

EXPLANATORY NOTES
BILL No. 619

The Consumer Protection and Business Practices (Banning Unfair A.I. Pricing) Amendment Act

**Clause
of Bill**

- 1 Short title.
- 2 Amending language.
- 3 **Section 2 amended**

Explanation

- Several definitions are added to define language used in subsequent amended sections.

- 4 **Section 7 amended**

- New subsection (t) and (u), as well as expanded language in subsection (l) establish unfair business practices specifically related to the use of algorithms or automated processing and large-scale data collection to increase the price of a consumer good for a specific consumer.

- 5 **Section 4 amended**

- New subsections (2) and (3) are added to aid in Interpretation of Part:

“(2) For the purpose of subsection 7(o), the use of personalized algorithmic pricing as part of the consumer transaction is deemed to be a material fact.

(3) For the purpose of subsection (7)(j) as it relates to a supplier that is an online retailer or online distributor, a consumer is deemed to give their express consent to the higher price only if:

(a) the supplier prominently discloses to the consumer the reason for the higher price in clear and understandable language; and

(b) the consumer takes clear overt action to consent to the higher price”.

- 6 **New section 8.1**

“Deemed unfair business practices

8.1 Without limiting the generality of sections 6, 7, or 8, it is deemed to be an unfair business practice within the meaning of that subsection when:

(a) a supplier takes advantage of a consumer if the supplier knows or ought to have known that the consumer was unable to protect, or incapable of protecting, his or her own interests because of the consumer's physical or mental infirmity, illiteracy, age or inability to understand the character, nature or language of the consumer transaction, or any other matter related to the transaction;

(b) the terms or conditions on which, or subject to which, the consumer entered into the consumer transaction are so adverse or so harsh to the consumer as to be inequitable; or

(c) a supplier that is an online retailer or online distributor or that uses an electronic shelf labelling system takes advantage of a consumer by demanding a price that is higher than the price offered to other consumers because of personalized algorithmic pricing in respect of that consumer”.

7 Section 9 amended

- New subsections (4) and (5) are added to Section 9 to expand scope of circumstances surrounding unfair business practices and determination thereof:

“(4) In determining whether anything not described in this section is an unfair business practice within the meaning of this Part, all relevant circumstances shall be considered including, but not limited to, the following factors, if applicable:

(a) whether there is a reasonable probability of full payment of the total price by the consumer;

(b) except where personalized algorithmic pricing is used, whether the total price grossly exceeded the total price at which similar goods are readily obtainable in a similar transaction by like consumers;

(c) in the case of an online retailer or online distributor, whether the total price, including the mandatory fees and charges, and any other material facts, are disclosed to the consumer in clear and understandable language and posted in a prominent manner; and

(d) in the case of a supplier that is an online retailer or online distributor or that uses an electronic shelf labelling system, the extent to which the collected, analyzed or processed data about the consumer that is available to the supplier is also available to the consumer.

(5) An unfair business practice may occur through the use of algorithms, data analytics, machine learning or artificial intelligence by the supplier or a third party, and is an unfair business practice for all the purposes of this Act notwithstanding that no consumer transaction is in fact entered into or concluded”.

8 Section 111 amended

- Existing Section 111 is repealed and replaced with the following:

“111 A prosecution for an offence under this Act must not be commenced more than two years after the day on which evidence sufficient to justify a prosecution for the offence came to the knowledge of the director. The certificate of the director as to the day on which the evidence came to their knowledge is evidence of that date”.

9 Coming into force.