AN ACT to amend the civil rights law and the public health law, in relation to establishing a protocol for COVID-19 testing, contact tracing, and immunity certification; and in relation to providing for the anonymization of biometric data for protection from law enforcement

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

Section 1. This act shall be known and may be cited as the "test, trust, and certify act".

§ 2. Section 50 of the civil rights law is amended to read as follows:

§ 50. Right of privacy. [A] 1. Any person, firm or corporation that collects, stores, and/or uses for the purpose of advertising [purposes, or for the purposes of], trade, data-mining, or generating commercial or economic value, the name, portrait [or] picture, video, voice, likeness, or any other personal data, biometric data, or location data of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, or, if such consent is obtained, subsequently fails to exercise reasonable care consistent with its obligations as bailee of such individual's name, portrait, picture, video, voice, likeness, or any other personal data, biometric data, or location data, is guilty of a misdemeanor.

2. As used in this section, "biometric data" means an individual's physiological, biological or behavioral characteristics or an electronic representation of such, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity.

3. Biometric data includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, body temperature, data collected from fluid from nasal cavities or saliva to ascertain the presence of the novel SARS-CoV-2 coronavirus, data collected from withdrawn blood serum, plasma, or whole blood used to determine the presence of antibodies, or other forms of bodily immunity, in convales-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [–] is old law to be omitted.
cent or otherwise asymptomatic patients of pathogenic and infectious
disease, and voice recordings, from which an identifier template, such
as a faceprint, a minutiae template, or a voiceprint, can be extracted,
and keystroke patterns or rhythms, gait patterns or rhythms, and sleep,
health, or exercise data that contain identifying information.
§ 3. Anonymization of biometric data; protection from law enforcement.
The commissioner of the department of health and the attorney general
shall ensure that:
(a) any sharing of information with governmental entities shall be
solely for purposes of optimizing the contact tracing and certification
protocol as outlined in title 8 of the public health law;
(b) any personal data that is not being used solely to assist the
person whose data is being accessed and that is being used for optimiz-
ing and administrating the protocol shall be cryptographically anonym-
ized and all reasonable care shall be taken to ensure that subsequent
deanonymization is not enabled or facilitated through databases used for
anonymized data;
(c) any personal data shared with law enforcement authorities shall be
shared solely in strict compliance with the fourth amendment to the
United States constitution and any and all other state, federal and
local laws, rules, regulations, or other legal constraints that protect
the rights of suspected or accused persons and the contact tracing and
certification protocol shall not lessen the degree of legally assured
biometric data privacy of New Yorkers;
(d) any and all practicable measures, including cryptographic and
self-sovereign data storage methods, when reasonable, shall be taken to
prevent unnecessary exposure, unnecessary custody over any form of
private data, or accidental data privacy breaches stemming from outside
or inadvertent disclosure.
§ 4. Article 21 of the public health law is amended by adding a new
title 8 to read as follows:

**TITLE VIII**

**SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2**
(SARS-CoV-2); CORONAVIRUS DISEASE 2019 (COVID-19)

*Section 2180. Definitions.*

2181. Guidelines for contact tracing; certification for immunity
status.

2182. Self-sovereign identification of data.

2183. Liaising with the federal centers for disease control and
prevention.

§ 2180. Definitions. As used in this title, the following terms shall
have the following meanings:

1. "Tracking" or "contact tracing" shall mean the protocol through
which the infectious spread of the novel SARS-CoV-2 coronavirus and
corresponding propagation of COVID-19 is monitored in individuals. Such
protocol may be implemented through, but not limited to, the use of
smart phone applications, an anonymized or pseudonymous digital tracing
identifier, and blockchain, GPS, or Bluetooth technology.

2. "Immunity" shall mean:

(a) the degree to which an individual is diagnostically determined to
not be susceptible to infection by or not capable of shedding the novel
SARS-CoV-2 coronavirus, as determined by various markers such as serolo-
gy-based testing for the presence of antibodies. Such serological test-
ing may include, but not be limited to, the rapid diagnostic test (RDT),
enzyme-linked immunosorbent assay (ELISA), neutralization assay, or any
test that has been approved by the United States Food and Drug Adminis-
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(b) the definition that the commissioner is authorized, in conjunction
and in consultation with medical researchers and health officers, to
unilaterally determine, as research continues to be conducted on immune
response to the novel coronavirus, serological testing, antiviral drug
therapies, and candidates for a vaccine.

