S-0329.1

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**SENATE BILL 5104**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senator Hasegawa

AN ACT Relating to a moratorium on facial recognition technology; amending RCW 43.386.901; adding a new chapter to Title 10 RCW; adding a new chapter to Title 19 RCW; creating a new section; prescribing penalties; providing expiration dates; and declaring an emergency.

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

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

(a) Facial recognition technology; or

(b) Information obtained from or by use of facial recognition.

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

(a) Was not requested or solicited by a state or local agency or any official thereof; and

(b) Is permanently deleted upon discovery.

(3) For the purposes of this chapter, "facial recognition" means an automated or semiautomated process by which:

(a) A person is identified or attempted to be identified based on the characteristics of the person's face; or

(b) The characteristics of a person's face are analyzed to determine the person's sentiment, state of mind, or other propensities including, but not limited to, the person's level of dangerousness.

(4) This section expires July 1, 2026.

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

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

(3) Any person who has been subjected to facial recognition in violation of section 1 of this act, or about whom information has been obtained, retained, accessed, or used in violation of section 1 of this act, may institute proceedings in any court of competent jurisdiction against the state and is entitled to recover actual damages, but not less than statutory damages of $1,000 per violation, whichever is greater.

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

(5) This section expires July 1, 2026.

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

(2) This section expires July 1, 2026.

NEW SECTION. **Sec.**  (1) A person may not operate, install, or commission the operation or installation of equipment incorporating facial recognition in any place of public resort, accommodation, assemblage, or amusement, as defined in RCW 49.60.040.

(2) For the purposes of this section, "facial recognition" means an automated or semiautomated process by which:

(a) A person is identified or attempted to be identified based on the characteristics of the person's face; or

(b) The characteristics of a person's face are analyzed to determine the person's sentiment, state of mind, or other propensities including, but not limited to, the person's level of dangerousness.

(3) This section expires July 1, 2026.

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

(2) The attorney general may bring an action in the name of the state, or as parens patriae on behalf of persons residing in the state, to enforce this chapter. In any action brought by the attorney general to enforce this chapter, a violation of this chapter is subject to a civil penalty of $1,000 for each violation of this chapter.

(3) A consumer prevailing in an action under this chapter may recover actual damages, but not less than statutory damages of $1,000 per violation, whichever is greater.

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

(5) This section expires July 1, 2026.

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

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

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

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

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

(ii) One member from law enforcement;

(iii) One representative from a retailer or other company that deploys facial recognition technology in physical premises open to the public;

(iv) One representative from a company that develops and provides facial recognition technology; and

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

(2) The task force shall:

(a) Choose two cochairs from among its legislative membership;

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

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

(d) Provide recommendations regarding appropriate regulation of facial recognition technology.

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

(4) Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

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

(6) This section expires January 1, 2022.

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

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

**Sec.**  RCW 43.386.901 and 2020 c 257 s 14 are each amended to read as follows:

Sections 1 through 9 and 11 through 13 of this act take effect July 1, ((~~2021~~)) 2026.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**