SENATE BILL 21-190

INTRODUCED

SENATE SPONSORSHIP

Rodriguez and Lundeen,

HOUSE SPONSORSHIP

(None),

A BILL FOR AN ACT

CONCERNING ADDITIONAL PROTECTION OF DATA RELATING TO

PERSONAL PRIVACY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill creates personal data privacy rights and:

- Applies to legal entities that conduct business or produce products or services that are intentionally targeted to Colorado residents and that either:
  - Control or process personal data of more than 100,000 consumers per calendar year; or
Derive revenue from the sale of personal data and control or process the personal data of at least 25,000 consumers; and

Does not apply to personal data governed by listed state and federal laws, listed activities, and employment records.

Consumers have the right to opt out of the processing of their personal data; access, correct, or delete the data; or obtain a portable copy of the data. The bill defines a "controller" as a person that, alone or jointly with others, determines the purposes and means of processing personal data. A "processor" means a person that processes personal data on behalf of a controller.

The bill:

- Specifies how controllers must fulfill duties regarding consumers' assertion of their rights, transparency, purpose specification, data minimization, avoiding secondary use, care, avoiding unlawful discrimination, and sensitive data;
- Requires controllers to conduct a data protection assessment for each of their processing activities involving personal data that present a heightened risk of harm to consumers, such as processing for purposes of targeted advertising or processing sensitive data; and
- May be enforced only by the attorney general or district attorneys.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add part 13 to article 1 of title 6 as follows:

PART 13

COLORADO PRIVACY ACT

6-1-1301. Short title. The short title of this part 13 is the "COLORADO PRIVACY ACT".

6-1-1302. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) The people of Colorado regard their privacy as a fundamental right and an essential element of their individual
COLORADO'S CONSTITUTION EXPLICITLY PROVIDES THE RIGHT TO PRIVACY UNDER SECTION 7 OF ARTICLE II, AND FUNDAMENTAL PRIVACY RIGHTS HAVE LONG BEEN, AND CONTINUE TO BE, INTEGRAL TO PROTECTING COLORADANS AND TO SAFEGUARDING OUR DEMOCRATIC REPUBLIC;

ONGOING ADVANCES IN TECHNOLOGY HAVE PRODUCED EXPONENTIAL GROWTH IN THE VOLUME AND VARIETY OF PERSONAL DATA BEING GENERATED, COLLECTED, STORED, AND ANALYZED AND THESE ADVANCES PRESENT BOTH PROMISE AND POTENTIAL PERIL;

THE ABILITY TO HARNESS AND USE DATA IN POSITIVE WAYS IS DRIVING INNOVATION AND BRINGS BENEFICIAL TECHNOLOGIES TO SOCIETY, BUT IT HAS ALSO CREATED RISKS TO PRIVACY AND FREEDOM;

AND

THE UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION AND LOSS OF PRIVACY CAN HAVE DEVASTATING IMPACTS RANGING FROM FINANCIAL FRAUD, IDENTITY THEFT, AND UNNECESSARY COSTS IN PERSONAL TIME AND FINANCES TO DESTRUCTION OF PROPERTY, HARASSMENT, REPUTATIONAL DAMAGE, EMOTIONAL DISTRESS, AND PHYSICAL HARM;

(b) DETERMINES THAT:

TECHNOLOGICAL INNOVATION AND NEW USES OF DATA CAN HELP SOLVE SOCIETAL PROBLEMS AND IMPROVE LIVES, AND IT IS POSSIBLE TO BUILD A WORLD WHERE TECHNOLOGICAL INNOVATION AND PRIVACY CAN COEXIST;

THE EUROPEAN UNION'S GENERAL DATA PROTECTION REGULATION IS EMERGING AS A MODEL FOR COUNTRIES ACROSS THE
States across the United States are looking to this and similar models to enact state-based data privacy requirements and to exercise the leadership that is lacking at the national level; and

(c) Declares that:

(I) By enacting this Part 13, Colorado will be among the states that empower consumers to protect their privacy and require companies to be responsible custodians of data as they continue to innovate;

