

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 -- 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

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 technology" shall mean any tool using an auto-
17 mated or semi-automated process that assists in uniquely identifying or

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

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1 verifying a person by comparing and analyzing patterns based on the
2 person's face.

3 2. a. On or before the first of December two thousand twenty-one, the
4 commissioner, in consultation with the department's chief privacy offi-
5 cer, shall study and make recommendations to the governor, temporary
6 president of the senate and speaker of the assembly on whether biometric
7 identifying technology, including but not limited to facial recognition
8 technology, is appropriate for use in public and nonpublic elementary
9 and secondary schools, including charter schools, and if so, what
10 restrictions and guidelines should be enacted to protect individual
11 privacy, civil rights, and civil liberty interests.

12 The commissioner shall consider, evaluate and report recommendations
13 concerning:

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

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

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

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

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

34 vi. the risk of an unauthorized breach of biometric information and
35 appropriate consequences therefor;

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

41 viii. analysis of other schools and organizations, if any, that have
42 implemented facial recognition technology and other biometric identify-
43 ing technology programs;

44 ix. the appropriateness and potential implications of using any
45 existing databases, including, but not limited to, local law enforcement
46 databases, as part of biometric identifying technology;

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

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

55 xii. legislation that may already exist, including but not limited to
56 section two-d of this article, that biometric technology may implicate

1 or conflict with, to ensure, among other things, that records of the use
2 of such technology are kept, privacy interests of data subjects are
3 protected, and that data breaches are avoided.

4 b. The commissioner shall consult with stakeholders and other inter-
5 ested parties when preparing such report. The office of information
6 technology, the division of criminal justice services, law enforcement
7 agencies, the state university of New York and the city university of
8 New York shall, to the extent practicable, identify and provide repre-
9 sentatives to the department, at the request of the commissioner, in
10 order to participate in the development and drafting of such report.

11 3. The commissioner shall, via scheduled public hearings and other
12 outreach methods, seek feedback from teachers, school administrators,
13 parents, individuals with expertise in school safety and security, indi-
14 viduals with expertise in data privacy issues and student privacy
15 issues, and individuals with expertise in civil rights and civil liber-
16 ties prior to making such recommendations.

17 4. Public and nonpublic elementary and secondary schools, including
18 charter schools, shall be prohibited from purchasing and utilizing biom-
19 etric identifying technology for any purpose, including school security,
20 until July 1, 2022.

21 § 2. This act shall take effect immediately.