STATE OF NEW YORK

3587

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. KIM, SIMON, FRONTUS, SEAWRIGHT, GLICK, COLTON, CAHILL, MONTESANO, BRONSON -- read once and referred to the Committee on Health

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; and to repeal title 8 of article 21 of the public health law relating thereto

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.

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

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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fluid from nasal cavities or saliva to ascertain the presence of the novel SARS-CoV-2 coronavirus, data collected from withdrawn blood serum, plasma, or whole blood used to determine the presence of antibodies, or other forms of bodily immunity, in convalescent or otherwise asymptomatic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 optimizing and administrating the protocol shall be cryptographically anonymized 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. Title 8 of article 21 of the public health law is REPEALED and a new title 8 is added 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 serology-based testing for the presence of antibodies. Such serological testing 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 Administration for diagnostic use in the United States and in the state of New York.

(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-contagious 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, providing 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 limited 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 twenty-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 counterparts 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 individual.

(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 functioning 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 information, 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.