

117TH CONGRESS
1ST SESSION

H. R. 3868

To protect individual liberty, ensure privacy, and prohibit discrimination with respect to the vaccination status of individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2021

Mrs. HARSHBARGER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, Education and Labor, Foreign Affairs, Oversight and Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect individual liberty, ensure privacy, and prohibit discrimination with respect to the vaccination status of individuals, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “No Vaccine Passports for Americans Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Severability.

TITLE I—GENERAL PROVISIONS

Subtitle A—Health Information Privacy Protections

- Sec. 101. Prohibition on establishment of Federal vaccine passports and tracking of individuals.
- Sec. 102. Vaccine status protections under HIPAA privacy regulations.

Subtitle B—Consent to Vaccination

- Sec. 111. Vaccinations.

TITLE II—PROHIBITION OF DISCRIMINATION BASED ON VACCINATION STATUS

Subtitle A—Nondiscrimination in Employment

- Sec. 201. Definitions.
- Sec. 202. Discrimination prohibited.
- Sec. 203. Defenses.
- Sec. 204. Remedies and enforcement.

Subtitle B—Nondiscrimination in Public Accommodation

- Sec. 211. Definitions.
- Sec. 212. Prohibition of discrimination by places of public accommodation.
- Sec. 213. Prohibition of discrimination in specified public transportation services provided by private entities.
- Sec. 214. Exemptions for private clubs and religious organizations.
- Sec. 215. Enforcement.
- Sec. 216. Effective date.

Subtitle C—Nondiscrimination by a Public Entity and Access to Federal Services

- Sec. 221. Nondiscrimination by a public entity.
- Sec. 222. Access to Federal services.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

- 3 (1) In December 2019, reports began circu-
- 4 lating that hospitals in Wuhan, China were seeing
- 5 cases of a pneumonia-like respiratory illness of un-
- 6 known origins.

1 (2) On December 31, 2019, an automated
2 translation of a Chinese media report about a novel
3 respiratory outbreak was posted to ProMED, one of
4 the largest public emerging disease and outbreak re-
5 porting systems used to promote communication
6 among infectious disease specialists, including sci-
7 entists, physicians, veterinarians, epidemiologists,
8 and public health professionals.

9 (3) The ProMED posting prompted the World
10 Health Organization (WHO) to instruct its China
11 Country Office to request verification of the out-
12 break from the communist government of the Peo-
13 ple’s Republic of China.

14 (4) In response to the WHO-prompted inquiry,
15 the Wuhan Municipal Health Commission issued its
16 first public statement on the outbreak, saying it had
17 identified 27 cases.

18 (5) On January 3, 2020, in what is clear con-
19 duct by the Chinese government to cover up the ori-
20 gins and dangers posed by the outbreak, Dr. Li
21 Wenliang, a physician at Wuhan Central Hospital,
22 was reprimanded by local police in the Public Secu-
23 rity Bureau for spreading allegedly “false state-
24 ments” about the outbreak online.

1 (6) On January 3, 2020, the Chinese Center for
2 Disease Control and Prevention (China CDC) Direc-
3 tor-General Gao Fu told the United States Centers
4 for Disease Control and Prevention (United States
5 CDC) Director Robert Redfield about a pneumonia
6 outbreak in Wuhan, Hubei Province, China.

7 (7) On January 6, 2020, the United States De-
8 partment of Health and Human Services (HHS)
9 Secretary Alex M. Azar II and United States CDC
10 Director Redfield offered to send United States
11 CDC experts to China, and United States CDC
12 issued a “Watch Level 1 Alert” for Wuhan, meaning
13 that the CDC recognized a heightened risk for trav-
14 elers, cautioning travelers to use health precautions
15 when traveling to areas in China.

16 (8) On January 11, 2020, a team led by Pro-
17 fessor Yong-zhen Zhang of Fudan University in
18 Shanghai posted the genetic sequence of the novel
19 virus on an open-access platform, sharing it with the
20 world.

21 (9) On January 14, 2020, the WHO tweeted,
22 “Preliminary investigations conducted by the Chi-
23 nese authorities have found no clear evidence of
24 human-to-human transmission of the novel
25 coronavirus (2019-nCoV) identified in Wuhan,

1 China”. The WHO’s assertion has been proven false
2 and completely contrary to medical science given
3 that there have been nearly 163,000,000 cases of in-
4 fection worldwide, resulting in more than 3,380,000
5 deaths.

6 (10) On January 20, 2020, China confirmed
7 person-to-person transmission of the novel
8 coronavirus and infections among medical workers.

9 (11) On January 21, 2020, the United States
10 CDC announced the first COVID–19 case in the
11 United States.

12 (12) On January 30, 2020, WHO Director-
13 General Tedros declared the epidemic a Public
14 Health Emergency of International Concern, and
15 President Donald J. Trump announced the forma-
16 tion of the President’s Coronavirus Task Force. In
17 a statement from the WHO regarding the second
18 meeting of its International Health Regulations
19 (2005) Emergency Committee regarding the out-
20 break of novel coronavirus (2019–nCoV), the Com-
21 mittee specifically did “not recommend any travel or
22 trade restriction based on the current information
23 available”.

24 (13) On January 31, 2020, President Trump
25 suspended entry into the United States of most for-

1 eigners who were physically present in mainland
2 China during the preceding 14-day period, effective
3 February 2, 2020, and Secretary Azar declared a
4 public health emergency for the United States to aid
5 response to the novel coronavirus.

6 (14) On February 1, 2020, then-presidential
7 candidate Joe Biden recklessly downplayed the risk
8 of the virus, suggesting in a tweet that President
9 Trump’s efforts to limit the spread of the virus were
10 nothing more than “hysteria, xenophobia, and fear-
11 mongering”.

12 (15) Numerous individuals criticized these trav-
13 el restrictions. When asked “if you had to, would
14 you close down the borders?” to stop the spread of
15 coronavirus, Senator Bernie Sanders said, “no”.
16 When asked about these travel restrictions, Rep-
17 resentative Nancy Pelosi stated, “[a]ctually tens of
18 thousands of people were allowed in from China, it
19 wasn’t as it was described as this great moment”.
20 WHO Director-General Tedros Adhanom
21 Ghebreyesus was reported to say that widespread
22 travel bans and restrictions were not needed to stop
23 the outbreak and could “have the effect of increas-
24 ing fear and stigma, with little public health ben-
25 efit”. Reportedly, Representative Ami Bera stated

1 that the travel ban “probably doesn’t make sense”
2 since the outbreak had already spread to several
3 other countries, that such measures were causing an
4 antagonistic relationship with the Chinese, and such
5 mandatory quarantines “may be overkill”.

6 (16) Health experts have since noted that the
7 early United States restrictions imposed on travelers
8 from China saved American lives. Former CDC di-
9 rector Dr. Tom Frieden noted that “[t]he travel ban
10 with China made a difference . . . It resulted in a
11 significant delay in the number of people coming in
12 with infection and because of that, that bought time
13 in the U.S. to better prepare.”. While testifying be-
14 fore the House of Representatives, Dr. Anthony
15 Fauci was asked if he believed that the travel re-
16 strictions saved lives, to which Dr. Fauci answered,
17 “yes, I do”.

18 (17) On February 26, 2020, United States
19 CDC confirmed a case of COVID–19 in California
20 in a person who reportedly did not have relevant
21 travel history or exposure to another known patient
22 with COVID–19.

23 (18) On February 29, 2020, United States
24 CDC reported the first COVID–19 death in United
25 States, though later public reports indicated that the

1 first death from COVID–19 may have been weeks
2 earlier.

3 (19) In a 60 Minutes interview posted on
4 March 8, 2020, Dr. Anthony Fauci stated that
5 “right now in the United States, people should not
6 be walking around with masks . . . there’s no rea-
7 son to be walking around with a mask. When you’re
8 in the middle of an outbreak wearing a mask might
9 make people feel a little bit better, and it might even
10 block a droplet, but it’s not providing the perfect
11 protection that people think that it is. And often,
12 there are unintended consequences, people keep fid-
13 dling with the masks, and they keep touching their
14 face . . . But, when you think masks, you should
15 think of healthcare providers needing them and peo-
16 ple who are ill. The people who, when you look at
17 the films of foreign countries and you see eight-five
18 percent of the people wearing masks, that’s fine.
19 That’s fine. I’m not against it. If you want to do it,
20 that’s fine . . . It could lead to a shortage of masks
21 for the people who really need it.”.

