2SSB 6281 - S AMD **1055**
By Senator Hasegawa

NOT ADOPTED 02/14/2020

1   On page 1, after line 4, insert the following:

2   **"Part I"**

3   On page 4, beginning on line 22, strike all of subsections (11)

4 through (13)

5   Renumber the remaining subsections consecutively and correct any

6 internal references accordingly.

7   On page 5, beginning on line 1, strike all of subsection (17)

8   Renumber the remaining subsections consecutively and correct any

9 internal references accordingly.

10   On page 5, beginning on line 11, strike all of subsection (21)

11   Renumber the remaining subsections consecutively and correct any

12 internal references accordingly.

13   On page 5, beginning on line 17, strike all of subsections (23)

14 and (24)

15   Renumber the remaining subsections consecutively and correct any

16 internal references accordingly.

17   On page 6, beginning on line 25, strike all of subsection (31)

18   Renumber the remaining subsections consecutively and correct any

19 internal references accordingly.

20   On page 7, beginning on line 17, strike all of subsection (35)

21   Renumber the remaining subsections consecutively and correct any

22 internal references accordingly.

23   On page 8, beginning on line 1, strike all of subsection (40)

24   Correct any internal references accordingly.

25   On page 17, beginning on line 21, after "purpose." strike all

26 material through "program." on line 24

27

1   Beginning on page 22, line 33, strike all of section 17

2   Renumber the remaining sections consecutively and correct any

3 internal references accordingly.

4   On page 26, after line 11, insert the following:

5   **"Part II**

6

7   NEW SECTION. **Sec. 20.** (1) It is unlawful for any Washington

8 state or local government agency or any official thereof to obtain,

9 retain, request, access, or use:

10   (a) Any facial recognition technology; or

11   (b) Any personal data obtained from or by use of facial

12 recognition.

13   (2) Inadvertent or unintentional receipt, access, or use of any

14 personal data obtained from facial recognition is not a violation of

15 this chapter, provided that:

16   (a) The personal data was not requested or solicited by a state

17 or local agency or any official thereof; and

18   (b) The personal data is permanently deleted upon discovery.

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

20   (a) An automated or semiautomated process by which a person is

21 identified or attempted to be identified based on the

22 characteristics of the person's face; or

23   (b) An automated or semiautomated process by which the

24 characteristics of a person's face are analyzed to determine the

25 person's sentiment, state of mind, or other propensities including,

26 but not limited to, the person's level of dangerousness.

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

28

29   NEW SECTION. **Sec. 21.** (1) No personal data obtained from or by

30 use of facial recognition may be received in evidence in any trial,

31 hearing, or other proceeding in or before any court, grand jury,

32 department, officer, agency, regulatory body, legislative committee,

33 or other authority subject to the jurisdiction of the state of

34 Washington.

1   (2) Any violation of section 20 of this act constitutes an
2 injury and any person may institute proceedings for injunctive
3 relief, declaratory relief, or writ of mandate in any court of
4 competent jurisdiction to enforce section 20 of this act. An action
5 instituted under this subsection may be brought against the
6 appropriate state or local government agency or state or local
7 government official and, if necessary, to effectuate compliance with
8 this chapter, any other government agency with possession, custody,
9 or control of personal data obtained from or by use of facial
10 recognition.

11   (3) Any person who has been subjected to facial recognition in
12 violation of section 20 of this act, or about whom personal data has
13 been obtained, retained, accessed, or used in violation of section
14 20 of this act, may institute proceedings in any court of competent
15 jurisdiction against the state and is entitled to recover actual
16 damages, but not less than statutory damages of one thousand dollars
17 per violation, whichever is greater.

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

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

22

23   NEW SECTION. **Sec. 22.** (1) Nothing in this chapter applies to
24 the use of a facial recognition matching system by the department of
25 licensing pursuant to RCW 46.20.037.

26   (2) Nothing in this chapter applies to the use of facial
27 recognition for the purpose of redacting a recording for release or
28 disclosure outside a law enforcement agency to protect the privacy
29 of a subject depicted in the recording, if the process does not
30 generate or result in the retention of any biometric data or
31 surveillance information.

