofitable to the franchisee, including between 10 p.m. and 6 a.m., unless the business is commonly recognized as an extended-hour business or the initial signed franchise agreement expressly required operation during those hours; or

(E) refuses to provide financial records that are unrelated or unnecessary to the performance of the franchisee's express obligations under the franchise agreement;

(5) require or prohibit a change in the management of a franchise except for good cause stated in writing and based on a violation of a material, reasonable, and reasonably necessary express provision of the franchise agreement;

(6) impose a standard of conduct or performance unless the franchisor establishes that the standard is reasonable, necessary, uniformly enforced, and uniformly applied throughout the franchise system, including to franchisor-owned outlets and licensees;

(7) sell, rent, or offer to sell to a franchisee, or require a franchisee to buy, a product or service for more than a fair and reasonable price or without a reasonable expectation that the transaction will support the profitable operation of the franchised business;

(8) discriminate among franchisees in charges for royalties, goods, services, equipment, rentals, advertising services, or another business dealing, unless the franchisor establishes that the distinction is reasonable, necessary to meet competition or reflect a material difference in circumstances, and does not adversely affect another franchisee;

(9) require or demand that a franchisee pay liquidated or other post-termination damages in excess of the average monthly royalty fees paid by the franchisee during the preceding 12 full calendar months, or the shorter period during which the outlet operated, multiplied by the lesser of—

(A) 6; or

(B) the number of months remaining in the term of the franchise agreement; or

(10) accomplish through a parent, subsidiary, affiliate, supplier, agent, or other intermediary any act prohibited by this subtitle.

(b) Duty of good faith.—

(1) A franchise agreement imposes on each party a duty to act in good faith in the performance and enforcement of the agreement.

(2) The duty of good faith shall—

(A) obligate a party to refrain from conduct that destroys or injures the ability of the other party to obtain and receive the expected fruits of the agreement;

(B) obligate a party to perform the acts required under the agreement to accomplish its purposes; and

(C) require honesty in fact and observance of reasonable standards of fair dealing in the trade.

(3) A provision of a franchise agreement may not be interpreted or enforced to obscure, avoid, or waive the duty to act reasonably and in good faith.

(c) Duty of due care.—

(1) A franchise agreement imposes on the franchisor a duty of due care. The franchisor shall exercise the skill and knowledge normally possessed by franchisors in good standing in the same or a similar type of business with respect to each undertaking the franchisor assumes or performs and each area in which the franchisor represents that it possesses skill or knowledge. A franchisor may conspicuously state that it does not provide advice or expertise in a specified area, but such a statement does not limit the duty of due care with respect to an undertaking the franchisor actually assumes or performs.

(2) For purposes of paragraph (1), skill or knowledge includes expertise resulting from—

(A) training and experience in the business licensed under the franchise agreement or extensive experience with the goods, services, or operating system of that business;

(B) experience organizing a franchise system and providing training, assistance, and services to franchisees; and

(C) written or oral commitments and representations upon which a prospective franchisee would reasonably rely.

(3) A franchisor may establish compliance with this subsection by showing that the franchisor contracted for, hired, or purchased the expertise necessary to perform its undertaking and incorporated, communicated, or provided that expertise to the franchisee.

(4) The duty imposed by this subsection may not be waived by agreement or conduct.

SEC. 1195. PROCEDURAL FAIRNESS AND FRANCHISEE ASSOCIATION.

(a) Franchisee association.—A franchisor may not, directly or indirectly—

(1) restrict a franchisee from associating with other franchisees or from forming, joining, leading, or participating in a trade association or other franchisee association for a lawful purpose;

(2) interfere with communications between franchisees concerning the franchise system or their common business interests; or

(3) retaliate or threaten to retaliate against a franchisee for conduct protected under paragraph (1) or (2).

(b) Unlawful contract terms.—It shall be unlawful for a franchisor, directly or indirectly, to require a term or condition in a franchise agreement or in an agreement ancillary or collateral to a franchise that directly or indirectly violates this subtitle.

(c) Waivers and releases.—

(1) A franchisor may not require a franchisee to assent to a disclaimer, waiver, release, stipulation, or other provision that purports—

(A) to relieve a person from a duty imposed by this subtitle, except as part of a settlement of a preexisting bona fide dispute; or

(B) to protect a person from liability under this subtitle arising from willful misconduct, bad faith, gross negligence, or reckless disregard of an obligation or duty.

(2) Except as provided in paragraph (1)(A), a condition, stipulation, provision, or term that purports to waive or restrict a protection or remedy under this subtitle is void and unenforceable.

