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(Original Signature of Member)

116TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To authorize the Director of the Centers for Disease Control and Prevention to award grants to eligible State, Tribal, and territorial public health agencies to develop and administer a program for digital contact tracing for COVID–19, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Ms. SPEIER introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_  
\_\_\_\_\_

**A BILL**

To authorize the Director of the Centers for Disease Control and Prevention to award grants to eligible State, Tribal, and territorial public health agencies to develop and administer a program for digital contact tracing for COVID–19, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Secure Data and Pri-  
5       vacy for Contact Tracing Act of 2020”.

1 **SEC. 2. GRANT PROGRAM FOR DIGITAL CONTACT TRACING**  
2 **FOR COVID-19.**

3 (a) IN GENERAL.—The Director of the Centers for  
4 Disease Control and Prevention shall award grants to eli-  
5 gible State, Tribal, and territorial public health agencies  
6 to—

7 (1) establish a contact-tracing program that im-  
8 plements traditional contact tracing protocols with  
9 the assistance of digital contact tracing technology  
10 to track and prevent the spread of COVID-19; or

11 (2) incorporate digital contact tracing tech-  
12 nology into a contact-tracing program that imple-  
13 ments traditional contact tracing protocols to track  
14 and prevent the spread of COVID-19.

15 (b) FUNDING DISQUALIFICATION.—If a State, Trib-  
16 al, or territorial public health agency develops or procures  
17 any digital contact tracing technology with respect to  
18 COVID-19 that does not meet each of the requirements  
19 listed in subsection (c), such State, Tribal, or territorial  
20 public health agency shall be ineligible to receive or con-  
21 tinue to receive—

22 (1) any funds through a grant under this sec-  
23 tion; and

24 (2) any other Federal funds, including under  
25 the CARES Act (Public Law 116-136), for any dig-

1       ital contact-tracing technology with respect to  
2       COVID–19.

3       (c) DIGITAL CONTACT-TRACING REQUIREMENTS.—A  
4       State, Tribal, or territorial public health agency may use  
5       a grant under this section for digital contact tracing tech-  
6       nology, as described in subsection (a), only if the tech-  
7       nology meets each of the following requirements:

8               (1) The technology shall be voluntary for the  
9       user and provide to the user complete and clear in-  
10      formation on the intended use and processing of  
11      data collected by the technology. To be voluntary for  
12      the user, the technology shall meet requirements in-  
13      cluding each of the following:

14               (A) Use of the technology and of contact-  
15      tracing data collected using the technology shall  
16      be predicated on the user’s affirmative consent.

17               (B) Use of the technology shall not be a  
18      condition for the reception of government bene-  
19      fits.

20               (C) Use of the technology shall not be  
21      made a condition of employment or employment  
22      status.

23               (2) The technology shall limit the collection of  
24      data by the technology to only the data that is nec-

1        essary to meet contact-tracing objectives, includ-  
2        ing—

3                (A) the status of any person as an infected  
4                or potentially infected person; and

5                (B) the proximity of a person to someone  
6                who is symptomatic or has tested positive.

7        (3) The technology—

8                (A) shall delete or de-identify any contact-  
9                tracing data that is individually identifiable in-  
10              formation not later than the date that is 30  
11              days after the end of the COVID–19 emergency  
12              declaration; and

13              (B) shall include notifications to prompt  
14              users to disable or completely remove any dig-  
15              ital contact-tracing technology where practical.

16        (4) The technology shall have robust contact  
17        detection specifications, including for distance and  
18        time, that allow for detection consistent with guid-  
19        ance of the Centers for Disease Control and Preven-  
20        tion on COVID–19.

21        (5) The technology shall ensure that the storing  
22        of proximity and any contact-tracing data is  
23        encrypted to the maximum extent possible.

