



Memorandum in Support

WORKING GROUP ON FACIAL RECOGNITION TECHNOLOGY

Facial Recognition #1

May 25, 2023

S.4457

By: Senator Liu

A.1362

By: M of A Gunther

Senate: Consumer Protection

Assembly: Consumer Affairs and Protection

Effective Date: 90th day after it shall have become a law

AN ACT to amend the General Business Law, in relation to biometric privacy.

LAW AND SECTIONS REFERRED TO: adds new article 32-A of the General Business Law

THE WORKING GROUP ON FACIAL RECOGNITION TECHNOLOGY SUPPORTS THIS LEGISLATION

This bill would add a new article 32-A of the General Business Law titled, “the Biometric Privacy Act.”

Recent events at an entertainment venue in New York State have demonstrated that biometric data about a person can be used to, among other things, deny access to that venue. More broadly, the capture, storage, use, and resale of that data by private entities can invade legitimate privacy interests of persons that are not protected by existing federal or New York State law.

The Biometric Privacy Act would require private entities that have biometric data in their possession to develop written policies that are available to the public and that address retention and destruction of that data. The Act would also require private entities to advise a person that his or her data is being collected or stored, to obtain written consent for collection or storage, bar sale or resale of data, and limit further disclosure. The Act would also allow a private cause of action for violation of its terms.

The capture and use of biometric data by private entities, often without knowledge of that capture or use by an affected person, is ubiquitous. Certainly, biometric data can be used for legitimate purposes by private entities. This bill would not prohibit private entities from doing so. However, it would install “guardrails” to protect the privacy interests of persons and to provide clear guidance to private entities. This will benefit the people of New York State as well as the entities that do business here.

For the above reasons, the NYSBA Working Group on Facial Recognition Technology **SUPPORTS** this legislation.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.