

# STATE OF NEW YORK

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## IN SENATE

June 3, 2020

Introduced by Sens. RIVERA, BAILEY, BENJAMIN, BIAGGI, CARLUCCI, COMRIE, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KENNEDY, KRUEGER, LIU, MAY, MYRIE, PARKER, PERSAUD, RAMOS, SALAZAR, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the confidentiality of contact tracing information

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

1 Section 1. Article 21 of the public health law is amended by adding a  
2 new title 8 to read as follows:

3 TITLE 8

4 NOVEL CORONAVIRUS, COVID-19

5 Section 2180. Definitions.

6 2181. COVID-19 contact tracing; confidentiality.

7 2182. Regulations.

8 § 2180. Definitions. As used in this title the following terms shall  
9 have the following meanings:

10 1. "Contact tracing" means case investigation and identification of  
11 principal individuals and contact individuals.

12 2. "Contact tracer" and "contact tracing entity" means an individual  
13 or entity employed by or under contract with the state, a local govern-  
14 ment, a state or local governmental entity, or an agent thereof, to  
15 conduct contact tracing, engage in contact tracing, or receive contact  
16 tracing information.

17 3. "Contact tracing information" means any information that includes  
18 or can reveal the identity of any principal individual or contact indi-  
19 vidual, and any COVID-19-related information or test results, received  
20 or collected for the purpose or in the course of contact tracing.

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

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1 4. "Contact individual" means an individual who has or may have come  
2 in contact with a principal individual or who has or may have been  
3 exposed to and possibly infected with COVID-19.

4 5. "Principal individual" means an individual with a confirmed or  
5 probable diagnosis of COVID-19.

6 6. "COVID-19" means infection with or the disease caused by the severe  
7 acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

8 7. "Immigration authority" means any entity, officer, employee, or  
9 government employee or agent thereof charged with or engaged in enforce-  
10 ment of the federal Immigration and Nationality Act, including the  
11 United States Immigration and Customs Enforcement or United States  
12 Customs and Border Protection, or any successor legislation or entity.

13 8. "De-identified" means, in relation to contact tracing information,  
14 that the information cannot identify or be made to identify or be asso-  
15 ciated with a particular individual, directly or indirectly and is  
16 subject to technical safeguards and policies and procedures that prevent  
17 re-identification, whether intentionally or unintentionally, of any  
18 individual.

19 9. "Law enforcement agent or entity" means any governmental entity or  
20 public servant, or agent, contractor or employee thereof, authorized to  
21 investigate, prosecute, or make an arrest for a criminal or civil  
22 offense, or engaged in any such activity, but shall not mean the depart-  
23 ment, the commissioner, a health district, a county department of  
24 health, a county health commissioner, a local board of health, a local  
25 health officer, the department of health and mental hygiene of the city  
26 of New York, or the commissioner of the department of health and mental  
27 hygiene of the city of New York.

28 10. "Support" means resources or services provided to an individual to  
29 enable such individual to safely quarantine or isolate, including  
30 grocery, meal or pharmacy delivery, laundry services, child or elder  
31 care, pet walking, assistance with telephone, internet, or other commu-  
32 nication services or devices, health and mental health services, legal  
33 services, provision of appropriate living space for individuals who  
34 cannot isolate or quarantine at home, and income replacement. "Support"  
35 may also include support provided to other individuals for whom the  
36 individual commonly provides those resources or services.

37 11. "Permitted purpose" means:

38 (a) disclosure to appropriate health care providers or their personnel  
39 for the purpose of the clinical diagnosis, care or treatment of the  
40 principal individual or contact individual who is the subject of the  
41 information, where an emergency exists and the individual is in immedi-  
42 ate need of medical attention and an attempt to secure consent would  
43 result in delay of treatment which would increase the risk to the indi-  
44 vidual's life or health;

45 (b) facilitating a legally-authorized public health-related action, in  
46 relation to a specified principal individual or contact individual,  
47 where and only to the extent necessary to protect the public health; or

48 (c) the investigation, prosecution or defense of a civil or legal  
49 action for a violation of this title; provided that if the use is initi-  
50 ated by a party other than the principal individual or contact individ-  
51 ual who is the subject of the contact tracing information, the informa-  
52 tion must be highly material and relevant for the purpose.

53 § 2181. COVID-19 contact tracing; confidentiality. 1. (a) All contact  
54 tracing information shall be kept confidential by any contact tracer and  
55 contact tracing entity, and may not be disclosed except as necessary to  
56 carry out contact tracing or a permitted purpose.

1 (b) Where a contact tracer or contact tracing entity discloses contact  
2 tracing information for a permitted purpose, the contact tracer or  
3 contact tracing entity shall make a record of the disclosure, including  
4 to whom it was made, which shall be part of the contact tracing informa-  
5 tion.

