

SENATE BILL 857

I3, P1

EMERGENCY BILL

0lr2272

By: **Senator Sydnor**

Introduced and read first time: February 3, 2020

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Facial Recognition Services – Moratorium**

3 FOR the purpose of prohibiting certain persons and certain units of State and local
4 government from using a facial recognition service or any information derived from
5 a facial recognition service in the State; declaring certain findings of the General
6 Assembly; granting certain authority to the Office of the Attorney General to enforce
7 certain provisions of this Act; establishing that certain violators of certain provisions
8 of this Act may be subject to an injunction and certain penalties; defining certain
9 terms; providing for the termination of this Act; making this Act an emergency
10 measure; and generally relating to facial recognition services.

11 BY adding to

12 Article – Commercial Law

13 Section 14–4201 through 14–4204 to be under the new subtitle “Subtitle 42. Facial
14 Recognition Services”

15 Annotated Code of Maryland

16 (2013 Replacement Volume and 2019 Supplement)

17 BY adding to

18 Article – State Government

19 Section 10–1701 through 10–1703 to be under the new subtitle “Subtitle 17. Facial
20 Recognition Services”

21 Annotated Code of Maryland

22 (2014 Replacement Volume and 2019 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **SUBTITLE 42. FACIAL RECOGNITION SERVICES.**2 **14-4201.**3 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**5 **(B) (1) “ENROLL” MEANS THE PROCESS BY WHICH A FACIAL**
6 **RECOGNITION SERVICE CREATES A FACIAL TEMPLATE FROM ONE OR MORE IMAGES**
7 **OF AN INDIVIDUAL AND ADDS THE FACIAL TEMPLATE TO A GALLERY USED BY THE**
8 **FACIAL RECOGNITION SERVICE FOR RECOGNITION OR PERSISTENT TRACKING OF**
9 **INDIVIDUALS.**10 **(2) “ENROLL” INCLUDES THE ACT OF ADDING AN EXISTING FACIAL**
11 **TEMPLATE DIRECTLY INTO A GALLERY USED BY A FACIAL RECOGNITION SERVICE.**12 **(C) “FACIAL RECOGNITION SERVICE” MEANS TECHNOLOGY THAT**
13 **ANALYZES FACIAL FEATURES AND IS USED FOR RECOGNITION OR PERSISTENT**
14 **TRACKING OF INDIVIDUALS IN STILL OR VIDEO IMAGES.**15 **(D) “FACIAL TEMPLATE” MEANS THE MACHINE-INTERPRETABLE PATTERN**
16 **OF FACIAL FEATURES THAT IS EXTRACTED FROM ONE OR MORE IMAGES OF AN**
17 **INDIVIDUAL BY A FACIAL RECOGNITION SERVICE.**18 **(E) “PERSISTENT TRACKING” MEANS THE USE OF A FACIAL RECOGNITION**
19 **SERVICE TO TRACK THE MOVEMENTS OF AN INDIVIDUAL:**20 **(1) WITHOUT USING THE FACIAL RECOGNITION SERVICE FOR**
21 **RECOGNITION OF THAT INDIVIDUAL; AND**22 **(2) ON A PERSISTENT BASIS THAT BEGINS AS SOON AS THE USER OF**
23 **THE FACIAL RECOGNITION SERVICE:**24 **(i) MAINTAINS THE FACIAL TEMPLATE OR UNIQUE IDENTIFIER**
25 **THAT ALLOWS THE TRACKING FOR MORE THAN 48 HOURS AFTER THE FACIAL**
26 **TEMPLATE OR IDENTIFIER IS FIRST CREATED; OR**27 **(ii) LINKS THE DATA CREATED BY THE FACIAL RECOGNITION**
28 **SERVICE TO ANY OTHER DATA, INCLUDING PURCHASE OR PAYMENT DATA, IN A**
29 **MANNER THAT RESULTS IN THE INDIVIDUAL WHO HAS BEEN TRACKED BEING**
30 **IDENTIFIED OR IDENTIFIABLE.**31 **(F) “RECOGNITION” MEANS THE USE OF A FACIAL RECOGNITION SERVICE**

1 TO PREDICT WHETHER AN UNKNOWN INDIVIDUAL MATCHES ANY INDIVIDUAL OR A
2 SPECIFIC INDIVIDUAL WHO HAS BEEN ENROLLED IN A GALLERY USED BY THE
3 FACIAL RECOGNITION SERVICE.

