CHAPTER 463

GOVERNMENT - STATE

SENATE BILL 22-113

BY SENATOR(S) Hansen and Buckner, Bridges, Fields, Ginal, Jaquez Lewis, Lee, Pettersen, Priola, Rankin, Story, Winter, Fenberg;
also REPRESENTATIVE(S) Tipper and Bacon, Benavidez, Duran, Froelich, Gonzales-Gutierrez, Hooton, Jodeh, Lindsay, Neville, Ricks, Snyder, Titone, Woodrow, Bernett, Herod, Kennedy, Ortiz, Sirota, Valdez A., Valdez D., Van Winkle, Weissman.

AN ACT

CONCERNING THE USE OF PERSONAL IDENTIFYING DATA, AND, IN CONNECTION THEREWITH, CREATING A TASK FORCE FOR THE CONSIDERATION OF FACIAL RECOGNITION SERVICES, RESTRICTING THE USE OF FACIAL RECOGNITION SERVICES BY STATE AND LOCAL GOVERNMENT AGENCIES, TEMPORARILY PROHIBITING PUBLIC SCHOOLS FROM EXECUTING NEW CONTRACTS FOR FACIAL RECOGNITION SERVICES, AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 2-3-1707 as follows:

2-3-1707. Task force for the consideration of facial recognition services - creation - membership - duties - compensation - staff support - repeal. (1) **Creation - membership.** (a) THERE IS CREATED A TASK FORCE FOR THE CONSIDERATION OF FACIAL RECOGNITION SERVICES. THE TASK FORCE CONSISTS OF THE FOLLOWING FIFTEEN MEMBERS:

(I) THE CHIEF INFORMATION OFFICER APPOINTED BY THE GOVERNOR PURSUANT TO SECTION 24-37.5-103 (1) OR THE CHIEF INFORMATION OFFICER'S DESIGNEE;

(II) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE;

(III) THE DIRECTOR OF THE COLORADO BUREAU OF INVESTIGATION CREATED IN SECTION 24-33.5-401 OR THE DIRECTOR'S DESIGNEE;

(IV) ONE MEMBER WHO REPRESENTS THE COLORADO DISTRICT ATTORNEYS' COUNCIL, TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

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Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(V) ONE MEMBER WHO REPRESENTS EITHER THE COUNTY SHERIFFS OF COLORADO OR THE COLORADO ASSOCIATION OF CHIEFS OF POLICE, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(VI) ONE MEMBER WHO IS A STATE REPRESENTATIVE, TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(VII) ONE MEMBER WHO IS A STATE SENATOR, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(VIII) ONE MEMBER WHO REPRESENTS LOCAL SCHOOL DISTRICT BOARDS OF EDUCATION, TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(IX) ONE MEMBER WHO IS AN INSTRUCTOR AT AN INSTITUTION OF HIGHER EDUCATION AND HAS EXPERT KNOWLEDGE OF, AND EXPERIENCE WITH, FACIAL RECOGNITION SERVICES TECHNOLOGY, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(X) ONE MEMBER WHO IS A BUSINESS PROFESSIONAL WITH EXPERT KNOWLEDGE OF, AND EXPERIENCE WITH, FACIAL RECOGNITION SERVICES PRODUCTS, TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(XI) ONE MEMBER WHO IS AN ATTORNEY WITH EXPERT KNOWLEDGE OF, AND EXPERIENCE WITH, FEDERAL AND STATE LAWS CONCERNING FACIAL RECOGNITION SERVICES, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(XII) ONE MEMBER WHO REPRESENTS THE COLORADO CRIMINAL DEFENSE BAR, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(XIII) ONE MEMBER WHO REPRESENTS A CONSUMER PROTECTION ASSOCIATION, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(XIV) ONE MEMBER WHO REPRESENTS A STATEWIDE CIVIL LIBERTIES ORGANIZATION, TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES; AND

(XV) ONE MEMBER WHO REPRESENTS DISPROPORTIONATELY IMPACTED COMMUNITIES, TO BE APPOINTED BY THE PRESIDENT OF THE SENATE.

(b) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL MAKE EACH OF THE INITIAL APPOINTMENTS DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION NOT LATER THAN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(c) THE TERMS OF THE APPOINTED MEMBERS OF THE TASK FORCE ARE AS FOLLOWS:

(I) THE STATE REPRESENTATIVE APPOINTED PURSUANT TO SUBSECTION (1)(a)(VI) OF THIS SECTION MAY SERVE INDEFINITELY, AT THE DISCRETION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, SO LONG AS THE PERSON REMAINS A STATE REPRESENTATIVE;

(II) THE STATE SENATOR APPOINTED PURSUANT TO SUBSECTION (1)(a)(VII) OF THIS SECTION MAY SERVE INDEFINITELY, AT THE DISCRETION OF THE PRESIDENT OF THE SENATE, SO LONG AS THE PERSON REMAINS A STATE SENATOR;

(III) THE INITIAL TERMS OF THE MEMBERS APPOINTED PURSUANT TO SUBSECTIONS (1)(a)(IV), (1)(a)(V), (1)(a)(VIII), (1)(a)(IX), AND (1)(a)(X) OF THIS SECTION ARE TWO YEARS, AND THEREAFTER THE TERMS OF SUCH MEMBERS ARE FOUR YEARS; AND

(IV) THE MEMBERS APPOINTED PURSUANT TO SUBSECTIONS (1)(a)(XI) TO (1)(a)(XV) OF THIS SECTION SHALL SERVE TERMS OF FOUR YEARS.

(d) ANY VACANCY THAT OCCURS AMONG THE APPOINTED MEMBERS OF THE TASK FORCE SHALL BE FILLED BY THE APPROPRIATE APPOINTING AUTHORITY AS SOON AS PRACTICABLE IN ACCORDANCE WITH THE LIMITATIONS SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION.

(e) IN MAKING APPOINTMENTS TO THE TASK FORCE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL ENSURE THAT THE MEMBERSHIP OF THE TASK FORCE:

(I) REFLECTS THE ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE STATE;

(II) INCLUDES REPRESENTATION OF ALL AREAS OF THE STATE, INCLUDING PERSONS WHO DO NOT RESIDE IN THE FRONT RANGE REGION OF THE STATE; AND

(III) TO THE EXTENT PRACTICABLE, INCLUDES PERSONS WITH DISABILITIES.

(f) NOT LATER THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE PRESIDENT OF THE SENATE SHALL APPOINT A MEMBER OF THE TASK FORCE TO SERVE AS THE INITIAL CHAIR OF THE TASK FORCE. THEREAFTER, THE CHAIR OF THE TASK FORCE SHALL BE APPOINTED ANNUALLY ON OR BEFORE JULY 1, WITH THE SPEAKER OF THE HOUSE OF REPRESENTATIVES APPOINTING THE CHAIR IN ODD-NUMBERED YEARS AND THE PRESIDENT OF THE SENATE APPOINTING THE CHAIR IN EVEN-NUMBERED YEARS.

