

Senate Bill 164

By: Senators Merritt of the 9th, Jones II of the 22nd, Jackson of the 41st, Mallow of the 2nd, Kemp of the 38th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling  
2 and other trade practices, so as to prohibit surveillance based price discrimination and  
3 surveillance based wage discrimination; to provide for definitions; to provide for civil  
4 penalties and enforcement; to provide for exceptions; to provide for certain rule making; to  
5 provide for the promulgation of rules and regulations; to provide for penalties; to provide for  
6 related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other  
10 trade practices, is amended by adding a new article to read as follows:

11 "ARTICLE 37

12 10-1-960.

13 As used in this article, the term:

14 (1) 'Automated decision system' means any system, software, or process, including one  
15 derived from machine learning, statistics, or other data processing or artificial intelligence  
16 techniques and excluding passive computing infrastructure, that uses computation, which  
17 is used to assist or replace human decision making.

18 (2) 'Behaviors' means an individual's observable, measurable, or inferred actions, habits,  
19 preferences, interests, or vulnerabilities, including an individual's political, personal, or  
20 professional affiliations, web browsing history, IP addresses, locations frequented,  
21 purchase history, financial circumstances, consumer behaviors, or inferences associated  
22 with a group, band, class, or tier of individuals of which the individual is associated.

23 (3) 'Biometrics' means data or information generated by the technological, processing,  
24 measurement, or analysis of a consumer or worker's biological, physical, or behavioral  
25 characteristics which can be processed for the purpose of uniquely identifying an  
26 individual. Such term includes a fingerprint; a voice print; a scan or record of an eye  
27 retina or iris image; a facial map, geometry, or template; genetic information; or other  
28 unique biological, physical, or behavioral patterns or characteristics.

29 (4) 'Consumer' means an individual who obtains, maintains, uses, purchases, leases, or  
30 receives goods, services, real property, or personal property or the representative of such  
31 individual.

32 (5) 'Genetic information' means information about an individual's genetic test, the genetic  
33 tests of family members of such individual, and the manifestation of a disease or disorder  
34 in such individual's family members. Such term includes any request for, or receipt of,  
35 genetic services with respect to an individual, or participation by such individual or such  
36 individual's family members in clinical research that includes such genetic services. Such  
37 term includes genetic information of a fetus carried by a pregnant individual. Such term  
38 includes genetic information of any embryo legally held by an individual or such  
39 individual's family member utilizing reproductive technology. Such term does not  
40 include information about the sex or age of an individual.

41 (6) 'Individualized' means specific to or inferences about an individual or group, band,  
42 class, or tier of individuals with particular personal characteristics, behaviors, or  
43 biometrics.

44 (7) 'Insurer' means every person engaged as a principal, indemnitor, surety, or contractor  
45 in the business of making contracts of insurance.

46 (8) 'Personal characteristics' means individual qualities, features, attributes, or traits,  
47 including immutable characteristics such as race and eye color; mutable characteristics  
48 such as a mailing address, weight, citizenship, or parental status; and any other personally  
49 identifiable information that could be used to uncover an individual's identity, including  
50 social security number, full name, or telephone number.

51 (9) 'Price' means the amount charged to a consumer in relation to a transaction, including  
52 all related costs and fees, and any other material terms of such transaction that has a  
53 direct bearing on the amount paid by the consumer or the value of the good or service to  
54 the consumer.

55 (10) 'Surveillance based price discrimination' means using an automated decision system  
56 to inform individualized prices based on surveillance data regarding a consumer.

57 (11) 'Surveillance based wage discrimination' means using an automated decision system  
58 to inform individualized wages based on surveillance data regarding a worker.

59 (12) 'Surveillance data' means data obtained through observation, inference, or  
60 surveillance of an individual that is related to personal characteristics, behaviors, or  
61 biometrics of such individual or a group, class, tier, or band of which the individual is  
62 associated. Such term includes information gathered, purchased, or otherwise acquired.

63 (13) 'Wage' means the material terms offered to a worker in exchange for labor,  
64 including the amount to be paid for such labor, whether as an hourly rate, piece rate,  
65 salary, bonuses, commissions and incentives, scheduling, task assignment, and any other  
66 similar material terms that have a direct impact on earnings of such worker.

