

# Senate Bill 309

Sponsored by Senator RILEY (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits certain use of face recognition technology by state agencies.

Requires state agencies to report on use of face recognition technology to office of State Chief Information Officer no later than 90 days after effective date of Act.

Requires State Chief Information Officer to study adoption of comprehensive framework for addressing appropriate use or prohibition of surveillance technology and provide information in report to interim Joint Legislative Committee on Information Management and Technology no later than September 15, 2023.

## A BILL FOR AN ACT

1  
2 Relating to face recognition technologies.

3       Whereas there is a need for privacy assessment and comprehensive structures to address ten-  
4 sions with transparency around the publication, accessibility and equitable sharing of data collected  
5 by state agencies; and

6       Whereas state agencies should prioritize addressing inequities and disparities when using data  
7 and should prioritize investing in technologies that improve people's lives, with a specific focus on  
8 communities of color and communities with disabilities; and

9       Whereas state agencies should center equity and human rights in privacy strategy development  
10 and acknowledge that underserved communities are most at risk in the digital age; and

11       Whereas human rights principles such as privacy and freedom of expression must guide the use  
12 of state agencies' data and digital services; and

13       Whereas it is essential to have an informed public discussion about decisions related to state  
14 agencies' acquisition and use of surveillance technologies including face recognition technologies;  
15 and

16       Whereas the use of face recognition technologies raises general concerns around privacy,  
17 intrusiveness and lack of transparency; and

18       Whereas a lack of transparency and accountability, in addition to biased technologies-partic-  
19 ularly in the context of false positives in law enforcement-can create devastating impacts on indi-  
20 viduals and families; and

21       Whereas United States federal law does not currently regulate face recognition technologies;  
22 and

23       Whereas existing methodologies assessing bias in face recognition technologies show progress  
24 on their performance, but there is still no formal certification process available that includes the full  
25 lifecycle of sensitive information collected from individuals; and

26       Whereas it is essential that government frameworks on data governance and privacy include  
27 impacted communities and transparent decision-making authority to regulate and oversee that the  
28 use of surveillance technologies and sensitive information do not harmfully impact civil rights and

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 civil liberties; and

2 Whereas the Legislative Assembly recognizes that rapid evolution of technologies demands more  
 3 frequent revisions of existing technology-related policies in order to ensure that the policies still  
 4 fulfill their purposes; and

5 Whereas the Legislative Assembly desires to adopt a ban on state agency acquisition and use  
 6 of face recognition technologies and information derived from such technologies; now therefore,

7 **Be It Enacted by the People of the State of Oregon:**

8 **SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

9 (1) **“Acquire” means to purchase, lease or accept by donation or gift.**

10 (2) **“Executive department” has the meaning given that term in ORS 174.112.**

11 (3) **“Face recognition” means the automated searching for a reference image in an image  
 12 repository by comparing the facial features of a probe image with the features of images  
 13 contained in an image repository, and that typically results in either:**

14 (a) **One or more likely match candidates or candidate images, ranked by computer-  
 15 evaluated similarity; or**

16 (b) **A negative result.**

17 (4) **“Face recognition technology” means an automated or semi-automated process using  
 18 face recognition that assists in identifying, verifying, detecting or characterizing facial fea-  
 19 tures of an individual or capturing information about an individual based on an individual’s  
 20 face.**

21 (5) **“State agency” means a board, commission, department, division, office or other en-  
 22 tity within the executive department, except:**

23 (a) **The Secretary of State;**

24 (b) **The State Treasurer;**

25 (c) **The Oregon State Lottery; and**

26 (d) **A public university that is listed in ORS 352.002.**

27 **SECTION 2. (1) Except as provided in subsection (2) of this section, a state agency may  
 28 not:**

29 (a) **Acquire, evaluate or use face recognition technology;**

30 (b) **Knowingly acquire, request, use, access or retain any information derived from face  
 31 recognition technology or intentionally collect information to be used for face recognition  
 32 technology;**

33 (c) **Direct an entity that is not a state agency to acquire or use face recognition tech-  
 34 nology on behalf of the state agency unless the acquisition or use is otherwise authorized  
 35 under this section; or**

36 (d) **Knowingly allow an entity that is not a state agency to use face recognition technol-  
 37 ogy on real property that is owned or leased by the state unless the use by a state agency  
 38 would otherwise be allowed under this section.**

39 (2)(a) **A state agency may use face recognition technology:**

40 (A) **For verification purposes to allow officers or employees of the state agency to access  
 41 their own personal or state agency-issued personal communication and electronic devices;**

42 (B) **As part of automatic face detection services in social media applications; or**

43 (C) **In detecting faces for the sole purpose of redacting a recording for release or disclo-  
 44 sure in order to protect the privacy of a subject depicted in the recording.**

45 (b) **A state agency may acquire, request, use, access or retain information that was de-**

1 rived from face recognition technology prior to the effective date of this 2021 Act to the ex-  
2 tent that such acquisition, request, use, access or retention is required by the public records  
3 law, ORS 192.311 to 192.478.