(2) **Issues for study.** THE TASK FORCE SHALL EXAMINE AND, PURSUANT TO SUBSECTION (3)(e) OF THIS SECTION, REPORT TO THE COMMITTEE CONCERNING THE EXTENT TO WHICH STATE AND LOCAL GOVERNMENT AGENCIES ARE CURRENTLY USING FACIAL RECOGNITION SERVICES AND PROVIDE RECOMMENDATIONS CONCERNING THE EXTENT TO WHICH STATE AND LOCAL GOVERNMENT AGENCIES SHOULD BE PERMITTED TO USE FACIAL RECOGNITION SERVICES, INCLUDING CONSIDERATION OF:

(a) REGULATION, APPROVAL, AND PROCUREMENT OF FACIAL RECOGNITION SERVICES;

(b) ACCESS TO DATA COLLECTED BY FACIAL RECOGNITION SERVICES;

(c) EDUCATION OF THE PUBLIC CONCERNING FACIAL RECOGNITION SERVICES, INCLUDING IN PUBLIC SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION;

(d) ETHICAL CONSIDERATIONS RELATING TO THE USE OF FACIAL RECOGNITION SERVICES;

(e) TRANSPARENCY AND DISCLOSURE REQUIREMENTS CONCERNING HOW STATE AND LOCAL GOVERNMENT AGENCIES USE FACIAL RECOGNITION SERVICES;

(f) THE POTENTIAL ABUSES AND THREATS POSED TO CIVIL LIBERTIES, FREEDOMS, PRIVACY, AND SECURITY BY THE USE OF FACIAL RECOGNITION SERVICES;

(g) THE POTENTIAL IMPACT OF THE USE OF FACIAL RECOGNITION SERVICES ON VULNERABLE COMMUNITIES; AND

(h) HOW TO FACILITATE AND ENCOURAGE THE CONTINUED DEVELOPMENT OF FACIAL RECOGNITION SERVICES SO THAT INDIVIDUALS, BUSINESSES, GOVERNMENTS, AND OTHER INSTITUTIONS CAN BENEFIT FROM THEIR USE WHILE SAFEGUARDING AGAINST POTENTIAL ABUSES AND THREATS.

(3) **Additional duties of the task force.** THE TASK FORCE SHALL:

(a) MEET ON OR BEFORE DECEMBER 1, 2022, AT A TIME AND PLACE TO BE DETERMINED BY THE CHAIR OF THE TASK FORCE;

(b) MEET AT LEAST ONCE EVERY FOUR MONTHS, OR MORE OFTEN AS DIRECTED BY THE CHAIR OF THE COMMITTEE;

(c) COMMUNICATE WITH AND OBTAIN INPUT FROM GROUPS THROUGHOUT THE STATE AFFECTED BY THE ISSUES IDENTIFIED IN SUBSECTION (2) OF THIS SECTION;

(d) CREATE SUBCOMMITTEES AS NEEDED TO CARRY OUT THE DUTIES OF THE TASK FORCE. THE SUBCOMMITTEES MAY CONSIST, IN PART, OF PERSONS WHO ARE NOT MEMBERS OF THE TASK FORCE. SUCH PERSONS MAY VOTE ON ISSUES BEFORE THE SUBCOMMITTEE BUT ARE NOT ENTITLED TO VOTE AT MEETINGS OF THE TASK FORCE.

(e) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), SUBMIT A REPORT TO THE COMMITTEE ON OR BEFORE OCTOBER 1, 2023, AND ON OR BEFORE EACH OCTOBER 1 THEREAFTER, THAT, AT A MINIMUM:

(I) DESCRIBES ISSUES TO BE STUDIED IN UPCOMING TASK FORCE MEETINGS AND A PRIORITIZATION OF THOSE ISSUES;

(II) DESCRIBES FINDINGS AND RECOMMENDATIONS REGARDING ISSUES CONSIDERED BY THE TASK FORCE;

(III) DESCRIBES LEGISLATIVE PROPOSALS THAT IDENTIFY THE POLICY ISSUES INVOLVED, THE AGENCIES RESPONSIBLE FOR THE IMPLEMENTATION OF THE CHANGES, AND THE FUNDING SOURCES REQUIRED FOR IMPLEMENTATION;

(IV) INCLUDES RECOMMENDATIONS CONCERNING:

(A) THE REQUIREMENTS AND RESTRICTIONS DESCRIBED IN PART 3 OF ARTICLE 18 OF TITLE 24; AND

(B) THE PROHIBITIONS AND EXCEPTIONS DESCRIBED IN SECTIONS 22-30.5-529 AND 22-32-150; AND

(V) INCLUDES A RECOMMENDATION AS TO WHETHER THE SCOPE OF THE ISSUES FOR STUDY BY THE TASK FORCE, AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, SHOULD BE EXPANDED TO INCLUDE CONSIDERATION OF ARTIFICIAL INTELLIGENCE OTHER THAN FACIAL RECOGNITION SERVICES, OR EVEN ARTIFICIAL INTELLIGENCE ITSELF, AND, IF SO, WHETHER THE MEMBERSHIP OF THE TASK FORCE SHOULD BE ADJUSTED ACCORDINGLY.

(4) **Compensation.** NONLEGISLATIVE MEMBERS OF THE TASK FORCE AND NONLEGISLATIVE MEMBERS OF ANY SUBCOMMITTEES OF THE TASK FORCE SERVE WITHOUT COMPENSATION. COMPENSATION OF LEGISLATIVE MEMBERS IS PAID FROM APPROPRIATIONS TO THE GENERAL ASSEMBLY.

(5) **Staff support.** THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL MAY SUPPLY STAFF ASSISTANCE TO THE TASK FORCE AS THE DIRECTOR OF RESEARCH DEEMS APPROPRIATE, SUBJECT TO AVAILABLE APPROPRIATIONS. THE TASK FORCE MAY ALSO ACCEPT DONATIONS OF IN-KIND SERVICES FOR STAFF SUPPORT FROM THE PRIVATE SECTOR.

(6) **Repeal.** THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027. PRIOR TO THE REPEAL, THE TASK FORCE IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 2-3-1203.

SECTION 2. In Colorado Revised Statutes, 2-3-1203, **add** (18.5)(a)(III) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal. (18.5) (a) The following statutory authorizations for the designated advisory committees will repeal on September 1, 2027:

(III) THE TASK FORCE FOR THE CONSIDERATION OF FACIAL RECOGNITION SERVICES CREATED IN SECTION 2-3-1707.

