

[Second Reprint]

ASSEMBLY, No. 4170

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 28, 2020

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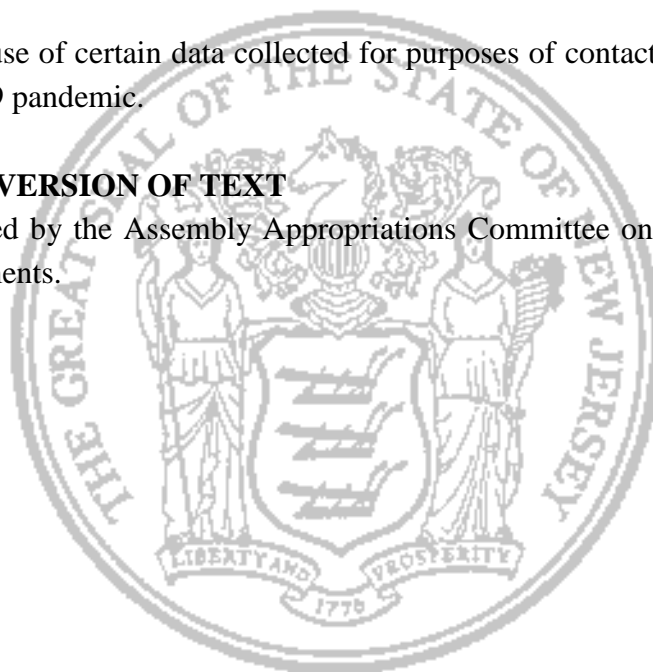
Assemblywomen Jimenez and Downey

SYNOPSIS

Restricts use of certain data collected for purposes of contact tracing related to COVID-19 pandemic.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on July 27, 2020, with amendments.



(Sponsorship Updated As Of: 7/30/2020)

1 AN ACT concerning data privacy related to certain health
 2 information ¹and supplementing Title 26 of the Revised
 3 Statutes¹.

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

7
 8 1. a. To the extent that any public health entity ²or a third party
 9 entity contracted by the public health entity to conduct contact tracing
 10 on the public health entity's behalf² collects data regarding an
 11 individual for the purposes of contact tracing related to the coronavirus
 12 disease 2019 (COVID-19) pandemic, including digital data from
 13 Bluetooth devices or global positioning systems, such health and
 14 location data shall only be used by the public health entity ²or third
 15 party entity² for the purposes of completing contact tracing ²or for
 16 research or other purposes authorized under subsection d. of this
 17 section², and the public health entity ²or third party entity² shall
 18 ensure ²[the] that any individually identifiable or private health² data
 19 is ²de-identified or² deleted from the entity's records no later than
 20 ²[30] 90² days after the date the data is received by the entity.

21 ²b.² If a public health entity ²enters into a contract with a third
 22 party entity to engage in contact tracing on the public health entity's
 23 behalf and, pursuant to that contract,² shares data collected for the
 24 purposes of contact tracing related to the COVID-19 pandemic with
 25 ²[a] the² third party entity ²or allows the third party entity to
 26 independently collect the data on behalf of the public health entity²,
 27 the public health entity shall ²:

28 (1)² publish the name of the third party entity on its Internet
 29 website or on the Internet website of the Department of Health ²[, and
 30 shall] ;

31 (2)² require that the third party entity only use the data for the
 32 purposes of completing contact tracing related to the COVID-19
 33 pandemic ²or for research or other purposes authorized under
 34 subsection d. of this section;² and

35 ²(3) require that² the third party entity delete ²[the] or de-identify
 36 any individually identifiable or private health² data by the date on
 37 which the public health entity is required to delete ²or de-identify² the
 38 data.

39 ²[To this end, the] c. The² Commissioner of Health shall require
 40 that systems using health and location data for contact tracing purposes
 41 automatically delete ²[the] or de-identify any individually identifiable
 42 or private health² data no later than ²[30] 90² days after the data is
 43 entered into the system.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AST committee amendments adopted June 11, 2020.

²Assembly AAP committee amendments adopted July 27, 2020.

