

JAN 21 2022

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# A BILL FOR AN ACT

RELATING TO FACIAL RECOGNITION SYSTEMS.

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

1           SECTION 1. The legislature finds that the unregulated and  
2 unfettered use of facial recognition technology poses unique and  
3 significant implications with respect to the civil rights and  
4 liberties of residents of and visitors to Hawaii. The  
5 legislature recognizes, however, that in certain limited  
6 circumstances, the use of this technology does not infringe on  
7 an individual's privacy rights.

8           The legislature also finds that detecting infectious  
9 travelers is a necessary step to ensure that Hawaii's economy  
10 can fully function while keeping the public safe. In May 2021,  
11 facial imaging equipment became operational throughout the  
12 State's five major airports that accept trans-Pacific flights.  
13 The equipment is being used in conjunction with thermal  
14 screening equipment as part of the Hawaii department of  
15 transportation airports division project to screen travelers for  
16 fevers and detect those who may be infected with coronavirus  
17 disease 2019 (COVID-19) or other infectious diseases that pose a



1 public health risk. According to a department of transportation  
2 news release dated May 17, 2021, any images collected under the  
3 project will remain anonymous, meaning no traveler's image will  
4 be connected to personal identifying information; images will  
5 not contain information on criminal history or outstanding  
6 warrants; images will not be shared with other agencies and will  
7 be deleted within thirty minutes; and travelers having a core  
8 body temperature of 100.3 degrees Fahrenheit and lower will not  
9 have their image recorded at all.

10 The legislature believes that the airports division of the  
11 department of transportation should be allowed to continue using  
12 facial recognition technology, solely within airports, for the  
13 purposes of emergency response and protection of public health.  
14 However, any screening or monitoring must be properly balanced  
15 with the constitutional right to privacy, the immediate  
16 destruction of obtained data, and prohibitions on sharing that  
17 data.

18 The purpose of this Act is to ensure that the legislature  
19 has the opportunity to properly vet future uses of rapidly  
20 evolving facial recognition technology, and to prevent any  
21 unintended consequences from interfering with the privacy and



1 freedom of persons in the State -- as has occurred in other  
2 jurisdictions -- by limiting the department of transportation's  
3 use of facial recognition systems to certain specified  
4 situations.

5 SECTION 2. Section 26-19, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§26-19 Department of transportation.** (a) The department  
8 of transportation shall be headed by a single executive to be  
9 known as the director of transportation. The department shall  
10 establish, maintain, and operate transportation facilities of  
11 the State, including highways, airports, harbors, and such other  
12 transportation facilities and activities as may be authorized by  
13 law.

14 The department shall plan, develop, promote, and coordinate  
15 various transportation systems management programs that shall  
16 include, but not be limited to, alternate work and school hours  
17 programs, bicycling programs, and ridesharing programs.

18 The department shall develop and promote ridesharing  
19 programs which shall include but not be limited to, carpool and  
20 vanpool programs, and may assist organizations interested in  
21 promoting similar programs, arrange for contracts with private



1 organizations to manage and operate these programs, and assist  
2 in the formulation of ridesharing arrangements. Ridesharing  
3 programs include informal arrangements in which two or more  
4 persons ride together in a motor vehicle.

5 (b) The functions and authority heretofore exercised by  
6 the department of public works with respect to highways are  
7 transferred to the department of transportation established by  
8 this chapter.

9 (c) On July 1, 1961, the Hawaii aeronautics commission,  
10 the board of harbor commissioners and the highway commission  
11 shall be abolished and their remaining functions, duties, and  
12 powers shall be transferred to the department of transportation.

13 (d) It shall be unlawful for the department or any  
14 departmental official to obtain, retain, share, access, or use  
15 any facial recognition system, or any information obtained from  
16 a facial recognition system, unless all of the following  
17 conditions are met:

18 (1) The director of health has determined that there  
19 exists the potential for a serious outbreak of a  
20 communicable or dangerous disease or that there exists  
21 the likelihood of extensive injury or death;



- 1        (2) Use of the facial recognition system, and any  
2        information obtained therefrom, occurs solely within  
3        state airports;
- 4        (3) The facial recognition system is used in conjunction  
5        with thermal scanning technology for the purpose of  
6        identifying an individual when there is reason to  
7        believe, based on the results of the thermal scan,  
8        that the individual may presently be infected with a  
9        communicable or dangerous disease; and
- 10       (4) Information obtained from the facial recognition  
11       system is:
- 12       (A) Destroyed within sixty minutes after being  
13       obtained;
- 14       (B) Not connected to any personal identifying data,  
15       including an individual's name, address, or  
16       driver's license or passport number;
- 17       (C) Not connected to any information on an  
18       individual's criminal history or outstanding  
19       arrest warrants;
- 20       (D) Not shared outside of the department; and



1           (E) Not used to establish probable cause for an  
2                   arrest;  
3 provided that this subsection shall not apply to a departmental  
4 official's personal use of a privately owned facial recognition  
5 system when the departmental official is acting in an unofficial  
6 capacity.

7           (e) As used in this section:

8           "Departmental official" means any person or entity acting  
9 on behalf of the department of transportation, including any  
10 officer, employee, agent, contractor, subcontractor, or vendor.

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

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

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

20           "Facial recognition system" means any computer software or  
21 application that performs facial recognition."



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1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 2293

**Report Title:**

Privacy; Facial Recognition Systems; DOT; Limitations on Use

**Description:**

Limits the Department of Transportation's use of facial recognition systems to certain specified situations. Does not apply to personal use of a privately owned facial recognition system when acting in an unofficial capacity.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