SECTION 3. In Colorado Revised Statutes, **amend** 2-3-1701 as follows:

2-3-1701. Definitions. As used in this part 17, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ARTIFICIAL INTELLIGENCE" MEANS SYSTEMS THAT CAN:

(a) PERCEIVE AN ENVIRONMENT THROUGH DATA ACQUISITION, PROCESS AND INTERPRET THE DERIVED INFORMATION, AND TAKE ACTIONS OR IMITATE INTELLIGENT BEHAVIOR TO ACHIEVE A SPECIFIED GOAL; AND

(b) LEARN FROM PAST BEHAVIOR AND RESULTS AND ADAPT THEIR BEHAVIOR ACCORDINGLY.

(1) (2) "Committee" means the joint technology committee created in section 2-3-1702.

(1.3) (3) "Cybersecurity" means a broad range of technologies, processes, and practices designed to protect networks, computers, programs, and data from attack, damage, or unauthorized access.

(1.7) (4) "Data privacy" means the collection and dissemination of data AND technology and the public expectation of privacy. "Data privacy" also includes the way personally identifiable information or other sensitive information is collected, stored, used, and finally destroyed or deleted, in digital form or otherwise.

(5) "DISPROPORTIONATELY IMPACTED COMMUNITY" HAS THE MEANING SET FORTH IN SECTION 24-4-109 (2)(b)(II).

(6) "FACIAL RECOGNITION SERVICE" HAS THE MEANING SET FORTH IN SECTION 24-18-301 (5).

(2) (7) "Information technology" means technology, infrastructure, equipment, systems, OR software controlling, displaying, switching, interchanging, transmitting, and receiving THAT CONTROLS, DISPLAYS, SWITCHES, INTERCHANGES, TRANSMITS, AND RECEIVES data or information, including audio, video, graphics, and text. "Information technology" shall be construed broadly to incorporate future technologies that change or supplant those in effect as of September 7, 2021.

(2.5) (8) "Information technology budget request" means a budget request from a state agency or state institution of higher education for the installation, development, maintenance, or upgrade of information technology, including the purchase of services from the office of information technology on the condition that the use of such services is the most cost beneficial option or falls within the duties and responsibilities of the office of information technology or the office's chief information officer as described in sections 24-37.5-105 and 24-37.5-106. "Information technology budget request" does not include budget requests that are primarily operational in nature or a budget request where the majority of funding will be used to support or modify state staffing levels.

(3) (9) "Office of information technology" OR "OFFICE" means the office of information technology created in section 24-37.5-103. C.R.S.

(4) (10) "Oversee" means reviews of major information technology projects as defined in section 24-37.5-102 (19), reviews of the office's budget requests for information technology projects, and ensuring that information technology projects follow best practice standards as established by the office. of information technology. "Oversee" does not include interference with the office's general responsibilities set forth in this article 3.

(5) (11) "State agency" means all of the departments, divisions, commissions, boards, bureaus, and institutions in the executive branch of the state government. "State agency" does not include the legislative or judicial department, the department of law, the department of state, the department of the treasury, or state-supported institutions of higher education, including the Auraria higher education center established in article 70 of title 23. C.R.S.

(12) "TASK FORCE" MEANS THE TASK FORCE FOR THE CONSIDERATION OF FACIAL

RECOGNITION SERVICES CREATED IN SECTION 2-3-1707.

SECTION 4. In Colorado Revised Statutes, **add** part 3 to article 18 of title 24 as follows:

PART 3
USE OF FACIAL RECOGNITION SERVICES BY STATE AND LOCAL
GOVERNMENT AGENCIES

24-18-301. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACCOUNTABILITY REPORT" MEANS A REPORT DEVELOPED PURSUANT TO SECTION 24-18-302 (2).

(2) "AGENCY" MEANS:

(a) AN AGENCY OF THE STATE GOVERNMENT OR OF A LOCAL GOVERNMENT; OR

(b) A STATE INSTITUTION OF HIGHER EDUCATION.

(3) "DECISIONS THAT PRODUCE LEGAL EFFECTS CONCERNING INDIVIDUALS OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS" MEANS DECISIONS THAT:

(a) RESULT IN THE PROVISION OR DENIAL OF FINANCIAL AND LENDING SERVICES, HOUSING, INSURANCE, EDUCATION ENROLLMENT, CRIMINAL JUSTICE, EMPLOYMENT OPPORTUNITIES, HEALTH-CARE SERVICES, OR ACCESS TO BASIC NECESSITIES SUCH AS FOOD AND WATER; OR

(b) IMPACT THE CIVIL RIGHTS OF INDIVIDUALS.

(4) "ENROLL", "ENROLLED", OR "ENROLLING" MEANS:

(a) THE PROCESS BY WHICH A FACIAL RECOGNITION SERVICE:

(I) CREATES A FACIAL TEMPLATE FROM ONE OR MORE IMAGES OF AN INDIVIDUAL; AND

(II) ADDS THE FACIAL TEMPLATE TO A GALLERY THAT IS USED BY THE FACIAL RECOGNITION SERVICE FOR RECOGNITION OR PERSISTENT TRACKING OF INDIVIDUALS; OR

(b) THE ACT OF ADDING AN EXISTING FACIAL TEMPLATE DIRECTLY INTO A GALLERY THAT IS USED BY A FACIAL RECOGNITION SERVICE.

(5) (a) "FACIAL RECOGNITION SERVICE" MEANS TECHNOLOGY THAT ANALYZES FACIAL FEATURES TO FACILITATE THE IDENTIFICATION, VERIFICATION, OR PERSISTENT TRACKING OF INDIVIDUALS IN STILL OR VIDEO IMAGES.

(b) "FACIAL RECOGNITION SERVICE" DOES NOT INCLUDE:

(I) THE ANALYSIS OF FACIAL FEATURES TO GRANT OR DENY ACCESS TO AN ELECTRONIC DEVICE;

(II) A GENERALLY AVAILABLE CONSUMER PRODUCT, INCLUDING A TABLET OR SMARTPHONE, THAT ALLOWS FOR THE ANALYSIS OF FACIAL FEATURES IN ORDER TO FACILITATE THE USER'S ABILITY TO MANAGE AN ADDRESS BOOK OR STILL OR VIDEO IMAGES FOR PERSONAL OR HOUSEHOLD USE; OR

(III) THE USE OF AN AUTOMATED OR SEMIAUTOMATED PROCESS BY A LAW ENFORCEMENT AGENCY FOR THE PURPOSE OF REDACTING A RECORDING FOR RELEASE OR DISCLOSURE TO PROTECT THE PRIVACY OF A SUBJECT DEPICTED IN THE RECORDING, SO LONG AS THE PROCESS DOES NOT GENERATE OR RESULT IN THE RETENTION OF ANY BIOMETRIC DATA OR SURVEILLANCE INFORMATION.