1 (d) PLAN FOR INTEROPERABILITY.—As a condition  
2 on receipt of a grant under this section, a State, Tribal,  
3 or territorial public health agency shall—

4 (1) develop and make publicly available a plan  
5 for how the digital contact-tracing technology of the  
6 agency with respect to COVID19 augments—

7 (A) traditional contact tracing efforts, if  
8 applicable; and

9 (B) statewide efforts to prevent, prepare  
10 for, and respond to COVID–19; and

11 (2) include in such plan a description of the  
12 agency’s efforts to ensure that the digital contact-  
13 tracing technologies of the agency with respect to  
14 COVID–19 are interoperable with the digital con-  
15 tact-tracing technology and public health agency  
16 databases of other jurisdictions with respect to  
17 COVID–19; and

18 (3) ensure that data collected by the digital  
19 contact-tracing technology of the agency—

20 (A) is accessed and processed only by pub-  
21 lic health authorities (or their designees); and

22 (B) is not shared with any person, or  
23 accessed or used by any person, for any purpose  
24 other than diagnosis, containment, treatment,  
25 or reduction of, or research into, COVID–19.

1 (e) INDEPENDENT SECURITY ASSESSMENTS.—

2 (1) IN GENERAL.—As a condition on receipt of  
3 a grant under this section, a State, Tribal, or terri-  
4 torial public health agency shall—

5 (A) establish procedures for completing or  
6 obtaining independent security assessments of  
7 digital contact-tracing infrastructure to ensure  
8 that physical and network security is resilient  
9 and secure; and

10 (B) develop a process to address the miti-  
11 gation or remediation of the security  
12 vulnerabilities discovered during such inde-  
13 pendent security assessments.

14 (2) SOURCE CODE.—A State, Tribal, or terri-  
15 torial public health agency should consider making  
16 public the source code of the digital contact-tracing  
17 technology used by the agency.

18 (f) APPLICATION.—To seek a grant under this sec-  
19 tion, an eligible State, Tribal, or territorial public health  
20 agency shall submit an application in such form, in such  
21 manner, and containing such information and assurances  
22 as the Director may require.

23 (g) SECURING DIGITAL CONTACT-TRACING DATA.—

24 (1) IN GENERAL.—The provisions of the  
25 HIPAA privacy and security law (as defined in sec-

1       tion 3009(a)(2) of the Public Health Service Act (42  
2       U.S.C. 300jj–19(a)(2))) shall apply to a State, Trib-  
3       al, or territorial public health agency receiving a  
4       grant under subsection (a) with respect to individ-  
5       ually identifiable health information (as defined in  
6       section 1171(a)(6) of the Social Security Act (42  
7       U.S.C. 1320d(a)(6))) received by, maintained on, or  
8       transmitted through a contact-tracing program de-  
9       scribed in such subsection (a) in the same manner  
10      as such provisions apply with respect to such infor-  
11      mation and a covered entity (as defined in section  
12      13400(3) of the HITECH Act (42 U.S.C.  
13      17921(3))).

14           (2) BUSINESS ASSOCIATES.—

15           (A) IN GENERAL.—Any entity with a con-  
16      tract in effect with an agency described in para-  
17      graph (1) for the development, maintenance, or  
18      operation of a program described in such para-  
19      graph shall be deemed to be a business asso-  
20      ciate of such agency for purposes of subtitle D  
21      of the HITECH Act (42 U.S.C. 17921 et seq.).

22           (B) REVISION OF SAMPLE AGREEMENT.—  
23      Not later than 180 days after the date of the  
24      enactment of this Act, the Secretary shall revise  
25      the sample business associate agreement provi-

1           sions published on January 25, 2013, to take  
2           account of the provisions of this subsection.

3           (C) EFFECTIVE DATE.—The provisions of  
4           subparagraph (A) shall apply beginning on the  
5           day after the Secretary revises the provisions  
6           described in subparagraph (B).

7           (h) LIMITATION ON USE OF DATA.—Data generated  
8           in connection with the operation of digital contact tracing  
9           technology funded pursuant to this section may not be  
10          used for any punitive purpose, including law enforcement,  
11          immigration enforcement, or criminal prosecution. Such  
12          data and any information derived from it, whether in  
13          whole or in part, may not be received as evidence in any  
14          trial, hearing, or other proceeding in or before any court,  
15          grand jury, department, officer, agency, regulatory body,  
16          legislative committee, or other authority of the United  
17          States, a State, or a political subdivision thereof.

18          (i) REPORT TO CONGRESS.—Not later than 90 days  
19          after the date of enactment of this Act, the Comptroller  
20          General of the United States shall—

21                 (1) evaluate the outcome of the grants awarded  
22                 under this section, including an assessment of the  
23                 impact of the implementation of digital contact-trac-  
24                 ing programs funded through such grants on the  
25                 spread of COVID–19; and



1           (2) submit to the Congress a report on the re-  
2           sults of such evaluation.

