

# STATE OF NEW YORK

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## IN ASSEMBLY

March 20, 2019

Introduced by M. of A. WALLACE, EPSTEIN, MOSLEY, M. G. MILLER, SIMON, GOTTFRIED, L. ROSENTHAL, REYES, OTIS, SIMOTAS, QUART, KIM, RODRIGUEZ, FAHY, ABINANTI, WEPRIN, ORTIZ, COLTON -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, DE LA ROSA, NOLAN -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the education law, in relation to the use of biometric identifying technology

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 2-e to  
2 read as follows:

3 § 2-e. Use of biometric identifying technology. 1. As used in this  
4 section:

5 a. "biometric identifying technology" shall mean any tool using an  
6 automated or semi-automated process that assists in verifying a person's  
7 identity based on a person's biometric information.

8 b. "biometric information" shall mean any measurable physical, physio-  
9 logical or behavioral characteristics that are attributable to a person,  
10 including but not limited to facial characteristics, fingerprint charac-  
11 teristics, hand characteristics, eye characteristics, vocal character-  
12 istics, and any other characteristics that can be used to identify a  
13 person including, but are not limited to: fingerprints; handprints;  
14 retina and iris patterns; DNA sequence; voice; gait; and facial geom-  
15 etry.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 c. "facial recognition" shall mean any tool using an automated or  
2 semi-automated process that assists in uniquely identifying or verifying  
3 a person by comparing and analyzing patterns based on the person's face.

4 2. Public and nonpublic elementary and secondary schools, including  
5 charter schools, shall be prohibited from purchasing or utilizing biome-  
6 tric identifying technology for any purpose, including school security,  
7 until July first, two thousand twenty-two or until the commissioner  
8 authorizes such purchase or utilization as provided in subdivision three  
9 of this section, whichever occurs later.

10 3. a. The commissioner shall not authorize the purchase or utilization  
11 of biometric identifying technology, including but not limited to facial  
12 recognition technology, without first issuing a report prepared in  
13 consultation with the department's chief privacy officer, making recom-  
14 mendations as to the circumstances in which the utilization of such  
15 technology is appropriate in public and nonpublic elementary and second-  
16 ary schools, including charter schools, and what restrictions and guide-  
17 lines should be enacted to protect individual privacy, civil rights, and  
18 civil liberty interests. Such report shall be made public and presented  
19 to the governor, the temporary president of the senate, and the speaker  
20 of the assembly, and shall consider, evaluate and present recommenda-  
21 tions concerning:

22 i. the privacy implications of collecting, storing, and/or sharing  
23 biometric information of students, teachers, school personnel and the  
24 general public entering a school or school grounds;

25 ii. the potential impact of the use of biometric identifying technolo-  
26 gy on student civil liberties and student civil rights, including the  
27 risks and implications of the technology resulting in false facial iden-  
28 tifications, and whether the risks of false facial identifications  
29 differs for different subgroups of individuals based on race, national  
30 origin, gender, age and other factors, and any other reasonable accuracy  
31 concerns with respect to technology;

32 iii. whether, and under what circumstances, such technology may be  
33 used for school security and the effectiveness of such technology to  
34 protect students and school personnel;

35 iv. whether, and under what circumstances and in what manner, informa-  
36 tion collected may be used by schools and shared with students, parents  
37 or guardians, outside agencies including law enforcement agencies, indi-  
38 viduals, litigants, the courts, and any other third parties;

39 v. the length of time biometric information may be retained and wheth-  
40 er, and in what manner, such information may be required to be perma-  
41 nently destroyed;

42 vi. the risk of an unauthorized breach of biometric information and  
43 appropriate consequences therefor;

44 vii. expected maintenance costs resulting from the storage and use of  
45 facial recognition images and other biometric information, including the  
46 cost of appropriately securing sensitive data, performing required  
47 updates to protect against an unauthorized breach of data, and potential  
48 costs associated with an unauthorized breach of data;

49 viii. analysis of other schools and organizations, if any, that have  
50 implemented facial recognition technology and other biometric identify-  
51 ing technology programs;

52 ix. the appropriateness and potential implications of using any exist-  
53 ing databases, including but not limited to, local law enforcement data-  
54 bases, as part of biometric identifying technology;

55 x. whether, and in what manner such biometric identifying technology  
56 should be assessed and audited, including but not limited to, vendor

1 datasets, adherence to appropriate standards of algorithmic fairness,  
2 accuracy, and other performance metrics, including with respect to  
3 subgroups of persons based on race, national origin, gender, and age;

4 xi. whether, and in what manner, the use of such technology should be  
5 disclosed by signs and the like in such schools, as well as communicated  
6 to parents, guardians, students, and district residents; and

7 xii. existing legislation, including but not limited to section 2-d of  
8 this article, that may be implicated by or in conflict with biometric  
9 technology to ensure the maintenance of records related to the use of  
10 such technology, protect the privacy interests of data subjects, and  
11 avoid any breaches of data.

12 b. The commissioner shall consult with stakeholders and other inter-  
13 ested parties when preparing such report. The office of information  
14 technology, the division of criminal justice services, law enforcement  
15 authorities and the state university of New York and the city university  
16 of New York shall, to the extent practicable, identify and provide  
17 representatives to the department, at the request of the commissioner,  
18 in order to participate in the development and drafting of such report.

19 4. The commissioner shall, via scheduled public hearings and other  
20 outreach methods, seek feedback from teachers, school administrators,  
21 parents, individuals with expertise in school safety and security, and  
22 individuals with expertise in data privacy issues and student privacy  
23 issues, and individuals with expertise in civil rights and civil liber-  
24 ties prior to making such recommendations.

25 § 2. This act shall take effect immediately.