

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3625 and 4211

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JANUARY 25, 2021

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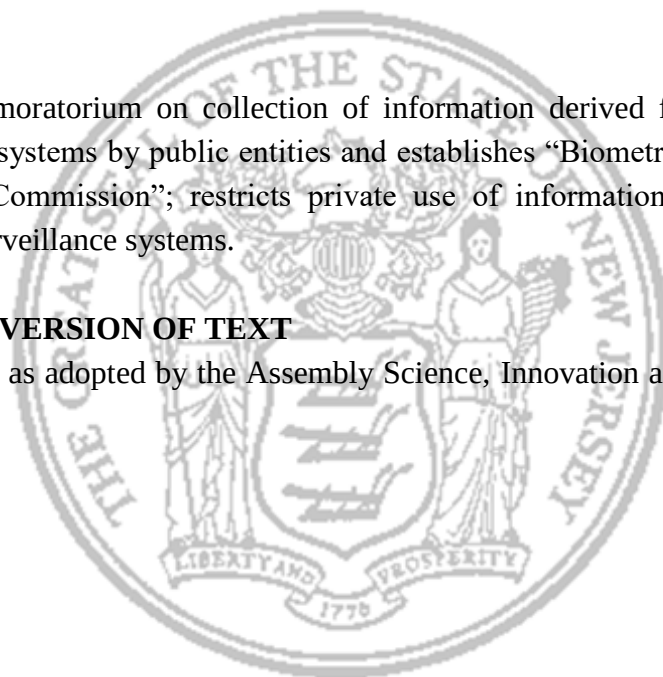
Assemblywoman Carter

SYNOPSIS

Imposes moratorium on collection of information derived from biometric surveillance systems by public entities and establishes “Biometric Surveillance Regulation Commission”; restricts private use of information derived from biometric surveillance systems.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Science, Innovation and Technology Committee.



1 AN ACT concerning biometric surveillance systems and
2 supplementing Title 52 of the Revised Statutes.

3

4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in P.L. , c. (C.) (pending before the
8 Legislature as this bill):

9 “Biometric surveillance system” means any computer software
10 system that performs remote facial recognition or other remote
11 biometric recognition of a person without the person’s, or the
12 person’s legally authorized representative’s, knowledge or consent.

13 “Facial recognition” means an automated or semi-automated
14 process that assists in identifying a person or capturing information
15 about a person based on the physical characteristics of the person’s
16 face, or that logs characteristics of a person’s face, head, or body to
17 infer emotion, associations, activities, or location of the person.

18 “Confidential and sensitive information” means personal
19 information that can be used to uniquely identify a person or a
20 person’s account or property and includes, but is not limited to, a
21 unique identifier number to locate an account or property, an
22 account number, a personal identification number, a passcode, a
23 driver’s license number, or a social security number.

24 "DNA" means deoxyribonucleic acid.

25 “Law enforcement agency” means: a State, interstate, municipal,
26 or county law enforcement agency; a law enforcement agency of an
27 educational institution that appoints law enforcement officers
28 pursuant to P.L.1970, c.211 (C.18A:6-4.2 et seq.); or any other
29 department, division, bureau, commission, board, or other authority
30 of this State or political subdivision thereof which employs law
31 enforcement officers.

32 “Other remote biometric recognition” means an automated or
33 semi-automated process that assists in identifying a person or
34 capturing information about a person based on the characteristics of
35 a person’s gait, voiceprint, or other immutable characteristic
36 ascertained from a distance, or that logs these characteristics to
37 infer emotion, associations, activities, or location of the person.
38 “Other remote biometric recognition” shall not include any remote
39 biometric recognition that is based on DNA, fingerprints, or palm
40 prints from a person.

41 “Private entity” means any person, partnership, corporation,
42 limited liability company, association, or other group, however
43 organized. A private entity shall not include a public entity or any
44 court or judge thereof.

45 "Public entity" means the State, any county, municipality,
46 district, or other political subdivision thereof, and any agency,
47 authority, or instrumentality of the foregoing; or any officer,
48 employee, agent, contractor, or subcontractor of a public entity.

1 “Written release” means informed written consent or, in the
2 context of employment, a release executed by an employee of a
3 private entity as a condition of employment.

4
5 2. a. A public entity shall not acquire, possess, access, collect,
6 capture, purchase, receive through trade, or otherwise obtain or use
7 information about a person derived from the use of a biometric
8 surveillance system.