22 (20) On April 3, 2020, United States CDC up-
23 dated its guidance on facial coverings, recom-
24 mending that Americans wear facial coverings in

1 public settings and especially when social distancing
2 measures are difficult to maintain.

3 (21) On May 15, 2020, the Trump administra-
4 tion announced the establishment of Operation Warp
5 Speed, a public-private partnership to expedite the
6 timeline for development, large scale manufacturing,
7 and delivery of a safe and effective COVID–19 vac-
8 cine to the American public. The initial goal of the
9 project was to develop at least 1 vaccine and begin
10 administering it to Americans before the end of
11 2020. As reported on BioCentury, Dr. Anthony
12 Fauci noted that the fastest a vaccine might be
13 ready for use in an emergency would be 1 year, al-
14 though the process could take up to 2 years. Before
15 the Senate on March 3, 2020, Dr. Fauci stated that
16 the process would likely take at least 1 to 1½ years
17 to have a vaccine that could be administered to
18 American persons. Some, such as the analytics firm
19 Clarivate, concluded that it might take at least 5
20 years for the leading vaccine candidates, like
21 Moderna, to complete the development process
22 through full regulatory approval.

23 (22) Operation Warp Speed and other govern-
24 ment actions sped COVID–19 vaccine development
25 by enabling typical vaccine development steps to be

1 taken simultaneously with manufacturing and dis-
2 tribution planning. As part of these actions, the
3 Federal Government made investments in critical
4 manufacturing capacity, giving pharmaceutical com-
5 panies confidence that if they invested in developing
6 a vaccine, once the vaccine received authorization
7 from the Food and Drug Administration, these com-
8 panies would be able to immediately begin distrib-
9 uting the vaccine.

10 (23) Despite efforts to speed vaccine develop-
11 ment to address the COVID–19 pandemic, the emer-
12 gency use authorization (EUA) process utilized by
13 the Food and Drug Administration (FDA) appears
14 to have met rigorous safety and efficacy standards.

15 (24) On July 14, 2020, United States CDC
16 issued stronger recommendations to wear masks as
17 a strategy for preventing the spread of COVID–19.
18 United States CDC Director Robert Redfield, in a
19 news release from the agency, identified masks as
20 “one of the most powerful weapons we have to slow
21 and stop the spread of the virus”.

22 (25) On December 11, 2020, the FDA issued
23 the first EUA for a vaccine for the prevention of
24 COVID–19 in individuals 16 years of age and older.

1 The EUA allowed the Pfizer-BioNTech COVID–19
2 Vaccine to be distributed in the United States.

3 (26) On December 18, 2020, the FDA issued
4 an EUA for the second vaccine for the prevention of
5 COVID–19 in individuals 16 years of age and older.
6 The EUA allowed the Moderna COVID–19 Vaccine
7 to be distributed in the United States for use in in-
8 dividuals 18 years of age and older.

9 (27) On February 27, 2021, the FDA issued an
10 EUA for the third vaccine for the prevention of
11 COVID–19. The EUA allowed the Janssen COVID–
12 19 Vaccine to be distributed in the United States for
13 use in individuals 18 years of age and older.

14 (28) Because of the hard work of countless
15 Americans, this public-private partnership, and the
16 funding and support from Congress, multiple safe
17 and effective COVID–19 vaccines have been, and are
18 still being, developed and manufactured, and, as of
19 May 16, 2021, about 273,000,000 vaccine doses had
20 been administered in the United States.

21 (29) Despite the successful development and
22 rollout of the current COVID–19 vaccines, it is not
23 fully known whether these vaccines will protect peo-
24 ple from the emergence and potential future emer-

1 gence of variants of SARS-CoV-2, the virus that
2 causes COVID-19.

3 (30) The emergence of future variants of
4 SARS-CoV-2 could require that the United States
5 continue to develop new COVID-19 vaccines and
6 that people receive a COVID-19 booster shot on a
7 regular, potentially annual, basis to maintain immu-
8 nity.

9 (31) According to the FDA fact sheets on
10 COVID-19 vaccines, there are certain populations
11 for whom existing COVID-19 vaccines are not indi-
12 cated or authorized or for whom there is insufficient
13 data to inform vaccine-related risks including—

14 (A) people with severe allergies to vaccine
15 components or who are immunocompromised;

16 (B) people with certain pre-existing condi-
17 tions such as bleeding disorders and women
18 who are pregnant, trying to get pregnant, or
19 breastfeeding; and

20 (C) children under the age of 18.

21 (32) Because of potential risks that the vaccine
22 poses to certain people, it is important that every
23 patient is able to consult his or her doctor to deter-
24 mine whether one of the COVID-19 vaccines is ap-
25 propriate for that patient.

1 (33) Consistent with fundamental human
2 rights, and medical and legal ethics and proper
3 standards of medical care, every American has the
4 right to “informed consent” with respect to medical
5 treatment, meaning that he or she has a right to be
6 fully informed about the nature of his or her health
7 care and to participate in and voluntarily make deci-
8 sions related to his or her care. In addition, every
9 patient has a right to medical privacy to expect that
10 the decisions and nature of care will be kept con-
11 fidential by his or her health care provider and any-
12 one who has access to the individual’s medical
13 records, including vaccination records.

14 (34) At various times in history, governments
15 and medical professionals have violated these and
16 other inherent rights including by coercing patients,
17 failing to properly inform patients of, or even inten-
18 tionally begin deceptive with patients about, their
19 rights and the risks inherent with various medical
20 procedures, experiments, and studies—including the
21 Tuskegee syphilis experiments, forced sterilization,
22 lobotomy procedures, electro-shock therapy, certain
23 psychological studies, collection and utilization of in-
24 dividuals’ cells and parts of their body, or from fetal

1 tissue of a patient’s offspring, without knowledge or
2 consent, and eugenics laws.

3 (35) The absence of informed consent not only
4 constitutes a violation of medical ethics and stand-
5 ards of care, in some cases, treatment may also con-
6 stitute a crime, such as battery.

7 (36) Criminal battery stemming from violations
8 of medical ethics and informed consent standards
9 have led to a significant degree of distrust of the
10 government, public health officials, and medical pro-
11 fessionals by certain groups and communities includ-
12 ing among the most vulnerable populations such as
13 ethnic minorities, immigrants, economically dis-
14 advantaged, unmarried mothers, those with disabil-
15 ities, and those with mental illnesses.

16 (37) On January 12, 2021, United States CDC
17 issued an order requiring proof of a negative
18 COVID–19 test for all air passengers arriving from
19 a foreign country to the United States, and on Feb-
20 ruary 14, 2021, the United States CDC announced
21 it would not recommend required testing for domes-
22 tic air travel.

23 (38) On March 19, 2021, the WHO released
24 draft recommendations for a Smart Vaccine Certifi-
25 cate—what amounts to a form of a “vaccine pass-

1 port” that would, per WHO’s “Smart Vaccination
2 Certificate Working Group”, “support COVID–19
3 vaccine delivery and monitoring” and to serve “cur-
4 rent and future requirements, toward the dual pur-
5 poses of (1) supporting continuity of care; and (2)
6 cross-border uses”.

7 (39) The International Air Transport Associa-
8 tion has developed the Travel Pass Initiative to
9 gather information on entry and exit testing require-
10 ments, allow passengers to create a digital passport
11 that verifies testing and vaccination status, and es-
12 tablish the capability of sharing health data with
13 government authorities.

14 (40) The European Commission has proposed a
15 Digital Green Certificate on March 17, 2021, to
16 prove a passenger’s vaccination status, test results,
17 and COVID–19 antibodies that may be adopted by
18 a country for public health restrictions.

19 (41) The State of New York is testing a vaccine
20 certification to be used for admission into public
21 events.

22 (42) More than 225 companies and organiza-
23 tions are involved in what is known as the Vaccina-
24 tion Credential Initiative, a program intended to es-

1 tablish standards for developers to build digital vac-
2 cine passports.

3 (43) On April 2, 2021, the United States CDC
4 announced vaccinated people could travel safely. On
5 April 5, 2021, the United States CDC rec-
6 ommended, but did not require, passengers to be
7 vaccinated, though cruise ships are still not per-
8 mitted to resume normal operations.

