A BILL FOR AN ACT

RELATING TO VIOLATION OF PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the unregulated and unfettered use of facial recognition poses unique and significant implications with respect to the civil rights and liberties of residents of and visitors to Hawaii.

The legislature also finds that facial recognition technology is based upon algorithms that are known to vary in accuracy. For example, a 2019 study by the National Institute of Standards and Technology of the United States Department of Commerce found evidence of race-based biases in the majority of the facial recognition algorithms examined. The study found that Blacks, Asians, and Native Americans were particularly likely to be misidentified by facial recognition technology.

The legislature further finds that facial recognition technology has already been used in concerning ways in other states and countries. This technology has reportedly been used to identify peaceful protestors during the 2020 Black Lives Matter protests in various cities. The use of this technology
has also reportedly resulted in the false arrests of three Black men in the United States, with other possible erroneous arrests and convictions yet to be uncovered. In December 2020, The New York Times reported that one of the arrested men, Nijeer Parks, had his case dismissed for lack of evidence; he is now suing the police, prosecutor, and City of Woodbridge, New Jersey, for false arrest, false imprisonment, and violation of his civil rights. Additionally, at least one foreign government is reported to have complete facial recognition profiles on all its citizens, which the government uses without restraint to suppress free speech and invade the privacy of people within its borders. The legislature believes that Hawaii's citizens should not be subject to such violations of privacy.

The legislature also finds that the broad application of government facial recognition in public spaces is the functional equivalent of requiring every person to carry and display a personal photo identification card at all times and to carry a government global positioning system tracking device, which would constitute an unacceptable violation of privacy.

The legislature further believes, however, that there are limited circumstances in which the use of facial recognition
does not infringe on an individual's privacy rights. Some
county police departments have used facial recognition
technology in a limited capacity, in coordination with the
Hawaii criminal justice data center in the department of the
attorney general. In the police departments, surveillance
images of a crime are compared against mugshots that already
exist in the Hawaii criminal justice data center's database.
The facial recognition program is intended to identify possible
suspects by generating investigative leads for detectives, but
any identification cannot constitute probable cause for arrest.
The legislature believes that county police departments should
be allowed to continue to use facial recognition for this
limited passive purpose. However, the legislature finds that
further uses of facial recognition technology should be
prohibited unless vetted and approved by the legislature.

The legislature further finds that the airports division of
the department of transportation plans to use facial recognition
technology to identify persons passing through airports who have
fevers and may be infected with coronavirus disease 2019
(COVID-19) or other infectious diseases that pose a public
health risk to the State. The legislature believes that
monitoring passengers is a necessary step to ensure that Hawaii's economy can fully function while keeping the public safe. The legislature believes that the airports division of the department of transportation should be allowed to continue to use facial recognition technology for this emergency purpose solely within airports. However, any monitoring must be properly balanced with the constitutional right to privacy, the immediate destruction of obtained data, and prohibitions on sharing that data.

The purpose of this Act is to ensure that the legislature has the opportunity to properly vet future uses of rapidly evolving facial recognition technology and to prevent unintended consequences from interfering with the privacy and freedom of persons in the State, as has occurred in other jurisdictions, by placing limits on the government's use of facial recognition systems, with certain specified exceptions.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:
"CHAPTER

FACIAL RECOGNITION PROHIBITION

§ -1 Purpose and scope. The purpose of this chapter is to place limits on the government's use of facial recognition systems, with certain specified exceptions.

§ -2 Applicability. This chapter shall not apply to a government official's personal use of a privately owned facial recognition system when the government official is acting in an unofficial capacity.

§ -3 Definitions. As used in this chapter:

"Facial recognition" means an automated or semiautomated process that:

(1) Assists in identifying or verifying an individual or capturing information about an individual based on the physical characteristics of the individual's face; or

(2) Uses characteristics of an individual's face, head, or body to infer emotion, associations, activities, or the location of the individual.

"Facial recognition system" means any computer software or application that performs facial recognition.
"Government" means the State, or any of its political subdivisions, departments, agencies, and instrumentalities, corporate or otherwise.

"Government official" means any person or entity acting on behalf of the State, or any of its political subdivisions, including any officer, employee, agent, contractor, subcontractor, or vendor.

§ 4 Restriction on government use of facial recognition. (a) Except as provided in subsection (b), it shall be unlawful for the government or any government official to obtain, retain, share, access, or use:

(1) Any facial recognition system; or
(2) Any information obtained from a facial recognition system.

(b) A facial recognition system or information obtained from a facial recognition system shall only be obtained, retained, shared, accessed, or used:

(1) By law enforcement agency personnel trained in the use of a facial recognition system:
(A) To compare surveillance photographs or videos to arrest booking photographs from the Hawaii criminal justice data center; or

(B) In a photo lineup conducted pursuant to section 801K-2;

(2) By driver's license and civil identification card issuing agencies to satisfy the requirements of the federal REAL ID Act of 2005, Public Law 109-13; or

(3) By the government or a government official:

(A) Upon a determination by the director of health that there is a potential for a serious outbreak of a communicable or dangerous disease or there is the likelihood of extensive injury or death;

(B) At state airports;

(C) In conjunction with thermal scanning technology; and

(D) To identify an individual when there is reason to believe, based on thermal scanning technology, that the individual could be infected with a communicable or dangerous disease;
provided that information obtained from a facial
recognition system shall be destroyed within sixty
minutes after it is obtained.

(c) Information obtained from a facial recognition system
shall not constitute probable cause for an arrest."

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY:  

[Signature]
Report Title:
Privacy; Facial Recognition Systems; Government Officials;
Limitations on Use

Description:
Limits the government's use of facial recognition systems, except in certain circumstances. Does not apply to personal use of a privately owned facial recognition system when acting in an unofficial capacity.

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