(II) This Part 13 addresses issues of statewide concern and:

(A) Provides consumers the right to access, correct, and delete personal data and the right to opt out not only of the sale of personal data but also of the collection and use of personal data;

(B) Imposes an affirmative obligation upon companies to safeguard personal data; to provide clear, understandable, and transparent information to consumers about how their personal data are used; and to strengthen compliance and accountability by requiring data protection assessments in the collection and use of personal data; and

(C) Empowers the attorney general and district attorneys to access and evaluate a company’s data protection assessments, to impose penalties where violations occur, and to prevent future violations.

6-1-1303. Definitions. As used in this Part 13, unless the
"Affiliate" means a legal entity that controls, is controlled by, or is under common control with another legal entity. As used in this subsection (1), "control" means:

(a) Ownership of, control of, or power to vote twenty-five percent or more of the outstanding shares of any class of voting security of the entity, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees, or general partners of the entity or of individuals exercising similar functions; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the entity as determined by the applicable prudential regulator, as that term is defined in 12 U.S.C. sec. 5481 (24), if any.

"Authenticate" means to use reasonable means to determine that a request to exercise any of the rights in section 6-1-1306 (1) is being made by or on behalf of the consumer who is entitled to exercise the rights.

"Business associate" has the meaning established in 45 CFR 160.103.

"Child" means an individual under thirteen years of age.

"Consent" means a clear, affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement, such as by a written statement, including by electronic means, or other clear, affirmative action.
"CONSUMER":

(a) MEANS AN INDIVIDUAL WHO IS A COLORADO RESIDENT ACTING
ONLY IN AN INDIVIDUAL OR HOUSEHOLD CONTEXT; AND

(b) DOES NOT INCLUDE AN INDIVIDUAL ACTING IN A COMMERCIAL
OR EMPLOYMENT CONTEXT.

"CONTROLLER" MEANS A PERSON THAT, ALONE OR JOINTLY
WITH OTHERS, DETERMINES THE PURPOSES FOR AND MEANS OF PROCESSING
PERSONAL DATA.

"COVERED ENTITY" HAS THE MEANING ESTABLISHED IN 45 CFR
160.103.

"DE-IDENTIFIED DATA" MEANS DATA THAT DO NOT IDENTIFY
AN INDIVIDUAL AND WITH RESPECT TO WHICH THERE IS NO REASONABLE
BASIS TO BELIEVE THAT THE INFORMATION CAN BE USED TO IDENTIFY AN
INDIVIDUAL.

"HEALTH CARE FACILITY" MEANS ANY ENTITY THAT IS
LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW
TO ADMINISTER MEDICAL TREATMENT IN THIS STATE.

"HEALTH CARE INFORMATION" MEANS INDIVIDUALLY
IDENTIFIABLE INFORMATION RELATING TO THE PAST, PRESENT, OR FUTURE
HEALTH STATUS OF AN INDIVIDUAL.

"HEALTH CARE PROVIDER" MEANS A PERSON LICENSED,
CERTIFIED, OR REGISTERED IN THIS STATE TO PRACTICE MEDICINE,
PHARMACY, CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY,
DENTISTRY, OPTOMETRY, OCCUPATIONAL THERAPY, OR OTHER HEALING
ARTS.

"HIPAA" MEANS THE FEDERAL "HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, 42
(14) "IDENTIFIED OR IDENTIFIABLE INDIVIDUAL" MEANS AN INDIVIDUAL WHO CAN BE READILY IDENTIFIED, DIRECTLY OR INDIRECTLY, IN PARTICULAR BY REFERENCE TO AN IDENTIFIER SUCH AS A NAME, AN IDENTIFICATION NUMBER, SPECIFIC GEOLOCATION DATA, OR AN ONLINE IDENTIFIER.

