
SUBSTITUTE HOUSE BILL 1654

State of Washington

66th Legislature

2019 Regular Session

By House Innovation, Technology & Economic Development (originally sponsored by Representatives Ryu, Shea, Morris, Valdez, Kloba, Fitzgibbon, Appleton, Frame, and Tarleton)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to the procurement and use of facial recognition
2 technology by government entities in Washington state and privacy
3 rights relating to facial recognition technology; and adding a new
4 chapter to Title 10 RCW.

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

6 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that:

7 (1) Washingtonians cherish privacy as an essential element of
8 their individual freedom, and Washington explicitly recognizes its
9 citizens' right to privacy in its Constitution under Article I,
10 section 7.

11 (2) Facial recognition technology poses unique and significant
12 civil rights and civil liberties concerns.

13 (3) Studies have found facial recognition technology to be less
14 accurate at identifying women, youth, and people of color, leading to
15 the risk of false matches.

16 (4) There is a long history of the use of previous surveillance
17 technologies to impact vulnerable communities, such as the use of
18 social media monitoring systems to track black lives matter activists
19 and license plate readers to track Muslim community members, and the
20 government of China is currently using facial recognition and other
21 technologies for general monitoring and social control.

1 (5) The use of facial recognition technology without warrant or
2 suspicion can chill the exercise of constitutionally protected free
3 speech, assembly, religious, privacy, and other rights.

4 (6) Before the widespread adoption of facial recognition
5 technology by government agencies occurs, there must be a public
6 discussion of acceptable uses of this technology, its accuracy must
7 be demonstrated, and disproportionate impacts on vulnerable
8 communities eliminated.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.

12 (1) "Facial recognition" means both:

13 (a) The automated or semiautomated process by which a person is
14 identified or attempted to be identified based on the characteristics
15 of their face, including identification of known or unknown
16 individuals or groups; and

17 (b) The automated or semiautomated process by which the
18 characteristics of an individual's face are analyzed to determine the
19 individual's sentiment, state of mind, or other propensities
20 including but not limited to level of dangerousness.

21 (2) "Facial recognition system" means any computer software or
22 application that performs facial recognition.

23 NEW SECTION. **Sec. 3.** GOVERNMENT USE OF FACIAL RECOGNITION
24 SYSTEMS. (1) Until the conditions set forth in subsection (2) of this
25 section are met, all government entities must follow the procurement
26 practices in chapter 40.26 RCW in order to obtain, retain, access, or
27 use:

28 (a) Any facial recognition system; or

29 (b) Any information obtained from or by use of a facial
30 recognition system.

31 (2) The restrictions set forth in subsection (1) of this section
32 remain in effect until such time as:

33 (a) The attorney general provides a report certifying to the
34 legislature that:

35 (i) Independent, third-party testing and auditing of the accuracy
36 of the five most commonly available facial recognition systems by
37 market share, under operational conditions, has taken place; and

1 (ii) Such testing and auditing shows no statistically significant
2 variation in the accuracy of such systems on the basis of the race,
3 skin tone, ethnicity, gender, or age of the individuals portrayed in
4 probe images, whether or not those categories are applied
5 individually or in combination;

6 (b) The Washington academy of sciences convenes a task force and
7 the task force delivers to the legislature a report documenting the
8 potential consequences and the best procurement practices of
9 government use of facial recognition systems on the civil rights and
10 civil liberties of all Washingtonians, including vulnerable
11 communities. The task force must consist of fifteen members who
12 represent: (i) Communities historically impacted by surveillance
13 technologies, including, but not limited to, African American,
14 Hispanic American, Native American, and Asian American communities,
15 religious minorities, protest and activist groups, and other
16 vulnerable communities; (ii) organizations that advocate for data
17 privacy protections for the public at large; and (iii) different
18 branches of law enforcement, facial recognition technology vendors,
19 and appropriate academic experts; and

20 (c) On the basis of the reports set forth in (a) and (b) of this
21 subsection, the legislature passes legislation finding that the
22 conditions set forth in this subsection (2) have been met, and
23 includes appropriate, recommended restrictions on facial recognition
24 systems' use by government agencies.

25 NEW SECTION. **Sec. 4.** PRIVACY RIGHTS RELATING TO FACIAL
26 RECOGNITION TECHNOLOGY. (1) This section applies to all Washington
27 state and local government agencies.

28 (2) It is unlawful for any state or local government agency or
29 state or local government official to monitor public spaces without a
30 probable cause using any facial recognition system or data obtained
31 therefrom; or to use facial recognition to analyze, whether or not
32 contemporaneously, any footage obtained from a police body worn
33 camera.

34 NEW SECTION. **Sec. 5.** ENFORCEMENT. (1) No data collected or
35 derived from any use of facial recognition in violation of this
36 chapter and no evidence derived therefrom may be received in evidence
37 in any trial, hearing, or other proceeding in or before any court,
38 grand jury, department, officer, agency, regulatory body, legislative

1 committee, or other authority subject to the jurisdiction of the
2 state of Washington. Facial recognition data collected or derived in
3 violation of this chapter must be considered unlawfully obtained and
4 must be deleted upon discovery.

5 (2) Any violation of this chapter constitutes an injury and any
6 person may institute proceedings for injunctive relief, declaratory
7 relief, or writ of mandate in any court of competent jurisdiction to
8 enforce this chapter. An action instituted under this subsection may
9 be brought against the appropriate state or local government agency
10 or state or local government official and, if necessary to effectuate
11 compliance with this chapter, any other government agency with
12 possession, custody, or control of data subject to this chapter.

13 (3) Any person who has been subjected to facial recognition in
14 violation of this chapter, or about whom information has been
15 obtained, retained, accessed, or used in violation of this chapter,
16 may institute proceedings in any court of competent jurisdiction
17 against the state and is entitled to recover actual damages, but not
18 less than liquidated damages of one thousand dollars or one hundred
19 dollars for each violation, whichever is greater.

20 (4) A court shall award costs and reasonable attorneys' fees to a
21 plaintiff who is the prevailing party in an action brought under
22 subsection (2) or (3) of this section.

23 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
24 constitute a new chapter in Title 10 RCW.

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