4 14-4202.

5 THE GENERAL ASSEMBLY FINDS THAT:

6 (1) THE USE OF FACIAL RECOGNITION SERVICES CAN PRESENT RISKS
7 TO THE PRIVACY, DEMOCRATIC FREEDOMS, AND CIVIL LIBERTIES OF RESIDENTS OF
8 THE STATE;

9 (2) FACIAL RECOGNITION TECHNOLOGY HAS A HISTORY OF BEING
10 LESS ACCURATE IN IDENTIFYING THE FACES OF WOMEN, YOUNG PEOPLE, AND
11 DARK-SKINNED PEOPLE, AND THAT SUCH INACCURACIES LEAD TO HARMFUL FALSE
12 POSITIVE IDENTIFICATIONS;

13 (3) MANY OF THE DATABASES TO WHICH FACIAL RECOGNITION
14 TECHNOLOGY IS APPLIED ARE PLAGUED BY RACIAL DISPARITIES AND OTHER
15 BIASES, WHICH GENERATE COPYCAT BIASES IN FACIAL RECOGNITION DATA; AND

16 (4) UNTIL THERE ARE STATUTORY SAFEGUARDS IN PLACE TO ALLOW
17 THE USE OF FACIAL RECOGNITION SERVICES IN WAYS THAT ARE BENEFICIAL AND
18 NOT HARMFUL, IT IS NECESSARY TO PROHIBIT THE USE OF FACIAL RECOGNITION
19 SERVICES TO PROTECT THE RESIDENTS OF THE STATE.

20 14-4203.

21 A PERSON MAY NOT USE A FACIAL RECOGNITION SERVICE OR ANY
22 INFORMATION DERIVED FROM A FACIAL RECOGNITION SERVICE IN THE STATE.

23 14-4204.

24 (A) THE OFFICE OF THE ATTORNEY GENERAL HAS EXCLUSIVE AUTHORITY
25 TO ENFORCE THIS SUBTITLE BY BRINGING AN ACTION IN THE NAME OF THE STATE,
26 OR AS PARENS PATRIAE ON BEHALF OF PERSONS RESIDING IN THE STATE, TO
27 ENFORCE THIS SUBTITLE.

28 (B) A PERSON THAT VIOLATES THIS SUBTITLE MAY BE SUBJECT TO AN
29 INJUNCTION AND BE LIABLE FOR A CIVIL PENALTY OF:

30 (1) FOR EACH UNINTENTIONAL VIOLATION, NOT MORE THAN \$2,500;
31 OR

1 **(2) FOR EACH INTENTIONAL VIOLATION, \$7,500.**

2 **Article – State Government**

3 **SUBTITLE 17. FACIAL RECOGNITION SERVICES.**

4 **10–1701.**

5 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
6 **INDICATED.**

7 **(B) (1) “ENROLL” MEANS THE PROCESS BY WHICH A FACIAL**
8 **RECOGNITION SERVICE CREATES A FACIAL TEMPLATE FROM ONE OR MORE IMAGES**
9 **OF AN INDIVIDUAL AND ADDS THE FACIAL TEMPLATE TO A GALLERY USED BY THE**
10 **FACIAL RECOGNITION SERVICE FOR RECOGNITION OR PERSISTENT TRACKING OF**
11 **INDIVIDUALS.**

12 **(2) “ENROLL” INCLUDES THE ACT OF ADDING AN EXISTING FACIAL**
13 **TEMPLATE DIRECTLY INTO A GALLERY USED BY A FACIAL RECOGNITION SERVICE.**

14 **(C) “FACIAL RECOGNITION SERVICE” MEANS TECHNOLOGY THAT**
15 **ANALYZES FACIAL FEATURES AND IS USED FOR RECOGNITION OR PERSISTENT**
16 **TRACKING OF INDIVIDUALS IN STILL OR VIDEO IMAGES.**