9 (44) The White House, while saying the
10 COVID–19 Task Force will not create a vaccine
11 passport, has engaged in a multi-agency coordina-
12 tion effort led by the Office of the National Coordi-
13 nator for Health Information Technology to develop
14 criteria and principles for a vaccine passport created
15 by the private sector.

16 (45) The private sector, which includes many
17 large technology companies that previously have
18 shown disregard for privacy and a willingness to en-
19 gage in censorship of Americans while bowing to the
20 will of the Chinese Communist party, are pursuing
21 digital vaccine passports that can be adopted by gov-
22 ernments and other public establishments to authen-
23 ticate personal health information.

24 (46) During a March 2, 2021, virtual meeting
25 lead by the Federal Health IT Coordinating Council

1 on behalf of the Biden Administration, a slide pres-
2 entation included the following: “Proof of individual
3 COVID-related health status is likely to be an im-
4 portant component of pandemic response, proof of
5 immunization will likely become a major, if not the
6 primary, form of health status validation,” and a
7 “unified Federal approach [is] required to ensure
8 Federal activities are working toward the same com-
9 mon goals for vaccine [passports].” Additionally, the
10 presentation suggested the Biden Administration ex-
11 pects that “Federal entities” would “likely require
12 vaccine verification for a variety of purposes” and
13 that the “Federal government will inevitably be in-
14 volved with vaccine credential solutions”.

15 (47) The Federal Health IT Coordinating
16 Council also listed a number of international organi-
17 zations and private companies that are working on
18 the development of vaccine passports.

19 (48) The development, implementation, and uti-
20 lization of vaccine passports, whether by Federal or
21 State government, or the private sector, has the po-
22 tential for significant misuse and abuse, leading to
23 the denial of constitutionally protected freedoms
24 such as freedom of association and freedom of move-
25 ment, and could allow the government or corporate

1 interests to begin to track people’s health status on
2 a large-scale basis.

3 (49) There currently exists no clear regulatory
4 framework to fully protect the privacy of United
5 States citizens and United States nationals with re-
6 spect to their vaccination records and negative
7 COVID–19 test results.

8 (50) The widespread utilization of vaccine pass-
9 ports will certainly lead to discrimination by busi-
10 nesses that provide public accommodations as they
11 could begin to require a customer to demonstrate his
12 or her health status, through the presentment of a
13 vaccine passport or other “papers” or by requiring
14 that the customer disclose his or her protected
15 health information, before the business agrees to
16 serve or otherwise do business with such individual,
17 meaning the denial of service in such cases could be
18 based on an individual’s disability, health status, or
19 familial status, such as a restaurant denying service
20 to a man who has not been vaccinated based on the
21 advice of his doctor due to a previous anaphylaxis
22 (allergic) reaction to an ingredient found in the
23 COVID–19 vaccines.

24 (51) The widespread acceptance of vaccine
25 passports could also lead to employment discrimina-

1 tion, where employers take adverse employment ac-
2 tions against employees who are not vaccinated be-
3 cause of an underlying health condition and without
4 regard to the Americans with Disabilities Act of
5 1990 (42 U.S.C. 12101 et seq.) (ADA), which re-
6 quires an interactive process whereby the employer
7 follows the law to assess if the employee can and
8 should be reasonably accommodated under the ADA.
9 For example, without proper disability protections,
10 an employer could terminate a female employee who
11 has not been vaccinated based on the advice of her
12 doctor simply because she is pregnant.

13 (52) In February 2021, a business in New York
14 told its employees that the business was instituting
15 a vaccine mandate and, when a woman who worked
16 there decided against getting a COVID–19 vaccine
17 because she was trying to get pregnant, she was told
18 her employment was being terminated.

19 (53) In March 2021, a woman in Cumberland
20 County, Pennsylvania was suspended from her job
21 after her employer issued a vaccine mandate for its
22 employees. The woman, who said she is not anti-vac-
23 cination, wanted sufficient time to consult with her
24 doctor to see if the vaccine was appropriate for her.

1 (54) For women who are pregnant or
2 breastfeeding, the CDC has indicated that “the po-
3 tential risks of COVID–19 vaccines to the pregnant
4 person and the fetus are unknown because these
5 vaccines have not been studied in pregnant people”.
6 Accordingly, it is highly likely that the implementa-
7 tion and use of vaccine passports, refusal to provide
8 services to unvaccinated persons, and decision by
9 employers to impose a vaccine mandate and to take
10 adverse employment actions against unvaccinated
11 employees, are likely to be unfair and discrimina-
12 tory, disparately impacting women because of their
13 sex.

14 (55) Given that several COVID–19 vaccines are
15 not recommended for children under the age of 12,
16 the implementation and widespread utilization of
17 vaccine passports could lead to the refusal to provide
18 services to unvaccinated persons, such as the denial
19 of services to families with small children, meaning
20 certain vaccine-related policies could lead to age or
21 familial-status-related discrimination.

22 (56) The denial of public services and public ac-
23 commodations, as well as adverse employment ac-
24 tions, based on COVID–19 vaccination status, lack of
25 of or refusal to present a vaccine passport, refusal

1 to get vaccinated, or requiring an individual to ex-
2 plain the underlying reason why they are not vac-
3 cinated, could constitute unlawful discrimination, in-
4 cluding as to sex, age, familial status, disability, or
5 based on genetic or other health condition.

6 (57) Any United States person that requests
7 the vaccine records of a United States individual, in-
8 cluding data such as a copy or other digital record
9 of a vaccine passport or similar proof of vaccination,
10 should be regarded as having collected “protected
11 health information” and should be regarded as a
12 “covered entity” as defined under the Health Insur-
13 ance Portability and Accountability Act of 1996
14 (Public Law 104–191).

15 (58) The policy of the United States is to rec-
16 ognize, defend, and protect the inherent rights of the
17 individual, including the right to privacy, the right
18 of liberty, the right to be secure in one’s person, the
19 right of the individual to be informed about any
20 medical procedures, treatment, or vaccination, and
21 the right of the individual to provide or withhold
22 consent to such procedures, treatment, or vaccina-
23 tion.

24 (59) Congress recognizes that special vigilance
25 is required, especially in times of crisis or emergency

1 to ensure that government agencies do not try to
2 take advantage of, manipulate, or enflame public
3 fear, stoke hatred of minority groups, or increase in-
4 tolerance toward the diversity that builds our Na-
5 tion.

6 (60) Congress finds that there is a clear need
7 for the Federal Government to take specific action
8 to restore public trust by protecting the privacy and
9 voluntary informed consent rights of patients specifi-
10 cally regarding vaccinations and an individual's vac-
11 cination records.

12 (61) Furthermore, the protection of such indi-
13 vidual rights to make one's own medical decisions in
14 consultation with his or her health care provider
15 without fear of coercion, forced vaccination, loss of
16 civil liberties, or risk of adverse employment action
17 is especially needed at a time when it is critical for
18 our Nation to increase public trust in vaccinations
19 and increase vaccination rates in order to end the
20 COVID-19 pandemic.

21 **SEC. 3. SEVERABILITY.**

22 (a) IN GENERAL.—If any provision of this Act, or
23 an amendment made by this Act, or the application of any
24 such provision or amendment to any person or cir-
25 cumstance is declared invalid or unconstitutional, the re-

1 mainder of this Act, including any amendment made by
 2 this Act, and the application of such provisions and
 3 amendments to any person or circumstance shall not be
 4 affected.

5 (b) EFFECT OF PARTIAL INVALIDATION, REPEAL, OR
 6 AMENDMENT.—The invalidation, repeal, or amendment of
 7 any part of this Act, or amendment made by this Act,
 8 does not release or extinguish any penalty, forfeiture, or
 9 liability incurred or right accruing or accrued under this
 10 Act (or amendment), unless the invalidation, repeal, or
 11 amendment so provides expressly. This Act, and amend-
 12 ments made by this Act, shall be treated as remaining in
 13 force for the purpose of sustaining any proper action or
 14 prosecution for the enforcement of the right, penalty, for-
 15 feiture, or liability pursuant to the previous sentence.