6 2. (a) An individual may waive the confidentiality provided for by  
7 this section, only by a written, informed and voluntary waiver, in plain  
8 language and in a language understandable to the individual making the  
9 waiver, and not part of any other document. The waiver shall state the  
10 scope and limit of the waiver. If an individual lacks the capacity to  
11 make a waiver, an individual authorized to consent to health care for  
12 the individual, or the individual's legal representative, may make the  
13 waiver. However, a waiver of confidentiality is not required to be  
14 written if it is solely for the purpose of arranging or providing  
15 support for the individual who is the subject of the contact tracing  
16 information.

17 (b) A waiver of confidentiality under this section shall only apply  
18 for the purpose of arranging or providing support if the individual who  
19 is the subject of the contact tracing information provides voluntary  
20 informed consent to the arranging or providing of the support.

21 3. A disclosure of contact tracing information authorized under this  
22 section shall be limited in scope as to the identity of any individual,  
23 the information to be disclosed, and the party to which disclosure may  
24 be made, and as necessary to achieve the purpose of the disclosure under  
25 this section, and shall not authorize re-disclosure except as explicitly  
26 authorized by the terms of the waiver under this section. However, this  
27 section does not bar disclosure of contact tracing information pertain-  
28 ing to and identifying a principal individual or contact individual by  
29 the individual who is identified.

30 4. (a) This section does not bar otherwise-lawful disclosure,  
31 possession or use of contact tracing information, including aggregate  
32 contact tracing information, that is de-identified. Disclosure,  
33 possession or use under this subdivision shall only be for a public  
34 health or public health research purpose.

35 (b) A person or entity may only possess or use de-identified contact  
36 tracing information if the person or entity maintains technical safe-  
37 guards and policies and procedures that prevent re-identification,  
38 whether intentional or unintentional, of any individual, as may be  
39 required by the commissioner (or the New York city commissioner of  
40 health and mental hygiene in the case of contact tracing information  
41 collected by or under authority of the New York city department of  
42 health and mental hygiene or the New York city health and hospitals  
43 corporation). The commissioner (or the New York city commissioner as  
44 the case may be) shall require safeguards, policies and procedures under  
45 this paragraph as the commissioner deems practicable.

46 (c) Disclosure, possession and use of de-identified contact tracing  
47 information under this subdivision shall be only pursuant to approval by  
48 the commissioner (or the New York city commissioner of health and mental  
49 hygiene in the case of contact tracing information collected by or under  
50 authority of the New York city department of health and mental hygiene  
51 or the New York city health and hospitals corporation) specifying the  
52 purpose, nature and scope of the disclosure, possession and use and  
53 measures to ensure that it will comply with this section and the terms  
54 of the approval.

55 5. No law enforcement agent or entity or immigration authority shall  
56 be a contact tracer or contact tracing entity or engage in contact trac-

1 ing. This subdivision does not bar an individual who is associated with  
2 a law enforcement entity or immigration authority from acting only as a  
3 principal individual or contact individual.

4 6. No contact tracer or contact tracing entity may provide contact  
5 tracing information to a law enforcement agent or entity or immigration  
6 authority. Without consent under subdivision two of this section,  
7 contact tracing information and any evidence derived therefrom shall not  
8 be subject to or provided in response to any legal process or be admis-  
9 sible for any purpose in any judicial or administrative action or  
10 proceeding. However, this subdivision does not restrict providing infor-  
11 mation, relating to a specified principal individual or contact individ-  
12 ual, where and only to the extent necessary for a permitted purpose.

13 7. (a) The commissioner (or the New York city commissioner of health  
14 and mental hygiene in the case of contact tracing information collected  
15 by or under authority of the New York city department of health and  
16 mental hygiene or the New York city health and hospitals corporation)  
17 shall make regulations to require that contact tracing information  
18 possessed, used or under the control of a contact tracer or contact  
19 tracing entity shall be subject to technical safeguards and policies and  
20 procedures for storage, transmission, use and protection of the informa-  
21 tion. The regulations shall prevent possession, use or disclosure of  
22 the contact tracing information not permitted by this title, and shall  
23 be at least as or more protective than the safeguards, policies and  
24 procedures the commissioner (or the New York city commissioner as the  
25 case may be) provides for other confidential information.

26 (b) This paragraph applies where contact tracing information is  
27 possessed or controlled by a contact tracer or contact tracing entity  
28 that is a non-governmental individual or entity employed by or under  
29 contract with a governmental entity, or an agent thereof. Within thirty  
30 days of collecting or receiving the contact tracing information, the  
31 non-governmental individual or entity shall (i) remove information from  
32 its possession or control and deliver it to the appropriate governmental  
33 contact tracing entity, retaining no copy of it; (ii) expunge the infor-  
34 mation from its possession or control; or (iii) de-identify the informa-  
35 tion. However, the expungement or de-identification of particular  
36 contact tracing information may be postponed for up to fifteen days  
37 while the contact tracer or contact tracing entity is actively engaged  
38 in contact tracing using that information, provided that the principal  
39 individual or contact individual to whom it pertains gives voluntary  
40 informed consent. The disclosure, possession and use of the de-identi-  
41 fied contact tracing information shall be subject to subdivision four of  
42 this section.

43 § 2182. Regulations. The commissioner shall make regulations imple-  
44 menting this title.

45 § 2. This act shall take effect immediately.