3. "Certifying" shall mean the protocol through which an individual is
determined to have immunity to COVID-19 or is otherwise deemed non-con-
tagious and able to participate in greater society.

4. "Self-sovereign identification" shall mean, with respect to the
collection and monitoring of data used for the tracking of the spread of
the novel coronavirus, COVID-19, the right of an individual to maintain
sovereign access and control of their data and their anonymity, provid-
ing proof of validity without being required to disclose unneeded
private data, and protect such data from extraction for profit or
exploitation by an authority or external entity, such as, but not limit-
ed to, a person, firm, corporation, or government entity that is not
done with the explicit intent for aiding the individual in mitigating
the spread of the novel coronavirus, COVID-19, or convalescing from
COVID-19, pursuant to sections twenty-one hundred eighty-one and twen-
ty-one hundred eighty-two of this title.

5. "COVID-19" shall mean the novel severe acute respiratory syndrome
coronavirus 2 (SARS-CoV-2).

§ 2181. Guidelines for contact tracing; certification for immunity
status. 1. The commissioner, in conjunction with his or her counter-
parts in municipalities of the state and the chief medical and health
officers in hospitals and medical facilities in the state, and at the
federal centers for disease control and prevention, shall develop a
protocol for contact tracing and certifying for immunity to mitigate the
spread of COVID-19.

2. The department shall ensure that authorized diagnostic tests for
immunity be conducted unconditionally and free of charge for any indi-
vidual.

(a) No provider of COVID-19 and antibody testing shall discriminate
against a consumer for exercising his or her right to unconditional and
free testing for immunity.

(b) A testing provider shall not discriminate against a patient who
exercises any of their self-sovereign identification and data protection
rights under this title or does not provide consent to additional data
collection or sharing under this title, including, but not limited to,
by:

(i) denying testing services to the consumer;

(ii) charging a fee for testing;

(iii) providing a different level or quality of testing or medical
service to the consumer; or

(iv) suggesting that the consumer will receive a fee for testing or
medical service or a different level or quality of testing or medical
service.

§ 2182. Self-sovereign identification of data. 1. The department shall
structure the protocol developed pursuant to section twenty-one hundred
eighty-one of this title to make provisions for accepting and function-
ing with the self-sovereign identification of individuals' data.

2. Information related or pertaining to an individual's immigration
status, banking status, financial affairs, or criminal or policing
record, shall be deemed to be sensitive personally identifiable informa-
tion, and shall not be procured from the individual at any point throughout the tracing and certification process.

3. For applications or agencies to support tracing, testing, and certification protocols required use of any centralized, third-party private platform or digital cloud infrastructure as central data storage for the purposes of implementing the protocol is prohibited.

4. The collection and storage of tracing and certification data for the implementation of the protocol shall be supported using a decentralized database, in order to facilitate:

(a) The protection of personal health records and individual identity, and the preservation of self-sovereignty over one’s own personal biometric data;

(b) The maximization of data integrity and security through encryption and verification of personal health records to mitigate the necessary involvement or infiltration of central parties not privy to access such information; and

(c) Accessibility to published data and data provenance, to ensure the transparency of tracing data inputs.

5. (a) Every individual has a right of self-sovereign identity whereby they can issue, revoke, and recover their identity autonomously.

(b) Every individual has the right to use their self-sovereign identity to submit provable information about themselves and have such information accepted as valid if it has been attested to cryptographically by an acceptable authority.

(c) Every self-sovereign identity system has the right to create a cryptographically secure digital signature, which shall be accepted as legally binding if properly attested to as representing the individual by an acceptable authority or authorities.

§ 2183. Liaising with the federal centers for disease control and prevention. The governor and the commissioner shall be responsible for liaising with the federal centers for disease control and prevention to coordinate state and federal efforts to mitigate the spread of COVID-19, ensure that adequate data protections as prescribed in this title are being taken at the federal level, and provide consultation to the federal government for implementing a similarly decentralized and self-sovereign system for contact tracing and immunity certification nationwide.

§ 5. This act shall take effect immediately.