Senate Bill 310

Sponsored by Senator RILEY (Presession 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

Relating to face recognition technology.

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

Whereas individuals should enjoy access to public spaces with a reasonable assumption of anonymity and personal privacy; and

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

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

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

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

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

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

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

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

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

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.

LC 1238
SECTION 1. As used in sections 1 to 3 of this 2021 Act:

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

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

(b) A negative result.

(2) “Face recognition technology” means an automated or semi-automated process using face recognition that assists in identifying, verifying, detecting or characterizing facial features of an individual or capturing information about an individual based on an individual's face.

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

(4) “Private entity” means a nongovernmental entity, including but not limited to a corporation, partnership, company, nonprofit organization or other legal entity or natural person.

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

SECTION 2. (1) Except as provided in subsection (2) of this section, a private entity within this state may not use face recognition technology in a place of public accommodation.

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

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

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

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

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

(4) The Commissioner of the Bureau of Labor and Industries may adopt rules to implement the provisions of this section.

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

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

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

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

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

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

(a) “Face recognition technology” has the meaning given that term in section 1 of this 2021 Act.
(b) “Place of public accommodation” has the meaning given that term in ORS 659A.400.

c) “Private entity” has the meaning given that term in section 1 of this 2021 Act.

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

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

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

(b) An assessment of the implications the use of face recognition technology has on private citizen rights to privacy and the protection of personal information;

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

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

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

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