1   **GOVERNMENTAL USE OF FACIAL RECOGNITION TECHNOLOGY**

2   2020 GENERAL SESSION

3   STATE OF UTAH

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5   **LONG TITLE**

6   **General Description:**

7   This bill addresses the state's use of facial recognition technology.

8   **Highlighted Provisions:**

9   This bill:

10   ▸   defines terms;

11   ▸   requires a disclosure that images taken by the Driver License Division may be used

12   for certain facial recognition comparisons;

13   ▸   provides that the Department of Public Safety (department) is the only government

14   entity in the state authorized to use a facial recognition system;

15   ▸   places limitations on the circumstances under which the department may conduct a

16   facial recognition comparison;

17   ▸   describes the process of, and requirements for, conducting a facial recognition

18   comparison;

19   ▸   addresses training of department employees; and

20   ▸   describes information that is required to be released, and information that is

21   protected, in relation to a facial recognition comparison.

22   **Money Appropriated in this Bill:**

23   None

24   **Other Special Clauses:**

25   None

26   **Utah Code Sections Affected:**

27   ENACTS:

28   **53-3-110**, Utah Code Annotated 1953

29   **77-23e-101**, Utah Code Annotated 1953

30   **77-23e-102**, Utah Code Annotated 1953

31   **77-23E-103**, Utah Code Annotated 1953

32   **77-23E-104**, Utah Code Annotated 1953

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34   *Be it enacted by the Legislature of the state of Utah:*

35   Section 1. Section **53-3-110** is enacted to read:

36   **53-3-110. Disclosure regarding use of images.**

37   Beginning July 1, 2020, the division shall include in any application for a license

38   certificate or identification card the following statement: "Your image may be used by the

39   Department of Public Safety to conduct a facial recognition comparison in relation to a

40   criminal investigation or a fraudulent or inaccurate application, to mitigate a life-threatening

41   emergency, or to identify an at-risk or deceased person."

42   Section 2. Section **77-23e-101** is enacted to read:

43   **CHAPTER 23E. GOVERNMENT USE OF FACIAL RECOGNITION TECHNOLOGY**

44   **77-23e-101. Title.**

45   This chapter is known as "Government Use of Facial Recognition Technology."

46   Section 3. Section **77-23e-102** is enacted to read:

47   **77-23e-102. Definitions.**

48   As used in this chapter:

49   (1) "Authorized database" means a database maintained by the department that

50   contains images taken when an individual:

51   (a) applies for a license certificate or identification card; or

52   (b) is taken into custody by a law enforcement agency or the Department of

53   Corrections.

54   (2) "Department" means the Department of Public Safety, created in Section 53-1-103.

55   (3) "Facial biometric data" means data derived from a measurement, pattern, contour,

56   or other characteristic of an individual's face, either directly or from an image.

57   (4) "Facial recognition comparison" means the process of comparing an image or facial

58   biometric data to an authorized database.

59   (5) (a) "Facial recognition system" means a computer system that, for the purpose of

60   attempting to determine the identity of an unknown individual, uses an algorithm to compare

61   biometric data of the face of the unknown individual to biometric data in a database of facial

62   images, or a database of biometric data taken from facial images, of known individuals.

63   (b) "Facial recognition system" does not include a system described in Subsection

64   (5)(a) that is available for use, free of charge, by the general public.

65   (6) (a) "Government entity" means:

66   (i) an executive department agency of the state;

67   (ii) the office of the governor, lieutenant governor, state auditor, attorney general, or

68   state treasurer;

69   (iii) the Board of Pardons and Parole;

70   (iv) the Board of Examiners;

71   (v) the National Guard;

72   (vi) the Career Service Review Office;

73   (vii) the State Board of Education;

74   (viii) the State Board of Regents;

75   (ix) the State Archives;

76   (x) the Office of the Legislative Auditor General;

77   (xi) the Office of Legislative Fiscal Analyst;

78   (xii) the Office of Legislative Research and General Counsel;

79   (xiii) the Legislature;

80   (xiv) a legislative committee of the Legislature;

81   (xv) a court, the Judicial Council, the Administrative Office of the Courts, and similar

82   administrative units in the judicial branch;

83   (xvi) a state-funded institution of higher education or public education; or

84   (xvii) a political subdivision of the state.

