

STATE OF NEW YORK

893

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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

AN ACT to amend the state technology law, in relation to the use of biometric identifying technology; and to repeal certain provisions of the education law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2-e of the education law, as added by a chapter of
2 the laws of 2020 amending the education law relating to the use of biom-
3 etric identifying technology, as proposed in legislative bills numbers
4 S. 5140-B and A. 6787-D, is REPEALED.

5 § 2. The state technology law is amended by adding a new section 106-b
6 to read as follows:

7 § 106-b. Use of biometric identifying technology in schools. 1. As
8 used in this section:

9 a. "biometric identifying technology" shall mean any tool using an
10 automated or semi-automated process that assists in verifying a person's
11 identity based on a person's biometric information.

12 b. "biometric information" shall mean any measurable physical, physio-
13 logical or behavioral characteristics that are attributable to a person,
14 including but not limited to facial characteristics, fingerprint charac-
15 teristics, hand characteristics, eye characteristics, vocal character-
16 istics, and any other characteristics that can be used to identify a
17 person including, but are not limited to: fingerprints; handprints;
18 retina and iris patterns; DNA sequence; voice; gait; and facial geom-
19 etry.

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

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

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1 2. a. Except as authorized in paragraph b of this subdivision, public
2 and nonpublic elementary and secondary schools, including charter
3 schools, shall be prohibited from purchasing or utilizing biometric
4 identifying technology for any purpose, including school security, until
5 July first, two thousand twenty-two or until the commissioner of educa-
6 tion authorizes such purchase or utilization as provided in subdivision
7 three of this section, whichever occurs later.

8 b. Schools may utilize biometric identifying technology for the
9 following purposes: (i) fingerprint identification of prospective school
10 employees where utilized for the purpose of compliance with a provision
11 of the education law or the regulations of the commissioner of education
12 or (ii) to exclusively identify employees that have consented in writing
13 to the use of such technology or in the case of employees represented
14 under article fourteen of the civil service law, where the employee
15 organization representing such employee has consented in writing to the
16 use of such technology.

17 3. a. The commissioner of education shall not authorize the purchase
18 or utilization of biometric identifying technology, including but not
19 limited to facial recognition technology, without the director first
20 issuing a report prepared in consultation with the state education
21 department, making recommendations as to the circumstances in which the
22 utilization of such technology is appropriate in public and nonpublic
23 elementary and secondary schools, including charter schools, and what
24 restrictions and guidelines should be enacted to protect individual
25 privacy, civil rights, and civil liberty interests. Such report shall
26 be made public and presented to the governor, the temporary president of
27 the senate, and the speaker of the assembly, and shall consider, evalu-
28 ate and present recommendations concerning:

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

32 ii. the potential impact of the use of biometric identifying technolo-
33 gy on student civil liberties and student civil rights, including the
34 risks and implications of the technology resulting in false facial iden-
35 tifications, and whether the risks of false facial identifications
36 differs for different subgroups of individuals based on race, national
37 origin, gender, age and other factors, and any other reasonable accuracy
38 concerns with respect to technology;

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

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

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

49 vi. the risk of an unauthorized breach of biometric information and
50 appropriate consequences therefor;

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

1 viii. analysis of other schools and organizations, if any, that have
2 implemented facial recognition technology and other biometric identify-
3 ing technology programs;

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

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

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

15 xii. existing legislation, including but not limited to section two-d
16 of the education law, that may be implicated by or in conflict with
17 biometric technology to ensure the maintenance of records related to the
18 use of such technology, protect the privacy interests of data subjects,
19 and avoid any breaches of data.

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

28 4. The director shall, via scheduled public hearings and other
29 outreach methods, seek feedback from teachers, school administrators,
30 parents, individuals with expertise in school safety and security, and
31 individuals with expertise in data privacy issues and student privacy
32 issues, and individuals with expertise in civil rights and civil liber-
33 ties prior to making such recommendations.

34 § 3. This act shall take effect on the same date and in the same
35 manner as a chapter of the laws of 2020 amending the education law
36 relating to the use of biometric identifying technology, as proposed in
37 legislative bills numbers S. 5140-B and A. 6787-D, takes effect.