9 b. Any person who suffers a violation of this section may
10 institute proceedings for injunctive or declaratory relief in any court
11 of competent jurisdiction to enforce this section, and the person
12 shall be entitled to recover for each violation:

13 (1) against a public entity that negligently violates a provision
14 of this section, liquidated damages of \$1,000 or actual damages,
15 whichever is greater;

16 (2) against a public entity that intentionally or recklessly
17 violates a provision of this section, liquidated damages of \$5,000 or
18 actual damages, whichever is greater;

19 (3) reasonable attorneys’ fees and costs, including expert
20 witness fees and other litigation expenses; and

21 (4) any other relief the court deems appropriate.

22 c. A person’s information derived from the use of a biometric
23 surveillance system in violation of this section shall not be
24 admissible in any criminal, civil, administrative, or other
25 proceeding, except in a judicial proceeding alleging a violation of
26 this section.

27 d. The provisions of this section shall not prohibit a law
28 enforcement agency from:

29 (1) lawfully utilizing a mobile fingerprint scanning device
30 during a detention to identify a person who does not have proof of
31 identification provided that the information retained through the use
32 of the device is otherwise permitted by law;

33 (2) accessing DNA information pursuant to the “DNA Database
34 and Databank Act of 1994,” P.L.1994, c.136 (C.53:1-20.17 et seq.)
35 or for any other law enforcement purpose otherwise permitted by
36 law;

37 (3) accessing and utilizing fingerprint data in accordance with
38 current law; or

39 (4) utilizing a lawfully installed security system that processes
40 information derived from the use of a biometric surveillance system
41 solely for the purpose of verifying the identity of law enforcement
42 officers and employees of law enforcement agencies to determine
43 whether they are permitted to access information, goods, materials,
44 areas, or other properties under the custody of the law enforcement
45 agency.

46
47 3. a. There is established the “Biometric Surveillance Regulation
48 Commission,” which shall evaluate whether public entities in this State

1 should be permitted to use biometric surveillance systems, and, if
2 appropriate, propose recommendations for legislation, regulations, and
3 standards governing the use of biometric surveillance systems by
4 public entities. The commission specifically shall examine:

5 (1) permissible and prohibited uses of biometric surveillance
6 systems by public entities;

7 (2) minimum standards for accuracy that biometric surveillance
8 systems are required to achieve in order to be authorized for use by
9 public entities and auditing requirements to ensure compliance with
10 those standards;

11 (3) standards for the use, management, and protection of
12 information derived from the use of biometric surveillance systems
13 by public entities including, but not limited to, data retention,
14 information sharing, data access, and audit trails;

15 (4) protections for due process, privacy, free speech and
16 association, and racial, gender, and religious equity;

17 (5) training requirements for public entity personnel authorized to
18 use biometric surveillance systems;

19 (6) procedures to address instances in which a person is
20 wrongfully targeted, arrested, or interrogated based on inaccurate
21 information derived from the use of a biometric surveillance
22 system; and

23 (7) disclosure requirements for public transparency as well as
24 discovery procedures.

25 b. The commission shall consist of nine members, serving ex
26 officio, or their designees:

27 (1) the Superintendent of State Police;

28 (2) the Attorney General;

29 (3) the Public Defender;

30 (4) one county prosecutor to be appointed by the County
31 Prosecutors Association of the State of New Jersey;

32 (5) the Administrative Director of the Courts;

33 (6) one representative of an organization that defends civil rights
34 or promotes social justice to be appointed by the Speaker of the
35 General Assembly;

36 (7) one faculty member of a university with knowledge and
37 experience in utilizing biometric surveillance systems to be appointed
38 by the President of the Senate;

39 (8) one member of the public to be appointed by the Speaker of the
40 General Assembly; and

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

43 c. The commission shall organize within 30 days of the
44 appointment of its members. The commission shall elect a
45 chairperson from among its members, and the chairperson shall
46 select a secretary who need not be a member of the commission.

47 d. The commission may meet at the call of its chairperson at
48 times and in the places it may deem appropriate and necessary to

1 fulfill its duties, and may conduct public hearings at any place it
2 shall designate.

3 e. The commission may request at a public hearing the
4 appearance of officials of any State agency or political subdivision
5 of the State and may solicit testimony of interested groups and the
6 general public.

7 f. The commission shall be entitled to call to its assistance and
8 avail itself of the services of the employees of any State, county, or
9 municipal department, board, bureau, commission, or agency as it
10 may require and as may be available to it for its purposes, and to
11 employ stenographic and clerical assistance and incur traveling and
12 other miscellaneous expenses necessary to perform its duties, within
13 the limits of funds appropriated or otherwise made available to it
14 for its purposes.

