
HOUSE BILL 2856

State of Washington

66th Legislature

2020 Regular Session

By Representatives Entenman, Morgan, and Santos

Read first time 01/27/20. Referred to Committee on Innovation, Technology & Economic Development.

1 AN ACT Relating to a moratorium on facial recognition technology;
2 adding a new chapter to Title 10 RCW; adding a new chapter to Title
3 19 RCW; creating a new section; prescribing penalties; and providing
4 expiration dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) It is unlawful for any Washington
7 state or local government agency or any official thereof to obtain,
8 retain, request, access, or use:

9 (a) Any facial recognition technology; or

10 (b) Any information obtained from or by use of facial
11 recognition.

12 (2) Inadvertent or unintentional receipt, access, or use of any
13 information obtained from facial recognition is not a violation of
14 this chapter, provided that:

15 (a) The information was not requested or solicited by a state or
16 local agency or any official thereof; and

17 (b) The information is permanently deleted upon discovery.

18 (3) For purposes of this chapter, "facial recognition" means:

19 (a) An automated or semiautomated process by which a person is
20 identified or attempted to be identified based on the characteristics
21 of the person's face; or

1 (b) An automated or semiautomated process by which the
2 characteristics of a person's face are analyzed to determine the
3 person's sentiment, state of mind, or other propensities including,
4 but not limited to, the person's level of dangerousness.

5 (4) This section expires July 1, 2023.

6 NEW SECTION. **Sec. 2.** (1) No information obtained from or by use
7 of facial recognition may be received in evidence in any trial,
8 hearing, or other proceeding in or before any court, grand jury,
9 department, officer, agency, regulatory body, legislative committee,
10 or other authority subject to the jurisdiction of the state of
11 Washington.

12 (2) Any violation of section 1 of this act constitutes an injury
13 and any person may institute proceedings for injunctive relief,
14 declaratory relief, or writ of mandate in any court of competent
15 jurisdiction to enforce section 1 of this act. An action instituted
16 under this subsection may be brought against the appropriate state or
17 local government agency or state or local government official and, if
18 necessary, to effectuate compliance with this chapter, any other
19 government agency with possession, custody, or control of information
20 obtained from or by use of facial recognition.

21 (3) Any person who has been subjected to facial recognition in
22 violation of section 1 of this act, or about whom information has
23 been obtained, retained, accessed, or used in violation of section 1
24 of this act, may institute proceedings in any court of competent
25 jurisdiction against the state and is entitled to recover actual
26 damages, but not less than statutory damages of one thousand dollars
27 per violation, whichever is greater.

28 (4) A court shall award costs and reasonable attorneys' fees to a
29 plaintiff who prevails in an action brought under subsection (2) or
30 (3) of this section.

31 (5) This section expires July 1, 2023.

32 NEW SECTION. **Sec. 3.** (1) Nothing in this chapter applies to the
33 use of a facial recognition matching system by the department of
34 licensing pursuant to RCW 46.20.037.

35 (2) This section expires July 1, 2023.

36 NEW SECTION. **Sec. 4.** (1) A person may not operate, install, or
37 commission the operation or installation of equipment incorporating

1 facial recognition in any place of public resort, accommodation,
2 assemblage, or amusement, as defined in RCW 49.60.040.

3 (2) For purposes of this section, "facial recognition" means:

4 (a) An automated or semiautomated process by which a person is
5 identified or attempted to be identified based on the characteristics
6 of the person's face; or

7 (b) An automated or semiautomated process by which the
8 characteristics of a person's face are analyzed to determine the
9 person's sentiment, state of mind, or other propensities including,
10 but not limited to, the person's level of dangerousness.

11 (3) This section expires July 1, 2023.

12 NEW SECTION. **Sec. 5.** (1) The legislature finds that the
13 practices covered by this chapter are matters vitally affecting the
14 public interest for the purpose of applying the consumer protection
15 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
16 in relation to the development and preservation of business and is an
17 unfair or deceptive act in trade or commerce and an unfair method of
18 competition for the purpose of applying the consumer protection act,
19 chapter 19.86 RCW.

20 (2) The attorney general may bring an action in the name of the
21 state, or as *parens patriae* on behalf of persons residing in the
22 state, to enforce this chapter. In any action brought by the attorney
23 general to enforce this chapter, a violation of this chapter is
24 subject to a civil penalty of one thousand dollars for each violation
25 of this chapter.

26 (3) A consumer prevailing in an action under this chapter may
27 recover actual damages, but not less than statutory damages of one
28 thousand dollars per violation, whichever is greater.

29 (4) A court must award costs and reasonable attorneys' fees to a
30 plaintiff who prevails in an action under this chapter.

31 (5) This section expires July 1, 2023.

32 NEW SECTION. **Sec. 6.** (1)(a) A joint legislative task force on
33 facial recognition technology is established, with members as
34 provided in this subsection.

35 (i) The president of the senate shall appoint one member from
36 each of the two largest caucuses of the senate;

1 (ii) The speaker of the house of representatives shall appoint
2 one member from each of the two largest caucuses of the house of
3 representatives;

4 (iii) The president of the senate and the speaker of the house of
5 representatives jointly shall appoint members as follows:

6 (A) Fifteen representatives from advocacy organizations that
7 represent consumers or protected classes of communities historically
8 impacted by surveillance technologies including, but not limited to,
9 African American, Hispanic American, Native American, and Asian
10 American communities, religious minorities, protest and activist
11 groups, and other vulnerable communities;

12 (B) One member from law enforcement;

13 (C) One representative from a retailer or other company who
14 deploys facial recognition technology in physical premises open to
15 the public;

16 (D) One representative from a company that develops and provides
17 facial recognition technology; and

18 (E) Two representatives from universities or research
19 institutions who are experts in either facial recognition technology
20 or technology ethics, or both.

21 (b) The task force shall choose two cochairs from among its
22 legislative membership.

23 (2) The task force shall:

24 (a) Review the existing research on the quality, accuracy, and
25 efficacy of facial recognition technology, including its quality,
26 accuracy, and efficacy across different subpopulations;

27 (b) Document the potential abuses and threats posed by the use of
28 facial recognition technology to civil liberties and freedoms,
29 privacy and security, discrimination, and other potential harm; and

30 (c) Provide recommendations regarding appropriate regulation of
31 facial recognition technology.

32 (3) The expenses of the task force must be paid jointly by the
33 senate and the house of representatives. Task force expenditures are
34 subject to approval by the senate facilities and operations committee
35 and the house of representatives executive rules committee, or their
36 successor committees. Staff support for the task force must be
37 provided by the senate committee services and the house of
38 representatives office of program research.

39 (4) Legislative members of the task force are reimbursed for
40 travel expenses in accordance with RCW 44.04.120. Nonlegislative

1 members are not entitled to be reimbursed for travel expenses if they
2 are elected officials or are participating on behalf of an employer,
3 governmental entity, or other organization. Any reimbursement for
4 other nonlegislative members is subject to chapter 43.03 RCW.

5 (5) The task force shall report its findings and recommendations
6 to the governor and the appropriate committees of the legislature by
7 September 30, 2021.

8 (6) This section expires July 1, 2023.

9 NEW SECTION. **Sec. 7.** (1) Sections 1 through 3 of this act
10 constitute a new chapter in Title 10 RCW.

11 (2) Sections 4 and 5 of this act constitute a new chapter in
12 Title 19 RCW.

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