(d) Gag clauses prohibited.—A franchisor may not require a franchisee, including in connection with operation, termination, cancellation, forfeiture, repurchase, resale, or departure from a franchise system, to assent to a provision that purports to prevent the franchisee from making an

oral or written statement relating to the franchise business, operation of the franchise system, or the franchisee's experience with the franchise business.

(e) Applicable law and forum.—A franchise agreement or an agreement ancillary or collateral to a franchise may not—

(1) deprive a franchisee of the application and benefits of this subtitle, another Federal law, or the law of a State in which the franchisee resides or the franchised business is located; or

(2) deprive a franchisee of the ability to commence an action against the franchisor for a violation of this subtitle or breach of an applicable agreement in a court in the State in which the franchisee's principal place of business is located.

(f) Collective proceedings.—A franchise agreement or an agreement ancillary or collateral to a franchise may not prevent a franchisee from bringing or participating in—

(1) a consolidated action;

(2) a mass action;

(3) a class action under rule 23 of the Federal Rules of Civil Procedure; or

(4) a similar consolidated, mass, or class proceeding permissible under Federal or State law.

(g) Integration clauses and evidence outside the agreement.—

(1) No avoidance.—An integration clause may not waive, excuse, or avoid compliance with this subtitle or an applicable State franchise law.

(2) Evidence outside the agreement.—In an action under this subtitle or an applicable State franchise law, an integration clause or the parol evidence rule may not be used to exclude consideration of a representation, omission, or circumstance solely because it is not contained in the franchise agreement.

(3) Other evidentiary rules preserved.—Except as provided in paragraph (2), nothing in this subsection alters the application of any rule of evidence.

SEC. 1196. TRANSFER, RENEWAL, TERMINATION, AND EFFECT OF TERMINATION.

(a) Transfer by franchisee.—

(1) Transfer permitted.—A franchisee may assign an interest in a franchised business or franchise to a transferee that satisfies the reasonable qualifications then generally applied by the franchisor in the offer and sale of franchises. A qualification is reasonable only if it is based on a legitimate business reason.

(2) Written grounds for refusal.—A franchisor may refuse to permit a transfer only if the refusal is not arbitrary or capricious and the franchisor states the grounds for refusal in writing.

(3) Notice and implied consent.—A franchisee shall give the franchisor not less than 60 days' written notice of a proposed transfer. The transfer shall be considered approved 60 days

after submission unless the franchisor provides a written refusal that complies with paragraph (2).

(4) Permissible conditions.—A franchisor may condition a transfer on—

(A) successful completion by the transferee of a reasonable training program;

(B) payment of a reasonable transfer fee that reimburses the franchisor for reasonable and actual expenses directly attributable to the transfer;

(C) payment or reasonable provision for payment of an amount due to the franchisor or an affiliate that is not subject to a bona fide dispute; or

(D) satisfaction by the transferee of the franchisor's current, reasonable financial qualifications for franchisees.

(5) Prohibited conditions.—A franchisor may not condition consent to a transfer on—

(A) forfeiture by the franchisee of an existing protection or remedy;

(B) a release of claims broader than a counterpart release offered by the franchisor; or

(C) a capital improvement, reinvestment, or purchase greater than the franchisor could reasonably require under the existing franchise agreement.

(6) Existing term preserved.—A franchisor may not require a franchisee or transferee to enter into an agreement with materially different terms or financial requirements as a condition of assigning the unexpired term of the franchise agreement.

(7) Transactions not requiring consent.—The following shall not be treated as a transfer requiring the consent of the franchisor, and the franchisor may not impose a fee exceeding its actual cost to review the matter:

(A) succession upon the death or disability of a franchisee or owner to a surviving spouse or heir, or to a partner active in management, unless the successor fails within 1 year to meet the franchisor's then current reasonable qualifications;

(B) incorporation of a proprietorship franchisee, except that the franchisor may require a personal guarantee of obligations relating to the franchise;

(C) a transfer within an existing ownership group if more than 50 percent of the franchise remains held by persons who meet the franchisor's reasonable current qualifications;

(D) a transfer of less than a controlling interest to the spouse or child of the franchisee if more than 50 percent of the franchise remains held by persons who meet the franchisor's reasonable current qualifications; or

(E) a grant or retention of a security interest in the franchised business, its assets, or an ownership interest in the franchisee, if the secured party is obligated to provide the franchisor notice of an intended foreclosure and a reasonable opportunity to satisfy the

secured obligation in exchange for an assignment of the secured obligation and security interest.

(8) Post-transfer covenant.—After transfer of the transferor's complete interest, a franchisor may not enforce a covenant that prohibits the transferor from engaging in a lawful occupation or enterprise, except a covenant protecting a trade secret, trademark, trade dress, or other intellectual property of the franchisor.