16 **TITLE I—GENERAL PROVISIONS**
 17 **Subtitle A—Health Information**
 18 **Privacy Protections**

19 **SEC. 101. PROHIBITION ON ESTABLISHMENT OF FEDERAL**
 20 **VACCINE PASSPORTS AND TRACKING OF IN-**
 21 **DIVIDUALS.**

22 (a) IN GENERAL.—No Federal funds may be used
 23 to create, establish or collaborate in the establishment of
 24 any Federal, State, private, or international vaccine pass-
 25 port system, vaccine tracking database, or similar system

1 or in the creation or adoption of any related guidelines
2 or standards, under which Federal, State, or international
3 government agencies or private companies would be able
4 to monitor or track individuals who have been vaccinated
5 against COVID–19, or which could otherwise be used to
6 limit the freedom of movement or the freedom of associa-
7 tion of individuals based on their COVID–19 vaccination
8 status.

9 (b) PERSONAL PRIVACY.—To the extent any Federal
10 department or agency has received, obtained, collected, ag-
11 gregated, stored, or is otherwise in possession of any data
12 or records from officials, including public health officials,
13 in any State, the District of Columbia, or any territory,
14 or any third party who administered or has information
15 related to the administration of any COVID–19 vaccina-
16 tions, including health care providers and insurers, such
17 data and records about any individuals’ vaccination status
18 shall be destroyed by the Federal department or agency
19 and, if in digital form, that data record shall be deleted
20 in its entirety within 30 days of the enactment of this Act.

21 (c) REPORTING.—For any Federal department or
22 agency that has received and subsequently destroyed
23 COVID–19 data or records as required by this section,
24 the head of such agency shall, not later than 15 days after
25 such data or records have been destroyed, submit a sworn

1 affidavit, subject to penalty of perjury, to Congress con-
2 firming that he or she has personally assured such data
3 or records have been destroyed.

4 (d) CRIMINAL PENALTIES.—Any person who know-
5 ingly makes or is responsible for the inclusion of a state-
6 ment or representation in an affidavit under subsection
7 (c) that is materially false, fictitious, or fraudulent shall
8 be fined not more than \$10,000, imprisoned not more
9 than 1 year, or both.

10 (e) PROHIBITION ON FEDERAL ISSUANCE OR VAC-
11 CINE PASSPORT OR SIMILAR DOCUMENTATION AND PRO-
12 HIBITION ON VACCINATION REQUIREMENT TO ENTER
13 FEDERAL PROPERTY OR SERVICES.—

14 (1) IN GENERAL.—No Federal department or
15 agency may issue a vaccine passport, vaccine pass,
16 or other standardized documentation for the purpose
17 of certifying the COVID–19 vaccination status of a
18 citizen of the United States to a third party, or oth-
19 erwise publish or share any COVID–19 vaccination
20 record of a citizen of the United States, or similar
21 health information.

22 (2) ACCESS TO FEDERAL PROPERTY AND SERV-
23 ICES.—Proof of COVID–19 vaccination shall not be
24 deemed a requirement for access to Federal property

1 or Federal services, or for access to congressional
2 grounds or services.

3 (f) EXCEPTIONS.—

4 (1) DEIDENTIFIED OR ANONYMIZED INFORMA-
5 TION FOR CERTAIN PURPOSES.—The prohibition de-
6 scribed in subsection (a) shall not apply to the ag-
7 gregation and sharing of information that has been
8 deidentified or anonymized if such information is
9 used for purposes of Federal, State, or local public
10 health reporting or academic studies, provided that
11 the recipient of such information does not have the
12 capability to reconstruct the data in any way that
13 would allow for the determination of the vaccination
14 status of any individual.

15 (2) LIMITED USE OF INFORMATION WITH RE-
16 SPECT TO FEDERAL EMPLOYEES.—The prohibition
17 described in subsection (a) and the requirement de-
18 scribed in subsection (b) shall not apply to the pos-
19 session by a Federal department or agency of
20 COVID–19 vaccination data or records pertaining to
21 any employee of such department or agency where
22 such data or records will be used solely to determine
23 if such employee would be eligible to gain admission
24 to a foreign country during international travel in
25 furtherance of the employee’s official duties.

1 **SEC. 102. VACCINE STATUS PROTECTIONS UNDER HIPAA**
2 **PRIVACY REGULATIONS.**

3 (a) IN GENERAL.—The Secretary of Health and
4 Human Services shall amend the regulations promulgated
5 under section 264(c) of the Health Insurance Portability
6 and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)
7 to establish the following:

8 (1) Reporting by covered entities to public
9 health entities of non-anonymized protected health
10 information related to an individual’s vaccination
11 status is not permissible, even during public health
12 emergencies, without express patient consent.

13 (2) Any United States person that requests the
14 vaccine records of a United States individual shall be
15 deemed to be a covered entity for purposes of such
16 request.

17 (3) With respect to any individual who shares
18 their vaccine status with any covered entity, the cov-
19 ered entity shall comply with any request from such
20 individual to—

21 (A) delete all protected health information
22 that identifies the individual’s vaccination sta-
23 tus, including in relation to any records shared
24 with the covered entities’ business associates, in
25 all active and inactive databases; and

1 (B) provide to such individual written con-
 2 firmation of such deletion.

3 (b) DEFINITIONS.—In this section, the terms “busi-
 4 ness associate”, “covered entity”, “protected health infor-
 5 mation” have the meanings given such terms in section
 6 160.103 of title 21, Code of Federal Regulations (or any
 7 successor regulations).

8 **Subtitle B—Consent to Vaccination**

9 **SEC. 111. VACCINATIONS.**

10 (a) IN GENERAL.—Part I of title 18, United States
 11 Code, is amended by inserting after chapter 117 the fol-
 12 lowing:

13 **“CHAPTER 117A—VACCINATIONS**

14 **“§ 2431. Vaccinations**

15 “(a) REQUIREMENTS.—

16 “(1) IN GENERAL.—Except as provided in para-
 17 graph (2), it shall be unlawful to—

18 “(A) require any United States person to
 19 receive a vaccine that has only received author-
 20 ization by the Food and Drug Administration
 21 through an emergency use authorization pursu-
 22 ant to section 564 of the Federal Food, Drug,
 23 and Cosmetic Act (21 U.S.C. 360bbb–3), or
 24 that has received such authorization prior to re-
 25 ceiving full approval or licensure under section

1 505 of the Federal Food, Drug, and Cosmetic
2 Act (21 U.S.C. 355) or section 351 of the Pub-
3 lic Health Service Act (42 U.S.C. 262); or

4 “(B) vaccinate with a vaccine that has only
5 received authorization by the Food and Drug
6 Administration through such an emergency use
7 authorization, or that has received such author-
8 ization prior to receiving such full approval or
9 licensure—

10 “(i) an individual under the age of 18;

11 or

12 “(ii) an individual that lacks the ca-
13 pacity to exercise the right to consent to be
14 vaccinated.

15 “(2) EXCEPTIONS.—Paragraph (1) shall not
16 apply if the individual, or if the individual is a minor
17 or is otherwise unable to consent, a parent, guard-
18 ian, conservator, or attorney-in-fact of the indi-
19 vidual, provides consent to be vaccinated.

20 “(3) SUNSET.—This subsection shall cease to
21 have force or effect on the date that is 5 years after
22 the date of enactment of this section.

23 “(b) RIGHT TO BE INFORMED.—Any person that ad-
24 ministers a vaccine for the coronavirus disease 2019
25 (COVID–19) shall, consistent with medical ethics and ap-

1 plicable informed consent laws of the State in which the
2 vaccine is administered and any applicable Federal regula-
3 tions related to informed consent laws, disclose to any in-
4 dividual, before the vaccine is administered, the risks asso-
5 ciated with the vaccine so that the individual can make
6 an informed decision.

7 “(c) PROTECTING PRIVACY.—

8 “(1) IN GENERAL.—Except as provided in sub-
9 paragraph (B), it shall be unlawful for any person
10 to publicly disclose information about the COVID-
11 19 vaccination status of an individual without the
12 express consent of the individual if the individual
13 provided the information to the person—

14 “(A) as an employee in the context of an
15 employer-employee relationship;

16 “(B) as an independent contractor where
17 the vaccination status was provided to the per-
18 son to whom the contractor is providing serv-
19 ices;

20 “(C) as a consumer in the context of any
21 consumer transaction;

22 “(D) as a patient in order to obtain med-
23 ical care or health-related services from any
24 health care provider; or

1 “(E) the user of any technology applica-
2 tion, platform, or service.

