

ASSEMBLY SCIENCE, INNOVATION AND TECHNOLOGY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3625 and 4211

STATE OF NEW JERSEY

DATED: JANUARY 25, 2021

The Assembly Science, Innovation and Technology Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3625 and 4211.

As substituted and reported, this bill imposes a moratorium on the collection of a person's information derived from the use of biometric surveillance systems by public entities and establishes the "Biometric Surveillance Regulation Commission." The bill also restricts private entities' use of information derived from the use of biometric surveillance systems, as that term is defined in the bill.

The bill specifically prohibits a public entity from acquiring, possessing, accessing, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining or using information about a person derived from the use of a biometric surveillance system. The bill provides for certain exceptions for law enforcement agencies

The bill establishes the "Biometric Surveillance Regulation Commission" (commission), which is to evaluate whether public entities in this State should be permitted to use biometric surveillance systems, and, if appropriate, propose recommendations for legislation, regulations, and standards governing the use of biometric surveillance systems by public entities. The commission is to consist of nine members, serving ex officio, or their designees:

- 1) the Superintendent of State Police;
- 2) the Attorney General;
- 3) the Public Defender;
- 4) one county prosecutor to be appointed by the County Prosecutors Association of the State of New Jersey;
- 5) the Administrative Director of the Courts;
- 6) one representative of an organization that defends civil rights or promotes social justice to be appointed by the Speaker of the General Assembly;
- 7) one faculty member of a university with knowledge and experience in utilizing biometric surveillance systems to be appointed by the President of the Senate;
- 8) one member of the public to be appointed by the Speaker of the General Assembly; and

9) one member of the public to be appointed by the President of the Senate.

The commission is to prepare and submit a report of its findings and recommendations, including legislative proposals, to the Governor and to the Legislature no later than 18 months after the organizational meeting of the commission. The commission is to expire upon submission of its report.

Under the bill, a private entity in possession of information derived from the use of a biometric surveillance system is required to develop a written policy, made available to the public, establishing a retention schedule and guidelines for the destruction of that information. These private entities are required to comply with the established retention schedule and destruction guidelines, unless otherwise provided in State or federal law or regulation, or in a valid warrant or subpoena issued by a court of competent jurisdiction.

A private entity is prohibited from acquiring, possessing, accessing, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining or using a person's information derived from the use of a biometric surveillance system, unless it first: informs the person or the person's legally authorized representative in writing that the information is being collected or stored; informs the person or the person's legally authorized representative in writing of the specific purpose and length of term for which that information is being collected, stored, and used; and receives a written release executed by the person or the person's legally authorized representative.

The bill also prohibits a private entity in possession of a person's information derived from the use of a biometric surveillance system from selling, leasing, trading, or otherwise profiting from that information.

A private entity in possession of a person's information derived from the use of a biometric surveillance system is prohibited from disclosing, re-disclosing, or otherwise disseminating that information unless: the person or the person's legally authorized representative consents to the disclosure or re-disclosure; the disclosure or re-disclosure completes a financial transaction requested or authorized by the person or the person's legally authorized representative; the disclosure or re-disclosure is required by State or federal law or municipal ordinance; or the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

A private entity in possession of a biometric identifier or biometric information is required under the bill to: store, transmit, and protect from disclosure: a person's information derived from the use of a biometric surveillance system using the reasonable standard of care within the private entity's industry; and all information derived from the use of a biometric surveillance system in a manner that is the same as or more protective than the manner in which the private entity

stores, transmits, and protects other confidential and sensitive information, as defined under the bill.

The bill provides that information obtained in violation of the bill is not to be admissible in any criminal, civil, administrative, or other proceeding, except in a judicial proceeding alleging a violation of certain provisions in the bill. A person is authorized under the bill to institute proceedings for injunctive or declaratory relief for a violation of certain provisions in the bill. A person is entitled to recover liquidated damages of \$1,000 or actual damages, whichever is greater, against a public or private entity that negligently violates a provision of the bill; liquidated damages of \$5,000 or actual damages, whichever is greater, against a public or private entity that intentionally or recklessly violates a provision of the bill; reasonable attorneys' fees and costs, including expert witness fees, and other litigation expenses; and any other relief the court deems appropriate.

The provisions of the bill are not to apply to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal "Gramm-Leach-Bliley Act."