

# STATE OF NEW YORK

5140--A

2019-2020 Regular Sessions

## IN SENATE

April 11, 2019

Introduced by Sens. KAVANAGH, MYRIE, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 computer soft-  
6 ware, algorithm, product, or application that collects or electronically  
7 analyzes biometric information for the purposes of identifying an indi-  
8 vidual.

9 b. "biometric information" shall mean any measurable physical or  
10 behavioral characteristics that are attributable to an individual  
11 person, including but not limited to facial characteristics, fingerprint  
12 characteristics, hand characteristics, eye characteristics, vocal char-  
13 acteristics, and any other physical characteristics that can be used to  
14 identify a person including, but are not limited to: fingerprints; hand-  
15 prints; retina and iris patterns; DNA sequence; voice; gait; and facial  
16 geometry.

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

21 2. a. On or before the first of December two thousand twenty-one, the  
22 commissioner, in consultation with the department's chief privacy offi-  
23 cer, shall study and make recommendations to the governor, temporary  
24 president of the senate and speaker of the assembly on whether biometric  
25 identifying technology, including but not limited to facial recognition,  
26 is appropriate for use in public and nonpublic elementary and secondary

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

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1 schools, including charter schools, and if so, what restrictions and  
2 guidelines should be enacted to protect individual privacy interests.  
3 The commissioner shall consider, evaluate and report recommendations  
4 concerning:

5 i. the privacy implications of collecting, storing, and sharing biome-  
6 tric data of students, teachers, school personnel and the general public  
7 entering a school or school grounds;

8 ii. the probability of the technology resulting in false facial iden-  
9 tifications and whether the probability of false facial identifications  
10 differs for different classifications of individuals based on race,  
11 national origin, gender, age and other factors;

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

15 iv. whether, and under what circumstances and in what manner, informa-  
16 tion collected may be used by schools and shared with students, parents  
17 or guardians, outside agencies including law enforcement agencies, indi-  
18 viduals, litigants, and the courts;

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

22 vi. the risk of an unauthorized breach of databanked biometric data  
23 and appropriate consequences therefor;

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

29 viii. analysis of other schools and organizations, if any, that have  
30 implemented facial recognition and other biometric information software  
31 programs;

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

35 x. legislation that may already exist, be needed or need to be amended  
36 to ensure, among other things, that records of the use of such technolo-  
37 gy are kept, privacy interests of data subjects are protected, and that  
38 data breaches are avoided.

39 b. The commissioner shall consult with stakeholders and other inter-  
40 ested parties when preparing such report. The office of information  
41 technology, the division of criminal justice services, law enforcement  
42 authorities and the state university of New York and the city university  
43 of New York shall, to the extent practicable, identify and provide  
44 representatives to the department, at the request of the commissioner,  
45 in order to participate in the development and drafting of such report.

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

51 4. Public and nonpublic elementary and secondary schools, including  
52 charter schools, shall be prohibited from purchasing and utilizing biom-  
53 etric identifying technology for any purpose, including school security,  
54 until July 1, 2022.

55 § 2. This act shall take effect immediately.