3 “(2) REQUIREMENTS.—For purposes of this
4 subsection, an individual does not provide express
5 consent to the disclosure of a COVID–19 vaccination
6 status unless—

7 “(A) the individual agrees to the cir-
8 cumstances of disclosure in writing; and

9 “(B) the agreement is not conditioned on
10 or contained within any other agreement.

11 “(3) EXCEPTION.—Paragraph (1) shall not
12 apply if the parent or guardian of the individual pro-
13 vides consent to the disclosure described in that sub-
14 paragraph.

15 “(d) CRIMINAL PENALTIES.—Whoever knowingly
16 violates subsection (a) or (c) shall be imprisoned no more
17 than 1 year, fined in accordance with this title, or both.

18 “(e) CIVIL PENALTIES.—Any person who receives the
19 COVID–19 vaccination status of an individual under cir-
20 cumstances that would create a reasonable expectation of
21 privacy in that status, including the circumstances listed
22 in subparagraphs (A) through (E) of subsection (c)(1),
23 and who either intentionally or negligently discloses that
24 status to the public without the consent of the individual

1 shall be subject to a civil fine not to exceed \$25,000 per
2 disclosure or any actual damages suffered.

3 “(f) PREEMPTION.—This section does not annul,
4 alter, or affect any law of any State or local government
5 that provides a greater level of privacy than the provisions
6 in this section.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENT.—
8 The table of chapters for part I of title 18, United States
9 Code, is amended by inserting after the item relating to
10 section 117 the following:

“117A. Vaccinations 2431”.

11 **TITLE II—PROHIBITION OF DIS-**
12 **CRIMINATION BASED ON VAC-**
13 **CINATION STATUS**

14 **Subtitle A—Nondiscrimination in**
15 **Employment**

16 **SEC. 201. DEFINITIONS.**

17 In this section:

18 (1) ADA TERMS.—The terms “direct threat”
19 and “undue hardship” have the meaning given those
20 terms in section 101 of the Americans with Disabil-
21 ities Act of 1990 (42 U.S.C. 12111).

22 (2) COVERED ENTITY.—The term “covered en-
23 tity”—

1 (A) has the meaning given the term “re-
2 spondent” in section 701(n) of the Civil Rights
3 Act of 1964 (42 U.S.C. 2000e(n)); and

4 (B) includes—

5 (i) an employer, which means a per-
6 son engaged in industry affecting com-
7 merce who has 15 or more employees as
8 defined in section 701(b) of title VII of the
9 Civil Rights Act of 1964 (42 U.S.C.
10 2000e(b)); and

11 (ii) an entity to which section 717(a)
12 of the Civil Rights Act of 1964 (42 U.S.C.
13 2000e–16(a)) applies.

14 (3) EMPLOYEE.—The term “employee”
15 means—

16 (A) an employee (including an applicant),
17 as defined in section 701(f) of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000e(f)); and

19 (B) an employee (including an applicant)
20 to which section 717(a) of the Civil Rights Act
21 of 1964 (42 U.S.C. 2000e–16(a)) applies.

22 (4) PERSON; COMMERCE; INDUSTRY AFFECTING
23 COMMERCE.—The terms “person”, “commerce”, and
24 “industry affecting commerce” shall have the same

1 meaning given such terms in section 701 of the Civil
2 Rights Act of 1964 (42 U.S.C. 2000e).

3 (5) QUALIFIED EMPLOYEE.—The term “quali-
4 fied employee” means an employee or applicant who,
5 with or without reasonable accommodation, can per-
6 form the essential functions of the employment posi-
7 tion. For the purposes of this title, consideration
8 shall be given to the employer’s judgment as to what
9 functions of a job are essential, and if an employer
10 has prepared a written description before advertising
11 or interviewing applicants for the job, this descrip-
12 tion shall be considered evidence of the essential
13 functions of the job.

14 (6) REASONABLE ACCOMMODATION.—The term
15 “reasonable accommodation” may include—

16 (A) job restructuring, modified work sched-
17 ules, telework, reassignment to a vacant posi-
18 tion, or wearing a mask or personal protective
19 equipment; and

20 (B) physical distancing for an
21 unvaccinated individual or an unvaccinated in-
22 dividual wearing a mask or personal protective
23 equipment, to the extent that the unvaccinated
24 individual interacts with individuals who are

1 vulnerable to COVID–19 and unvaccinated for
2 COVID–19.

3 (7) VACCINATION STATUS.—The term “vaccina-
4 tion status” means—

5 (A) an individual’s status based on the vol-
6 untary election to receive or not to receive a
7 COVID–19 vaccine; and

8 (B) regardless of whether someone has or
9 has not been vaccinated against COVID–19, an
10 individual’s status with respect to having or
11 producing proof of such vaccination in the form
12 of a vaccine passport or other medical records
13 that would demonstrate whether an individual
14 has been vaccinated against COVID–19.

15 **SEC. 202. DISCRIMINATION PROHIBITED.**

16 (a) GENERAL RULE.—No covered entity shall dis-
17 criminate against a qualified employee on the basis of vac-
18 cination status, or the qualified employee’s unwillingness
19 or inability to present a vaccine passport or other proof
20 of having a COVID–19 vaccine, in regard to job applica-
21 tion procedures, the hiring, advancement, or discharge of
22 employees, employee compensation, job training, and other
23 terms, conditions, and privileges of employment.

24 (b) CONSTRUCTION.—

1 (1) IN GENERAL.—As used in subsection (a),
2 the term “discriminate against a qualified employee
3 on the basis of vaccination status” includes—

4 (A) limiting, segregating, or classifying an
5 employee in a way that adversely affects the op-
6 portunities or status of such employee because
7 of the vaccination status of such employee;

8 (B) participating in a contractual or other
9 arrangement or relationship that has the effect
10 of subjecting a covered entity’s qualified em-
11 ployee based on vaccination status to the dis-
12 crimination prohibited by this title (such rela-
13 tionship includes a relationship with an employ-
14 ment or referral agency, labor union, an organi-
15 zation providing fringe benefits to an employee
16 of the covered entity, or an organization pro-
17 viding training and apprenticeship programs);

18 (C) utilizing standards, criteria, or meth-
19 ods of administration—

20 (i) that have the effect of discrimina-
21 tion on the basis of vaccination status; or

22 (ii) that perpetuate the discrimination
23 of others who are subject to common ad-
24 ministrative control;

1 (D) excluding or otherwise denying equal
2 benefits to a qualified employee because of the
3 known vaccination status of an individual with
4 whom the qualified employee is known to have
5 a relationship or association;

6 (E)(i) not making reasonable accommoda-
7 tions based on vaccination status for an other-
8 wise qualified employee, unless such covered en-
9 tity can demonstrate that the accommodation
10 would impose an undue hardship on the oper-
11 ation of the business of such covered entity; or

12 (ii) denying employment opportunities to
13 an employee who is an otherwise qualified em-
14 ployee based on vaccination status, if such de-
15 nial is based on the need of such covered entity
16 to make reasonable accommodation based on
17 the vaccination status of the qualified employee;
18 and

19 (F) using qualification standards, employ-
20 ment tests, or other selection criteria that
21 screen out or tend to screen out an individual
22 or a class of individuals based on vaccination
23 status unless the standard, test or other selec-
24 tion criteria, as used by the covered entity, is

1 shown to be job-related for the position in ques-
2 tion and is consistent with business necessity.

3 (2) EXCLUSIONS.—Notwithstanding any other
4 provision of this section, the term “discriminate
5 against a qualified individual on the basis of vac-
6 cination status” does not include—

7 (A) requiring physical distancing by or
8 from individuals who are particularly vulnerable
9 to COVID–19 or have not been fully vaccinated
10 for COVID–19;

11 (B) requiring a qualified employee to wear
12 a mask or to utilize other personal protective
13 equipment; or

14 (C) conducting any symptom check as de-
15 scribed in subsection (d)(3).

16 (c) COVERED ENTITIES IN FOREIGN COUNTRIES.—

17 It shall not be unlawful under this section for a covered
18 entity to take any action that constitutes discrimination
19 under this section with respect to an employee in a work-
20 place in a foreign country if compliance with this section
21 would cause such covered entity to violate the law of the
22 foreign country in which such workplace is located.

