
A BILL FOR AN ACT

RELATING TO FACE SURVEILLANCE.

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

1 SECTION 1. The legislature finds that the unregulated use
2 of face surveillance poses a unique and significant threat to
3 the civil rights and liberties of residents and visitors of
4 Hawaii, especially with regard to the rights guaranteed by the
5 First, Fourth, and Fourteenth Amendments of the Constitution of
6 the United States and article I, sections 4, 5, 6, and 7 of the
7 Hawaii State Constitution.

8 The legislature further finds that a study published in
9 2019 by the National Institute of Standards and Technology found
10 that the majority of face surveillance technology systems are
11 far less accurate in identifying the faces of women, elderly
12 people, children, and people of color. These inaccuracies place
13 certain persons at an elevated risk of harmful "false positive"
14 identifications. Multiple studies and a growing base of experts
15 have had similar findings. Additionally, numerous studies have
16 shown that many of the databases to which face surveillance



1 technology is applied are plagued by racial and other biases,
2 which generate copycat biases in face surveillance data.

3 The legislature also finds that the broad application of
4 face surveillance in public spaces is the functional equivalent
5 of requiring every person to carry and display a personal photo
6 identification card at all times and carry a government global
7 positioning system tracking device, which constitutes an
8 unacceptable mass violation of privacy without probable cause.

9 The legislature further believes that the benefits of using
10 unregulated face surveillance can be outweighed by its harms.
11 One known advantage of face surveillance in Hawaii is that some
12 county police departments have used face surveillance technology
13 in a limited capacity, in coordination with the Hawaii criminal
14 justice data center in the department of the attorney general.
15 In the police departments, surveillance images of a crime are
16 compared against mugshots already existing in the Hawaii
17 criminal justice data center's database. The face surveillance
18 program is intended to identify possible suspects by generating
19 investigative leads for detectives. While the face surveillance
20 program is relatively new and has been used relatively few
21 times, the results of the program have been promising. The



1 legislature believes that county police departments should be
2 allowed to continue to use face surveillance for this limited
3 purpose. However, until the technology matures and proper
4 protections are put in place, the legislature finds further uses
5 of face recognition technology should be vetted and approved by
6 the legislature.

7 The legislature further finds that the increasing
8 prevalence and sophistication of face surveillance technology
9 for commercial purposes poses a unique threat to the civil
10 rights and liberties of the State's residents and visitors.
11 Commercial venues are beginning to incorporate face surveillance
12 technology to support in-store tracking of individuals. The
13 technology identifies individuals entering stores or, if the
14 precise identity of an individual is yet unknown, surveys the
15 individual's face to determine the individual's age and gender.

16 The legislature finds that this information is being sold
17 to third parties or provided to foreign governments for purposes
18 that are wholly inconsistent with the State's public policy and
19 democratic principles. At least one foreign government is said
20 to already have complete facial recognition profiles on all its
21 citizens, which it uses to suppress free speech and invade the



1 privacy of people within its borders without restraint.
2 Hawaii's citizens should not be subject to such violation of
3 privacy.

4 The purpose of this Act is to place a moratorium on:

- 5 (1) Government use of face surveillance other than
6 existing police department use; and
7 (2) Private use of face surveillance unless the subject of
8 the face surveillance has given clear, discrete,
9 written consent,

10 to ensure the legislature can properly vet future uses of the
11 rapidly evolving technology and prevent unintended consequences
12 from befalling Hawaii residents and their privacy and freedom.

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

16 "CHAPTER

17 FACE SURVEILLANCE

18 § -1 Definitions. As used in this chapter:

19 "Face surveillance" means an automated or semiautomated
20 process that:



1 (1) Assists in identifying or verifying an individual or
2 capturing information about an individual based on the
3 physical characteristics of the individual's face; or

4 (2) Uses characteristics of an individual's face, head, or
5 body to infer emotion, associations, activities, or
6 the location of the individual.

7 "Face surveillance system" means any computer software or
8 application that performs face surveillance.

9 "Government" means the State, or any of its political
10 subdivisions, departments, agencies, and instrumentalities,
11 corporate or otherwise.

12 "Government official" means any person or entity acting on
13 behalf of the State, or any of its political subdivisions,
14 including any officer, employee, agent, contractor,
15 subcontractor, or vendor.

16 "Private entity" means any individual, partnership,
17 corporation, limited liability company, association, or other
18 group, however organized.

19 "Written release" means informed written consent.

20 § -2 Restriction on government use of face surveillance.

21 (a) Except as provided in subsection (b), it shall be unlawful



1 for the government or any government official to obtain, retain,
2 access, or use:

3 (1) Any face surveillance system; or

4 (2) Any information obtained from a face surveillance
5 system.