1 ²**[b.]** d. Nothing in this section shall be construed to prohibit
2 public health entities or other appropriate entities from acquiring,
3 retaining, or using de-identified contact tracing data collected in
4 relation to the COVID-19 pandemic for research purposes or for other
5 purposes related to the State’s response to the COVID-19 pandemic.
6 The de-identified contact tracing data that may be acquired, retained,
7 and used pursuant to this subsection shall include information and
8 statistics concerning: age; gender; race and ethnicity; location;
9 COVID-19 infection status; COVID-19 exposure information,
10 including the type and nature of the exposure, the setting in which the
11 exposure occurred, the relationship of the individual with the source of
12 the exposure, the date of exposure, and the duration of the exposure;
13 the date of onset of COVID-19; and any other statistical information
14 authorized by the Commissioner of Health for acquisition, retention, or
15 use under this subsection. Any entity in possession of de-identified
16 contact tracing data as authorized under this subsection shall attest to
17 the Commissioner of Health that the entity will not attempt to re-
18 identify the data.

19 ²e. ²A third party entity that misuses or unlawfully discloses
20 ²individually identifiable or private health data collected by or shared
21 with the entity for the purposes of conducting² COVID-19 contact
22 tracing ²**[data shared with it by a public health entity]**², or that retains
23 the ²individually identifiable or private health² data beyond the date on
24 which the data is required to be deleted ²or de-identified², shall be
25 liable to a civil penalty of up to \$10,000, which shall be collected by
26 and in the name of the Commissioner of Health in a summary
27 proceeding before a court of competent jurisdiction pursuant to the
28 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et
29 seq.).

30 ²**[c.]** ²f. ²As used in this section:

31 “Contact tracing” means the process of identifying individuals who
32 were in contact with a person who has tested positive for COVID-19
33 or who was likely exposed to COVID-19, as well as providing support
34 services to the individual. Contact tracing may include: verbal
35 interviews with individuals and those they may have had contact with,
36 as well as any other individual who may have knowledge of potential
37 exposure situations; to the extent authorized by applicable State and
38 federal laws, accessing an individual’s digital data from a Bluetooth or
39 global positioning system to identify potential exposures; and any
40 other means utilized by a public health entity to track potential
41 exposures to, and the potential spread of, COVID-19 among
42 individuals and population groups within the State.

43 ²“De-identified data” means information that cannot be linked to
44 an individual without additional information that is kept separately, or
45 information that has been modified to a degree that the risk of re-
46 identification is small.

1 “Individually identifiable data” means information that can be
2 linked to an individual without the need for additional information, or
3 information that can be linked to an individual using other information
4 that is readily available to or accessible by the public.

5 “Private health data” means health data that is subject to the
6 federal “Health Insurance Portability and Accountability Act of 1996,”
7 Pub.L.104-191, and any regulations promulgated thereunder by the
8 Secretary of the U.S. Department of Health and Human Services.²

9 “Public health entity” means the Department of Health ²**[.]** and²
10 any county or local board of health ²**[.]**, and any other entity conducting
11 contact tracing in response to the COVID-19 pandemic² .

12
13 2. ²**[No later than 30 days after the effective date of this act,**
14 **the]** The² Commissioner of Health shall ²**[publish on its Internet**
15 **website proposed guidance on how]** adopt rules and regulations,
16 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
17 (C.52:14B-1 et seq.), establishing rules and restrictions concerning
18 the ways in which² public health entities and third party entities
19 may use data collected for contact tracing related to the COVID-19
20 pandemic, and how those entities will be required to ensure the
21 security and confidentiality of that data, including any specific
22 internal audit requirements those entities will be required to
23 implement to guard against misuse or unauthorized disclosure of the
24 data. ²**[The commissioner shall create a mechanism for members of**
25 **the public to submit comments on the proposed guidance, allow for**
26 **a public comment period of at least 30 days, and, no later than 30**
27 **days after the public comment period closes, publish final guidance**
28 **on the use of data collected for the purposes of contact tracing**
29 **related to the COVID-19 pandemic, which final guidance may**
30 **incorporate appropriate revisions based on public comments**
31 **received.]**² Nothing in this section shall be construed to prohibit or
32 delay the implementation of section 1 of this act immediately upon
33 the effective date of this act.

34
35 3. This act shall take effect immediately ¹**[and shall expire one**
36 **year after the end of both the state of emergency and the public health**
37 **emergency declared in response to the coronavirus disease 2019**
38 **pandemic]**¹ .