(6) "FACIAL TEMPLATE" MEANS A MACHINE-INTERPRETABLE PATTERN OF FACIAL FEATURES THAT IS EXTRACTED FROM ONE OR MORE IMAGES OF AN INDIVIDUAL BY A FACIAL RECOGNITION SERVICE.

(7) "IDENTIFICATION" MEANS THE USE OF A FACIAL RECOGNITION SERVICE BY AN AGENCY TO DETERMINE WHETHER AN UNKNOWN INDIVIDUAL MATCHES ANY INDIVIDUAL WHOSE IDENTITY IS KNOWN TO THE AGENCY AND WHO HAS BEEN ENROLLED BY REFERENCE TO THAT IDENTITY IN A GALLERY USED BY THE FACIAL RECOGNITION SERVICE.

(8) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE MUNICIPALITY, A COUNTY, OR A CITY AND COUNTY.

(9) "MEANINGFUL HUMAN REVIEW" MEANS REVIEW OR OVERSIGHT BY ONE OR MORE INDIVIDUALS WHO ARE TRAINED IN ACCORDANCE WITH SECTION 24-18-305 AND WHO HAVE THE AUTHORITY TO ALTER A DECISION UNDER REVIEW.

(10) "NONIDENTIFYING DEMOGRAPHIC DATA" MEANS DATA THAT IS NOT LINKED OR REASONABLY LINKABLE TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL AND INCLUDES INFORMATION ABOUT AN INDIVIDUAL'S GENDER, RACE, ETHNICITY, AGE, OR LOCATION.

(11) (a) "ONGOING SURVEILLANCE" MEANS THE CONTINUAL USE OF A FACIAL RECOGNITION SERVICE BY AN AGENCY TO TRACK IN REAL TIME THE PHYSICAL MOVEMENTS OF A SPECIFIED INDIVIDUAL THROUGH ONE OR MORE PUBLIC PLACES.

(b) "ONGOING SURVEILLANCE" DOES NOT INCLUDE A SINGLE RECOGNITION OR ATTEMPTED RECOGNITION OF AN INDIVIDUAL IF NO ATTEMPT IS MADE TO SUBSEQUENTLY TRACK THAT INDIVIDUAL'S MOVEMENT OVER TIME AFTER THE INDIVIDUAL HAS BEEN RECOGNIZED.

(12) "PERSISTENT TRACKING" MEANS THE USE OF A FACIAL RECOGNITION SERVICE BY AN AGENCY TO TRACK THE MOVEMENTS OF AN INDIVIDUAL ON A PERSISTENT BASIS WITHOUT IDENTIFICATION OR VERIFICATION OF THE INDIVIDUAL. TRACKING BECOMES PERSISTENT AS SOON AS:

(a) THE FACIAL TEMPLATE THAT PERMITS THE TRACKING IS MAINTAINED FOR

MORE THAN FORTY-EIGHT HOURS AFTER FIRST ENROLLING THAT TEMPLATE; OR

(b) DATA CREATED BY THE FACIAL RECOGNITION SERVICE IS LINKED TO ANY OTHER DATA SUCH THAT THE INDIVIDUAL WHO HAS BEEN TRACKED IS IDENTIFIED OR IDENTIFIABLE.

(13) "RECOGNITION" MEANS THE USE OF A FACIAL RECOGNITION SERVICE BY AN AGENCY TO DETERMINE WHETHER AN UNKNOWN INDIVIDUAL MATCHES:

(a) ANY INDIVIDUAL WHO HAS BEEN ENROLLED IN A GALLERY USED BY THE FACIAL RECOGNITION SERVICE; OR

(b) A SPECIFIC INDIVIDUAL WHO HAS BEEN ENROLLED IN A GALLERY USED BY THE FACIAL RECOGNITION SERVICE.

(14) "REPORTING AUTHORITY" MEANS:

(a) FOR A LOCAL GOVERNMENT AGENCY, THE CITY COUNCIL, COUNTY COMMISSION, OR OTHER LOCAL GOVERNMENT AGENCY IN WHICH LEGISLATIVE POWERS ARE VESTED; AND

(b) FOR A STATE AGENCY, THE OFFICE OF INFORMATION TECHNOLOGY CREATED IN SECTION 24-37.5-103.

(15) "VERIFICATION" MEANS THE USE OF A FACIAL RECOGNITION SERVICE BY AN AGENCY TO DETERMINE WHETHER AN INDIVIDUAL IS A SPECIFIC INDIVIDUAL WHOSE IDENTITY IS KNOWN TO THE AGENCY AND WHO HAS BEEN ENROLLED BY REFERENCE TO THAT IDENTITY IN A GALLERY USED BY THE FACIAL RECOGNITION SERVICE.

24-18-302. Notice of intent to use facial recognition service - accountability reports - public review and comment - notice - exemption. (1) ON AND AFTER THE EFFECTIVE DATE OF THIS PART 3, AN AGENCY THAT USES OR INTENDS TO DEVELOP, PROCURE, OR USE A FACIAL RECOGNITION SERVICE SHALL FILE WITH ITS REPORTING AUTHORITY A NOTICE OF INTENT TO DEVELOP, PROCURE, USE, OR CONTINUE TO USE THE FACIAL RECOGNITION SERVICE AND SPECIFY A PURPOSE FOR WHICH THE TECHNOLOGY IS TO BE USED.

(2) EXCEPT AS DESCRIBED IN SUBSECTION (8) OF THIS SECTION, AFTER FILING THE NOTICE OF INTENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION, AND PRIOR TO DEVELOPING, PROCURING, USING, OR CONTINUING TO USE A FACIAL RECOGNITION SERVICE, AN AGENCY SHALL PRODUCE AN ACCOUNTABILITY REPORT FOR THE FACIAL RECOGNITION SERVICE. AN ACCOUNTABILITY REPORT MUST INCLUDE:

(a) (I) THE NAME, VENDOR, AND VERSION OF THE FACIAL RECOGNITION SERVICE; AND

(II) A DESCRIPTION OF ITS GENERAL CAPABILITIES AND LIMITATIONS, INCLUDING REASONABLY FORESEEABLE CAPABILITIES OUTSIDE THE SCOPE OF THE AGENCY'S PROPOSED USE;

(b) (I) THE TYPE OF DATA INPUTS THAT THE FACIAL RECOGNITION SERVICE USES;

(II) HOW DATA IS GENERATED, COLLECTED, AND PROCESSED; AND

(III) THE TYPE OF DATA THE FACIAL RECOGNITION SERVICE IS REASONABLY LIKELY TO GENERATE;

(c) A DESCRIPTION OF THE PURPOSE AND PROPOSED USE OF THE FACIAL RECOGNITION SERVICE, INCLUDING:

(I) WHAT DECISION WILL BE USED TO MAKE OR SUPPORT THE FACIAL RECOGNITION SERVICE; AND

(II) THE INTENDED BENEFITS OF THE PROPOSED USE, INCLUDING ANY DATA OR RESEARCH DEMONSTRATING THOSE BENEFITS;

(d) A CLEAR USE AND DATA MANAGEMENT POLICY, INCLUDING PROTOCOLS FOR THE FOLLOWING:

(I) HOW, WHEN, AND BY WHOM THE FACIAL RECOGNITION SERVICE WILL BE DEPLOYED OR USED; TO WHOM DATA WILL BE AVAILABLE; THE FACTORS THAT WILL BE USED TO DETERMINE WHERE, WHEN, AND HOW THE TECHNOLOGY IS DEPLOYED; AND OTHER RELEVANT INFORMATION, SUCH AS WHETHER THE TECHNOLOGY WILL BE OPERATED CONTINUOUSLY OR USED ONLY UNDER SPECIFIC CIRCUMSTANCES;

(II) IF THE FACIAL RECOGNITION SERVICE WILL BE OPERATED OR USED BY AN ENTITY ON THE AGENCY'S BEHALF, A DESCRIPTION OF THE ENTITY'S ACCESS AND ANY APPLICABLE PROTOCOLS;

(III) ANY MEASURES TAKEN TO MINIMIZE INADVERTENT COLLECTION OF ADDITIONAL DATA BEYOND THE AMOUNT NECESSARY FOR THE SPECIFIC PURPOSE FOR WHICH THE FACIAL RECOGNITION SERVICE WILL BE USED;

(IV) DATA INTEGRITY AND RETENTION POLICIES APPLICABLE TO THE DATA COLLECTED USING THE FACIAL RECOGNITION SERVICE, INCLUDING HOW THE AGENCY WILL MAINTAIN AND UPDATE RECORDS USED IN CONNECTION WITH THE SERVICE, HOW LONG THE AGENCY WILL KEEP THE DATA, AND THE PROCESSES BY WHICH DATA WILL BE DELETED;

(V) WHAT PROCESSES WILL BE REQUIRED PRIOR TO EACH USE OF THE FACIAL RECOGNITION SERVICE;

(VI) DATA SECURITY MEASURES APPLICABLE TO THE FACIAL RECOGNITION SERVICE, INCLUDING:

(A) HOW DATA COLLECTED USING THE FACIAL RECOGNITION SERVICE WILL BE SECURELY STORED AND ACCESSED; AND

(B) IF AN AGENCY INTENDS TO SHARE ACCESS TO THE FACIAL RECOGNITION SERVICE OR THE DATA FROM THAT FACIAL RECOGNITION SERVICE WITH ANY THIRD PARTY THAT IS NOT A LAW ENFORCEMENT AGENCY, THE RULES AND PROCEDURES BY WHICH THE AGENCY WILL ENSURE THAT THE THIRD PARTY COMPLIES WITH THE AGENCY'S USE AND DATA MANAGEMENT POLICY;

(VII) THE AGENCY'S TRAINING PROCEDURES, INCLUDING THOSE IMPLEMENTED IN ACCORDANCE WITH SECTION 24-18-305, AND HOW THE AGENCY WILL ENSURE THAT ALL PERSONNEL WHO OPERATE THE FACIAL RECOGNITION SERVICE OR ACCESS ITS DATA ARE KNOWLEDGEABLE ABOUT AND ABLE TO ENSURE COMPLIANCE WITH THE USE AND DATA MANAGEMENT POLICY BEFORE USING THE FACIAL RECOGNITION SERVICE; AND

(VIII) ANY OTHER POLICIES THAT WILL GOVERN USE OF THE FACIAL RECOGNITION SERVICE;

(e)   THE AGENCY'S TESTING PROCEDURES, INCLUDING ITS PROCESSES FOR PERIODICALLY UNDERTAKING OPERATIONAL TESTS OF THE FACIAL RECOGNITION SERVICE IN ACCORDANCE WITH SECTION 24-18-304;

(f)   INFORMATION CONCERNING THE FACIAL RECOGNITION SERVICE'S RATE OF FALSE MATCHES, POTENTIAL IMPACTS ON PROTECTED SUBPOPULATIONS, AND HOW THE AGENCY WILL ADDRESS ERROR RATES THAT ARE DETERMINED INDEPENDENTLY TO BE GREATER THAN ONE PERCENT;

(g)   A DESCRIPTION OF ANY POTENTIAL IMPACTS OF THE FACIAL RECOGNITION SERVICE ON CIVIL RIGHTS AND LIBERTIES, INCLUDING POTENTIAL IMPACTS TO PRIVACY AND POTENTIAL DISPARATE IMPACTS ON MARGINALIZED COMMUNITIES, INCLUDING THE SPECIFIC STEPS THE AGENCY WILL TAKE TO MITIGATE THE POTENTIAL IMPACTS; AND

(h)   THE AGENCY'S PROCEDURES FOR RECEIVING FEEDBACK, INCLUDING THE CHANNELS FOR RECEIVING FEEDBACK, FROM INDIVIDUALS AFFECTED BY THE USE OF THE FACIAL RECOGNITION SERVICE AND FROM THE COMMUNITY AT LARGE, AS WELL AS THE PROCEDURES FOR RESPONDING TO FEEDBACK.

(3) PRIOR TO FINALIZING AN ACCOUNTABILITY REPORT, AN AGENCY SHALL:

(a) ALLOW FOR A PUBLIC REVIEW AND COMMENT PERIOD;

(b)   HOLD AT LEAST THREE PUBLIC MEETINGS TO OBTAIN FEEDBACK FROM COMMUNITIES; AND

(c) CONSIDER THE ISSUES RAISED BY THE PUBLIC THROUGH THE PUBLIC MEETINGS.

(4) AT LEAST NINETY DAYS BEFORE AN AGENCY PUTS A FACIAL RECOGNITION SERVICE INTO OPERATIONAL USE, THE AGENCY SHALL POST THE FINAL ADOPTED ACCOUNTABILITY REPORT ON THE AGENCY'S PUBLIC WEBSITE AND SUBMIT IT TO THE AGENCY'S REPORTING AUTHORITY. THE REPORTING AUTHORITY SHALL POST THE MOST RECENT VERSION OF EACH SUBMITTED ACCOUNTABILITY REPORT ON ITS PUBLIC WEBSITE.

(5) AN AGENCY SHALL UPDATE ITS FINAL ACCOUNTABILITY REPORT AND SUBMIT THE UPDATED ACCOUNTABILITY REPORT TO THE AGENCY'S REPORTING AUTHORITY AT LEAST EVERY TWO YEARS.

(6) AN AGENCY SEEKING TO PROCURE A FACIAL RECOGNITION SERVICE MUST

REQUIRE EACH VENDOR TO DISCLOSE ANY COMPLAINTS OR REPORTS OF BIAS
REGARDING THE VENDOR'S FACIAL RECOGNITION SERVICE.