(b) Renewal.—

(1) Good cause required.—A franchisor may not fail to renew a franchise except for good cause based on a legitimate business reason, including a franchisee's refusal or failure during the preceding year substantially to comply with a material, reasonable, and reasonably necessary express obligation of the franchise agreement.

(2) Renewal fee.—A renewal fee shall not be unreasonable and shall be considered reasonable if it does not exceed 50 percent of the average initial franchise fee or other required payment then being charged to new franchisees in the same market.

(3) Notice and cure.—Before nonrenewal, the franchisor shall give the franchisee written notice at least 90 days in advance. The notice shall state each reason constituting good cause and provide the franchisee not less than 60 days to cure a claimed discrepancy and reinstate eligibility for renewal.

(4) Terms of renewal.—If a franchisor requires a new franchise agreement as a condition of renewal, the renewed agreement shall preserve the royalties, advertising fees, other fees, and protected territory in the expiring agreement and may not impose a new fee.

(c) Termination.—

(1) Good cause required.—A franchisor may not terminate or cancel a franchise, or substantially change the competitive circumstances of the franchisee, except for good cause.

(2) Cross-default prohibited.—A default under one franchise agreement does not constitute a default under another franchise agreement to which the franchisee or an affiliate is a party. A contrary cross-default provision is void and unenforceable.

(3) Notice and cure.—Except as provided in paragraphs (4) through (6), before termination or cancellation, the franchisor shall give the franchisee written notice at least 90 days in advance. The notice shall state each reason constituting good cause and provide the franchisee not less than 60 days to cure each claimed default.

(4) Abandonment.—If the ground for termination is voluntary abandonment of the franchise relationship, the franchisor may give notice 15 days before termination or cancellation.

(5) Nonpayment.—If the ground for termination is nonpayment of an amount due under the franchise agreement, the franchisee shall receive written notice and not less than 15 days to cure. A franchisee may exercise the cure provided by this paragraph not more than 3 times during any 12-month period.

(6) Imminent danger.—If the ground for termination is a violation of law or regulation that creates an imminent danger to public health or safety, the franchisee shall receive immediate written notice and 24 hours after receipt to cure the violation.

(7) Certain final convictions.—A franchisor may terminate upon written notice after a franchisee is convicted by final judgment of an offense punishable by imprisonment for more than 1 year that is directly related to operation of the franchised business or materially impairs the goodwill of the franchise or franchised trademark. The franchisor may not collect a penalty or fee as a consequence of the conviction.

(8) Termination by franchisee.—A franchisee may terminate a franchise agreement for good cause without liability for the termination, lost future royalties, or the unexpired term of the agreement, but remains liable for an accrued obligation that is not subject to a bona fide dispute. Good cause includes a change to the franchise system or competitive circumstances that causes a substantial negative impact or substantial financial hardship in operation of the franchise.

(d) Effect of termination.—

(1) Compensation.—Except in the case of voluntary relinquishment or abandonment by the franchisee or expiration where the franchisee does not elect to renew, the franchisor shall fairly compensate the franchisee or the franchisee's estate for—

(A) the fair market value at termination of inventory, supplies, equipment, and furnishings purchased from the franchisor or an approved source and reasonably required in operation of the franchised business; and

(B) the fair market value of the going-concern value and goodwill of the business, if any.

(2) Offset.—A franchisor may offset an amount mutually agreed upon and owed by the franchisee that is not subject to a bona fide dispute.

(e) Transfer by franchisor.—A franchisor may not transfer, by sale or otherwise, its interest in a franchise system unless—

(1) not less than 30 days before the effective date, the franchisor provides every franchisee notice of the proposed transfer;

(2) the notice includes a complete description of the business and financial terms of the proposed transfer; and

(3) the person assuming the franchisor's obligations has the business experience and financial means to perform all obligations of the franchisor in the ordinary course of business.

(f) Post-expiration competition.—A franchisor may not prohibit or enforce a prohibition against a former franchisee engaging in a business at any location after expiration or lawful termination of the franchise agreement or using the customer list and telephone numbers associated with the franchised business, to the extent permitted by applicable privacy law and consistent with any express customer direction regarding use or disclosure of the customer's information, except that the franchisor may enforce a provision reasonably requiring the former franchisee to—

(1) cease using a trademark, trade secret, trade dress, or other intellectual property owned by the franchisor or an affiliate;

(2) alter the appearance of the business premises to avoid substantial similarity to the standard design, decor, trade dress, or motif of the franchise system; or

(3) modify the manner or mode of operations to avoid substantial confusion with methods unique to the franchisor and commonly used by franchisees in the same market.