(15) "PERSONAL DATA":

(a) MEANS INFORMATION THAT IS LINKED OR REASONABLY LINKABLE TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL; AND

(b) DOES NOT INCLUDE DE-IDENTIFIED DATA OR PUBLICLY AVAILABLE INFORMATION. AS USED IN THIS SUBSECTION (15)(b), "PUBLICLY AVAILABLE INFORMATION" MEANS INFORMATION THAT IS LAWFULLY MADE AVAILABLE FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS; INFORMATION THAT A CONTROLLER HAS A REASONABLE BASIS TO BELIEVE THE CONSUMER HAS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC OR TO WIDELY DISTRIBUTED MEDIA; AND INFORMATION MADE AVAILABLE TO THE GENERAL PUBLIC BY A PERSON TO WHOM THE CONSUMER HAS DISCLOSED THE INFORMATION IF THE CONSUMER HAS NOT RESTRICTED THE INFORMATION TO A SPECIFIC AUDIENCE.

(16) "PROCESS" OR "PROCESSING" MEANS THE COLLECTION, USE, SALE, STORAGE, DISCLOSURE, ANALYSIS, DELETION, OR MODIFICATION OF PERSONAL DATA AND INCLUDES THE ACTIONS OF A CONTROLLER DIRECTING A PROCESSOR TO PROCESS PERSONAL DATA.

(17) "PROCESSOR" MEANS A PERSON THAT PROCESSES PERSONAL DATA ON BEHALF OF A CONTROLLER.

(18) "PROFILING" MEANS ANY FORM OF AUTOMATED PROCESSING
OF PERSONAL DATA TO EVALUATE, ANALYZE, OR PREDICT PERSONAL
ASPECTS CONCERNING AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL'S
ECONOMIC SITUATION, HEALTH, PERSONAL PREFERENCES, INTERESTS,
RELIABILITY, BEHAVIOR, LOCATION, OR MOVEMENTS.

(19) "PROTECTED HEALTH INFORMATION" HAS THE MEANING
ESTABLISHED IN 45 CFR 160.103.

(20) "PSEUDONYMOUS DATA" MEANS PERSONAL DATA THAT CAN
NO LONGER BE ATTRIBUTED TO AN INDIVIDUAL WITHOUT THE USE OF
ADDITIONAL INFORMATION IF THE ADDITIONAL INFORMATION IS KEPT
SEPARATELY AND IS SUBJECT TO TECHNICAL AND ORGANIZATIONAL
MEASURES TO ENSURE THAT THE PERSONAL DATA ARE NOT ATTRIBUTED
TO AN INDIVIDUAL.

(21) (a) "SALE", "SELL", OR "SOLD" MEANS THE EXCHANGE OF
PERSONAL DATA FOR MONETARY OR OTHER CONSIDERATION BY A
CONTROLLER TO A THIRD PARTY FOR PURPOSES OF LICENSING OR SELLING
PERSONAL DATA AT THE THIRD PARTY'S DISCRETION TO ADDITIONAL THIRD
PARTIES.

(b) "SALE" DOES NOT INCLUDE THE FOLLOWING:

(I) THE DISCLOSURE OF PERSONAL DATA TO A PROCESSOR THAT
PROCESSES THE PERSONAL DATA ON BEHALF OF A CONTROLLER;

(II) THE DISCLOSURE OF PERSONAL DATA TO A THIRD PARTY WITH
WHOM THE CONSUMER HAS A DIRECT RELATIONSHIP FOR PURPOSES OF
PROVIDING A PRODUCT OR SERVICE REQUESTED BY THE CONSUMER OR
OTHERWISE IN A MANNER THAT IS CONSISTENT WITH A CONSUMER'S
REASONABLE EXPECTATIONS CONSIDERING THE CONTEXT IN WHICH THE
CONSUMER PROVIDED THE PERSONAL DATA TO THE CONTROLLER;

(III) THE DISCLOSURE OR TRANSFER OF PERSONAL DATA TO AN
AFFILIATE OF THE CONTROLLER; OR

(IV) THE DISCLOSURE OR TRANSFER TO A THIRD PARTY OF
PERSONAL DATA AS AN ASSET THAT IS PART OF A MERGER, ACQUISITION,
BANKRUPTCY, OR OTHER TRANSACTION IN WHICH THE THIRD PARTY
ASSUMES CONTROL OF ALL OR PART OF THE CONTROLLER'S ASSETS.

