



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

18 "Person" means a natural person or an entity, including,
19 but not limited to, a corporation, partnership, association,
20 trust, limited liability company, cooperative, or other
21 organization.

22 "Personal data" means any information, including unique
23 identifiers, that is linked or reasonably linkable, alone or
24 in combination with other information, to an identified or
25 identifiable individual or a device that identifies or is
26 linked or reasonably linkable to an individual. "Personal

1 data" does not include de-identified data.

2 "Surveillance pricing" means offering or setting a
3 customized price for goods or services for a specific consumer
4 or group of consumers based, in whole or in part, on personal
5 data. "Surveillance pricing" includes, but is not limited to,
6 the use of technological methods, systems, or tools, such as
7 sensors, cameras, device tracking, or other forms of
8 observation or data collection, that are capable of gathering
9 personal information about a consumer's behavior,
10 characteristics, location, or other personal attributes.
11 "Surveillance pricing" also includes offering random
12 variations in prices to different customers using a website,
13 mobile application, or comparable online technology.
14 "Surveillance pricing" does not include a discounted price
15 offered to a consumer terminating or taking steps to terminate
16 a service or membership with a person.

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, including variations in
25 taxes, fees, and assessments imposed by federal, State, or

1 local law, and differences in shipping or delivery costs.

2 (2) The difference in pricing is due to generally
3 applicable price fluctuations over time.

4 (3) The difference in pricing is based solely on the
5 offer of a good faith credit, refund, rebate, or discount
6 issued in response to:

7 (A) a service disruption, error, or other failure
8 to deliver a good or service as promised or expected;

9 (B) a billing dispute or;

10 (C) a request for cancellation.

11 (4) The difference in pricing is based on publicly
12 disclosed eligibility criteria that any consumer could
13 potentially meet, including, but not limited to, signing
14 up for a mailing list, registering for promotional
15 communications, or participating in a promotional event
16 and all differences in pricing and the terms and criteria
17 for receiving the differences in pricing are conveyed
18 clearly and conspicuously and are disclosed in clear and
19 prominent terms on the company's website.

20 (5) The difference in pricing is offered or provided
21 to a commonly understood social grouping, such as
22 teachers, veterans, senior citizens, or students, if:

23 (A) all the differences in pricing and the terms
24 and criteria for receiving the differences in pricing
25 are publicly available, are disclosed and conveyed
26 clearly and conspicuously on the company's website;

1 and

2 (B) any consumer can obtain the difference in
3 price if the consumer can demonstrate that the
4 consumer is part of the group.

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

7 (A) the price difference is available to any
8 consumer who participates in the loyalty, membership,
9 or rewards program and meets the publicly disclosed
10 terms, eligibility criteria, or conditions, and prices
11 are not individualized for consumers as part of the
12 program; the consumer consents to participate in the
13 program; and the program may offer discounts or
14 promotional benefits under its terms and conditions if
15 participation in the program does not result in the
16 consumer paying a higher price than the price
17 otherwise available;

18 (B) current discounts, promotions, rewards, or any
19 other benefits provided to loyalty program members,
20 and the conditions that must be met before obtaining
21 them, are disclosed clearly and conspicuously on equal
22 terms on the company's website; and

23 (C) any loyalty, membership, or rewards program
24 that allows a user to accrue and exchange points,
25 credits, or any similar nonmonetary system of value
26 for a product or service does not charge a different

1 price for those points, credits, or similar
2 nonmonetary system of value to different consumers for
3 the same or substantially similar product or service.

4 (7) That a refusal to extend credit at specific terms
5 or the refusal to enter into a transaction with a specific
6 consumer is based on data provided in a consumer report
7 covered by the federal Fair Credit Reporting Act.

8 (8) That the person operates as a bank, savings bank,
9 credit union, or any financial institution certified,
10 permitted, approved, chartered, registered, licensed, or
11 otherwise authorized to engage in any profession, trade,
12 occupation, or industry by the Division of Banking or the
13 Division of Financial Institutions of the Department of
14 Financial and Professional Regulation.

15 (c) This Act does not apply to an air carrier that provides
16 air transportation, as those terms are used in 49 U.S.C.
17 41713.

18 (d) This Act does not apply to the pricing of insurance or
19 insurance-related products issued by a risk-bearing entity
20 under an Act administered by the Department of Insurance,
21 unless the surveillance pricing is used to price the product
22 based on a consumers willingness to pay or limits a consumer's
23 ability to comparison shop.

24 Section 15. Ban on electronic shelf labels. An operator of
25 a grocery store larger than 10,000 square feet shall not: (1)

1 use an electronic shelf label or any digital price display
2 technology in a grocery store; or (2) use a digital
3 representation of the price of each item for sale at a grocery
4 store.

5 Section 20. Enforcement.

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

16 (b) A violation of Section 10 or 15 constitutes an
17 unlawful practice under the Consumer Fraud and Deceptive
18 Business Practices Act. All remedies, penalties, and authority
19 granted to the Attorney General or the State's Attorney by the
20 Consumer Fraud and Deceptive Business Practices Act shall be
21 available to the Attorney General or the State's Attorney for
22 the enforcement of Section 10 or 15.

23 Section 25. Action for actual damages. Any person who
24 suffers actual damage as a result of a violation of Section 10

1 or 15 may bring an action under Section 10a of the Consumer
2 Fraud and Deceptive Business Practices Act.

3 Section 30. Waiver void and unenforceable. Any waiver of
4 the provisions of this Act is void and unenforceable as
5 contrary to public policy.

6 Section 35. Home rule. A home rule unit may not regulate
7 surveillance pricing in a manner inconsistent with the
8 regulation by the State of surveillance pricing under this
9 Act. This Section is a limitation under subsection (i) of
10 Section 6 of Article VII of the Illinois Constitution on the
11 concurrent exercise by home rule units of powers and functions
12 exercised by the State.

13 Section 90. The Consumer Fraud and Deceptive Business
14 Practices Act is amended by adding Section 2MMMM as follows:

15 (815 ILCS 505/2MMMM new)

16 Sec. 2MMMM. Violations of the Protection from Surveillance
17 Pricing Act. Any person who violates Section 10 or 15 of the
18 Protection from Surveillance Pricing Act commits an unlawful
19 practice within the meaning of this Act.".