

1 SENATE BILL NO. 397
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5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE FACIAL RECOGNITION FOR
6 GOVERNMENT USE ACT; PROVIDING A PURPOSE; PROHIBITING THE USE OF CONTINUOUS FACIAL
7 SURVEILLANCE; PROHIBITING THE USE OF FACIAL RECOGNITION TECHNOLOGY; PROVIDING
8 EXEMPTIONS FOR LAW ENFORCEMENT; PROVIDING EXEMPTIONS UNDER CERTAIN CONDITIONS;
9 PROVIDING FOR NOTICE REQUIREMENTS; PROVIDING FOR RETENTION AND DESTRUCTION
10 REQUIREMENTS; PROVIDING FOR REPORTING REQUIREMENTS; PROVIDING FOR PENALTIES;
11 PROVIDING DEFINITIONS; PROVIDING FOR A TRANSITION; AND PROVIDING AN IMMEDIATE
12 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15

16 NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Facial
17 Recognition for Government Use Act".
18

19 NEW SECTION. Section 2. Purpose. (1) Except as provided in subsection (2), the purpose of
20 [sections 1 through 12] is to prohibit the use of facial recognition technology for continuous facial surveillance or
21 facial identification by state and local government agencies and law enforcement agencies.

22 (2) It is the intent of the legislature to provide state and local government agencies the guidelines
23 to use, or contract with third parties to use on their behalf, facial verification and to provide law enforcement
24 agencies the ability to use facial recognition technology for investigations of serious crimes.
25

26 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 12], unless the context
27 clearly indicates otherwise, the following definitions apply:

Amendment - 1st Reading-white - Requested by: Kenneth Bogner - (S) Business, Labor, and Economic Affairs

68th Legislature

Drafter: Erin Sullivan, 406-444-3594

SB0397.001.001

1 (1) "Affirmative authorization" means an action that demonstrates the intentional decision by an
2 individual to opt into the retention of the individual's facial biometric data by a third-party vendor.

3 (2) "Another jurisdiction" means the federal government, the United States military, the District of
4 Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United
5 States Virgin Islands, Guam, American Samoa, a federally recognized Indian tribe, or a state other than
6 Montana.

7 (3) "Continuous facial surveillance" means the generalized monitoring of public places or third-
8 party image sets using facial recognition technology for facial identification to match faces with a prepopulated
9 list of face images. The term includes but is not limited to scanning stored video footage to identify faces in the
10 stored data, real-time scanning of video surveillance to identify faces passing by the cameras, and passively
11 monitoring video footage using facial recognition technology for general surveillance purposes without a
12 particularized suspicion of a specific target.

13 (4) "Department" means the department of justice.

14 (5) "Digital driver's license" means a secure version of an individual's physical driver's license or
15 identification card that is stored on the individual's mobile device.

16 (6) "Facial biometric data" means data derived from a measurement, pattern, contour, or other
17 characteristic of an individual's face, either directly or from an image.

18 (7) (a) "Facial identification" means a computer system that, for the purpose of attempting to
19 determine the identity of an unknown individual, uses an algorithm to compare the facial biometric data of an
20 unknown individual derived from a photograph, video, or image to a database of photographs or images and
21 associated facial biometric data in order to identify potential matches.

22 (b) The term does not include:

23 (i) a system used specifically to protect against unauthorized access to a particular location or an
24 electronic device; or

25 (ii) a system a consumer uses for the consumer's private purposes.

26 (8) "Facial recognition service" or "facial recognition technology" means the use of facial
27 identification or facial verification.

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SB0397.001.001

1 (9) "Facial verification" means the automated process of comparing an image or facial biometric
2 data of a known individual to an image database, or to government documentation containing an image of the
3 known individual, to identify a potential match in pursuit of the individual's identity.

4 (10) "Law enforcement agency" means:

5 (a) an agency or officer of the state of Montana or of a political subdivision that is empowered by
6 the laws of this state to conduct investigations or to make arrests; and

7 (b) an attorney, including the attorney general, who is authorized by the laws of this state to
8 prosecute or to participate in the prosecution of a person who is arrested or who may be subject to a civil action
9 related to or concerning an arrest.

10 (11) "Motor vehicle division" means the division within the department of justice authorized to issue
11 driver's licenses.

12 (12) "Personal information" has the same meaning as in 30-14-1704.

13 (13) "Public building" means any building that the state or any political subdivision of the state
14 maintains for the use of the public.

15 (14) "Public employee" means a person employed by a state or local government agency, including
16 but not limited to a peace officer.

17 (15) "Public official" means a person elected or appointed to a public office that is part of a state or
18 local government agency.

19 (16) "Public roads and highways of this state" has the same meaning as in 15-70-401.

20 (17) "Serious crime" means:

21 (a) a crime under the laws of this state that is a violation of 45-5-102, 45-5-103, 45-5-104, 45-5-
22 106, 45-5-202, 45-5-207, 45-5-210, 45-5-212, 45-5-213, 45-5-220, 45-5-302, 45-5-303, 45-5-401, 45-5-503, 45-
23 5-504(3), 45-5-508, 45-5-602, 45-5-603, 45-5-622, 45-5-625, 45-5-627, 45-5-628, 45-5-702, 45-5-703, 45-5-
24 704, or 45-5-705; or

25 (b) a crime under the laws of another jurisdiction that is substantially similar to a crime under
26 subsection (17)(a).

27 (18) "State or local government agency" means a state, county, or municipal government, a

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1 department, agency, or subdivision of a state, county, or municipal government, or any other entity identified in
2 law as a public instrumentality. The term does not include a school district or law enforcement agency.

3 (19) "Vendor" has the same meaning as in 18-4-123.
4

5 **NEW SECTION. Section 4. Prohibition of continuous facial surveillance.** (1) A state or local
6 government agency, law enforcement agency, public employee, or public official may not obtain, retain,
7 possess, access, request, contract for, or use continuous facial surveillance.

8 (2) The use of facial recognition technology for facial verification, including any resulting data, may
9 not be used to aid or assist in any type of continuous facial surveillance.
10

11 **NEW SECTION. Section 5. Prohibition of facial recognition technology.** (1) Except as provided in
12 [sections 6 and 8], a state or local government agency, law enforcement agency, public employee, or public
13 official may not:

14 (a) obtain, retain, possess, access, request, or use facial recognition technology or information
15 derived from a search using facial recognition technology;

16 (b) enter into an agreement with a third-party vendor for any purpose listed in subsection (1)(a); or

17 (c) install or equip a continuous facial surveillance monitoring camera on public buildings or on
18 public roads and highways of this state, except as provided in 46-5-117.

19 (2) The motor vehicle division may not establish a digital driver's license program that utilizes facial
20 recognition technology without the consent of the legislature.
21

22 **NEW SECTION. Section 6. Use of facial recognition technology by law enforcement -- when**
23 **permitted -- restrictions on use -- warrant required.** (1) The department of justice is the only state or local
24 government agency authorized to use facial recognition technology for criminal investigations. A request from a
25 law enforcement agency for a search using facial recognition technology must be made to the criminal
26 intelligence information section established in 44-5-501.

27 (2) A law enforcement agency may request a search using facial recognition technology and may