

AN ACT

1 Amending the act of December 17, 1968 (P.L.1224, No.387),
2 entitled "An act prohibiting unfair methods of competition
3 and unfair or deceptive acts or practices in the conduct of
4 any trade or commerce, giving the Attorney General and
5 District Attorneys certain powers and duties and providing
6 penalties," further providing for definitions, for unlawful
7 acts or practices and exclusions, for civil penalties and for
8 private actions.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 2(4) of the act of December 17, 1968
12 (P.L.1224, No.387), known as the Unfair Trade Practices and
13 Consumer Protection Law, is amended by adding a subclause and
14 the section is amended by adding clauses to read:

15 Section 2. Definitions.--As used in this act.

16 * * *

17 (4) "Unfair methods of competition" and "unfair or deceptive
18 acts or practices" mean any one or more of the following:

19 * * *

20 (xx.1) Engaging in surveillance pricing.

1 * * *

2 (14) "Surveillance pricing" means offering or setting a
3 customized price for goods or services using technological
4 methods, systems or tools to analyze personal data to inform the
5 price for a specific consumer or group of consumers based, in
6 whole or in part, on personal data that may be purchased from a
7 third party or gathered using technology, including sensors,
8 cameras, device tracking or other forms of observation or data
9 collection. The term does not include circumstances in which the
10 seller can demonstrate that:

11 (i) The difference in pricing is based solely on different
12 costs associated with providing the goods or services to
13 different consumers.

14 (ii) A public discounted price is offered on equal terms
15 pursuant to publicly disclosed eligibility criteria to:

16 (A) all consumers who meet the publicly disclosed
17 eligibility criteria, including criteria related to volume
18 purchases, signing up for a mailing list, registering for
19 promotional communications or participating in a promotional
20 event; or

21 (B) all members of a broadly defined and publicly recognized
22 group of consumers, including teachers, active or retired
23 military personnel, senior citizens, students or residents of a
24 certain area based on publicly disclosed eligibility criteria.

25 (iii) A discounted price is offered on equal terms pursuant
26 to publicly disclosed terms and conditions to all members,
27 enrollees or participants in a loyalty, membership or rewards
28 program.

29 (iv) The person operates as an insurer licensed or regulated
30 or legally authorized to do business in this Commonwealth or any

1 surplus lines insurer, including any person acting on behalf of
2 the insurer.

3 (v) The person can demonstrate that a refusal to extend
4 credit at specific terms or the refusal to enter into a
5 transaction with a specific consumer is based on data provided
6 in a consumer report covered by 15 U.S.C. Ch. 41 Subch. III
7 (relating to credit reporting agencies).

8 (15) "Discounted price" means a price that is verifiably
9 lower than the widely available and publicly disclosed bona fide
10 market price.

11 (16) "Personal data" means any information, including unique
12 identifiers, that is linked or reasonably linkable, alone or in
13 combination with other information, to an identified or
14 identifiable individual or a device that identifies or is linked
15 or reasonably linkable to an individual.

16 Section 2. Sections 3(a), 8(b) and 9.2(a) of the act are
17 amended to read:

18 Section 3. Unlawful Acts or Practices; Exclusions.--(a)
19 Unfair methods of competition and unfair or deceptive acts or
20 practices in the conduct of any trade or commerce as defined by
21 subclauses (i) through (xxi) of clause (4) of section 2 of this
22 act and regulations promulgated under section 3.1 of this act
23 are hereby declared unlawful. Any waiver of the surveillance
24 pricing restrictions under this act shall be deemed void and
25 unenforceable. The provisions of this act shall not apply to any
26 owner, agent or employe of any radio or television station, or
27 to any owner, publisher, printer, agent or employe of an
28 Internet service provider or a newspaper or other publication,
29 periodical or circular, who, in good faith and without knowledge
30 of the falsity or deceptive character thereof, publishes, causes

1 to be published or takes part in the publication of such
2 advertisement.

3 * * *

4 Section 8. Civil Penalties.--* * *

5 (b) In any action brought under section 4 of this act, if
6 the court finds that a person, firm or corporation is wilfully
7 using or has wilfully used a method, act or practice declared
8 unlawful by section 3 of this act, the Attorney General or the
9 appropriate District Attorney, acting in the name of the
10 Commonwealth of Pennsylvania, may recover, on behalf of the
11 Commonwealth of Pennsylvania, a civil penalty of not exceeding
12 one thousand dollars (\$1,000) per violation, except that a civil
13 penalty not to exceed three thousand dollars (\$3,000) shall
14 apply for a method, act or practice declared unlawful as defined
15 by subclause (xx.1) of clause (4) of section 2 of this act,
16 which civil penalty shall be in addition to other relief which
17 may be granted under sections 4 and 4.1 of this act. Where the
18 victim of the wilful use of a method, act or practice declared
19 unlawful by section 3 of this act is sixty years of age or
20 older, the civil penalty shall not exceed three thousand dollars
21 (\$3,000) per violation, which penalty shall be in addition to
22 other relief which may be granted under sections 2 and 4.1 of
23 this act.

24 Section 9.2. Private Actions.--(a) Any person who purchases
25 or leases goods or services primarily for personal, family or
26 household purposes and thereby suffers any ascertainable loss of
27 money or property, real or personal, as a result of the use or
28 employment by any person of a method, act or practice declared
29 unlawful by section 3 of this act, may bring a private action to
30 recover actual damages or one hundred dollars (\$100), whichever

1 is greater[.], except that the person may recover actual damages
2 or three thousand dollars (\$3,000), whichever is greater, in the
3 case of a method, act or practice declared unlawful as defined
4 by subclause (xx.1) of clause (4) of section 2 of this act. The
5 court may, in its discretion, award up to three times the actual
6 damages sustained, but not less than one hundred dollars (\$100),
7 and may provide such additional relief as it deems necessary or
8 proper[.], except that the person may recover actual damages or
9 three thousand dollars (\$3,000), whichever is greater, in the
10 case of a method, act or practice declared unlawful as defined
11 by subclause (xx.1) of clause (4) of section 2 of this act. The
12 court may award to the plaintiff, in addition to other relief
13 provided in this section, costs and reasonable attorney fees.

14 * * *

15 Section 3. This act shall take effect in 60 days.