

119TH CONGRESS
2D SESSION

S. _____

To strengthen the prohibition on price discrimination under the Clayton Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To strengthen the prohibition on price discrimination under the Clayton Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Prices for Local
5 Businesses Act”.

6 **SEC. 2. CLAYTON ACT AMENDMENTS.**

7 (a) IN GENERAL.—The Clayton Act (15 U.S.C. 12
8 et seq.) is amended—

9 (1) in section 2 (15 U.S.C. 13)—

10 (A) in subsection (a)—

1 (i) by striking “in commerce” each
2 place it appears and inserting “in com-
3 merce or in any activity affecting com-
4 merce”; and

5 (ii) by striking “commodities” each
6 place it appears and inserting “products or
7 services”;

8 (iii) by inserting “service provision,”
9 after “sale,”;

10 (iv) by striking “goods, wares, or mer-
11 chandise” and inserting “products or serv-
12 ices”;

13 (v) by striking “goods” each place it
14 appears and inserting “products or serv-
15 ices”; and

16 (vi) by inserting “functional discounts
17 or” after “due allowance for”;

18 (B) in subsection (b)—

19 (i) by inserting “including a person
20 charged with inducing or receiving such
21 discrimination,” after “person charged
22 with a violation of this section,”; and

23 (ii) by striking “: *Provided, however,*
24 That nothing herein contained shall pre-
25 vent a seller rebutting the prima-facie case

1 thus made by showing that his lower price
2 or the furnishing of services or facilities to
3 any purchaser or purchasers was made in
4 good faith to meet an equally low price of
5 a competitor, or the services or facilities
6 furnished by a competitor”;

7 (C) in subsection (c)—

8 (i) by striking “in commerce” and in-
9 serting “in commerce or in any activity af-
10 fecting commerce”; and

11 (ii) by striking “goods, wares, or mer-
12 chandise” and inserting “products or serv-
13 ices”;

14 (D) in subsection (d)—

15 (i) by striking “in commerce” and in-
16 serting “in commerce or in any activity af-
17 fecting commerce”; and

18 (ii) by striking “products or commod-
19 ities” each place it appears and inserting
20 “products or services”;

21 (E) in subsection (e)—

22 (i) by inserting “engaged in commerce
23 or in any activity affecting commerce”
24 after “any person”; and

1 (ii) by striking “commodity” each
2 place it appears and inserting “product or
3 service”;

4 (F) by amending subsection (f) to read as
5 follows:

6 “(f)(1) Subject to paragraph (2), it shall be unlawful
7 for any person engaged in commerce or in any activity
8 affecting commerce, in the course of such commerce or
9 in the course of any activity affecting commerce, to induce
10 or receive the benefit of any violation of this section.

11 “(2) In the case of a person with annual retail sales
12 that do not exceed \$100,000,000,000, paragraph (1) shall
13 only apply if the person knowingly induced or received the
14 benefit of the violation of this section.”; and

15 (G) by adding at the end the following:

16 “(g) For purposes of this section—

17 “(1) the term ‘purchase’ means to pay or grant
18 anything of value in exchange for a product or serv-
19 ice; and

20 “(2) the term ‘purchaser’ means a person who
21 pays or grants anything of value in exchange for a
22 product or service, whether or not—

23 “(A) title passes to the payor or grantor;

24 and

1 “(B) the payor or grantor exercises domin-
2 ion or control over the product or service.”; and
3 (2) in section 4 (15 U.S.C. 15)—

4 (A) in subsection (a), by inserting “and
5 (c)” after “Except as provided in subsection
6 (b)”;

7 (B) by redesignating subsection (c) as sub-
8 section (d); and

9 (C) by inserting after subsection (b) the
10 following:

11 “(c) In an action brought with respect to a violation
12 of any subsection of section 2, the plaintiff, upon a show-
13 ing of proof that the plaintiff has been unlawfully discrimi-
14 nated against by the defendant—

15 “(1) shall conclusively be presumed to have sus-
16 tained injury and damages equal to the monetary
17 amount or equivalent of the unlawful discrimination;
18 and

19 “(2) may establish damages in addition to the
20 damages described in paragraph (1), if any, that the
21 plaintiff sustained as a result of the discrimina-
22 tion.”.

23 (b) **APPLICABILITY.**—The amendments made by this
24 Act shall apply to transactions occurring on or after the
25 date of enactment of this Act.