4 (3)(a) As soon as a state agency learns that it has inadvertently or unintentionally re-  
5 ceived, accessed or used information obtained from face recognition technology, the state  
6 agency shall:

7 (A) Immediately cease use of the information;

8 (B) Document the receipt, access or use of the information in an impact report; and

9 (C) Submit the impact report to the office of the State Chief Information Officer in the  
10 manner provided for by the State Chief Information Officer by rule.

11 (b) An impact report required by this section must include:

12 (A) The date the information obtained from face recognition technology was received,  
13 accessed or used;

14 (B) The source of the information;

15 (C) A description or summary of the incident;

16 (D) Whether the state agency accessed or used the information in the course of the state  
17 agency's operations; and

18 (E) The corrective measures taken by the state agency to prevent further transmission  
19 or use of any information inadvertently or unintentionally obtained through the use of face  
20 recognition technology.

21 (c) The State Chief Information Officer shall include information contained in impact  
22 reports received under this section in the biennial assessment required under ORS 276A.203  
23 (4)(a)(G).

24 (4) The office of the State Chief Information Officer shall provide public education re-  
25 garding the scope and limitations of the prohibitions set forth in this section.

26 (5) The State Chief Information Officer may adopt rules to implement the provisions of  
27 sections 1 to 3 of this 2021 Act. Rules adopted under this subsection must align with and  
28 support the Enterprise Information Resources Management Strategy described in ORS  
29 276A.203.

30 **SECTION 3.** (1) A person injured by a material violation by a state agency of section 2  
31 of this 2021 Act may bring an action against the state in circuit court for injunctive relief,  
32 declaratory relief or writ of mandamus to require the agency to comply with section 2 of this  
33 2021 Act.

34 (2) At least 30 days before initiating an action under subsection (1) of this section, the  
35 person bringing the action must provide written notice to the Attorney General. If the  
36 agency has not corrected the violation of section 2 of this 2021 Act at the end of the thirty-  
37 day notice period, the person may initiate the action under subsection (1) of this section.

38 (3) If an agency corrects a violation after receiving notice under subsection (2) of this  
39 section, the agency shall post a notice that describes the corrective measures taken to ad-  
40 dress the violation in a conspicuous space on the agency's website and on the Oregon  
41 transparency website described in ORS 276A.253.

42 **SECTION 4.** No later than 90 days after the effective date of this 2021 Act, each state  
43 agency, as that term is defined in section 1 of this 2021 Act, shall provide to the office of the  
44 State Chief Information Officer the results of an assessment of whether face recognition  
45 technology is in use at the state agency and detailing the scope of any such use. The results

1 of the assessment shall be made publicly available.

2 **SECTION 5.** (1) As used in this section:

3 (a) “Face recognition technology” has the meaning given that term in section 1 of this  
4 2021 Act.

5 (b) “State agency” has the meaning given that term in section 1 of this 2021 Act.

6 (c) “Surveillance technology” includes any software, electronic device or system utilizing  
7 an electronic device, which is designed or primarily intended to collect, retain, analyze, pro-  
8 cess or share information that:

9 (A) Is geographic data as defined in ORS 276A.203, information in an audio, electronic,  
10 visual, thermal, olfactory or biometric format, or other information of a similar type or in  
11 a similar format; and

12 (B) Is specifically associated with, or capable of being associated with, any individual or  
13 group.

14 (2) The State Chief Information Officer, in consultation with state agencies, shall study  
15 the adoption of a comprehensive framework for addressing the appropriate use or prohibition  
16 of surveillance technology, including face recognition technology and the information derived  
17 from face recognition technology.

18 (3) The study required by this section shall include:

19 (a) A review of the assessments provided to the office by state agencies under section 4  
20 of this 2021 Act; and

21 (b) An assessment of state agency staff and budget resources necessary to:

22 (A) Establish statewide privacy policies and procedures;

23 (B) Develop effective privacy assessment tools;

24 (C) Create guidelines for acquiring, using or sharing information derived from surveil-  
25 lance technologies;

26 (D) Design and implement public engagement processes, with a focus on underserved  
27 communities; and

28 (E) Create decision-making structures for managing data derived from surveillance  
29 technologies.

30 (4) The office shall provide the results of the study in a report that may include recom-  
31 mendations for legislation, in the manner provided in ORS 192.245, to the interim Joint Leg-  
32 islative Committee on Information Management and Technology no later than September 15,  
33 2023.

34 **SECTION 6.** Sections 4 and 5 of this 2021 Act are repealed on January 2, 2024.

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