3           (j) DEFINITIONS.—In this section:

4           (1) AFFIRMATIVE EXPRESS CONSENT.—The  
5           term “affirmative express consent” means an affirm-  
6           ative act by an individual that clearly and conspicu-  
7           ously communicates the individual’s authorization  
8           for an act or practice, in response to a specific re-  
9           quest that—

10                   (A) is provided to the individual in a clear  
11                   and conspicuous disclosure that is separate  
12                   from other options or acceptance of general  
13                   terms;

14                   (B) includes a description of each act or  
15                   practice for which the individual’s consent is  
16                   sought and—

17                           (i) is written clearly and unmistakably  
18                           stated; and

19                           (ii) includes a prominent heading that  
20                           would enable a reasonable individual to  
21                           identify and understand the act or prac-  
22                           tice; and

23                   (C) cannot be inferred from inaction.

1           (2) CONTACT-TRACING DATA.—The term “con-  
2           tact-tracing data” means information linked or rea-  
3           sonably linkable to a user or device, that—

4                   (A) concerns the COVID–19 pandemic;

5                   and

6                   (B) is gathered, processed, or transferred  
7           by digital contact tracing technology.

8           (3) COVID–19 EMERGENCY DECLARATION.—

9           The term “COVID–19 emergency declaration” has  
10          the meaning given to such term in section  
11          1135(g)(1)(B) of the Social Security Act (42 U.S.C.  
12          1320b–5).

13          (4) DE-IDENTIFY.—The term “de-identify”  
14          means to ensure that information cannot reasonably  
15          identify, relate to, describe, be capable of being asso-  
16          ciated with, or be linked, directly or indirectly, to a  
17          particular individual.

18          (5) DESIGNEE.—The term “designee”—

19                   (A) subject to subparagraph (B), means  
20          any person or entity, other than a public health  
21          agency, that collects, processes, or transfers  
22          contact-tracing data in the course of performing  
23          a service or function on behalf of, for the ben-  
24          efit of, under instruction of, and under contrac-

1 tual agreement with a public health authority;  
2 and

3 (B) excludes any Federal, State, Tribal,  
4 territorial, or local law (including immigration  
5 law) enforcement personnel or entity.

6 (6) DIGITAL CONTACT-TRACING TECH-  
7 NOLOGY.—

8 (A) IN GENERAL.—The term “digital con-  
9 tact-tracing technology” means a website, on-  
10 line application, mobile application, mobile oper-  
11 ating system feature, or smart device applica-  
12 tion that is designed, in part or in full, for the  
13 purpose of—

14 (i) determining that a contact incident  
15 has occurred relating to the COVID–19  
16 pandemic; and

17 (ii) taking consequent steps such as  
18 reporting the incident to a public health  
19 authority or user, or providing guidance or  
20 instructions to the user of the mobile de-  
21 vice or the user’s household.

22 (B) LIMITATIONS.—Such term does not in-  
23 clude any technology to assist individuals to  
24 evaluate whether they are experiencing COVID–

1           19 symptoms to the extent the technology is not  
2           used as described in subparagraph (A).

3           (7) DIRECTOR.—The term “Director” means  
4           the Director of the Centers for Disease Control and  
5           Prevention.

6           (8) MOBILE APPLICATION.—The term “mobile  
7           application” means a software program that runs on  
8           the operating system of a mobile device.

9           (9) MOBILE DEVICE.—The term “mobile de-  
10          vice” means a smartphone, tablet computer, or simi-  
11          lar portable computing device that transmits data  
12          over a wireless connection.

13          (10) SOURCE CODE.—The term “source code”  
14          is the programming instruction for a computer pro-  
15          gram in its original form and saved in a file.

16          (11) TRADITIONAL CONTACT TRACING.—The  
17          term “traditional contact tracing” means contact  
18          tracing by traditional means prior to contemporary  
19          digital contact tracing.

20          (12) USER.—The term “user” means a member  
21          of the public who utilizes the software or hardware  
22          product.

23          (k) AUTHORIZATION OF APPROPRIATIONS.—To carry  
24          out this section, there are authorized to be appropriated  
25          \$75,000,000, to remain available until expended.