(7) AN AGENCY SEEKING TO USE A FACIAL RECOGNITION SERVICE FOR A PURPOSE
NOT DISCLOSED IN THE AGENCY'S EXISTING ACCOUNTABILITY REPORT MUST:

(a) SEEK AND CONSIDER PUBLIC COMMENTS AND COMMUNITY INPUT CONCERNING
THE PROPOSED NEW USE; AND

(b) IN RESPONSE TO SUCH COMMENTS AND INPUT, ADOPT AN UPDATED
ACCOUNTABILITY REPORT AS DESCRIBED IN THIS SECTION.

(8) THE REQUIREMENTS OF SUBSECTIONS (2), (3), (4), (5), AND (7) OF THIS
SECTION CONCERNING ACCOUNTABILITY REPORTS DO NOT APPLY TO AN AGENCY'S
PROCUREMENT OR USE OF A FACIAL RECOGNITION SERVICE IF:

(a) THE FACIAL RECOGNITION SERVICE IS PART OF A GENERALLY AVAILABLE
CONSUMER PRODUCT;

(b) THE FACIAL RECOGNITION SERVICE IS INCLUDED IN THE CONSUMER PRODUCT
ONLY FOR PERSONAL OR HOUSEHOLD USE; AND

(c) THE AGENCY CERTIFIES PUBLICLY THAT THE FACIAL RECOGNITION SERVICE IS
NOT THE REASON FOR THE AGENCY'S PROCUREMENT OR USE OF THE CONSUMER
PRODUCT AND WILL NOT BE USED FOR GOVERNMENTAL PURPOSES.

**24-18-303. Use of facial recognition service - meaningful human review of
certain decisions required.** AN AGENCY USING A FACIAL RECOGNITION SERVICE TO
MAKE DECISIONS THAT PRODUCE LEGAL EFFECTS CONCERNING INDIVIDUALS OR
SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS MUST ENSURE THAT
THOSE DECISIONS ARE SUBJECT TO MEANINGFUL HUMAN REVIEW.

**24-18-304. Use of facial recognition service - testing required before use in
certain contexts - testing capability required - exemption.** (1) EXCEPT AS
DESCRIBED IN SUBSECTION (4) OF THIS SECTION, BEFORE DEPLOYING A FACIAL
RECOGNITION SERVICE IN A CONTEXT IN WHICH IT WILL BE USED TO MAKE DECISIONS
THAT PRODUCE LEGAL EFFECTS CONCERNING INDIVIDUALS OR SIMILARLY
SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS, AN AGENCY MUST TEST THE FACIAL
RECOGNITION SERVICE IN OPERATIONAL CONDITIONS. AN AGENCY MUST TAKE
REASONABLE STEPS TO ENSURE BEST QUALITY RESULTS BY FOLLOWING ALL
GUIDANCE PROVIDED BY THE DEVELOPER OF THE FACIAL RECOGNITION SERVICE.

(2) (a) EXCEPT AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, AN AGENCY
THAT DEPLOYS A FACIAL RECOGNITION SERVICE SHALL REQUIRE THE FACIAL
RECOGNITION SERVICE PROVIDER TO MAKE AVAILABLE AN APPLICATION
PROGRAMMING INTERFACE OR OTHER TECHNICAL CAPABILITY, CHOSEN BY THE
PROVIDER, TO ENABLE LEGITIMATE, INDEPENDENT, AND REASONABLE TESTS OF THE
FACIAL RECOGNITION SERVICE FOR ACCURACY AND TO IDENTIFY UNFAIR
PERFORMANCE DIFFERENCES ACROSS DISTINCT SUBPOPULATIONS, INCLUDING
SUBPOPULATIONS THAT ARE DEFINED BY VISUALLY DETECTABLE CHARACTERISTICS
SUCH AS:

(I) RACE, SKIN TONE, ETHNICITY, GENDER, AGE, OR DISABILITY STATUS; OR

(II) OTHER PROTECTED CHARACTERISTICS THAT ARE OBJECTIVELY DETERMINABLE OR SELF-IDENTIFIED BY THE INDIVIDUALS PORTRAYED IN THE TESTING DATASET.

(b) IF THE RESULTS OF INDEPENDENT TESTING IDENTIFY MATERIAL UNFAIR PERFORMANCE DIFFERENCES ACROSS SUBPOPULATIONS, THE PROVIDER MUST DEVELOP AND IMPLEMENT A PLAN TO MITIGATE THE IDENTIFIED PERFORMANCE DIFFERENCES WITHIN NINETY DAYS AFTER RECEIPT OF THE RESULTS.

(c) SUBSECTION (2)(a) OF THIS SECTION DOES NOT REQUIRE A PROVIDER TO DISCLOSE PROPRIETARY MATERIAL OR MAKE AVAILABLE AN APPLICATION PROGRAMMING INTERFACE OR OTHER TECHNICAL CAPABILITY IN A MANNER THAT WOULD INCREASE THE RISK OF CYBER ATTACKS. PROVIDERS BEAR THE BURDEN OF MINIMIZING THESE RISKS WHEN MAKING AN APPLICATION PROGRAMMING INTERFACE OR OTHER TECHNICAL CAPABILITY AVAILABLE FOR TESTING PURPOSES.

(3) NOTHING IN THIS SECTION REQUIRES AN AGENCY TO COLLECT OR PROVIDE DATA TO A FACIAL RECOGNITION SERVICE PROVIDER TO SATISFY THE REQUIREMENTS IN SUBSECTION (1) OF THIS SECTION.

(4) THE REQUIREMENTS OF SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY IF THE FACIAL RECOGNITION SERVICE PROVIDER IS A PARTICIPANT IN THE FACE RECOGNITION VENDOR TEST ONGOING PROJECT OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

24-18-305. Use of facial recognition service - training of users required. (1) AN AGENCY USING A FACIAL RECOGNITION SERVICE MUST CONDUCT PERIODIC TRAINING OF ALL INDIVIDUALS WHO OPERATE A FACIAL RECOGNITION SERVICE OR WHO PROCESS PERSONAL DATA OBTAINED FROM THE USE OF A FACIAL RECOGNITION SERVICE.

(2) THE TRAINING REQUIRED BY SUBSECTION (1) OF THIS SECTION MUST INCLUDE COVERAGE OF:

(a) THE CAPABILITIES AND LIMITATIONS OF THE FACIAL RECOGNITION SERVICE;

(b) PROCEDURES TO INTERPRET AND ACT ON THE OUTPUT OF THE FACIAL RECOGNITION SERVICE; AND

(c) TO THE EXTENT APPLICABLE TO THE DEPLOYMENT CONTEXT, THE MEANINGFUL HUMAN REVIEW REQUIREMENT FOR DECISIONS THAT PRODUCE LEGAL EFFECTS CONCERNING INDIVIDUALS OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS.

