

# STATE OF NEW YORK

5140--B

2019-2020 Regular Sessions

## IN SENATE

April 11, 2019

Introduced by Sens. KAVANAGH, BIAGGI, KRUEGER, MYRIE, RAMOS, 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 -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- 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 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.

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

19 2. Public and nonpublic elementary and secondary schools, including  
20 charter schools, shall be prohibited from purchasing or utilizing biome-

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

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1 tric identifying technology for any purpose, including school security,  
2 until July first, two thousand twenty-two or until the commissioner  
3 authorizes such purchase or utilization as provided in subdivision three  
4 of this section, whichever occurs later.

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

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

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

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

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

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

37 vi. the risk of an unauthorized breach of biometric information and  
38 appropriate consequences therefor;

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

44 viii. analysis of other schools and organizations, if any, that have  
45 implemented facial recognition technology and other biometric identify-  
46 ing technology programs;

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

50 x. whether, and in what manner such biometric identifying technology  
51 should be assessed and audited, including but not limited to, vendor  
52 datasets, adherence to appropriate standards of algorithmic fairness,  
53 accuracy, and other performance metrics, including with respect to  
54 subgroups of persons based on race, national origin, gender, and age;

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

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

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

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

22 § 2. This act shall take effect immediately.