23 (d) MEDICAL EXAMINATIONS AND INQUIRIES.—

24 (1) IN GENERAL.—Consistent with paragraph

25 (2), the prohibition against discrimination as re-

1 ferred to in subsection (a) shall include medical ex-
2 aminations designed to reveal a qualified employee's
3 vaccination status and inquiries about a qualified
4 employee's vaccination status or reasons for choos-
5 ing not to receive a COVID–19 vaccine.

6 (2) PROHIBITED EXAMINATIONS AND INQUIR-
7 IES.—A covered entity shall not require a medical
8 examination designed to reveal a qualified employ-
9 ee's vaccination status and shall not make inquiries
10 of an employee as to the vaccination status of the
11 employee or reasons for choosing not to receive a
12 COVID–19 vaccine unless such examination or in-
13 quiry is shown to be job-related and consistent with
14 business necessity.

15 (3) SYMPTOM CHECKS PERMITTED.—Notwith-
16 standing any other provision of this title, a covered
17 entity may implement basic health screenings that
18 ask individuals if they have symptoms associated
19 with COVID–19 as long as the covered entity does
20 not discriminate against a qualified employee, as de-
21 scribed in subsection (a), based on those symptoms,
22 provided that the covered entity does not discrimi-
23 nate on the basis of vaccination status when taking
24 any action in response to any symptom check.

1 **SEC. 203. DEFENSES.**

2 (a) IN GENERAL.—It may be a defense to a charge
3 of discrimination under this title that an alleged applica-
4 tion of qualification standards, tests, or selection criteria
5 that screen out or tend to screen out or otherwise deny
6 a job or benefit to a qualified employee based on vaccina-
7 tion status has been shown to be job-related and consistent
8 with business necessity, and such performance cannot be
9 accomplished by reasonable accommodation, as required
10 under this title.

11 (b) RELIGIOUS ENTITIES.—

12 (1) IN GENERAL.—This title shall not prohibit
13 a religious corporation, association, educational in-
14 stitution, or society from giving preference in em-
15 ployment to individuals of a particular religion to
16 perform work connected with the carrying on by
17 such corporation, association, educational institu-
18 tion, or society of its activities.

19 (2) RELIGIOUS TENETS REQUIREMENT.—Under
20 this title, a religious organization may require that
21 all applicants and employees conform to the religious
22 tenets of such organization.

23 **SEC. 204. REMEDIES AND ENFORCEMENT.**

24 (a) EMPLOYEES COVERED BY TITLE VII OF THE
25 CIVIL RIGHTS ACT OF 1964.—

1 (1) IN GENERAL.—The powers, remedies, and
2 procedures provided in sections 705, 706, 707, 709,
3 710, and 711 of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e–4 et seq.) to the Commission, the At-
5 torney General, or any person alleging a violation of
6 title VII of such Act (42 U.S.C. 2000e et seq.) shall
7 be the powers, remedies, and procedures this Act
8 provides to the Commission, the Attorney General,
9 or any person, respectively, alleging an unlawful em-
10 ployment practice in violation of this title against an
11 employee described in section 201(3)(A) except as
12 provided in paragraphs (2) and (3) of this sub-
13 section.

14 (2) COSTS AND FEES.—The powers, remedies,
15 and procedures provided in subsections (b) and (c)
16 of section 722 of the Revised Statutes (42 U.S.C.
17 1988) shall be the powers, remedies, and procedures
18 this Act provides to the Board or any person alleg-
19 ing such practice.

20 (3) DAMAGES.—The powers, remedies, and pro-
21 cedures provided in section 1977A of the Revised
22 Statutes (42 U.S.C. 1981a), including the limita-
23 tions contained in subsection (b)(3) of such section
24 1977A, shall be the powers, remedies, and proce-
25 dures this title provides to the Board or any person

1 alleging such practice (not an employment practice
2 specifically excluded from coverage under section
3 1977A(a)(1) of the Revised Statutes).

4 (b) EMPLOYEES COVERED BY SECTION 717 OF THE
5 CIVIL RIGHTS ACT OF 1964.—

6 (1) IN GENERAL.—The powers, remedies, and
7 procedures provided in section 717 of the Civil
8 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
9 Commission, the Attorney General, the Librarian of
10 Congress, or any person alleging a violation of that
11 section shall be the powers, remedies, and proce-
12 dures this title provides to the Commission, the At-
13 torney General, the Librarian of Congress, or any
14 person, respectively, alleging an unlawful employ-
15 ment practice in violation of this title against an em-
16 ployee described in section 201(3)(B), except as pro-
17 vided in paragraphs (2) and (3) of this subsection.

18 (2) COSTS AND FEES.—The powers, remedies,
19 and procedures provided in subsections (b) and (c)
20 of section 722 of the Revised Statutes (42 U.S.C.
21 1988) shall be the powers, remedies, and procedures
22 this Act provides to the Commission, the Attorney
23 General, the Librarian of Congress, or any person
24 alleging such practice.

1 (3) DAMAGES.—The powers, remedies, and pro-
2 cedures provided in section 1977A of the Revised
3 Statutes (42 U.S.C. 1981a), including the limita-
4 tions contained in subsection (b)(3) of such section
5 1977A, shall be the powers, remedies, and proce-
6 dures this title provides to the Commission, the At-
7 torney General, the Librarian of Congress, or any
8 person alleging such practice (not an employment
9 practice specifically excluded from coverage under
10 section 1977A(a)(1) of the Revised Statutes).

11 (c) PROHIBITION AGAINST RETALIATION.—

12 (1) IN GENERAL.—No person shall discriminate
13 against any employee because such employee has op-
14 posed any act or practice made unlawful by this title
15 or because such employee made a charge, testified,
16 assisted, or participated in any manner in an inves-
17 tigation, proceeding, or hearing under this title.

18 (2) PROHIBITION AGAINST COERCION.—It shall
19 be unlawful to coerce, intimidate, threaten, or inter-
20 fere with any individual in the exercise or enjoyment
21 of, or on account of such individual having exercised
22 or enjoyed, or on account of such individual having
23 aided or encouraged any other individual in the exer-
24 cise or enjoyment of, any right granted or protected
25 by this title.

1 (3) REMEDY.—The remedies and procedures
 2 otherwise provided for under this section shall be
 3 available to aggrieved individuals with respect to vio-
 4 lations of this subsection.

5 (d) LIMITATION.—Notwithstanding subsections
 6 (a)(3) and (b)(3), if an unlawful employment practice in-
 7 volves the provision of a reasonable accommodation pursu-
 8 ant to this title or regulations implementing this title,
 9 damages may not be awarded under section 1977A of the
 10 Revised Statutes (42 U.S.C. 1981a) if the covered entity
 11 demonstrates good faith efforts, in consultation with the
 12 qualified employee, to identify and make a reasonable ac-
 13 commodation that would provide such employee with an
 14 equally effective opportunity and would not cause an
 15 undue hardship on the operation of the covered entity.

16 **Subtitle B—Nondiscrimination in** 17 **Public Accommodation**

18 **SEC. 211. DEFINITIONS.**

19 In this subtitle:

20 (1) ADA TERMS.—The terms “commerce”,
 21 “commercial facilities”, “private entity”, and “public
 22 accommodation” have the meanings given those
 23 terms in section 301 of the Americans with Disabil-
 24 ities Act of 1990 (42 U.S.C. 12181).

1 (2) INDIVIDUAL WHO HAS NOT RECEIVED A
2 COVID–19 VACCINE.—The term “individual who has
3 not received a COVID–19 vaccine” means an indi-
4 vidual who has not received a COVID–19 vaccine or
5 who does not have or cannot produce proof of having
6 such a vaccine.

7 (3) VACCINATION STATUS.—The term “vaccina-
8 tion status” means—

9 (A) an individual’s status based on the vol-
10 untary election to receive or not to receive a
11 COVID–19 vaccine; and

12 (B) regardless of whether someone has or
13 has not been vaccinated against COVID–19, an
14 individual’s status with respect to having or
15 producing proof of such vaccination in the form
16 of a vaccine passport or other medical records
17 that would demonstrate whether an individual
18 has been vaccinated against COVID–19.