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

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1   NEW SECTION. **Sec. 23.** (1) A person may not operate, install,
2 or commission the operation or installation of equipment
3 incorporating facial recognition in any place of public resort,
4 accommodation, assemblage, or amusement, as defined in RCW 49.60.040.
5   (2) For purposes of this section, "facial recognition" means:
6   (a) An automated or semiautomated process by which a person is
7 identified or attempted to be identified based on the
8 characteristics of the person's face; or
9   (b) An automated or semiautomated process by which the
10 characteristics of a person's face are analyzed to determine the
11 person's sentiment, state of mind, or other propensities including,
12 but not limited to, the person's level of dangerousness.
13   (3) This section expires July 1, 2023.
14
15   NEW SECTION. **Sec. 24.** (1) The legislature finds that the
16 practices covered by this chapter are matters vitally affecting the
17 public interest for the purpose of applying the consumer protection
18 act, chapter 19.86 RCW. A violation of this chapter is not
19 reasonable in relation to the development and preservation of
20 business and is an unfair or deceptive act in trade or commerce and
21 an unfair method of competition for the purpose of applying the
22 consumer protection act, chapter 19.86 RCW.
23   (2) The attorney general may bring an action in the name of the
24 state, or as parens patriae on behalf of persons residing in the
25 state, to enforce this chapter. In any action brought by the
26 attorney general to enforce this chapter, a violation of this
27 chapter is subject to a civil penalty of one thousand dollars for
28 each violation of this chapter.
29   (3) A consumer prevailing in an action under this chapter may
30 recover actual damages, but not less than statutory damages of one
31 thousand dollars per violation, whichever is greater.
32   (4) A court must award costs and reasonable attorneys' fees to a
33 plaintiff who prevails in an action under this chapter.
34   (5) This section expires July 1, 2023.

1   NEW SECTION. **Sec. 25.** (1)(a) A joint legislative task force on
2 facial recognition technology is established, with members as
3 provided in this subsection.
4   (i) The president of the senate shall appoint one member from
5 each of the two largest caucuses of the senate;
6   (ii) The speaker of the house of representatives shall appoint
7 one member from each of the two largest caucuses of the house of
8 representatives;
9   (iii) The president of the senate and the speaker of the house
10 of representatives jointly shall appoint members as follows:
11   (A) Fifteen representatives from advocacy organizations that
12 represent consumers or protected classes of communities historically
13 impacted by surveillance technologies including, but not limited to,
14 African American, Hispanic American, Native American, and Asian
15 American communities, religious minorities, protest and activist
16 groups, and other vulnerable communities;
17   (B) One member from law enforcement;
18   (C) One representative from a retailer or other company who
19 deploys facial recognition technology in physical premises open to
20 the public;
21   (D) One representative from a company that develops and provides
22 facial recognition technology; and
23   (E) Two representatives from universities or research
24 institutions who are experts in either facial recognition technology
25 or technology ethics, or both.
26   (b) The task force shall choose two cochairs from among its
27 legislative membership.
28   (2) The task force shall:
29   (a) Review the existing research on the quality, accuracy, and
30 efficacy of facial recognition technology, including its quality,
31 accuracy, and efficacy across different subpopulations;
32   (b) Document the potential abuses and threats posed by the use
33 of facial recognition technology to civil liberties and freedoms,
34 privacy and security, discrimination, and other potential harm; and

1   (c) Provide recommendations regarding appropriate regulation of
2 facial recognition technology.

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

10   (4) Legislative members of the task force are reimbursed for
11 travel expenses in accordance with RCW 44.04.120. Nonlegislative
12 members are not entitled to be reimbursed for travel expenses if
13 they are elected officials or are participating on behalf of an
14 employer, governmental entity, or other organization. Any
15 reimbursement for other nonlegislative members is subject to chapter
16 43.03 RCW.

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

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

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22   NEW SECTION. **Sec. 26.** (1) Sections 20 through 22 of this act
23 constitute a new chapter in Title 10 RCW.

24   (2) Sections 23 and 24 of this act constitute a new chapter in
25 Title 19 RCW."

26   On page 26, line 12, after "**20.**" strike "This act takes" and
27 insert "Sections 1 through 19 of this act take"

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     By Senator Hasegawa
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1   On page 1, beginning on line 1 of the title, after "data;"
2 strike the remainder of the title and insert "adding new chapters to
3 Title 19 RCW; adding a new chapter to Title 10 RCW; creating a new
4 section; prescribing penalties; providing an effective date; and
5 providing expiration dates."

     EFFECT: (1) Removes references to facial recognition from the
definitions and strikes section 17 – facial recognition; and
     (2) Prohibits the use of facial recognition by state and local
governments with limited exceptions. Creates a joint legislative
task force on facial recognition to review existing research,
document potential threats, and provide recommendations regarding
appropriate regulation of facial recognition.

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