

2020 Regular Session

HOUSE BILL NO. 662

BY REPRESENTATIVE JORDAN

PRIVACY: Provides relative to facial recognition software

1 AN ACT

2 To enact Chapter 8-N of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:844.91, relative to facial recognition software; to provide definitions; to
4 to provide for profiling; to require human review; to require documentation; to
5 require consent; to provide for testing; to provide for government agencies; to
6 prohibit discrimination; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 8-N of Title 45 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 45:844.91, is hereby enacted to read as follows:

10 CHAPTER 8-N. FACIAL RECOGNITION TECHNOLOGY

11 §844.91. Facial recognition; definitions; protections; government agencies

12 A. For purposes of this Chapter:

13 (1) "Controller" means a natural person or legal person which, alone or
14 jointly with others, determines the purposes and means of the processing of personal
15 data.

16 (2) "Facial recognition" means technology that analyzes facial features and
17 is used for the unique personal identification of natural persons in still or video
18 images.

19 (3) "Processor" means a natural or legal person which processes personal
20 data on behalf of the controller.

1 B.(1) Controllers using facial recognition for profiling shall employ
2 meaningful human review prior to making final decisions based on such profiling
3 where such final decisions produce legal effects concerning consumers or similarly
4 significant effects concerning consumers. Decisions producing legal effects or
5 similarly significant effects shall include but not be limited to denial of consequential
6 services or support, such as financial and lending services, housing, insurance,
7 education enrollment, criminal justice, employment opportunities, and healthcare
8 services.

9 (2) Processors that provide facial recognition services shall provide
10 documentation that includes general information that explains the capabilities and
11 limitations of the technology in terms that customers and consumers can understand.

12 (3) Processors that provide facial recognition services shall prohibit the use
13 of such facial recognition services by controllers to unlawfully discriminate under
14 federal or state law against individual consumers or groups of consumers.

15 (4) Controllers shall obtain consent from consumers prior to deploying facial
16 recognition services. The placement of conspicuous notice in physical premises or
17 online that clearly conveys that facial recognition services are being used constitute
18 a consumer's consent to the use of such facial recognition services when that
19 consumer enters those premises or proceeds to use the online services that have such
20 notice, provided that there is a means by which the consumer may exercise choice
21 as to facial recognition services.

22 (5) Providers of commercial facial recognition services that make their
23 technology available as an online service for developers and customers to use in their
24 own scenarios shall make available an application programming interface or other
25 technical capability, chosen by the provider, to enable third parties that are
26 legitimately engaged in independent testing to conduct reasonable tests of those
27 facial recognition services for accuracy and unfair bias.

28 C. State and local government agencies shall not use facial recognition
29 technology to engage in ongoing surveillance of specified individuals in public

1 spaces, unless such use is in support of law enforcement activities and either of the
2 following conditions are met:

3 (1) A court order has been obtained to permit the use of facial recognition
4 services for that ongoing surveillance.

5 (2) There is an emergency involving imminent danger or risk of death or
6 serious physical injury to a person.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 662 Original

2020 Regular Session

Jordan

Abstract: Regulates the use of facial recognition software.

Proposed law defines the following terms: "controller", "facial recognition", and "processor".

Proposed law requires controllers to employ meaningful human review before making final decisions when using facial recognition for profiling where those final decisions produce legal or other significant effects concerning consumers, including but not limited to denial of consequential service or support for the following: financial and lending services, housing, insurance, education enrollment, criminal justice, employment opportunities, and health care services.

Proposed law requires processors providing facial recognition services to provide documentation supplying general information explaining what the technology is capable of in plain terms for consumer understanding.

Proposed law requires processors providing facial recognition services to prohibit controllers from unlawfully using the services to discriminate against consumers in violation of federal or state law.

Controllers are required, pursuant to proposed law, to get consent from a consumer before deploying facial recognition services. Further, proposed law allows consent to the use of facial recognition services to be obtained by placing notice prominently on the premises or online.

Proposed law requires commercial providers, who make their facial recognition technology available to developers and customers for their own use, to extend to third parties engaged in legitimate testing, an application programming interface of the provider's choosing to allow the third parties to conduct reasonable tests on the facial recognition service for accuracy and unfair bias.

Proposed law prohibits state and local government agencies from using facial recognition technology for ongoing surveillance of specific individuals who are in public spaces except when used to support law enforcement activities and either: (1) a court order permitting the use of facial recognition services has been obtained or (2) a person is in imminent risk of death or physical injury.

(Adds R.S. 45:844.91)