

# STATE OF NEW YORK

7135

2023-2024 Regular Sessions

## IN SENATE

May 18, 2023

Introduced by Sens. HOYLMAN-SIGAL, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the civil rights law, in relation to prohibiting the use of biometric surveillance system or biometric surveillance information in places of public accommodation

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

1 Section 1. Article 4 of the civil rights law is amended to add a new  
2 section 40-h to read as follows:

3 § 40-h. Biometric surveillance. 1. For the purposes of this section:

4 (a) "Biometric information" means any measurable physiological, biolog-  
5 ical or behavioral characteristics that are attributable to an individ-  
6 ual person, including facial characteristics, fingerprint character-  
7 istics, hand characteristics, eye characteristics, vocal  
8 characteristics, and any other physical characteristics that can be  
9 used, singly or in combination with each other or with other informa-  
10 tion, to establish individual identity. Examples of biometric informa-  
11 tion include, but are not limited to, fingerprints, handprints, retina  
12 and iris patterns, DNA sequence, voice, gait, and facial geometry.

13 (b) "Biometric surveillance" means either of the following, alone or  
14 in combination:

15 (i) an automated or semi-automated process by which a person is iden-  
16 tified or attempted to be identified based on their biometric informa-  
17 tion, including identification of known or unknown individuals or  
18 groups; and/or

19 (ii) an automated or semi-automated process that generates, or assists  
20 in generating, surveillance information about an individual based on  
21 their biometric information.

22 (c) "Biometric surveillance system" means any computer software or  
23 application that performs biometric surveillance.

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

LBD07865-01-3

1 (d) "Surveillance information" means either of the following, alone or  
2 in combination:

3 (i) any information about a known or unknown individual, including but  
4 not limited to, a person's name, date of birth, gender, aggregated  
5 location data, or criminal background; and/or

6 (ii) any information derived from biometric information, including but  
7 not limited to, assessments about an individual's sentiment, state of  
8 mind or level of dangerousness.

9 (e) "Use" does not include using biometric information to unlock a  
10 personal or business device, such as a telephone or laptop computer.

11 2. It shall be unlawful for any person who is the owner, franchisor,  
12 franchisee, lessor, lessee, proprietor, manager, superintendent, agent  
13 or employee of any place or provider of public accommodation to use any  
14 biometric surveillance system or biometric surveillance information or  
15 enter into any agreement that authorizes any third party, on behalf of  
16 the owner, franchisor, franchisee, lessor, lessee, proprietor, manager,  
17 superintendent, agent or employee of any place or provider of public  
18 accommodation, to use any biometric surveillance system or biometric  
19 surveillance information.

20 3. Nothing in this section shall be construed to prohibit the owner,  
21 franchisor, franchisee, lessor, lessee, proprietor, manager, superinten-  
22 dent, agent or employee of any place or provider of public accommodation  
23 from using biometric surveillance on an electronic device, such as a  
24 cell phone or tablet for the sole purpose of user authentication.

25 4. No place or provider of public accommodation may collect, capture,  
26 purchase, receive through trade, or otherwise obtain a person's biome-  
27 tric information, unless it first:

28 (a) informs the subject or the subject's legally authorized represen-  
29 tative in writing that biometric information is being collected or  
30 stored;

31 (b) informs the subject or the subject's legally authorized represen-  
32 tative in writing of the specific purpose and length of term for which  
33 biometric information is being collected, stored, and used; and

34 (c) receives a written release executed by the subject of the biome-  
35 tric information or the subject's legally authorized representative; and  
36 the subject must provide their consent knowingly and voluntarily through  
37 the written release, and giving consent may not be made a condition of  
38 provision of a service by a provider of a public accommodation or entry  
39 into a place of public accommodation.

40 5. An owner, franchisor, franchisee, lessor, lessee, proprietor,  
41 manager, superintendent, agent or employee of any place or provider of  
42 public accommodation in possession of biometric information shall:

43 (a) store, transmit, and protect from disclosure all biometric infor-  
44 mation using the reasonable standard of care within the industry of the  
45 owner, franchisor, franchisee, lessor, lessee, proprietor, manager,  
46 superintendent, agent or employee of any place or provider of public  
47 accommodation; and

48 (b) store, transmit, and protect from disclosure all biometric infor-  
49 mation in a manner that is the same as or more protective than the  
50 manner in which the owner, franchisor, franchisee, lessor, lessee,  
51 proprietor, manager, superintendent, agent or employee of any place or  
52 provider of public accommodation stores, transmits, and protects other  
53 confidential and sensitive information.

54 6. (a) Any person who or any agency, bureau, corporation or associ-  
55 ation which shall violate any of the provisions of this section or who  
56 or which shall aid or incite the violation of any of said provisions

1 shall for each and every violation thereof be liable to a penalty of not  
2 less than the greater of one thousand dollars of actual damages, to be  
3 recovered by the person aggrieved thereby or by any resident of this  
4 state, to whom such person shall assign their cause of action, in any  
5 court of competent jurisdiction in the county in which the plaintiff or  
6 the defendant shall reside.

7 (b) In any action brought under this section, the court shall award  
8 reasonable attorneys' fees to a prevailing plaintiff.

9 (c) Upon motion from a criminal defendant, a court shall order that  
10 evidence be suppressed or excluded if the court finds that such evidence  
11 was obtained in violation of this section.

12 (d) Nothing in this subdivision shall be construed to limit any indi-  
13 vidual's rights under state or federal law.

14 7. Severability. If any provision of this section shall be held to be  
15 invalid by a court of competent jurisdiction, then such provision shall  
16 be considered separately and apart from the remaining provisions, which  
17 shall remain in full force and effect.

18 § 2. This law shall take effect immediately.