MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1585

H.P. 1174

House of Representatives, April 27, 2021

An Act To Increase Privacy and Security by Prohibiting the Use of Facial Surveillance by Certain Government Employees and Officials

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT Clerk

R(+ B. Hunt

Presented by Representative LOOKNER of Portland.

Cosponsored by Representatives: EVANGELOS of Friendship, HARNETT of Gardiner, MORALES of South Portland, O'NEIL of Saco, PLUECKER of Warren, TALBOT ROSS of Portland, WARREN of Hallowell, Senator: MAXMIN of Lincoln.

1	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 25 MRSA Pt. 14 is enacted to read:
3	<u>PART 14</u>
4	<u>SURVEILLANCE</u>
5	CHAPTER 701
6	FACIAL SURVEILLANCE
7	§6001. Facial surveillance
8 9	1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.
10 11 12	A. "Facial surveillance" means an automated or semi-automated process that assists in identifying or verifying an individual, or in capturing information about an individual, based on the physical characteristics of an individual's face.
13 14	B. "Facial surveillance system" means any computer software or application that performs facial surveillance.
15 16	C. "Public employee" means a person employed by the State, a county, a municipality or any entity identified in statute as a public instrumentality.
17 18 19	D. "Public official" means a person elected or appointed to a public office that is part of the State, a county, a municipality or any entity identified in statute as a public instrumentality.
20 21	2. Public employee or public official use of facial surveillance. The following provisions govern the use of facial surveillance by a public employee or public official.
22	A. A public employee or public official may not:
23 24	(1) Obtain, retain, possess, access or use a facial surveillance system or information derived from a facial surveillance system;
25 26 27	(2) Enter into an agreement with a 3rd party for the purpose of obtaining, retaining, possessing, accessing or using, by or on behalf of a public employee or public official, a facial surveillance system; or
28 29 30	(3) Issue a permit or enter into any other agreement that authorizes a 3rd party to obtain, retain, possess, access or use a facial surveillance system or information derived from a facial surveillance system.
31	B. Nothing in paragraph A prohibits a public employee or public official from:
32 33	(1) Using evidence relating to an investigation of a specific crime that may have been generated from a facial surveillance system;
34 35 36	(2) Obtaining or possessing an electronic device, such as a cell phone or computer, for evidentiary purposes or an electronic device, such as a cell phone or tablet, that performs facial surveillance for the sole purpose of user authentication:

2 3	owned by a public employee or public official for the sole purpose of user authentication;
4 5 6	(4) Using social media or communications software or applications for communicating with the public as long as such use does not include the affirmative use of facial surveillance;
7 8	(5) Using automated redaction software as long as such software does not have the capability of performing facial surveillance; and
9 10	(6) Complying with the National Child Search Assistance Act of 1990, 34 United States Code, Sections 41307 and 41308 (2021).
11	3. Enforcement. The following provisions govern enforcement.
12 13 14	A. Facial surveillance data collected or derived in violation of this section must be considered unlawfully obtained and must be deleted upon discovery, subject to applicable law.
15 16 17 18	B. Data collected or derived from any use of facial surveillance in violation of this section and evidence derived therefrom may not be received in evidence in any proceeding in or before any department, officer, agency, regulatory body, legislative committee or authority subject to the jurisdiction of the State.
19 20 21 22 23 24	C. A violation of this section constitutes an injury, and a person may institute proceedings for injunctive relief, declaratory relief or writ of mandate in any court of competent jurisdiction to enforce this section. An action instituted under this paragraph must be brought against the respective public employee or public official necessary to effectuate compliance with this section and any other governmental agency with possession, custody or control of data subject to this section.
25 26 27	D. A violation of this section by a public employee or public official must result in consequences that may include retraining, suspension or termination, subject to due process requirements and provisions of a collective bargaining agreement.
28 29	E. Nothing in this section may be construed to limit any individual's rights under state or federal law.
30	SUMMARY
31 32	This bill prohibits the use of facial surveillance by public employees and public officials subject to certain exceptions.

(3) Using facial recognition on an electronic device, such as a cell phone or tablet,

1