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:

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

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

(a) "Biometric information" means any measurable physiological, biological or behavioral characteristics that are attributable to an individual person, including facial characteristics, fingerprint characteristics, hand characteristics, eye characteristics, vocal characteristics, and any other physical characteristics that can be used, singly or in combination with each other or with other information, to establish individual identity. Examples of biometric information include, but are not limited to, fingerprints, handprints, retina and iris patterns, DNA sequence, voice, gait, and facial geometry.

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

(i) an automated or semi-automated process by which a person is identified or attempted to be identified based on their biometric information, including identification of known or unknown individuals or groups; and/or

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

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

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

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

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

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

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

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

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

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

(a) informs the subject or the subject's legally authorized representative in writing that biometric information is being collected or stored;

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

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

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

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

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

6. (a) Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of this section or who or which shall aid or incite the violation of any of said provisions

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

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

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

(d) Nothing in this subdivision shall be construed to limit any individual's rights under state or federal law.

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

§ 2. This law shall take effect immediately.