STATE OF NEW YORK

5140

2019-2020 Regular Sessions

IN SENATE

April 11, 2019

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Education

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:

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

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

a. "biometric identifying technology" shall mean technology that utilizes a student's biometric record including but not limited to, technology that provides automated facial recognition and object recognition of live and recorded surveillance video.

b. "biometric record" shall mean a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

c. "facial recognition" shall mean a biometric application or biometric identifying technology capable of uniquely identifying or verifying a person by comparing and analyzing patterns based on the person's facial contours.

2. On or before the first of December two thousand twenty, the commissioner, in consultation with the department's chief privacy officer, shall study and make recommendations to the governor, temporary president of the senate and speaker of the assembly on whether biometric identifying technology, including but not limited to facial recognition, is appropriate for use in public and nonpublic elementary and secondary schools, including charter schools, and if so, what restrictions and

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

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guidelines should be enacted to protect individual privacy interests. The commissioner shall consider and evaluate:

a. the privacy implications of collecting, storing, and sharing biometric data of students, teachers, school personnel and the general public entering a school or school grounds;

b. the reliability of the technology and whether reliability differs for different classifications of individuals based on race, national origin, gender, age or other factors;

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

d. whether, and under what circumstances and in what manner, information collected may be used by schools and shared with students, parents or guardians, outside agencies including law enforcement agencies, individuals, litigants, and the courts;

e. the risk of an unauthorized breach of databanked biometric data and appropriate consequences therefor;

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

g. analysis of other schools and organizations, if any, that have implemented facial recognition and other biometric record software programs;

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

i. legislation that may be needed to ensure, among other things, that records of the use of such technology are kept, privacy interests of data subjects are protected, and that data breaches are avoided.

3. The commissioner shall, via scheduled public hearings and other outreach methods, seek feedback from teachers, school administrators, parents, individuals with expertise in school safety and security, and individuals with expertise in data privacy issues and student privacy issues prior to making such recommendations.

4. Commencing with the two thousand nineteen--two thousand twenty school year, public and nonpublic elementary and secondary schools, including charter schools, shall be prohibited from purchasing and utilizing biometric identifying technology for any purpose, including school security, absent specific authority in state legislation.

§ 2. This act shall take effect immediately.