19 **SEC. 212. PROHIBITION OF DISCRIMINATION BY PLACES OF**
20 **PUBLIC ACCOMMODATION.**

21 (a) GENERAL RULE.—Subject to the provisions of
22 this subtitle, no individual shall be discriminated against
23 on the basis of vaccination status, or the individual’s un-
24 willingness or inability to present a vaccine passport or
25 other proof of having a COVID–19 vaccine, in the full and

1 equal enjoyment of the goods, services, facilities, privi-
2 leges, advantages, or accommodations of any place of pub-
3 lic accommodation by any person who owns, leases (or
4 leases to), or operates a place of public accommodation.

5 (b) CONSTRUCTION.—

6 (1) GENERAL PROHIBITION.—

7 (A) ACTIVITIES.—

8 (i) DENIAL OF PARTICIPATION.—It
9 shall be discriminatory to subject an indi-
10 vidual or class of individuals on the basis
11 of the vaccination status of such individual
12 or class of individuals, directly, or through
13 contractual, licensing, or other arrange-
14 ments, to a denial of the opportunity of the
15 individual or class to participate in or ben-
16 efit from the goods, services, facilities,
17 privileges, advantages, or accommodations
18 of an entity.

19 (ii) PARTICIPATION IN UNEQUAL BEN-
20 EFIT.—It shall be discriminatory to afford
21 an individual or class of individuals, on the
22 basis of vaccination status of such indi-
23 vidual or class of individuals, directly, or
24 through contractual, licensing, or other ar-
25 rangements with the opportunity to partici-

1 pate in or benefit from a good, service, fa-
2 cility, privilege, advantage, or accommoda-
3 tion that is not substantially equal to that
4 afforded to other individuals.

5 (iii) SEPARATE BENEFIT.—It shall be
6 discriminatory to provide an individual or
7 class of individuals, on the basis of vac-
8 cination status of such individual or class
9 of individuals, directly, or through contrac-
10 tual, licensing, or other arrangements with
11 a good, service, facility, privilege, advan-
12 tage, or accommodation that is different or
13 separate from that provided to other indi-
14 viduals, unless such action is necessary to
15 provide the individual or class of individ-
16 uals with a good, service, facility, privilege,
17 advantage, or accommodation, or other op-
18 portunity that is as effective as that pro-
19 vided to others.

20 (iv) INDIVIDUAL OR CLASS OF INDIVIDUALS.—For purposes of clauses (i)
21 through (iii) of this subparagraph, the
22 term “individual or class of individuals”
23 refers to the clients or customers of the
24 covered public accommodation that enters
25

1 into the contractual, licensing or other ar-
2 rangement.

3 (B) INTEGRATED SETTINGS.—Goods, serv-
4 ices, facilities, privileges, advantages, and ac-
5 commodations shall be afforded to an individual
6 regardless of vaccination status in the most in-
7 tegrated setting appropriate.

8 (C) OPPORTUNITY TO PARTICIPATE.—Not-
9 withstanding the existence of separate or dif-
10 ferent programs or activities provided in accord-
11 ance with this section, an individual who has
12 not received a COVID–19 vaccine shall not be
13 denied the opportunity to participate in such
14 programs or activities that are not separate or
15 different.

16 (D) ADMINISTRATIVE METHODS.—An indi-
17 vidual or entity shall not, directly or through
18 contractual or other arrangements, utilize
19 standards or criteria or methods of administra-
20 tion—

21 (i) that have the effect of discrimi-
22 nating on the basis of vaccination status;
23 or

1 (ii) that perpetuate the discrimination
2 of others who are subject to common ad-
3 ministrative control.

4 (E) ASSOCIATION.—It shall be discrimina-
5 tory to exclude or otherwise deny equal goods,
6 services, facilities, privileges, advantages, ac-
7 commodations, or other opportunities to an in-
8 dividual or entity because of the vaccination
9 status of an individual with whom the indi-
10 vidual or entity is known to have a relationship
11 or association.

12 (2) SPECIFIC PROHIBITIONS.—

13 (A) DISCRIMINATION.—For purposes of
14 subsection (a), discrimination includes—

15 (i) the imposition or application of eli-
16 gibility criteria that screen out or tend to
17 screen out an individual who has not had
18 a COVID–19 vaccine or any class of such
19 individuals from fully and equally enjoying
20 any goods, services, facilities, privileges,
21 advantages, or accommodations, unless
22 such criteria can be shown to be necessary
23 for the provision of the goods, services, fa-
24 cilities, privileges, advantages, or accom-
25 modations being offered; and

1 (ii) a failure to make reasonable modi-
2 fications in policies, practices, or proce-
3 dures, when such modifications are nec-
4 essary to afford such goods, services, facili-
5 ties, privileges, advantages, or accommoda-
6 tions to individuals who have not received
7 a COVID–19 vaccine, unless the entity can
8 demonstrate that making such modifica-
9 tions would fundamentally alter the nature
10 of such goods, services, facilities, privi-
11 leges, advantages, or accommodations.

12 (3) SPECIFIC CONSTRUCTION.—Nothing in this
13 title shall require an entity to permit an individual
14 to participate in or benefit from the goods, services,
15 facilities, privileges, advantages and accommodations
16 of such entity where such individual poses a direct
17 threat to the health or safety of others. The term
18 “direct threat” means a significant risk to the
19 health or safety of others that cannot be eliminated
20 by a modification of policies, practices, or procedures
21 or by physical distancing, wearing a mask, or wear-
22 ing personal protective equipment.

23 (c) DISTANCING AND PPE.—Notwithstanding any
24 other provision of this section, an individual shall not be
25 considered to be discriminated against on the basis of vac-

1 cination status in violation of this section if that individual
2 is required to engage in physical distancing, wear a mask,
3 or wear personal protective equipment.

4 **SEC. 213. PROHIBITION OF DISCRIMINATION IN SPECIFIED**
5 **PUBLIC TRANSPORTATION SERVICES PRO-**
6 **VIDED BY PRIVATE ENTITIES.**

7 (a) GENERAL RULE.—No individual shall be dis-
8 criminated against on the basis of vaccination status, or
9 the individual’s unwillingness or inability to present a vac-
10 cine passport or other proof of vaccinations status, in the
11 full and equal enjoyment of specified public transportation
12 services provided by a private entity that is primarily en-
13 gaged in the business of transporting people and whose
14 operations affect commerce.

15 (b) CONSTRUCTION.—For purposes of subsection (a),
16 discrimination includes—

17 (1) the imposition or application by an entity
18 described in subsection (a) of eligibility criteria that
19 screens out or tends to screen out an individual
20 based on vaccination status or any class of individ-
21 uals based on vaccination status from fully enjoying
22 the specified public transportation services provided
23 by the entity, unless such criteria can be shown to
24 be necessary for the provision of the services being
25 offered; and

1 (2) the failure of such entity to make reason-
 2 able modifications, including physical distancing for
 3 an unvaccinated individual or an unvaccinated indi-
 4 vidual wearing a mask or personal protective equip-
 5 ment, to the extent that the unvaccinated individual
 6 interacts with individuals who are vulnerable to
 7 COVID–19 and unvaccinated for COVID–19.

8 (c) DISTANCING AND PPE.—Notwithstanding any
 9 other provision of this section, an individual shall not be
 10 considered to be discriminated against on the basis of vac-
 11 cination status in violation of this section if that individual
 12 is required to engage in physical distancing, wear a mask,
 13 or wear personal protective equipment.

14 **SEC. 214. EXEMPTIONS FOR PRIVATE CLUBS AND RELI-**
 15 **GIOUS ORGANIZATIONS.**

16 The provisions of this subtitle shall not apply to pri-
 17 vate clubs or establishments exempted from coverage
 18 under title II of the Civil Rights Act of 1964 (42 U.S.C.
 19 2000–a(e)) or to religious organizations or entities con-
 20 trolled by religious organizations, including places of wor-
 21 ship.

22 **SEC. 215. ENFORCEMENT.**

23 (a) AVAILABILITY OF REMEDIES AND PROCE-
 24 DURES.—The remedies and procedures set forth in section
 25 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–

1 3(a)) are the remedies and procedures this subtitle pro-
 2 vides to any person who is being subjected to discrimina-
 3 tion on the basis of vaccination status in violation of this
 4 subtitle or who has reasonable grounds for believing that
 5 such person is about to be subjected to discrimination in
 6 violation of this subtitle. Nothing in this section shall re-
 7 quire a person who has not received a COVID–19 vaccine
 8 to engage in a futile gesture if such person has actual no-
 9 tice that a person or organization covered by this subtitle
 10 does not intend to comply with its provisions.