6 (b) A face surveillance system or information obtained
7 from a face surveillance system shall only be obtained,
8 retained, accessed, or used:

9 (1) By law enforcement agency personnel trained in the use
10 of a face surveillance system;

11 (2) To compare surveillance photographs or videos to
12 arrest booking photographs from the Hawaii criminal
13 justice data center;

14 (3) In a photo lineup conducted pursuant to section
15 801K-2; and

16 (4) By driver's license and civil identification card
17 issuing agencies to satisfy the requirements of the
18 federal REAL ID Act of 2005.

19 Information obtained from a face surveillance system shall not
20 constitute probable cause for an arrest.



1 § -3 Restriction on private use of face surveillance
2 without permission. (a) It shall be unlawful for any private
3 entity to obtain, retain, access, or use any face surveillance
4 system or any information obtained through a face surveillance
5 system, unless the private entity first:

6 (1) Informs the subject or the subject's legally
7 authorized representative in writing that the private
8 entity wishes to obtain, retain, access, or use a face
9 surveillance system or information obtained through a
10 face surveillance system;

11 (2) Informs the subject or the subject's legally
12 authorized representative in writing of the specific
13 purpose and length of term for which the private
14 entity wishes to obtain, retain, access, or use a face
15 surveillance system or information obtained through a
16 face surveillance system; and

17 (3) Receives a clear, discrete, written release, which is
18 not a part of or otherwise combined with any other
19 permission granting instrument or function, executed
20 by the proposed subject of the face surveillance
21 system or information obtained through a face



1 surveillance system or that subject's legally
2 authorized representative, granting permission to
3 obtain, retain, access, or use a face surveillance
4 system or information obtained through a face
5 surveillance system with respect to that subject.

6 (b) In the absence of a clear, discrete, written release
7 to do so, no private entity in possession of a face surveillance
8 system or information obtained through a face surveillance
9 system may sell, share, lease, trade, or otherwise profit from
10 information obtained through a face surveillance system.

11 (c) No private entity in possession of a face surveillance
12 system or information obtained through a face surveillance
13 system may disclose, redisclose, or otherwise disseminate
14 information obtained through a face surveillance system unless
15 the subject of the face surveillance system or information
16 obtained through the face surveillance system or the subject's
17 legally authorized representative consents to the disclosure,
18 redisclosure, or dissemination pursuant to the standards
19 contained in subsection (a).

20 (d) A private entity in possession of a face surveillance
21 system or information obtained through a face surveillance



1 system shall store, transmit, and protect from disclosure all
2 information obtained through a face surveillance system:

- 3 (1) Using the reasonable standard of care within the
4 private entity's industry; and
5 (2) In a manner that is the same as or more protective
6 than the manner in which the private entity stores,
7 transmits, and protects other confidential and
8 sensitive information.

9 (e) Nothing in this section shall be construed to prohibit
10 private entities from using cameras for internal security
11 related purposes; provided that any information collected from a
12 camera used for internal security related purposes shall not be
13 sold, shared, leased, traded, or otherwise profited from as
14 provided in this section.

15 § -4 **Enforcement.** (a) Notwithstanding any other law to
16 the contrary, no data collected or derived from any use of a
17 face surveillance system in violation of this chapter and no
18 evidence derived therefrom may be received in evidence in any
19 trial, hearing, or other proceeding in or before any court,
20 grand jury, department, officer, agency, regulatory body,
21 legislative committee, or other authority subject to the



1 jurisdiction of this State. Face surveillance data collected or
2 derived in violation of this chapter shall be considered
3 unlawfully obtained and shall be deleted upon discovery.

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

13 (c) Any person who has been subjected to face surveillance
14 in violation of this chapter or about whom information has been
15 obtained, retained, accessed, or used in violation of this
16 chapter, may institute proceedings in any court of competent
17 jurisdiction against the private entity or government and shall
18 be entitled to recover actual damages, but not less than
19 liquidated damages of \$100 for each violation or \$1,000,
20 whichever is greater.



1 (d) A court shall award costs and reasonable attorneys'
2 fees to a plaintiff who is the prevailing party in an action
3 brought under subsection (b) or (c).

4 (e) Violations of this chapter by an employee of the
5 government shall result in consequences that may include
6 retraining, suspension, or termination, subject to due process
7 requirements and the employee's collective bargaining
8 agreement."

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Face Surveillance; Government Use; Private Use; Consent

Description:

Limits the government use of face surveillance except in certain circumstances. Limits the private use of face surveillance unless the subject of the face surveillance has given consent. Takes effect on 7/1/2050. (HD1)

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