17 **(D) “FACIAL TEMPLATE” MEANS THE MACHINE–INTERPRETABLE PATTERN**
18 **OF FACIAL FEATURES THAT IS EXTRACTED FROM ONE OR MORE IMAGES OF AN**
19 **INDIVIDUAL BY A FACIAL RECOGNITION SERVICE.**

20 **(E) “PERSISTENT TRACKING” MEANS THE USE OF A FACIAL RECOGNITION**
21 **SERVICE TO TRACK THE MOVEMENTS OF AN INDIVIDUAL:**

22 **(1) WITHOUT USING THE FACIAL RECOGNITION SERVICE FOR**
23 **RECOGNITION OF THAT INDIVIDUAL; AND**

24 **(2) ON A PERSISTENT BASIS THAT BEGINS AS SOON AS THE USER OF**
25 **THE FACIAL RECOGNITION SERVICE:**

26 **(I) MAINTAINS THE FACIAL TEMPLATE OR UNIQUE IDENTIFIER**
27 **THAT ALLOWS THE TRACKING FOR MORE THAN 48 HOURS AFTER THE FACIAL**
28 **TEMPLATE OR IDENTIFIER IS FIRST CREATED; OR**

29 **(II) LINKS THE DATA CREATED BY THE FACIAL RECOGNITION**

1 SERVICE TO ANY OTHER DATA, INCLUDING PURCHASE OR PAYMENT DATA, IN A
2 MANNER THAT RESULTS IN THE INDIVIDUAL WHO HAS BEEN TRACKED BEING
3 IDENTIFIED OR IDENTIFIABLE.

4 (F) "RECOGNITION" MEANS THE USE OF A FACIAL RECOGNITION SERVICE
5 TO PREDICT WHETHER AN UNKNOWN INDIVIDUAL MATCHES ANY INDIVIDUAL OR A
6 SPECIFIC INDIVIDUAL WHO HAS BEEN ENROLLED IN A GALLERY USED BY THE
7 FACIAL RECOGNITION SERVICE.

8 (G) "UNIT" HAS THE MEANING STATED IN § 10-1301 OF THIS TITLE.

9 10-1702.

10 THE GENERAL ASSEMBLY FINDS THAT:

11 (1) USE OF FACIAL RECOGNITION SERVICES BY A UNIT CAN PRESENT
12 RISKS TO THE PRIVACY, DEMOCRATIC FREEDOMS, AND CIVIL LIBERTIES OF
13 RESIDENTS OF THE STATE;

14 (2) FACIAL RECOGNITION TECHNOLOGY HAS A HISTORY OF BEING
15 LESS ACCURATE IN IDENTIFYING THE FACES OF WOMEN, YOUNG PEOPLE, AND
16 DARK-SKINNED PEOPLE, AND THAT SUCH INACCURACIES LEAD TO HARMFUL FALSE
17 POSITIVE IDENTIFICATIONS;

18 (3) MANY OF THE DATABASES TO WHICH FACIAL RECOGNITION
19 TECHNOLOGY IS APPLIED ARE PLAGUED BY RACIAL DISPARITIES AND OTHER
20 BIASES, WHICH GENERATE COPYCAT BIASES IN FACIAL RECOGNITION DATA; AND

21 (4) UNTIL THERE ARE STATUTORY SAFEGUARDS IN PLACE TO ALLOW
22 THE USE OF FACIAL RECOGNITION SERVICES IN WAYS THAT ARE BENEFICIAL AND
23 NOT HARMFUL, IT IS NECESSARY TO PROHIBIT THE USE OF FACIAL RECOGNITION
24 SERVICES BY UNITS TO PROTECT THE RESIDENTS OF THE STATE.

25 10-1703.

26 A UNIT MAY NOT USE A FACIAL RECOGNITION SERVICE OR ANY INFORMATION
27 DERIVED FROM A FACIAL RECOGNITION SERVICE IN THE STATE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
29 measure, is necessary for the immediate preservation of the public health or safety, has
30 been passed by a yea and nay vote supported by three-fifths of all the members elected to
31 each of the two Houses of the General Assembly, and shall take effect from the date it is
32 enacted. It shall remain effective for a period of 1 year from the date it is enacted and, at
33 the end of the 1-year period, this Act, with no further action required by the General

1 Assembly, shall be abrogated and of no further force and effect.