

# SENATE . . . . . No. 113

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Eileen M. Donoghue*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act creating transparency in emerging price discrimination technologies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>1/27/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/3/2017</i>

# SENATE . . . . . No. 113

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By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 113) of Eileen M. Donoghue, Tackey Chan, Barbara A. L'Italien, Sheila C. Harrington and others for legislation to create transparency in emerging price discrimination technologies. Consumer Protection and Professional Licensure.

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninetieth General Court  
(2017-2018)  
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An Act creating transparency in emerging price discrimination technologies.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           The General Laws are hereby amended by inserting after chapter 93K the following  
2 chapter:-

3           CHAPTER 93L DISCRIMINATORY PRICING

4           Section 1. Definitions.

5           For the purpose of this chapter, the following words shall, unless the context otherwise  
6 requires, have the following meanings:

7           “Consumer data”, material obtained from any source that contains consumer information  
8 or preferences for residents of Massachusetts.

9           “Discriminatory Pricing”, the practice of selling, renting or leasing identical or  
10 substantially similar goods or services at different prices.

“Online price”, the price of an item offered or disclosed on a website or other internet-based forum.

“Online consumer”, any resident of Massachusetts seeking to purchase a retail product through a website or other internet-based forum.

“Online seller”, any person or entity that offers any product or service for sale, rent or lease on a website or other internet-based forum. Online seller includes any authorized representative of a seller; however seller shall exclude an individual not engaged in trade or commerce under chapter 93A of the general laws, who places a classified advertisement on or via the internet, or other online publication.

## Section 2. Disclosure of Discriminatory Pricing.

If an online seller uses consumer data to engage in discriminatory pricing, the online seller shall clearly and conspicuously disclose to the online consumer the specific consumer data obtained and sources of those data. Such disclosure shall be made separately from the online seller’s terms and conditions.

If an online seller uses consumer data to engage in discriminatory pricing, the online seller shall clearly and conspicuously disclose the range of all online prices offered for that product or service within the immediately preceding 72-hour period. Disclosure of actual prices for the product or service shall be updated not less than hourly, shall be listed prominently next to the currently offered sales price, and shall be in the same font size as the offer price.

## Section 3. Prohibited Discrimination.

31 No online seller shall, directly or indirectly, offer an online price intended to discriminate  
32 against or having the effect of actually discriminating against persons of any religious sect,  
33 creed, class, race, color, denomination, sex, gender identity, sexual orientation, which shall not  
34 include persons whose sexual orientation involves minor children as the sex object, nationality,  
35 or because of deafness or blindness, or any physical or mental disability.

#### 36 Section 4. Violations.

37 Any violations of the provisions of this chapter shall be deemed to be an unfair and  
38 deceptive trade practice, as defined in section two of chapter 93A.

#### 39 Section 5. Enforcement.

40 The attorney general shall make rules and regulations interpreting and enforcing the  
41 provisions of this chapter and may bring an action pursuant to section 4 of chapter 93A against a  
42 person or otherwise to remedy violations of this chapter and for other relief that may be  
43 appropriate. Such rules and regulations shall not be inconsistent with the rules, regulations and  
44 decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of  
45 15 U.S.C. 45(a)(1), as from time to time amended.