
SENATE BILL 5104

State of Washington

67th Legislature

2021 Regular Session

By Senator Hasegawa

Prefiled 01/07/21.

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

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

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

9 (a) Facial recognition technology; or

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

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

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

16 (b) Is permanently deleted upon discovery.

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

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

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

5 (4) This section expires July 1, 2026.

6 NEW SECTION. **Sec. 2.** (1) No information obtained from or by use
7 of facial recognition may be received in evidence in any trial,
8 hearing, or other proceeding in or before any court, grand jury,
9 department, officer, agency, regulatory body, legislative committee,
10 or other authority subject to the jurisdiction of the state of
11 Washington.

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

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

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

31 (5) This section expires July 1, 2026.

32 NEW SECTION. **Sec. 3.** (1) Nothing in this chapter applies to the
33 use of a facial recognition matching system by the department of
34 licensing pursuant to RCW 46.20.037.

35 (2) This section expires July 1, 2026.

36 NEW SECTION. **Sec. 4.** (1) A person may not operate, install, or
37 commission the operation or installation of equipment incorporating

1 facial recognition in any place of public resort, accommodation,
2 assemblage, or amusement, as defined in RCW 49.60.040.

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

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

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

11 (3) This section expires July 1, 2026.

12 NEW SECTION. **Sec. 5.** (1) The legislature finds that the
13 practices covered by this chapter are matters vitally affecting the
14 public interest for the purpose of applying the consumer protection
15 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
16 in relation to the development and preservation of business and is an
17 unfair or deceptive act in trade or commerce and an unfair method of
18 competition for the purpose of applying the consumer protection act,
19 chapter 19.86 RCW.

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

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

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

31 (5) This section expires July 1, 2026.

32 NEW SECTION. **Sec. 6.** (1) A joint legislative task force on
33 facial recognition technology is established, with members as
34 provided in this subsection:

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

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

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

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

12 (ii) One member from law enforcement;

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

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

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

21 (2) The task force shall:

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

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

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

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

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

38 (4) Legislative members of the task force are reimbursed for
39 travel expenses in accordance with RCW 44.04.120. Nonlegislative
40 members are not entitled to be reimbursed for travel expenses if they

1 are elected officials or are participating on behalf of an employer,
2 governmental entity, or other organization. Any reimbursement for
3 other nonlegislative members is subject to chapter 43.03 RCW.

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

7 (6) This section expires January 1, 2022.

8 NEW SECTION. **Sec. 7.** (1) Sections 1 through 3 of this act
9 constitute a new chapter in Title 10 RCW.

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

12 **Sec. 8.** RCW 43.386.901 and 2020 c 257 s 14 are each amended to
13 read as follows:

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

16 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of
18 the state government and its existing public institutions, and takes
19 effect immediately.

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