24-18-306. Use of facial recognition service - record keeping required. AN AGENCY USING A FACIAL RECOGNITION SERVICE SHALL MAINTAIN RECORDS OF ITS USE OF THE SERVICE THAT ARE SUFFICIENT TO FACILITATE PUBLIC REPORTING AND AUDITING OF COMPLIANCE WITH THE AGENCY'S USE AND DATA MANAGEMENT POLICIES DEVELOPED AS PART OF THE AGENCY'S ACCOUNTABILITY REPORT PURSUANT TO SECTION 24-18-302 (2)(d).

24-18-307. Use of facial recognition service by law enforcement agencies - surveillance and tracking - prohibited uses - warrants. (1)　A LAW ENFORCEMENT AGENCY SHALL NOT USE A FACIAL RECOGNITION SERVICE TO ENGAGE IN ONGOING SURVEILLANCE, CONDUCT REAL-TIME OR NEAR REAL-TIME IDENTIFICATION, OR START PERSISTENT TRACKING UNLESS:

(a)　THE LAW ENFORCEMENT AGENCY OBTAINS A WARRANT AUTHORIZING SUCH USE;

(b)　SUCH USE IS NECESSARY TO DEVELOP LEADS IN AN INVESTIGATION;

(c)　THE LAW ENFORCEMENT AGENCY HAS ESTABLISHED PROBABLE CAUSE FOR SUCH USE; OR

(d)　THE LAW ENFORCEMENT AGENCY OBTAINS A COURT ORDER AUTHORIZING THE USE OF THE SERVICE FOR THE SOLE PURPOSE OF LOCATING OR IDENTIFYING A MISSING PERSON OR IDENTIFYING A DECEASED PERSON. A COURT MAY ISSUE AN EX PARTE ORDER UNDER THIS SUBSECTION (1)(d) IF A LAW ENFORCEMENT OFFICER CERTIFIES AND THE COURT FINDS THAT THE INFORMATION LIKELY TO BE OBTAINED IS RELEVANT TO LOCATING OR IDENTIFYING A MISSING PERSON OR IDENTIFYING A DECEASED PERSON.

(2)　A LAW ENFORCEMENT AGENCY SHALL NOT APPLY A FACIAL RECOGNITION SERVICE TO ANY INDIVIDUAL BASED ON THE INDIVIDUAL'S RELIGIOUS, POLITICAL, OR SOCIAL VIEWS OR ACTIVITIES; PARTICIPATION IN A PARTICULAR NONCRIMINAL ORGANIZATION OR LAWFUL EVENT; OR ACTUAL OR PERCEIVED RACE, ETHNICITY, CITIZENSHIP, PLACE OF ORIGIN, IMMIGRATION STATUS, AGE, DISABILITY, GENDER, GENDER EXPRESSION, GENDER IDENTITY, SEXUAL ORIENTATION, OR OTHER CHARACTERISTIC PROTECTED BY LAW.

(3)　A LAW ENFORCEMENT AGENCY SHALL NOT USE A FACIAL RECOGNITION SERVICE TO CREATE A RECORD DEPICTING ANY INDIVIDUAL'S EXERCISE OF RIGHTS GUARANTEED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND BY SECTION 10 OF ARTICLE II OF THE STATE CONSTITUTION.

(4)　A LAW ENFORCEMENT AGENCY SHALL NOT USE THE RESULTS OF A FACIAL RECOGNITION SERVICE AS THE SOLE BASIS TO ESTABLISH PROBABLE CAUSE IN A CRIMINAL INVESTIGATION. THE RESULTS OF A FACIAL RECOGNITION SERVICE MAY BE USED IN CONJUNCTION WITH OTHER INFORMATION AND EVIDENCE LAWFULLY OBTAINED BY A LAW ENFORCEMENT OFFICER TO ESTABLISH PROBABLE CAUSE IN A CRIMINAL INVESTIGATION.

(5)　A LAW ENFORCEMENT AGENCY SHALL NOT SUBSTANTIVELY MANIPULATE AN IMAGE FOR USE IN A FACIAL RECOGNITION SERVICE IN A MANNER NOT CONSISTENT WITH THE FACIAL RECOGNITION SERVICE PROVIDER'S INTENDED USE AND TRAINING.

24-18-308. Use of facial recognition service by agencies - disclosure to criminal defendant required - warrants. (1)　AN AGENCY SHALL DISCLOSE ITS USE OF A FACIAL RECOGNITION SERVICE ON A CRIMINAL DEFENDANT TO THAT DEFENDANT IN A TIMELY MANNER PRIOR TO TRIAL.

(2) IN JANUARY OF EACH YEAR, ANY JUDGE WHO HAS ISSUED OR EXTENDED A WARRANT FOR THE USE OF A FACIAL RECOGNITION SERVICE AS DESCRIBED IN SECTION 24-18-307 DURING THE PRECEDING YEAR, OR WHO HAS DENIED APPROVAL OF SUCH A WARRANT DURING THAT YEAR, SHALL REPORT TO THE STATE COURT ADMINISTRATOR:

(a) THE FACT THAT A WARRANT OR EXTENSION WAS APPLIED FOR;

(b) THE FACT THAT THE WARRANT OR EXTENSION WAS GRANTED AS APPLIED FOR, WAS MODIFIED, OR WAS DENIED;

(c) THE PERIOD OF SURVEILLANCE AUTHORIZED BY THE WARRANT AND THE NUMBER AND DURATION OF ANY EXTENSIONS OF THE WARRANT;

(d) THE IDENTITY OF THE APPLYING INVESTIGATIVE OR LAW ENFORCEMENT OFFICER AND AGENCY MAKING THE APPLICATION AND THE PERSON AUTHORIZING THE APPLICATION; AND

(e) THE NATURE OF THE PUBLIC SPACES WHERE THE SURVEILLANCE WAS CONDUCTED.

(3) IN JANUARY OF EACH YEAR, ANY AGENCY THAT HAS APPLIED FOR A WARRANT OR AN EXTENSION OF A WARRANT FOR THE USE OF A FACIAL RECOGNITION SERVICE TO ENGAGE IN ANY SURVEILLANCE AS DESCRIBED IN SECTION 24-18-307 SHALL PROVIDE TO THE AGENCY'S REPORTING AUTHORITY A REPORT SUMMARIZING NONIDENTIFYING DEMOGRAPHIC DATA OF INDIVIDUALS NAMED IN WARRANT APPLICATIONS AS SUBJECTS OF SURVEILLANCE WITH THE USE OF A FACIAL RECOGNITION SERVICE.

