

CONSUMER PRIVACY AND FACIAL RECOGNITION TECHNOLOGY

A SNAPSHOT OF OTHER STATES' RESPONSES

LAW AND JUSTICE INTERIM COMMITTEE
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With the rise of online shopping, social media, and artificial intelligence it is no surprise that personal information security is on the minds of lawmakers. Often, legislation is focused on is who is allowed to collect and store personal data, why it is collected, and how the data is used. According to the National Conference of State Legislators, at least 40 states and provinces have introduced or considered more than 350 pieces of consumer privacy related legislation in 2023 alone.¹ This number has grown exponentially from previous years and the trend is expected to continue in 2024.

COMPREHENSIVE CONSUMER PRIVACY LAWS

Some states enacted comprehensive consumer privacy laws or acts in response to increasing personal information privacy concerns. Comprehensive consumer privacy laws broadly regulate the collection, use, and disclosure of personal information and provide an express set of consumer rights with regard to collected data, such as the right to access, correct, and delete personal information collected by businesses. Montana joined this list of states with the passage of Senate Bill 384, the [Consumer Data Privacy Act](#), in the 2023 Regular Session. Other states that have adopted comprehensive consumer privacy laws or acts as of February 2024² include:

- [California Consumer Privacy Act of 2018](#)
 - [Proposition 24, the CPRA](#)
- [Colorado Privacy Act](#)
- [Connecticut Data Privacy Act](#)
- [Delaware Personal Data Privacy Act](#)
- [Florida Consumer Collection Practices Act](#)
- [Indiana Consumer Data Protection Act](#)
- [Iowa Data Protection Act](#)
- [New Jersey Senate Bill 332](#)
- [Oregon Consumer Privacy Act](#)
- [Tennessee Information Protection Act](#)
- [Texas Data Privacy and Security Act](#)
- [Virginia Consumer Data Protection Act](#)

FACIAL RECOGNITION LEGISLATION

One aspect of consumer privacy is collecting, storing, and protecting the biometric identifiers of a consumer. Facial recognition is a category of biometric software that maps an individual's facial features mathematically and stores the data as a faceprint.³ To further establish governance over this part of personal information privacy, states have enacted specific language regarding biometric identifiers.

“Facial recognition technology is a contemporary security solution that automatically identifies and verifies the identity of an individual from a digital image or video frame. This technology can be compared to other biometric technologies, and used for a number of activities.”

U.S. Department of Homeland Security

¹ <https://www.ncsl.org/technology-and-communication/2023-consumer-data-privacy-legislation>

² <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>

³ <https://www.techtarget.com/searchenterpriseai/definition/facial-recognition>

ENACTED LEGISLATION

Illinois enacted the [Biometric Information Privacy Act in 2008](#), which was the first in the nation to establish facial recognition technology regulation language. Notably, the legislation only applied to private entities and not government agencies. During this same time, through a combination of three pieces of legislation from 2007, 2009, and 2017, Texas enacted a part of code, the [Business and Commerce Code, Chapter 503: Biometric Identifiers](#), that states how and when biometric identifier information may be captured and stored for commercial purpose.

Similar to Montana’s [Senate Bill 397 \(2023\)](#), the “Facial Recognition for Government Use Act”, other states have recently brought forward language specific to facial recognition technology.

2019

California Assembly Bill 1215	This act bans facial recognition technology use and biometric surveillance systems in connection with cameras worn or carried by law enforcement for the purpose of identifying individuals using biometric data. The ban covers both direct use of biometric surveillance by law enforcement as well as by request of an officer or agency. The act contains exceptions in the areas of recordings and the use of a mobile fingerprint scanning.
Massachusetts Senate No. 2963	This act was a declared emergency law and necessary for the immediate preservation of the public safety. The police reform bill includes a ban on the use of facial recognition technology by public agencies except the Registry of Motor Vehicles. Law enforcement agencies can request a facial recognition search from the Registry of Motor Vehicles.
New York Assembly Bill A6787D	This act directs the Commissioner of Education to study the use of biometric identifying technology. The act also prohibits biometric identifying technology in schools until July 1, 2022 or until the commissioner authorizes its use.
Washington Senate Bill 6280	This act establishes safeguards for the use of facial recognition technology by state and local government agencies. The legislation requires any state or local government agency intending to use a facial recognition service to file a notice of intent for the service and specify a purpose for which the technology will be used.

2020

Maryland House Bill 1202	This act prohibits an employer from using certain facial recognition services during an applicant's interview for employment unless the applicant consents.
Vermont Senate Bill 124	This act prohibits law enforcement officers the use of or information acquired by facial recognition technology. The legislation also establishes that the Vermont Criminal Justice Council will analyze law enforcement potential needs to use facial recognition technology and recommend a statewide policy on law enforcement officers use of facial recognition technology.

