



Sen. Robert Peters

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1 AMENDMENT TO SENATE BILL 320

2 AMENDMENT NO. _____. Amend Senate Bill 320 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Protection from Surveillance Pricing Act.

6 Section 5. Definitions. In this Act:

7 "De-identified data" means data that does not identify and
8 cannot reasonably be used to infer information about, or
9 otherwise be linked to, an identified or identifiable
10 individual, or a device linked to the individual, if the
11 controller that possesses the data:

12 (1) takes reasonable physical, administrative, and
13 technical measures to ensure that the data cannot be
14 associated with an individual or be used to re-identify
15 any individual or device that identifies or is linked or
16 reasonably linkable to an individual;

1 (2) publicly commits to process the data only in a
2 de-identified fashion and not attempt to re-identify the
3 data; and

4 (3) contractually obligates any recipients of the data
5 to satisfy the requirements set forth in paragraphs (1)
6 and (2) of this definition.

7 "Electronic shelf label" means a digital or electronic
8 display device that presents product and pricing information
9 to a consumer. "Electronic shelf label" includes a QR code
10 that directs a consumer to product and pricing information.

11 "Grocery store" means a retail establishment that
12 primarily sells grocery products, including fresh produce.

13 "Person" means a natural person or an entity, including,
14 but not limited to, a corporation, partnership, association,
15 trust, limited liability company, cooperative, or other
16 organization.

17 "Personal data" means any information, including unique
18 identifiers, that is linked or reasonably linkable, alone or
19 in combination with other information, to an identified or
20 identifiable individual or a device that identifies or is
21 linked or reasonably linkable to an individual. "Personal
22 data" does not include de-identified data.

23 "Surveillance pricing" means offering or setting a
24 customized price for goods or services for a specific consumer
25 or group of consumers based, in whole or in part, on personal
26 data. "Surveillance pricing" includes, but is not limited to,

1 the use of technological methods, systems, or tools, such as
2 sensors, cameras, device tracking, or other forms of
3 observation or data collection, that are capable of gathering
4 personal information about a consumer's behavior,
5 characteristics, location, or other personal attributes.
6 "Surveillance pricing" also includes offering random
7 variations in prices to different customers using a website,
8 mobile application, or comparable online technology.
9 "Surveillance pricing" does not include a discounted price
10 offered to a consumer terminating or taking steps to terminate
11 a service or membership with a person.

12 "Loyalty program" means a program that rewards consumers
13 for repeat purchases, in which a consumer has separately and
14 affirmatively enrolled prior to the point of sale, through a
15 distinct enrollment process that is not bundled with or
16 conditioned upon any individual purchase transaction.

17 Section 10. Ban on surveillance pricing.

18 (a) Except as provided in subsection (b), a person shall
19 not engage in surveillance pricing.

20 (b) A person does not engage in surveillance pricing if
21 the person can demonstrate that:

22 (1) The difference in pricing is based solely on
23 different costs associated with providing the goods or
24 services to different consumers.

25 (2) The difference in pricing is based on publicly

1 disclosed eligibility criteria that any consumer could
2 potentially meet, including, but not limited to, signing
3 up for a mailing list, registering for promotional
4 communications, or participating in a promotional event
5 and all differences in pricing and the terms and criteria
6 for receiving the differences in pricing are conveyed
7 clearly and conspicuously and are disclosed in clear and
8 prominent terms on the company's website.

9 (3) The difference in pricing is offered or provided
10 to a commonly understood social grouping, such as
11 teachers, veterans, senior citizens, or students, if:

12 (A) all the differences in pricing and the terms
13 and criteria for receiving the differences in pricing
14 are publicly available, are disclosed and conveyed
15 clearly and conspicuously on the company's website;
16 and

17 (B) any consumer can obtain the difference in
18 price if the consumer can demonstrate that the
19 consumer is part of the group.

20 (4) The difference in pricing is offered as part of a
21 loyalty, membership, or rewards program if:

22 (A) the price difference is available to any
23 consumer in the loyalty, membership, or rewards
24 program who meets the publicly disclosed terms,
25 eligibility criteria, or conditions and prices are not
26 individualized for consumers as part of the program;

1 and who consents to the program. Discounts or
2 promotional benefits may be offered pursuant to such
3 terms and conditions, provided such discounts do not
4 result in a higher price than would otherwise be
5 available;

6 (B) current discounts, promotions, rewards, or any
7 other benefits provided to loyalty program members,
8 and the conditions that must be met before obtaining
9 them, are disclosed clearly and conspicuously on equal
10 terms on the company's website; and

11 (C) any loyalty, membership, or rewards program
12 that allows a user to accrue and exchange points,
13 credits, or any similar nonmonetary system of value
14 for a product or service does not charge a different
15 price for those points, credits, or similar
16 nonmonetary system of value to different consumers for
17 the same or substantially similar product or service.

18 (5) The person can demonstrate that a refusal to
19 extend credit at specific terms or the refusal to enter
20 into a transaction with a specific consumer is based on
21 data provided in a consumer report covered by the federal
22 Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

23 (6) The person operates as a bank, savings bank,
24 credit union, or any financial institution certified,
25 permitted, approved, chartered, registered, licensed, or
26 otherwise authorized to engage in any profession, trade,

1 occupation, or industry by the Division of Banking or the
2 Division of Financial Institutions of the Department of
3 Financial and Professional Regulation.

4 Section 15. Ban on electronic shelf labels. An operator of
5 a grocery store larger than 10,000 square feet shall not:

6 (1) use an electronic shelf label or any digital price
7 display technology in a grocery store; or

8 (2) use a digital representation of the price of each item
9 for sale at a grocery store.

10 Section 20. Enforcement.

11 (a) The Attorney General or the State's Attorney of any
12 county in this State may bring an action in the name of the
13 People of this State against any person to restrain and
14 prevent any pattern or practice in violation of Section 10 or
15 Section 15. In the enforcement of Section 10 or Section 15, the
16 Attorney General or the State's Attorney may accept an
17 assurance of voluntary compliance from anyone engaged in any
18 conduct, act, or practice deemed in violation of Section 10 or
19 Section 15. The failure to perform the terms of any such
20 assurance constitutes prima facie evidence of a violation of
21 Section 10 or Section 15.

22 (b) A violation of Section 10 or Section 15 constitutes an
23 unlawful practice under the Consumer Fraud and Deceptive
24 Business Practices Act. All remedies, penalties, and authority

1 granted to the Attorney General or the State's Attorney by the
2 Consumer Fraud and Deceptive Business Practices Act shall be
3 available to the Attorney General or the State's Attorney for
4 the enforcement of Section 10 or Section 15.

5 Section 21. Action for actual damages. Any person who
6 suffers actual damage as a result of a violation of Section 10
7 or Section 15 may bring an action under Section 10a of the
8 Consumer Fraud and Deceptive Business Practices Act.

9 Section 25. Waiver void and unenforceable. Any waiver of
10 the provisions of this Act is void and unenforceable as
11 contrary to public policy.

12 Section 30. Home rule. A home rule unit may not regulate
13 surveillance pricing in a manner inconsistent with the
14 regulation by the State of surveillance pricing under this
15 Act. This Section is a limitation under subsection (i) of
16 Section 6 of Article VII of the Illinois Constitution on the
17 concurrent exercise by home rule units of powers and functions
18 exercised by the State."