(22) "SENSITIVE DATA" MEANS:
(a) PERSONAL DATA REVEALING RACIAL OR ETHNIC ORIGIN,
RELIGIOUS BELIEFS, A MENTAL OR PHYSICAL HEALTH CONDITION OR
DIAGNOSIS, SEX LIFE OR SEXUAL ORIENTATION, OR CITIZENSHIP OR
CITIZENSHIP STATUS;
(b) GENETIC OR BIOMETRIC DATA THAT MAY BE PROCESSED FOR
THE PURPOSE OF UNIQUELY IDENTIFYING AN INDIVIDUAL; OR
(c) THE PERSONAL DATA FROM A KNOWN CHILD.
(23) "STUDENT" MEANS AN INDIVIDUAL WHO:
(a) IS AT LEAST THIRTEEN YEARS OF AGE AND LESS THAN EIGHTEEN
YEARS OF AGE; AND
(b) INTERACTS WITH A CONTROLLER IN CONNECTION WITH A
FORMAL EDUCATIONAL SETTING.
(24) "TARGETED ADVERTISING":
(a) MEANS DISPLAYING TO A CONSUMER AN ADVERTISEMENT THAT
IS SELECTED BASED ON PERSONAL DATA OBTAINED OR INFERRED OVER
TIME FROM THE CONSUMER'S ACTIVITIES ACROSS NONAFFILIATED
WEBSITES, APPLICATIONS, OR ONLINE SERVICES TO PREDICT CONSUMER
PREFERENCES OR INTERESTS; AND
(b) DOES NOT INCLUDE ADVERTISING TO A CONSUMER IN RESPONSE
TO THE CONSUMER'S REQUEST FOR INFORMATION OR FEEDBACK.
(25) "THIRD PARTY" MEANS A PERSON, PUBLIC AUTHORITY,
AGENCY, OR BODY OTHER THAN A CONSUMER, CONTROLLER, PROCESSOR, OR AFFILIATE OF THE PROCESSOR OR THE CONTROLLER.

6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section, this part 13 applies to a controller that:

(a) Conducts business in Colorado or produces products or services that are intentionally targeted to residents of Colorado; and

(b) Satisfies one or both of the following thresholds:

(I) Controls or processes the personal data of one hundred thousand consumers or more during a calendar year;

or

(II) Derives revenue or receives a discount on the price of goods or services from the sale of personal data and processes or controls the personal data of twenty-five thousand consumers or more.

(2) This part 13 does not apply to:

(a) Protected health information;

(b) Health care information for purposes of patient access to medical records pursuant to part 8 of article 1 of title 25;

(c) Patient identifying information, as defined in 42 CFR 2.11, for purposes of 42 CFR 2, established pursuant to 42 U.S.C. sec. 290dd-2;

(d) Identifiable private information, as defined in 45 CFR 46.102, for purposes of the federal policy for the protection of human subjects pursuant to 45 CFR 46; identifiable private information that is otherwise information collected as part of

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HUMAN SUBJECTS RESEARCH PURSUANT TO THE GOOD CLINICAL PRACTICE GUIDELINES ISSUED BY THE INTERNATIONAL COUNCIL FOR HARMONISATION OF TECHNICAL REQUIREMENTS FOR PHARMACEUTICALS FOR HUMAN USE OR THE PROTECTION OF HUMAN SUBJECTS UNDER 21 CFR 50 AND 56; OR PERSONAL DATA USED OR SHARED IN RESEARCH CONDUCTED IN ACCORDANCE WITH ONE OF MORE OF THE CATEGORIES SET FORTH IN THIS SUBSECTION (2)(d);

(e) INFORMATION AND DOCUMENTS CREATED FOR PURPOSES OF HIPAA AND ITS IMPLEMENTING REGULATIONS;