SEC. 1197. INDEPENDENT SOURCING, ADVERTISING, AND ENCROACHMENT.

(a) Independent sourcing.—Except as provided in subsection (e), a franchisor, directly or indirectly through an affiliate or another person, may not prohibit or restrict a franchisee from obtaining equipment, fixtures, supplies, goods, or services used in the establishment or operation of the franchised business from a source chosen by the franchisee, except that the franchisor may require such equipment, fixtures, supplies, goods, or services to meet reasonable, established, and uniformly enforced systemwide quality standards.

(b) Approved vendors.—If a franchisor approves vendors of equipment, fixtures, supplies, goods, or services—

(1) the franchisor shall provide and continuously update an inclusive list of approved vendors;

(2) the franchisor shall promptly and objectively evaluate and respond to a reasonable request by a franchisee for approval of a competitive source; and

(3) the franchisor shall approve not fewer than 2 vendors for each required category of equipment, fixture, supply, good, or service unless the franchisor and franchisees operating a majority of the outlets subject to the requirement agree otherwise.

(c) Vendor payments and benefits.—

(1) A franchisor and each affiliate shall fully disclose each rebate, commission, payment, discount, or other benefit received from a vendor as a result of a purchase of goods or services by a franchisee.

(2) A rebate, commission, payment, discount, or other benefit described in paragraph (1) shall be distributed directly to the franchisee whose purchase generated the benefit.

(d) Annual report.—Not less frequently than annually, a franchisor shall report, in accordance with generally accepted accounting principles, the amount of revenue and profit earned by the franchisor and each affiliate from the sale or provision of equipment, fixtures, supplies, goods, or services to franchisees.

(e) Intellectual property exception.—Subsection (a) does not apply to a reasonable quantity of equipment, fixtures, supplies, goods, or services that the franchisor requires a franchisee to obtain from the franchisor or an affiliate if the item or service is central to the franchised business and incorporates a trade secret, patent, copyright, trademark, or other intellectual property owned or lawfully controlled by the franchisor or affiliate. A trademark, trade name, logo, or other

source-identifying matter applied to an otherwise substitutable item does not, by itself, satisfy this subsection.

(f) Advertising, marketing, and promotional funds.—

(1) Fiduciary duty.—A franchisor has a fiduciary duty in the administration or supervision of an advertising, marketing, or promotional fund or program to which franchisees are required or routinely expected to contribute.

(2) Separate account.—A franchisor that administers or supervises a fund or program described in paragraph (1) shall keep all franchisee contributions in a separate account.

(3) Independent audit.—Not later than 60 days after the close of each fiscal year, the franchisor shall provide each contributing franchisee an audit conducted by an independent certified public accountant of the fund or program. The audit shall disclose each fee, expense, or other payment from the account to the franchisor or to a subsidiary, affiliate, or other entity controlled in whole or in part by the franchisor.

(4) Payments to fund.—The franchisor shall disclose the source and amount of, and deliver to the fund or program, each discount, rebate, compensation, or payment received from a person with whom the fund or program transacts.

(5) Use of funds.—Amounts in a fund or program described in paragraph (1) may be used only for the purposes represented to franchisees and may not be used to promote the sale of new franchises unless that use is separately disclosed and approved by a majority of contributing franchisees.

(g) Encroachment.—

(1) Prohibition.—A franchisor may not place, or license another person to place, a new outlet for a franchised business in unreasonable proximity to an established outlet of a similar kind if—

(A) the intent or probable effect is to diminish the gross sales of the established outlet by more than 5 percent during the first 12 months of public operation of the new outlet; and

(B) the established outlet offers goods or services identified by the same trademark as the new outlet or has premises identified by the same trademark.

(2) Compensation alternative.—Paragraph (1) does not apply if, before the new outlet begins public operation, the franchisor offers in writing to pay each affected franchisee an amount equal to 50 percent of the gross sales of the new outlet, net of sales taxes, returns, and allowances, during the first 24 months of public operation if the sales of the established outlet decline by more than 5 percent during the first 12 months of public operation of the new outlet as a consequence of the new outlet.

(3) Burden of proof.—The franchisor bears the burden of establishing whether and to what extent a decline in sales occurred for a reason other than establishment of the new outlet.

(4) Measurement period.—For purposes of this subsection, a period measured from the public operation of a new outlet begins on the date on which the outlet first offers goods or services for sale to the public and may not include any period before that date.

(h) No evasion.—It shall be unlawful for a franchisor to evade or attempt to evade this section through an affiliate, designated supplier, purchasing cooperative, intermediary, common ownership arrangement, or other device.