11 (b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

12 (1) DENIAL OF RIGHTS.—

13 (A) AUTHORITY TO INVESTIGATE.—The
 14 Attorney General shall have the authority to in-
 15 vestigate alleged violations of this subtitle, and
 16 shall undertake periodic reviews of compliance
 17 of entities subject to this subtitle.

18 (B) POTENTIAL VIOLATION.—If the Attor-
 19 ney General has reasonable cause to believe
 20 that—

21 (i) any person or group of persons is
 22 engaged in a pattern or practice of dis-
 23 crimination under this subtitle; or

24 (ii) any person or group of persons
 25 has been discriminated against under this

1 subtitle and such discrimination raises an
2 issue of general public importance;
3 the Attorney General may commence a civil ac-
4 tion in any appropriate United States district
5 court.

6 (2) AUTHORITY OF COURT.—In a civil action
7 under paragraph (1)(B), the court—

8 (A) may grant any equitable relief that
9 such court considers to be appropriate, includ-
10 ing, to the extent required by this subtitle—

11 (i) granting temporary, preliminary,
12 or permanent relief;

13 (ii) providing a modification of policy,
14 practice, or procedure, or alternative meth-
15 od; and

16 (iii) making reasonable accommoda-
17 tions for individuals who have not received
18 a COVID–19 vaccine;

19 (B) may award such other relief as the
20 court considers to be appropriate, including
21 monetary damages to individuals aggrieved
22 when requested by the Attorney General; and

23 (C) may, to vindicate the public interest,
24 assess a civil penalty against the entity subject
25 to this subtitle in an amount—

1 (i) not exceeding \$50,000 for a first
2 violation; and

3 (ii) not exceeding \$100,000 for any
4 subsequent violation.

5 (3) SINGLE VIOLATION.—For purposes of para-
6 graph (2)(C), in determining whether a first or sub-
7 sequent violation has occurred, a determination in a
8 single action, by judgment or settlement, that the
9 entity subject to this subtitle has engaged in more
10 than one discriminatory act shall be counted as a
11 single violation.

12 (4) PUNITIVE DAMAGES.—For purposes of
13 paragraph (2)(B), the term “monetary damages”
14 and “such other relief” does not include punitive
15 damages.

16 (5) JUDICIAL CONSIDERATION.—In a civil ac-
17 tion under paragraph (1)(B), the court, when con-
18 sidering what amount of civil penalty, if any, is ap-
19 propriate, shall give consideration to any good faith
20 effort or attempt to comply with this Act by the en-
21 tity. In evaluating good faith, the court shall con-
22 sider, among other factors it deems relevant, wheth-
23 er the entity could have reasonably anticipated the
24 need for a reasonable accommodation for individuals
25 who have not received a COVID–19 vaccine.

1 **SEC. 216. EFFECTIVE DATE.**

2 This subtitle shall become effective 90 days after the
3 date of the enactment of this Act.

4 **Subtitle C—Nondiscrimination by a**
5 **Public Entity and Access to Fed-**
6 **eral Services**

7 **SEC. 221. NONDISCRIMINATION BY A PUBLIC ENTITY.**

8 (a) IN GENERAL.—Subject to the provisions of this
9 subtitle, no qualified individual who has not received a
10 COVID–19 vaccine shall, by reason of such vaccination
11 status, including the qualified individual’s unwillingness or
12 inability to present a vaccine passport or other proof of
13 having a COVID–19 vaccine, be excluded from participa-
14 tion in or be denied the benefits of the services, programs,
15 or activities of a public entity, or be subjected to discrimi-
16 nation by any such entity.

17 (b) RIGHT TO VOTE SHALL NOT BE IMPAIRED.—
18 It shall be unlawful for any State or political subdivision,
19 as such term is used in the Voting Rights Act of 1965
20 (52 U.S.C. 10301 et seq.), to require or impose a require-
21 ment that a voter or voters must present a vaccine pass-
22 port or otherwise present information regarding their vac-
23 cination status in order to exercise the right to vote, in-
24 cluding to vote in person, in any election involving any
25 candidate for Federal office.

1 (c) RULE OF CONSTRUCTION.—Notwithstanding sub-
2 section (a), a public entity shall not be considered in viola-
3 tion of subsection (a) if that public entity requires a quali-
4 fied individual who has not received a COVID–19 vaccine
5 to engage in physical distancing, wear a mask, or wear
6 personal protective equipment.

7 (d) ENFORCEMENT.—The remedies, procedures, and
8 rights set forth in section 505 of the Rehabilitation Act
9 of 1973 (29 U.S.C. 794a) shall be the remedies, proce-
10 dures, and rights this title provides to any person alleging
11 discrimination on the basis of status as a qualified indi-
12 vidual who has not received a COVID–19 vaccine in viola-
13 tion of this section.

14 (e) DEFINITIONS.—

15 (1) QUALIFIED INDIVIDUAL WHO HAS NOT RE-
16 CEIVED A COVID–19 VACCINE.—The term “qualified
17 individual who has not received a COVID–19 vac-
18 cine” means an individual who—

19 (A) has voluntarily elected not to receive a
20 COVID–19 vaccine; and

21 (B) with or without reasonable modifica-
22 tions to rules, policies, or practices, including
23 physical distancing, mask wearing, wearing per-
24 sonal protective equipment, or undergoing a
25 COVID-related symptom check meets the essen-

1 tial eligibility requirements for the receipt of
2 services or the participation in programs or ac-
3 tivities provided by a public entity.

4 (2) PUBLIC ENTITY.—The term “public entity”
5 has the meaning given that term in section 201 of
6 the Americans with Disabilities Act of 1990 (42
7 U.S.C. 12131).

8 **SEC. 222. ACCESS TO FEDERAL SERVICES.**

9 (a) FEDERAL SERVICES.—

10 (1) IN GENERAL.—No otherwise qualified indi-
11 vidual who has not received a COVID–19 vaccine,
12 shall, solely by reason of her or his vaccine status,
13 be excluded from the participation in, be denied the
14 benefits of, or be subjected to discrimination under
15 any program or activity receiving Federal financial
16 assistance or under any program or activity con-
17 ducted by any Executive agency or by the United
18 States Postal Service.

19 (2) REGULATIONS.—The head of each such
20 agency shall promulgate such regulations as may be
21 necessary to carry out this section.

22 (3) PROGRAM OR ACTIVITY.—In this section the
23 term “program or activity” has the meaning given
24 that term in section 504 of the Rehabilitation Act of
25 1973 (29 U.S.C. 794).

1 (b) PETITION; ACCESS TO PROPERTY.—An individ-
2 ual’s right to petition the Federal Government and an in-
3 dividual’s right to access Federal property shall not be af-
4 fected because the individual is a qualified individual who
5 has not received a COVID–19 vaccine. Proof of COVID–
6 19 vaccination shall not be a requirement for access to
7 Federal property or Federal services, or for access to con-
8 gressional grounds or services.

9 (c) EXCEPTION RELATING TO ADMISSION AND DE-
10 PARTURE OF ALIENS.—

11 (1) IN GENERAL.—Notwithstanding any other
12 provision of this Act, the Secretary of Homeland Se-
13 curity may request, require, and collect vaccination
14 records providing evidence of vaccination for
15 COVID–19, SARS–CoV–2, or any variant of
16 COVID–19 or SARS–CoV–2 from any alien (as de-
17 fined in section 101(a) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1101(a)) seeking admission
19 to the United States or departing the United States,
20 to the extent necessary to ensure public health.

21 (2) RECORDKEEPING.—The Secretary of Home-
22 land Security may maintain such evidence of vac-
23 cination and any ancillary documentation for a pe-
24 riod the Secretary considers necessary.

1 (3) PRIVACY.—Information collected or main-
2 tained under paragraph (1) or (2) may not be trans-
3 mitted or communicated to any entity or individual
4 other than an employee of the Department of Home-
5 land Security designated by the Secretary of Home-
6 land Security.

7 (4) RULE OF CONSTRUCTION.—Nothing in this
8 subsection shall be construed to provide an alien a
9 right or an enforceable action relating to the admis-
10 sion of the alien to the United States or authoriza-
11 tion to remain in the United States.

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