(f) PATIENT SAFETY WORK PRODUCT, AS DEFINED IN 42 CFR 3.20, FOR PURPOSES OF PATIENT SAFETY IMPROVEMENT PURSUANT TO 42 CFR 3, ESTABLISHED PURSUANT TO 42 U.S.C. SECS. 299b-21 TO 299b-26;

(g) INFORMATION THAT IS:

(I) DE-IDENTIFIED IN ACCORDANCE WITH THE REQUIREMENTS FOR DE-IDENTIFICATION SET FORTH IN 45 CFR 164; AND

(II) DERIVED FROM ANY OF THE HEALTH-CARE-RELATED INFORMATION DESCRIBED IN THIS SECTION.

(h) INFORMATION MAINTAINED IN THE SAME MANNER AS INFORMATION UNDER SUBSECTIONS (2)(a) TO (2)(g) OF THIS SECTION BY:

(I) A COVERED ENTITY OR BUSINESS ASSOCIATE;

(II) A HEALTH CARE FACILITY OR HEALTH CARE PROVIDER; OR

(III) A PROGRAM OF A QUALIFIED SERVICE ORGANIZATION AS DEFINED IN 42 CFR 2.11;

(i) (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(i)(II) OF THIS SECTION, AN ACTIVITY INVOLVING THE COLLECTION, MAINTENANCE, DISCLOSURE, SALE, COMMUNICATION, OR USE OF ANY PERSONAL DATA BEARING ON A CONSUMER'S CREDITWORTHINESS, CREDIT STANDING,
CREDIT CAPACITY, CHARACTER, GENERAL REPUTATION, PERSONAL
CHARACTERISTICS, OR MODE OF LIVING BY A CONSUMER REPORTING
AGENCY AS DEFINED IN 15 U.S.C. SEC. 1681a (f); BY A FURNISHER OF
INFORMATION AS SET FORTH IN 15 U.S.C. SEC. 1681s-2 THAT PROVIDES
INFORMATION FOR USE IN A CONSUMER REPORT, AS DEFINED IN 15 U.S.C.
SEC. 1681a (d); OR BY A USER OF A CONSUMER REPORT AS SET FORTH IN 15

(II) THIS SUBSECTION (2)(i) APPLIES ONLY TO THE EXTENT THAT
THE ACTIVITY IS REGULATED BY THE FEDERAL "FAIR CREDIT REPORTING
DATA ARE NOT COLLECTED, MAINTAINED, DISCLOSED, SOLD,
COMMUNICATED, OR USED EXCEPT AS AUTHORIZED BY THE FEDERAL "FAIR
CREDIT REPORTING ACT", AS AMENDED.

(j) PERSONAL DATA:

(I) COLLECTED AND MAINTAINED FOR PURPOSES OF ARTICLE 22 OF
TITLE 10;

(II) COLLECTED, PROCESSED, SOLD, OR DISCLOSED PURSUANT TO
SEQ., AS AMENDED, AND IMPLEMENTING REGULATIONS, IF THE
COLLECTION, PROCESSING, SALE, OR DISCLOSURE IS IN COMPLIANCE WITH
THAT LAW;

(III) COLLECTED, PROCESSED, SOLD, OR DISCLOSED PURSUANT TO
SEC. 2721 ET SEQ., AS AMENDED, IF THE COLLECTION, PROCESSING, SALE,
OR DISCLOSURE IS REGULATED BY THAT LAW;

(IV) REGULATED BY THE FEDERAL "CHILDREN'S ONLINE PRIVACY
PROTECTION ACT OF 1998", 15 U.S.C. SECS. 6501 TO 6506, AS AMENDED,
If collected, processed, and maintained in compliance with that law; or


(k) data maintained for employment records purposes;

(l) information used and disclosed in compliance with 45 CFR 164.512; or

(m) a financial institution or an affiliate of a financial institution that is subject to the federal "Gramm-Leach-Bliley Act", 15 U.S.C. sec. 6801 et seq., as amended, and implementing regulations.