85   (b) "Government entity" includes:

86   (i) every office, agency, board, bureau, committee, department, advisory board, or

87   commission of an entity described in Subsection (6)(a) that is funded or established by the

88   government to carry out the public's business; or

89   (ii) a person acting as an agent of a government entity or acting on behalf of a

90   government entity.

91   (7) "Law enforcement agency" means a public entity that exists to primarily prevent,

92   detect, or prosecute crime or enforce criminal statutes or ordinances.

93   Section 4. Section **77-23E-103** is enacted to read:

94   **77-23E-103. Government use of facial recognition system -- Restrictions --**

95   **Disclosure.**

96   (1) Except as provided in this section, a government entity may not use a facial

97   recognition system.

98   (2) (a) The department is the only government entity in the state authorized to use a

99   facial recognition system.

100   (b) The department may not use a facial recognition system for any purpose other than

101   a purpose authorized in this section.

102   (c) All requests for a facial recognition comparison shall be made to, and completed

103   by, individuals employed by the department who:

104   (i) are trained to make a facial recognition comparison and identification; and

105   (ii) have completed implicit bias training.

106   (d) Except as provided in Subsection (3), the department may not comply with a

107   request for a facial recognition comparison unless:

108   (i) the request is made by a law enforcement agency;

109   (ii) the request is made for the purpose of identifying an individual in relation to an

110   active criminal investigation, to mitigate a life-threatening emergency, or to identify an at-risk

111   or deceased person; and

112   (iii) the law enforcement agency agrees to use the comparison:

113   (A) in accordance with the requirements of law; and

114   (B) only in relation to a purpose described in Subsection (2)(d)(ii).

115   (3) The department may compare an image taken of an applicant for a license

116   certificate or an identification card, to determine whether the applicant has submitted a

117   fraudulent or inaccurate application.

118   (4) An employee described in Subsection (2)(c) shall make a facial recognition

119   comparison, as follows:

120   (a) the employee shall run the comparison using a facial recognition system that, in

121   accordance with industry standards:

122   (i) makes the comparison using an algorithm that compares only facial biometric data;

123   (ii) is secure; and

124   (iii) is produced by a company that is currently in business;

125   (b) if the facial recognition system indicates a possible match, the employee shall:

126   (i) make an independent visual comparison to determine whether there is a likely
127   match;
128   (ii) if the employee determines that there is a likely match, seek a second opinion from
129   another trained employee or the employee's supervisor; and
130   (iii) if the other trained employee or the employee's supervisor agrees that there is a
131   likely match, report the results to the requesting law enforcement agency via an encrypted
132   method.
133   (5) A law enforcement agency of the state or of a political subdivision shall, when
134   submitting a case to a prosecutor, disclose to the prosecutor, in writing:
135   (a) whether a facial recognition comparison was made in investigating the case; and
136   (b) a description of how the facial recognition comparison was used in the
137   investigation.
138   Section 5. Section **77-23E-104** is enacted to read:
139   **77-23E-104. Data protection and disclosure.**
140   (1) Data relating to a facial recognition comparison described in Section 77-23E-103:
141   (a) is, in accordance with Section 63G-2-305, a protected record under Title 63G,
142   Chapter 2, Government Records Access and Management Act; and
143   (b) may not be used or shared for any purpose other than a purpose described in
144   Section 77-23E-103.
145   (2) The department shall, upon request, release statistical information regarding facial
146   recognition comparisons, including requests and results, after ensuring that the information:
147   (a) does not contain identifying information; and
148   (b) does not disclose details regarding a pending investigation.