



Rep. Maura Hirschauer

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LRB104 04043 SPS 29231 a

1 AMENDMENT TO HOUSE BILL 220

2 AMENDMENT NO. _____. Amend House Bill 220 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Surveillance-Based Price and Wage Discrimination Act.

6 Section 5. Definitions. As used in this Act:

7 "Automated decision system" means any system, software, or
8 process, including one derived from machine learning,
9 statistics, or other data processing or artificial
10 intelligence techniques and excluding passive computing
11 infrastructure, that uses computation, the result of which is
12 used to assist or replace human decision-making.

13 "Behaviors" mean an individual's observable, measurable,
14 or inferred actions, habits, preferences, interests, or
15 vulnerabilities, including an individual's political,
16 personal, or professional affiliations, web browsing history,

1 purchase history, financial circumstances, or consumer
2 behaviors.

3 "Biometric information" means data or information
4 generated by the technological, processing, measurement, or
5 analysis of a consumer's or employee's biological, physical,
6 or behavioral characteristics, that can be used for the
7 purpose of uniquely identifying an individual. "Biometric
8 information" includes fingerprints, voiceprints, scans or
9 records of an eye retina or iris, facial maps, facial
10 geometry, facial templates, genetic information, or other
11 unique biological, physical, or behavioral patterns or
12 characteristics.

13 "Consumer" has the meaning set forth in the Consumer Fraud
14 and Deceptive Business Practices Act.

15 "Employee" has the meaning set forth in the Illinois Wage
16 Payment and Collection Act.

17 "Genetic information" has the meaning set forth in the
18 Health Insurance Portability and Accountability Act of 1996,
19 as specified in 45 CFR 160.103.

20 "Individualized" means specific to an individual or group,
21 band, class, or tier of individuals with particular personal
22 characteristics, behaviors, or biometric information.

23 "Insurer" means every person engaged as principal,
24 indemnitee, surety, or contractor in the business of making
25 insurance contracts.

26 "Personal characteristics" means individual qualities,

1 features, attributes, or traits, including immutable
2 characteristics, such as race and eye color, mutable
3 characteristics, such as address, weight, citizenship, or
4 parenthood status, and any other personally identifiable
5 information that could be used to identify an individual,
6 including social security number, name, or phone number.

7 "Price" means the amount charged to a consumer in relation
8 to a transaction, including all related costs and fees, and
9 any other material terms of the transaction that has a direct
10 bearing on the amount paid by the consumer or the value of the
11 good or service to the consumer.

12 "Surveillance data" means data obtained through
13 observation, inference, or surveillance of a consumer or
14 employee that is related to personal characteristics,
15 behaviors, or biometric information of the individual or
16 group, band, class, or tier of individuals of which the
17 individual is a part. "Surveillance data" includes information
18 gathered, purchased, or otherwise acquired.

19 "Wage" has the meaning set forth in the Illinois Wage
20 Payment and Collection Act.

21 Section 10. Prohibit surveillance-based price
22 discrimination.

23 (a) A person shall not use surveillance data as part of an
24 automated decision system to inform the individualized price
25 assessed to a consumer for goods or services. A person does not

1 violate this subsection if the person assesses different
2 prices to different consumers based on the cost of providing
3 the good or service to the different consumers.

4 (b) This Section shall not apply to:

5 (1) an insurer in compliance with the Illinois
6 Insurance Code that only uses risk-relevant data as part
7 of an automated decision system that informs decisions
8 related to any costs assessed to a consumer for an
9 insurance policy; or

10 (2) an entity that declines to extend credit at
11 specific terms to a consumer or enter into a transaction
12 with a consumer based on data provided in a consumer
13 report in compliance with the Fair Credit Reporting Act.

14 Section 15. Prohibit surveillance-based wage
15 discrimination.

16 (a) A person shall not use surveillance data as part of an
17 automated decision system to inform the individualized wage
18 paid to an employee. A person does not violate this subsection
19 if the person:

20 (1) offered individualized wages based solely on:

21 (A) data specific to the individual employee that
22 is directly related to the tasks the employee was
23 hired to perform; or

24 (B) differences in the cost to the employee of
25 providing labor to the person;

1 (2) discloses in plain language before hiring an
2 employee whose wages are set in whole or in part through
3 automated decision-making what data is considered and how
4 automated decision-making considers that data; and

5 (3) developed and proactively provided to employees
6 reasonable procedures to ensure the accuracy of all data
7 considered by an automated decision-making system in
8 setting wage rates, as determined by rule.

9 (b) This Section shall not apply to a person who makes a
10 decision not to hire an employee that the person has not
11 previously employed.

12 Section 20. Enforcement. The Attorney General shall
13 enforce this Act. A person who violates this Act shall be
14 subject to a civil penalty not to exceed \$10,000 for each
15 violation and reasonable attorney's fees. A violation of any
16 provision of this Act shall constitute a separate violation
17 with respect to each consumer, employee, or transaction.

18 Section 25. Private right of action.

19 (a) A person aggrieved by a violation of this Act may bring
20 a civil action on behalf of themselves or a group of similarly
21 situated persons to restrain further violations and to recover
22 damages, costs, and reasonable attorney's fees, including the
23 greater of:

24 (1) the amount of actual damages sustained;

1 (2) \$3,000 for each violation; or

2 (3) 3 times the amount of actual damages sustained, if
3 it is established by clear and convincing evidence that
4 the person who violated this Act engaged in bad faith
5 conduct or intentionally violated this Act.

6 (b) A violation of any provision of this Act shall
7 constitute a separate violation with respect to each consumer,
8 employee, or transaction.

9 Section 30. Relationship with other laws. Nothing in this
10 Act, including the enforcement authority granted to the
11 Attorney General, preempts or otherwise affects any other
12 right, claim, remedy, presumption, or defense available at law
13 or in equity.

14 Section 35. Rulemaking. The Attorney General may adopt
15 rules necessary to implement and enforce this Act."