2021

<p>Louisiana <u>House Resolution 199</u></p>	<p>A joint study that directs the House Committee on Administration of Criminal Justice and the House Committee on Judiciary to study the use of facial recognition data, collection methods, and usage by law enforcement in legal proceedings. This study came after <u>House Bill 611</u>, which prohibited the use of facial recognition data under certain circumstances, failed to pass the House.</p>
<p>Utah <u>Senate Bill 34</u></p>	<p>An act that enacted the Utah Code of Criminal Procedure to state that the Department of Public Safety is the only state agency authorized to use a facial recognition system and limit the purposes of the system. Law enforcement may submit a request to the department to use and access an image database that is maintained by the department through the Utah Criminal Justice Information System.</p>
<p>Virginia <u>House Bill 2031</u></p>	<p>An act that prohibits local law-enforcement agency or campus police department from using facial recognition technology unless authorized by statute. The legislation prohibits a local law-enforcement agency or campus police department at a public institution of higher education currently using facial recognition technology from continuing to use such technology without such authorization after July 1, 2021.</p>

2022

<p>Alabama <u>Senate Bill 56</u></p>	<p>An act that prohibits the state or local law enforcement agencies from using facial recognition technology as the sole basis for making an arrest or establishing probable cause in criminal investigations.</p>
<p>Colorado <u>Senate Bill 113</u></p>	<p>An act that requires a state or local government agency, including institutions of higher education, that use or intends to use facial recognition to file with its reporting authority a notice of intent to use and specify a purpose for the use of the technology. For a Colorado state agency, the reporting authority is the office of information technology in the governor's office. But for a local government agency, the reporting agency is the city council, county commission, or other local government agency vested with legislative powers.</p>
<p>Illinois <u>Senate Bill 225</u></p>	<p>An act that prohibits the Secretary of State from providing facial recognition search services or photographs obtained in the process of issuing an identification card or a driver's license or permit to any federal, state, or local law enforcement agency or other governmental entity for the purpose of enforcing federal immigration laws.</p>
<p>Kentucky <u>Senate Bill 176</u></p>	<p>An act creating a working group on facial technology and requiring the working group to adopt a model facial recognition technology policy by January 1, 2024, that governs use of facial recognition technology.</p>
<p>Vermont <u>House Bill 195</u></p>	<p>An act that creates an exception on the use of facial recognition technology by law enforcement during a criminal investigation, allowing the use of the technology when it pertains to an investigation into sexual exploitation of children.</p>
<p>Virginia <u>Senate Bill 741</u></p>	<p>An act that authorizes local law-enforcement agencies, campus police departments, and the Department of State Police to use facial recognition technology for certain purposes. It also establishes authority over the appropriate technology, training requirements and protocols for requests for technology use, data maintenance and reporting requirements, and penalties.</p>

2023

Alabama <u>Senate Bill 1221</u>	An act that establishes language that hospitals and other health organizations may request assistance from criminal justice agencies to use their biometric identifier data collection to identify unidentifiable patients who are either incapacitated or deceased.
Illinois <u>House Bill 3902</u>	An act referred to as the Drones as First Responders Act that prohibits the use of facial recognition technology on drones.

INTRODUCED LEGISLATION

Several states are currently pursuing either first-of-its-kind legislation or supplemental language to bolster current statutes to include biometric identifiers specific to facial recognition technology. Listed below are some bills directly related to facial recognition currently in process as of February 2024:

California <u>Assembly Bill 1814</u>	An act relating to law enforcement agencies use of facial recognition technology.
Colorado <u>House Bill 1130</u>	An act amending the Colorado Privacy Act to add protections for an individual's biometric identifiers & data.
Georgia <u>House Bill 1245</u>	An act relating to the use of facial recognition technology by law enforcement agencies.
Kentucky <u>Senate Bill 180</u>	An act to restrict use of or create a cause of action for the use of facial recognition technology and biometric identifiers under certain circumstances.
Maryland <u>House Bill 338</u> <u>Senate Bill 182</u>	Language to establish governance on the use of facial recognition technology by law enforcement agencies under certain circumstances, as well as establish an authority to develop and administer a training program on facial recognition technology use.
Maryland <u>House Bill 1001</u>	Language prohibiting automated enforcement systems from using biometric identifying technology, including facial recognition technology.
Maryland <u>Senate Bill 943</u>	Language prohibiting bus obstruction monitoring systems from using biometric identification techniques, including facial recognition technology
Massachusetts <u>House Bill 4359</u>	An act to implement the recommendations of the special commission on facial recognition technology.
New York <u>Assembly Bill 8853</u> <u>Senate Bill 7944</u>	An act prohibiting the use of biometric identifying technology in schools under certain circumstances.
New York <u>Assembly Bill 2642</u> <u>Senate Bill 4824</u>	An act to enact the "facial recognition technology study act" to study privacy concerns and potential regulatory approaches to the development of facial recognition technology.
New Jersey <u>Senate Bill 968</u>	An act prohibiting the use of facial recognition technology on consumers except for legitimate safety purposes.