67 (14) 'Worker' means a natural person performing work as an employee, and includes any  
68 individual, including a migratory laborer, performing labor or services for the benefit of  
69 an employer and any other individuals performing labor or services on behalf of or for  
70 the benefit of an employer or other person. For the purposes of this article, such term  
71 includes relevant factors in determining whether an individual is an employee including  
72 the degree of control such employer may exercise or does exercise over such individual  
73 and the degree to which such individual performs labor or services that is the primary  
74 work of the employer; provided, however, that an individual primarily free from control  
75 and direction in the performance of such labor or services, both under his or her contract  
76 for the performance of such labor or services, and who is customarily engaged in an  
77 independent trade, occupation, profession, or business related to such labor or services  
78 performed is not an employee.

79 10-1-961.

80 (a)(1) No person shall engage in surveillance based price discrimination.

81 (2) A person shall not be considered to have engaged in surveillance based price  
82 discrimination if such person can demonstrate that:

83 (A) Differential prices are justified based on differences in the cost of providing a good  
84 or service to different consumers; or

85 (B) Such person operates as an insurer and only inputs risk relevant data into any  
86 automated decision system that informs decisions related to any amount a consumer  
87 must pay for an insurance policy.

88 (3) Surveillance based price discrimination shall not include the refusal to extend credit  
89 at specific terms or the refusal to enter into a transaction with a specific consumer based  
90 on data provided in a consumer report covered by the federal Fair Credit Reporting Act,  
91 15 U.S.C. Section 1681, et. seq.

92 (b)(1) No person shall engage in surveillance based wage discrimination.

93 (2) A person has not engaged in surveillance based wage discrimination if such person  
94 can demonstrate that:

95 (A) Such person offers individualized wages based solely on:

96 (i) Data specific to a worker that is directly related to the labor or services such  
97 worker was hired to perform; or

98 (ii) Differences in the cost to the worker of providing labor and services to such  
99 person;

100 (B) Such person discloses in plain language before hiring a worker to perform labor  
101 or services and to all workers whose wages are set in whole or in part by an automated  
102 decision system and what data is considered and how such automated decision system  
103 considers such data; and

104 (C) Such person develops and proactively provides to all workers reasonable  
105 procedures to ensure the accuracy of all data considered by an automated decision  
106 system in setting wage rates as determined through rule making.

107 (3) Surveillance based wage discrimination shall not include a decision not to hire an  
108 individual who such person has not previously employed.

109 10-1-962.

110 The Attorney General is authorized to promulgate such rules and regulations as necessary  
111 for the purpose of implementing and enforcing this article.

112 10-1-963.

113 Nothing in this article, including the enforcement authority granted to the Attorney General  
114 and the district attorneys of this state, shall preempt or otherwise affect any other right,  
115 claim, remedy, presumption, or defense available at law or in equity.

116 10-1-964.

117 (a) A person that violates any provision of this article engages in a deceptive, unfair, or  
118 unconscionable act or practice.

119 (b) The Attorney General or any district attorney may bring a civil action on behalf of the  
120 state to seek the imposition of civil penalties as follows:

121 (1) Any person that violates any provision of this article shall forfeit and pay to the  
122 general fund of this state a civil penalty of not more than \$10,000.00 for each such  
123 violation. Each violation of this article shall constitute a separate violation with respect  
124 to each consumer, worker, or transaction involved; and

125 (2) Costs and attorneys' fees shall be awarded to the Attorney General or a district  
126 attorney in all actions where the Attorney General or the district attorney successfully  
127 enforces the provisions of this article.

128 (c) In addition to any remedies otherwise provided by law or in equity, a person aggrieved  
129 by a violation of this article may bring a civil action on behalf of themselves or a group of  
130 similarly situated persons to restrain further violations and to recover damages, costs, and  
131 reasonable attorneys' fees, including the greater of:

132 (1) The amount of actual damages sustained, including prejudgment interest of either  
133 8 percent per year or at the rate provided for in Code Section 7-4-2, whichever is greater,  
134 from the date the claim under this article accrued;

135 (2) The amount of \$3,000.00 for each violation and each such violation of this article  
136 shall constitute a separate violation with respect to each consumer, worker, or transaction  
137 involved; or

138 (3) Three times the amount of actual damages sustained, if it is established by clear and  
139 convincing evidence that such person violating the provisions of this article engaged in  
140 bad faith conduct or intentionally violated the provisions of this article."

141

**SECTION 2.**

142 All laws and parts of laws in conflict with this Act are repealed.