
A BILL FOR AN ACT

RELATING TO VIOLATION OF PRIVACY.

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

1 SECTION 1. The legislature finds that the unregulated and
2 unfettered use of facial recognition poses unique and
3 significant implications with respect to the civil rights and
4 liberties of residents of and visitors to Hawaii.

5 The legislature also finds that facial recognition
6 technology is based upon algorithms that are known to vary in
7 accuracy. For example, a 2019 study by the National Institute
8 of Standards and Technology of the United States Department of
9 Commerce found evidence of race-based biases in the majority of
10 the facial recognition algorithms examined. The study found
11 that Blacks, Asians, and Native Americans were particularly
12 likely to be misidentified by facial recognition technology.

13 The legislature further finds that facial recognition
14 technology has already been used in concerning ways in other
15 states and countries. This technology has reportedly been used
16 to identify peaceful protestors during the 2020 Black Lives
17 Matter protests in various cities. The use of this technology



1 has also reportedly resulted in the false arrests of three Black
2 men in the United States, with other possible erroneous arrests
3 and convictions yet to be uncovered. In December 2020, *The New*
4 *York Times* reported that one of the arrested men, Nijeer Parks,
5 had his case dismissed for lack of evidence; he is now suing the
6 police, prosecutor, and City of Woodbridge, New Jersey, for
7 false arrest, false imprisonment, and violation of his civil
8 rights. Additionally, at least one foreign government is
9 reported to have complete facial recognition profiles on all its
10 citizens, which the government uses without restraint to
11 suppress free speech and invade the privacy of people within its
12 borders. The legislature believes that Hawaii's citizens should
13 not be subject to such violations of privacy.

14 The legislature also finds that the broad application of
15 government facial recognition in public spaces is the functional
16 equivalent of requiring every person to carry and display a
17 personal photo identification card at all times and to carry a
18 government global positioning system tracking device, which
19 would constitute an unacceptable violation of privacy.

20 The legislature further believes, however, that there are
21 limited circumstances in which the use of facial recognition



1 does not infringe on an individual's privacy rights. Some
2 county police departments have used facial recognition
3 technology in a limited capacity, in coordination with the
4 Hawaii criminal justice data center in the department of the
5 attorney general. In the police departments, surveillance
6 images of a crime are compared against mugshots that already
7 exist in the Hawaii criminal justice data center's database.
8 The facial recognition program is intended to identify possible
9 suspects by generating investigative leads for detectives, but
10 any identification cannot constitute probable cause for arrest.
11 The legislature believes that county police departments should
12 be allowed to continue to use facial recognition for this
13 limited passive purpose. However, the legislature finds that
14 further uses of facial recognition technology should be
15 prohibited unless vetted and approved by the legislature.

16 The legislature further finds that the airports division of
17 the department of transportation plans to use facial recognition
18 technology to identify persons passing through airports who have
19 fevers and may be infected with coronavirus disease 2019
20 (COVID-19) or other infectious diseases that pose a public
21 health risk to the State. The legislature believes that



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1 monitoring passengers is a necessary step to ensure that
2 Hawaii's economy can fully function while keeping the public
3 safe. The legislature believes that the airports division of
4 the department of transportation should be allowed to continue
5 to use facial recognition technology for this emergency purpose
6 solely within airports. However, any monitoring must be
7 properly balanced with the constitutional right to privacy, the
8 immediate destruction of obtained data, and prohibitions on
9 sharing that data.

10 The purpose of this Act is to ensure that the legislature
11 has the opportunity to properly vet future uses of rapidly
12 evolving facial recognition technology and to prevent unintended
13 consequences from interfering with the privacy and freedom of
14 persons in the State, as has occurred in other jurisdictions, by
15 placing limits on the government's use of facial recognition
16 systems, with certain specified exceptions.

17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:



1 "CHAPTER

2 FACIAL RECOGNITION PROHIBITION

3 § -1 Purpose and scope. The purpose of this chapter is
4 to place limits on the government's use of facial recognition
5 systems, with certain specified exceptions.

6 § -2 Applicability. This chapter shall not apply to a
7 government official's personal use of a privately owned facial
8 recognition system when the government official is acting in an
9 unofficial capacity.

10 § -3 Definitions. As used in this chapter:

11 "Facial recognition" means an automated or semiautomated
12 process that:

- 13 (1) Assists in identifying or verifying an individual or
14 capturing information about an individual based on the
15 physical characteristics of the individual's face; or
16 (2) Uses characteristics of an individual's face, head, or
17 body to infer emotion, associations, activities, or
18 the location of the individual.

19 "Facial recognition system" means any computer software or
20 application that performs facial recognition.



1 "Government" means the State, or any of its political
2 subdivisions, departments, agencies, and instrumentalities,
3 corporate or otherwise.

4 "Government official" means any person or entity acting on
5 behalf of the State, or any of its political subdivisions,
6 including any officer, employee, agent, contractor,
7 subcontractor, or vendor.

8 § -4 Restriction on government use of facial

9 recognition. (a) Except as provided in subsection (b), it
10 shall be unlawful for the government or any government official
11 to obtain, retain, share, access, or use:

12 (1) Any facial recognition system; or

13 (2) Any information obtained from a facial recognition
14 system.

15 (b) A facial recognition system or information obtained
16 from a facial recognition system shall only be obtained,
17 retained, shared, accessed, or used:

18 (1) By law enforcement agency personnel trained in the use
19 of a facial recognition system:



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- 1 (A) To compare surveillance photographs or videos to
2 arrest booking photographs from the Hawaii
3 criminal justice data center; or
4 (B) In a photo lineup conducted pursuant to section
5 801K-2;
6 (2) By driver's license and civil identification card
7 issuing agencies to satisfy the requirements of the
8 federal REAL ID Act of 2005, Public Law 109-13; or
9 (3) By the government or a government official:
10 (A) Upon a determination by the director of health
11 that there is a potential for a serious outbreak
12 of a communicable or dangerous disease or there
13 is the likelihood of extensive injury or death;
14 (B) At state airports;
15 (C) In conjunction with thermal scanning technology;
16 and
17 (D) To identify an individual when there is reason to
18 believe, based on thermal scanning technology,
19 that the individual could be infected with a
20 communicable or dangerous disease;



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1 provided that information obtained from a facial
2 recognition system shall be destroyed within sixty
3 minutes after it is obtained.

4 (c) Information obtained from a facial recognition system
5 shall not constitute probable cause for an arrest."

6 SECTION 3. This Act shall take effect upon its approval.

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Report Title:

Privacy; Facial Recognition Systems; Government Officials;
Limitations on Use

Description:

Limits the government's use of facial recognition systems, except in certain circumstances. Does not apply to personal use of a privately owned facial recognition system when acting in an unofficial capacity.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

