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**SUBSTITUTE HOUSE BILL 2856**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Innovation, Technology & Economic Development (originally sponsored by Representatives Entenman, Morgan, and Santos)

READ FIRST TIME 02/06/20.

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

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

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

9 (a) Any facial recognition technology; or

10 (b) Any information obtained from or by use of facial  
11 recognition.

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

15 (a) The information was not requested or solicited by a state or  
16 local agency or any official thereof; and

17 (b) The information is permanently deleted upon discovery.

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

19 (a) An automated or semiautomated process by which a person is  
20 identified or attempted to be identified based on the characteristics  
21 of the person's face; or

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

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

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 one thousand dollars  
27 per violation, 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, 2023.

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) Nothing in this chapter applies to the use of facial  
36 recognition for the purpose of redacting a recording for release or  
37 disclosure outside a law enforcement agency to protect the privacy of  
38 a subject depicted in the recording, if the process does not generate

1 or result in the retention of any biometric data or surveillance  
2 information.

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

4 NEW SECTION. **Sec. 4.** (1) A person may not operate, install, or  
5 commission the operation or installation of equipment incorporating  
6 facial recognition in any place of public resort, accommodation,  
7 assemblage, or amusement, as defined in RCW 49.60.040.

8 (2) For purposes of this section, "facial recognition" means:

9 (a) An automated or semiautomated process by which a person is  
10 identified or attempted to be identified based on the characteristics  
11 of the person's face; or

12 (b) An automated or semiautomated process by which the  
13 characteristics of a person's face are analyzed to determine the  
14 person's sentiment, state of mind, or other propensities including,  
15 but not limited to, the person's level of dangerousness.

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

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

25 (2) The attorney general may bring an action in the name of the  
26 state, or as *parens patriae* on behalf of persons residing in the  
27 state, to enforce this chapter. In any action brought by the attorney  
28 general to enforce this chapter, a violation of this chapter is  
29 subject to a civil penalty of one thousand dollars for each violation  
30 of this chapter.

31 (3) A consumer prevailing in an action under this chapter may  
32 recover actual damages, but not less than statutory damages of one  
33 thousand dollars per violation, whichever is greater.

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

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

1        NEW SECTION.    **Sec. 6.**    (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 of  
10 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 of  
33 facial recognition technology to civil liberties and freedoms,  
34 privacy and security, discrimination, and other potential harm; and

35        (c) Provide recommendations regarding appropriate regulation of  
36 facial recognition technology.

37        (3) The expenses of the task force must be paid jointly by the  
38 senate and the house of representatives. Task force expenditures are  
39 subject to approval by the senate facilities and operations committee  
40 and the house of representatives executive rules committee, or their

1 successor committees. Staff support for the task force must be  
2 provided by the senate committee services and the house of  
3 representatives office of program research.

4 (4) Legislative members of the task force are reimbursed for  
5 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
6 members are not entitled to be reimbursed for travel expenses if they  
7 are elected officials or are participating on behalf of an employer,  
8 governmental entity, or other organization. Any reimbursement for  
9 other nonlegislative members is subject to chapter 43.03 RCW.

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

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

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

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

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