SEC. 1198. ENFORCEMENT, APPLICABILITY, AND RELATION TO OTHER LAW.

(a) Enforcement by Commission.—

(1) Treatment under Federal Trade Commission Act.—A violation of sections 1193 through 1197, or a regulation promulgated under this subtitle, shall be treated as—

(A) an unfair, deceptive, or abusive act or practice and an unfair method of competition under section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)); and

(B) a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a).

(2) Powers.—The Commission shall enforce sections 1193 through 1197 and any regulation promulgated under this subtitle in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subtitle.

(b) Enforcement by States.—

(1) Civil action.—If the attorney general of a State, or another authorized State officer, has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by a violation of this subtitle, the attorney general or officer may bring a civil action on behalf of the residents of the State in an appropriate State court or district court of the United States to—

(A) enjoin the violation;

(B) enforce compliance with this subtitle;

(C) obtain damages, restitution, refunds, or other compensation; or

(D) obtain any other relief the court considers appropriate.

(2) State powers preserved.—Nothing in this subsection shall prevent an attorney general or other authorized State officer from exercising powers conferred by State law to conduct investigations, administer oaths or affirmations, compel attendance of witnesses or production of evidence, or proceed under a civil or criminal statute of the State.

(c) Private cause of action.—

(1) In general.—Notwithstanding any other provision of law, a person harmed by a violation or threatened violation of this subtitle or part 436 of title 16, Code of Federal Regulations, may

bring a civil action in a State court of competent jurisdiction or a district court of the United States to—

(A) recover actual damages;

(B) obtain rescission, restitution, injunctive relief, and other equitable relief the court considers appropriate; and

(C) recover reasonable attorney's fees, expert witness fees, and costs.

(2) No exhaustion.—A plaintiff is not required to exhaust an administrative remedy before bringing an action under this subsection.

(d) Controlling-person liability.—A person that directly or indirectly controls a person liable under this subtitle, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person performing a similar function, and an employee who materially aids the act or transaction constituting the violation shall be jointly and severally liable to the same extent, unless the person establishes that the person had no knowledge of, or reasonable grounds to know of, the facts giving rise to liability.

(e) Limitations period.—An action under subsection (c) may be commenced not later than the later of—

(1) 5 years after the date on which the violation occurred; or

(2) 3 years after the date on which the violation was discovered or reasonably should have been discovered.

(f) Venue and service.—

(1) Private action.—A private action may be brought in a State in which the claimant resides or the franchised business is located.

(2) State action.—A State action brought in a district court of the United States may be brought in a district in which the defendant is found, is an inhabitant, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. Process may be served in any district in which the defendant is an inhabitant or may be found.

(g) Remedies cumulative.—The protections and remedies provided by this subtitle are in addition to, and not in lieu of, any protection or remedy available under Federal or State law.

(h) No preemption of stronger law.—Nothing in this subtitle shall be construed to preempt, displace, or limit a Federal, State, Tribal, or local law that provides equal or greater protection to a franchisee or prospective franchisee.

(i) Rulemaking.—

(1) Initial rules.—Not later than July 1, 2027, the Commission shall promulgate rules under section 553 of title 5, United States Code, necessary to carry out this subtitle, including rules governing historical financial performance data under section 1193(d), encroachment under section 1197(g), and prevention of evasion.

(2) Continuing authority.—The Commission may thereafter revise or supplement rules promulgated under paragraph (1) and may maintain or establish requirements that provide equal or greater protection than the protections provided by this subtitle, but may not by rule, guidance, or interpretation weaken, narrow, or create an exemption from a protection established by this subtitle unless expressly authorized by an Act of Congress enacted after the date of enactment of this Act.

(3) Statutory effectiveness.—Failure to promulgate a rule by the deadline under paragraph (1) shall not delay or otherwise affect the effective date, applicability, or enforceability of this subtitle.

(j) Effective date and applicability.—

(1) Effective date.—This subtitle shall take effect on January 1, 2027.

(2) Existing agreements.—This subtitle shall apply to conduct occurring on or after January 1, 2027, with respect to any franchise agreement in effect on or after that date, without regard to the date on which the agreement was entered into, amended, exchanged, transferred, assigned, or renewed.

(3) Early administrative action.—Notwithstanding paragraph (1), beginning on the date of enactment of this Act, the Commission may promulgate rules and take other administrative actions necessary to implement this subtitle, except that no such rule may take effect before January 1, 2027.

(4) No retroactive liability.—Nothing in this subtitle shall create liability for conduct completed before January 1, 2027.

(The POPULIST Act of 2026, TITLE XI, version 2.4, last updated August 7, 2026)