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:

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 any computer software, algorithm, product, or application that collects or electronically analyzes biometric information for the purposes of identifying an individual.

b. "biometric information" shall mean any measurable physical or behavioral characteristics that are attributable to an individual person, including but not limited to facial characteristics, fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other physical characteristics that can be used to identify a person including, but are not limited to: fingerprints; handprints; retina and iris patterns; DNA sequence; voice; gait; and facial geometry.

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. a. On or before the first of December two thousand twenty-one, 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

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

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

i. 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;

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

iii. 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;

iv. 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;

v. the length of time biometric information may be retained and whether, and in what manner, such information may be required to be permanently destroyed;

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

vii. expected maintenance costs resulting from the storage and use of facial recognition images and other biometric information, 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;

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

ix. 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

x. legislation that may already exist, be needed or need to be amended 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.

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

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. 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, until July 1, 2022.

§ 2. This act shall take effect immediately.