15 g. The members of the commission shall serve without
16 compensation, but may be reimbursed for necessary expenses
17 incurred in the performance of their duties to the extent that funds
18 are made available for that purpose.

19 h. Five members of the commission shall constitute a quorum
20 for the transaction of business.

21 i. The commission shall prepare and submit a report of its
22 findings and recommendations, including legislative proposals, to
23 the Governor and, pursuant to section 2 of P.L.1991, c.164
24 (C.52:14-19.1), to the Legislature, no later than 18 months after the
25 organizational meeting of the commission. The commission shall
26 expire upon submission of its report.

27

28 4. a. A private entity in possession of a person's information
29 derived from the use of a biometric surveillance system shall
30 develop a written policy, made available to the public, establishing
31 a retention schedule and guidelines for permanently destroying that
32 information when the initial purpose for collecting or obtaining the
33 information has been satisfied or within three years of the person's
34 last interaction with the private entity, whichever occurs first.
35 Unless otherwise provided in State or federal law or regulation, or
36 in a valid warrant or subpoena issued by a court of competent
37 jurisdiction, a private entity in possession of a person's information
38 derived from the use of a biometric surveillance system shall
39 comply with its established retention schedule and destruction
40 guidelines.

41 b. A private entity shall not acquire, possess, access, collect,
42 capture, purchase, receive through trade, or otherwise obtain or use
43 a person's information derived from the use of a biometric
44 surveillance system unless it first:

45 (1) informs the person or the person's legally authorized
46 representative in writing that information derived from the use of a
47 biometric surveillance system is being collected or stored;

1 (2) informs the person or the person's legally authorized
2 representative in writing of the specific purpose and length of term
3 for which a person's information derived from a biometric
4 surveillance system is being collected, stored, and used; and
5 (3) receives a written release executed by the person or the
6 person's legally authorized representative.

7 c. A private entity in possession of a person's information
8 derived from the use of biometric surveillance system shall not sell,
9 lease, trade, or otherwise profit from that information.

10 d. A private entity in possession of a person's information
11 derived from the use of a biometric surveillance system shall not
12 disclose, re-disclose, or otherwise disseminate that information
13 unless:

14 (1) the person or the person's legally authorized representative
15 consents to the disclosure or re-disclosure;

16 (2) the disclosure or re-disclosure completes a financial
17 transaction requested or authorized by the person or the person's
18 legally authorized representative;

19 (3) the disclosure or re-disclosure is required by State or federal
20 law or municipal ordinance; or

21 (4) the disclosure is required pursuant to a valid warrant or
22 subpoena issued by a court of competent jurisdiction.

23 e. A private entity in possession of a person's information
24 derived from the use of a biometric surveillance system shall store,
25 transmit, and protect from disclosure that information:

26 (1) using the reasonable standard of care within the private
27 entity's industry; and

28 (2) in a manner that is the same as or more protective than the
29 manner in which the private entity stores, transmits, and protects
30 other confidential and sensitive information.

31 f. A person's information derived from the use of a biometric
32 surveillance system that is obtained in violation of this section shall
33 not be admissible in any criminal, civil, administrative, or other
34 proceeding, except in a judicial proceeding alleging a violation of
35 this section.

36

37 5. Any person who suffers a violation of section 4 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) may
39 institute proceedings for injunctive or declaratory relief in any court
40 of competent jurisdiction to enforce section 4 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill), and the
42 person shall be entitled to recover for each violation:

43 a. against a private entity that negligently violates a provision
44 of section 4 of P.L. , c. (C.) (pending before the
45 Legislature as this bill), liquidated damages of \$1,000 or actual
46 damages, whichever is greater;

47 b. against a private entity that intentionally or recklessly
48 violates a provision of section 4 of P.L. , c. (C.) (pending

- 1 before the Legislature as this bill), liquidated damages of \$5,000 or
2 actual damages, whichever is greater;
- 3 c. reasonable attorneys' fees and costs, including expert
4 witness fees and other litigation expenses; and
- 5 d. other relief the court deems appropriate.
6
- 7 6. Nothing in P.L. , c. (C.) (pending before the
8 Legislature as this bill) shall apply to a financial institution or an
9 affiliate of a financial institution that is subject to Title V of the
10 federal "Gramm-Leach-Bliley Act," 15 U.S.C. s.6801 et seq., and
11 the rules and implementing regulations promulgated thereunder.
12
- 13 7. This act shall take effect immediately and section 3 of this
14 act shall expire upon the submission of the commission's report.