24-18-309. Use of facial recognition service - applicability and exemptions. (1) NOTWITHSTANDING ANY PROVISION OF THIS PART 3 TO THE CONTRARY, THIS PART 3 DOES NOT APPLY TO:

(a) AN AGENCY THAT:

(I) IS REQUIRED TO USE A SPECIFIC FACIAL RECOGNITION SERVICE PURSUANT TO A FEDERAL REGULATION OR ORDER, OR THAT USES A FACIAL RECOGNITION SERVICE IN PARTNERSHIP WITH A FEDERAL AGENCY TO FULFILL A CONGRESSIONAL MANDATE, FULFILL AVIATION SECURITY DIRECTIVES, OR COMPLY WITH FEDERAL LAW;

(II) USES A FACIAL RECOGNITION SERVICE IN ASSOCIATION WITH A FEDERAL AGENCY TO VERIFY THE IDENTITY OF INDIVIDUALS PRESENTING THEMSELVES FOR TRAVEL AT AN AIRPORT; OR

(III) USES A FACIAL RECOGNITION SERVICE IN CONNECTION WITH A PHYSICAL ACCESS CONTROL SYSTEM IN ORDER TO GRANT OR DENY ACCESS TO A SECURE AREA;

(b) THE USE OF A FACIAL RECOGNITION SERVICE SOLELY FOR RESEARCH PURPOSES BY A STATE AGENCY SO LONG AS THE USE DOES NOT RESULT IN OR AFFECT ANY DECISIONS THAT PRODUCE LEGAL EFFECTS CONCERNING INDIVIDUALS OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING INDIVIDUALS; OR

(c) A UTILITY.

SECTION 5. In Colorado Revised Statutes, **add** 22-32-150 as follows:

22-32-150. Contracting for facial recognition service by schools prohibited - definition - repeal. (1) EXCEPT AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, A SCHOOL DISTRICT OR A SCHOOL OR A CHARTER SCHOOL OF A SCHOOL DISTRICT SHALL NOT EXECUTE A CONTRACT WITH ANY VENDOR FOR THE PURCHASE OF, OR FOR SERVICES RELATED TO, ANY FACIAL RECOGNITION SERVICE.

(2) THE PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:

(a) A CONTRACT THAT WAS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS SECTION, INCLUDING SUCH A CONTRACT THAT IS RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION; OR

(b) A CONTRACT FOR THE PURCHASE OF, OR FOR SERVICES RELATED TO, A GENERALLY AVAILABLE CONSUMER PRODUCT, INCLUDING A TABLET OR SMARTPHONE, THAT ALLOWS FOR THE ANALYSIS OF FACIAL FEATURES IN ORDER TO FACILITATE THE USER'S ABILITY TO MANAGE AN ADDRESS BOOK OR STILL OR VIDEO IMAGES FOR PERSONAL OR HOUSEHOLD USE.

(3) AS USED IN THIS SECTION, "FACIAL RECOGNITION SERVICE" HAS THE MEANING SET FORTH IN SECTION 24-18-301 (5).

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 6. In Colorado Revised Statutes, **add** 22-30.5-529 as follows:

22-30.5-529. Contracting for facial recognition service by institute charter schools prohibited - definition - repeal. (1) EXCEPT AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, AN INSTITUTE CHARTER SCHOOL SHALL NOT EXECUTE A CONTRACT WITH ANY VENDOR FOR THE PURCHASE OF, OR FOR SERVICES RELATED TO, ANY FACIAL RECOGNITION SERVICE.

(2) THE PROHIBITION DESCRIBED IN SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:

(a) A CONTRACT THAT WAS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS SECTION, INCLUDING SUCH A CONTRACT THAT IS RENEWED AFTER THE EFFECTIVE DATE OF THIS SECTION; OR

(b) A CONTRACT FOR THE PURCHASE OF, OR FOR SERVICES RELATED TO, A GENERALLY AVAILABLE CONSUMER PRODUCT, INCLUDING A TABLET OR SMARTPHONE, THAT ALLOWS FOR THE ANALYSIS OF FACIAL FEATURES IN ORDER TO FACILITATE THE USER'S ABILITY TO MANAGE AN ADDRESS BOOK OR STILL OR VIDEO IMAGES FOR PERSONAL OR HOUSEHOLD USE.

(3) AS USED IN THIS SECTION, "FACIAL RECOGNITION SERVICE" HAS THE MEANING SET FORTH IN SECTION 24-18-301 (5).

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2025.

SECTION 7. In Colorado Revised Statutes, 18-5.5-102, **add** (5) as follows:

18-5.5-102. Cybercrime. (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN INDIVIDUAL MAY AUTHORIZE AN AGENT TO ACCESS AND PROCESS, ON THAT INDIVIDUAL'S BEHALF, THAT INDIVIDUAL'S PERSONAL DATA OR OTHER INFORMATION HELD ON A COMPUTER, COMPUTER NETWORK, OR COMPUTER SYSTEM AND THAT IS OTHERWISE ACCESSIBLE TO THE INDIVIDUAL. AN AUTHORIZED AGENT REMAINS LIABLE FOR ANY UNAUTHORIZED ACTIVITY ON A SYSTEM UNDER APPLICABLE UNFAIR COMPETITION LAWS; THE FEDERAL "COMPUTER FRAUD AND ABUSE ACT", 18 U.S.C. SEC. 1030 ET SEQ., AS AMENDED; AND OTHER PROVISIONS OF THIS SECTION.

SECTION 8. In Colorado Revised Statutes, 24-30-1404, **amend** (7)(h) as follows:

24-30-1404. Contracts - definition. (7) (h) The six-month deadline imposed by ~~paragraph (a) of this subsection (7)~~ SUBSECTION (7)(a) OF THIS SECTION does not apply to information technology projects that are overseen by the joint technology committee pursuant to part 17 of article 3 of title 2. ~~C.R.S. For the purposes of this paragraph (h)~~ AS USED IN THIS SUBSECTION (7)(h), "information technology" has the ~~same~~ meaning ~~as~~ provided in ~~section 2-3-1701 (2), C.R.S.~~ SECTION 2-3-1701 (7).

SECTION 9. In Colorado Revised Statutes, 24-37-101, **amend** the introductory portion and (5) as follows:

24-37-101. Definitions. As used in this ~~article~~ ARTICLE 37, unless the context otherwise requires:

(5) "Information technology budget request" has the ~~same~~ meaning ~~as~~ set forth in ~~section 2-3-1701 (2.5), C.R.S.~~ SECTION 2-3-1701 (8).

SECTION 10. Appropriation. (1) For the 2022-23 state fiscal year, $11,109 is appropriated to the legislative department. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) $943 for use by the general assembly; and

(b) $10,166 for use by the legislative council, which amount is based on an assumption that the legislative council will require an additional 0.2 FTE.

SECTION 11. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 8, 2022