

Senate Bill 310

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 private entities from using face recognition technology in place of public accommodation. Provides for private right of action against private entity that violates prohibition on use of face recognition technology in place of public accommodation.

Requires Bureau of Labor and Industries to study adoption of comprehensive framework for addressing appropriate use or prohibition of face recognition technology and 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 technology.

3 Whereas there is a need for privacy assessment and comprehensive structures to address ten-
4 sions with transparency around the sharing of data collected by private entities; and

5 Whereas individuals should enjoy access to public spaces with a reasonable assumption of ano-
6 nymity and personal privacy; and

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

10 Whereas underserved communities are most at risk in the digital age and equity and human
11 rights should be priorities in the development of privacy strategies; and

12 Whereas human rights principles such as privacy and freedom of expression must guide the use
13 of face recognition data digital services; and

14 Whereas it is essential to have an informed public discussion about decisions related to the use
15 of face recognition technology; and

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

18 Whereas United States federal law does not currently regulate face recognition technologies;
19 and

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

23 Whereas it is essential that frameworks on privacy include impacted communities and trans-
24 parent decision-making authority to regulate and oversee that the use of face recognition technology
25 does not harmfully impact civil rights and civil liberties; and

26 Whereas the Legislative Assembly desires to adopt a ban on the use of face recognition tech-
27 nology by private entities in places of public accommodation; now, therefore,

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

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

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

5 (a) One or more likely match candidates or candidate images, ranked by computer-
6 evaluated similarity; or

7 (b) A negative result.

8 (2) “Face recognition technology” means an automated or semi-automated process using
9 face recognition that assists in identifying, verifying, detecting or characterizing facial fea-
10 tures of an individual or capturing information about an individual based on an individual’s
11 face.

12 (3) “Place of public accommodation” has the meaning given that term in ORS 659A.400.

13 (4) “Private entity” means a nongovernmental entity, including but not limited to a cor-
14 poration, partnership, company, nonprofit organization or other legal entity or natural per-
15 son.

16 (5) “Probe image” means a facial image captured from photo or video.

17 **SECTION 2.** (1) Except as provided in subsection (2) of this section, a private entity
18 within this state may not use face recognition technology in a place of public accommo-
19 dation.

20 (2) A private entity may use face recognition technology:

21 (a) To the extent that such use is necessary to comply with federal, state or local laws;

22 (b) For verification purposes to allow employees of the private entity to access their own
23 personal or employer-issued communication and electronic devices; or

24 (c) As part of automatic face detection services in social media applications.

25 (3) The Bureau of Labor and Industries shall provide public education regarding the scope
26 and limitations of the provisions of this section.

27 (4) The Commissioner of the Bureau of Labor and Industries may adopt rules to imple-
28 ment the provisions of this section.

29 **SECTION 3.** (1)(a) A person injured by a material violation by a private entity of section
30 2 of this 2021 Act may bring an action against the private entity in circuit court for damages
31 or to obtain injunctive relief or any other remedy that the court deems appropriate to re-
32 quire the private entity to comply with section 2 of this 2021 Act.

33 (b) The court shall award to the prevailing plaintiff in an action under this section the
34 amount of damages sustained as a result of the violation or an amount equal to \$1,000 per
35 day for a continuing violation, whichever is greater.

36 (2) The court shall award reasonable attorneys fees to the prevailing plaintiff in an action
37 under this section unless the court finds that:

38 (a) The plaintiff provided to the private entity defendant written demand for the payment
39 of the claim not less than 30 days prior to the commencement of the action; and

40 (b) The private entity defendant tendered to the plaintiff, prior to the commencement of
41 the action, an amount not less than the damages awarded to the plaintiff, exclusive of any
42 costs, interest and prevailing party fees.

43 **SECTION 4.** (1) As used in this section:

44 (a) “Face recognition technology” has the meaning given that term in section 1 of this
45 2021 Act.

1 (b) "Place of public accommodation" has the meaning given that term in ORS 659A.400.

2 (c) "Private entity" has the meaning given that term in section 1 of this 2021 Act.

3 (2) The Bureau of Labor and Industries, in consultation with any relevant state agencies,
4 shall study the adoption of a comprehensive framework for addressing the appropriate use
5 or prohibition of face recognition technology and the information derived from face recogni-
6 tion technology in places of public accommodation.

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

8 (a) A review of the impacts of the use of face recognition technology by private entities
9 in places of public accommodation, particularly with respect to the impacts such use has on
10 historically underserved communities;

11 (b) An assessment of the implications the use of face recognition technology has on pri-
12 vate citizen rights to privacy and the protection of personal information;

13 (c) The identification of effective privacy assessment tools; and

14 (d) The evaluation of successful public engagement processes that focus on historically
15 underserved communities.

16 (4) The bureau shall provide the results of the study in a report that may include rec-
17 ommendations for legislation, in the manner provided in ORS 192.245, to the interim Joint
18 Legislative Committee on Information Management and Technology no later than September
19 15, 2023.

20 SECTION 5. Section 4 of this 2021 Act is repealed on January 2, 2024.
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