

# STATE OF NEW YORK

8853

## IN ASSEMBLY

January 18, 2024

Introduced by M. of A. WALLACE -- read once and referred to the Committee on Education

AN ACT to amend the state technology law, in relation to banning the use of biometric identifying technology in schools

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

1 Section 1. Subdivisions 2, 3 and 4 of section 106-b of the state technology law, as added by chapter 2 of the laws of 2021, are amended to  
2 read as follows:

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

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

19 ~~[3. a. The commissioner of education shall not authorize the purchase~~  
20 ~~or utilization of biometric identifying technology, including but not~~  
21 ~~limited to facial recognition technology, without the director first~~  
22 ~~issuing a report prepared in consultation with the state education~~  
23 ~~department, making recommendations as to the circumstances in which the~~  
24 ~~utilization of such technology is appropriate in public and nonpublic~~  
25 ~~elementary and secondary schools, including charter schools, and what~~  
26 ~~restrictions and guidelines should be enacted to protect individual~~  
27 ~~privacy, civil rights, and civil liberty interests. Such report shall be~~  
28

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

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1 ~~made public and presented to the governor, the temporary president of~~  
2 ~~the senate, and the speaker of the assembly, and shall consider, evalu-~~  
3 ~~ate and present recommendations concerning;~~

4 ~~i. the privacy implications of collecting, storing, and/or sharing~~  
5 ~~biometric information of students, teachers, school personnel and the~~  
6 ~~general public entering a school or school grounds;~~

7 ~~ii. the potential impact of the use of biometric identifying technolo-~~  
8 ~~gy on student civil liberties and student civil rights, including the~~  
9 ~~risks and implications of the technology resulting in false facial iden-~~  
10 ~~tifications, and whether the risks of false facial identifications~~  
11 ~~differs for different subgroups of individuals based on race, national~~  
12 ~~origin, gender, age and other factors, and any other reasonable accuracy~~  
13 ~~concerns with respect to technology;~~

14 ~~iii. whether, and under what circumstances, such technology may be~~  
15 ~~used for school security and the effectiveness of such technology to~~  
16 ~~protect students and school personnel;~~

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

21 ~~v. the length of time biometric information may be retained and wheth-~~  
22 ~~er, and in what manner, such information may be required to be perma-~~  
23 ~~nently destroyed;~~

24 ~~vi. the risk of an unauthorized breach of biometric information and~~  
25 ~~appropriate consequences therefor;~~

26 ~~vii. expected maintenance costs resulting from the storage and use of~~  
27 ~~facial recognition images and other biometric information, including the~~  
28 ~~cost of appropriately securing sensitive data, performing required~~  
29 ~~updates to protect against an unauthorized breach of data, and potential~~  
30 ~~costs associated with an unauthorized breach of data;~~

31 ~~viii. analysis of other schools and organizations, if any, that have~~  
32 ~~implemented facial recognition technology and other biometric identify-~~  
33 ~~ing technology programs;~~

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

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

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

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

50 ~~b. The director, in consultation with the commissioner of education,~~  
51 ~~shall consult with stakeholders and other interested parties when~~  
52 ~~preparing such report. The state education department, the division of~~  
53 ~~criminal justice services, law enforcement authorities and the state~~  
54 ~~university of New York and the city university of New York shall, to the~~  
55 ~~extent practicable, identify and provide representatives to the office~~

1 ~~of information technology, at the request of the director, in order to~~  
2 ~~participate in the development and drafting of such report.~~

3 ~~4. The director shall, via scheduled public hearings and other~~  
4 ~~outreach methods, seek feedback from teachers, school administrators,~~  
5 ~~parents, individuals with expertise in school safety and security, and~~  
6 ~~individuals with expertise in data privacy issues and student privacy~~  
7 ~~issues, and individuals with expertise in civil rights and civil liber-~~  
8 ~~ties prior to making such recommendations.]~~

9 § 2. This act shall take effect immediately.