(3) The obligations imposed on controllers or processors under this part 13 do not:

(a) restrict a controller's or processor's ability to:

(I) comply with federal, state, or local laws, rules, or regulations;

(II) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities;

(III) cooperate with law enforcement agencies concerning conduct or activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local law;

(IV) investigate, exercise, prepare for, or defend legal claims;

(V) conduct internal research to improve, repair, or
DEVELOP PRODUCTS, SERVICES, OR TECHNOLOGY;

(VI) IDENTIFY AND REPAIR TECHNICAL ERRORS THAT IMPAIR EXISTING OR INTENDED FUNCTIONALITY;

(VII) PERFORM INTERNAL OPERATIONS THAT ARE REASONABLY ALIGNED WITH THE EXPECTATIONS OF THE CONSUMER BASED ON THE CONSUMER'S EXISTING RELATIONSHIP WITH THE CONTROLLER;

(VIII) PROVIDE A PRODUCT OR SERVICE SPECIFICALLY REQUESTED BY A CONSUMER, PERFORM A CONTRACT TO WHICH THE CONSUMER IS A PARTY, OR TAKE STEPS AT THE REQUEST OF THE CONSUMER PRIOR TO ENTERING INTO A CONTRACT;

(IX) PROTECT THE VITAL INTERESTS OF THE CONSUMER OR OF ANOTHER INDIVIDUAL;

(X) PREVENT, DETECT, PROTECT AGAINST, OR RESPOND TO SECURITY INCIDENTS, IDENTITY THEFT, FRAUD, HARASSMENT, OR MALICIOUS, DECEPTIVE, OR ILLEGAL ACTIVITY; PRESERVE THE INTEGRITY OR SECURITY OF SYSTEMS; OR INVESTIGATE, REPORT, OR PROSECUTE THOSE RESPONSIBLE FOR ANY SUCH ACTION;

(XI) PROCESS PERSONAL DATA FOR REASONS OF PUBLIC INTEREST IN THE AREA OF PUBLIC HEALTH, BUT SOLELY TO THE EXTENT THAT THE PROCESSING:

(A) IS SUBJECT TO SUITABLE AND SPECIFIC MEASURES TO SAFEGUARD THE RIGHTS OF THE CONSUMER WHOSE PERSONAL DATA ARE PROCESSED; AND

(B) IS UNDER THE RESPONSIBILITY OF A PROFESSIONAL SUBJECT TO CONFIDENTIALITY OBLIGATIONS UNDER FEDERAL, STATE, OR LOCAL LAW;

(XII) ASSIST ANOTHER PERSON WITH ANY OF THE ACTIVITIES SET FORTH IN THIS SUBSECTION (3);
(b) Apply where compliance by the controller or processor with this Part 13 would violate an evidentiary privilege under Colorado law;

(c) Prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under Colorado law as part of a privileged communication;

(d) Adversely affect the rights or freedoms of any persons; and

(e) Apply to the processing of personal data by an individual in the course of a purely personal or household activity.

(4) (a) A controller or processor that discloses personal data to another controller or processor in compliance with this Part 13 does not violate this Part 13 if the recipient processes the personal data in violation of this Part 13, and, at the time of disclosing the personal data, the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation.

(b) A controller or processor receiving personal data from a controller or processor in compliance with this Part 13 as specified in subsection (4)(a) of this section does not violate this Part 13 if the controller or processor from which it receives the personal data fails to comply with applicable obligations under this Part 13.

(5) Personal data that are processed by a controller pursuant to this section:
(a) SHALL NOT BE PROCESSED FOR ANY PURPOSE OTHER THAN
THOSE EXPRESSLY LISTED IN THIS SECTION; AND

(b) SHALL BE PROCESSED SOLELY TO THE EXTENT THAT THE
PROCESSING IS NECESSARY, REASONABLE, AND PROPORTIONATE TO THE
SPECIFIC PURPOSE OR PURPOSES LISTED IN THIS SECTION.

(6) IF A CONTROLLER PROCESSES PERSONAL DATA PURSUANT TO
AN EXEMPTION IN THIS SECTION, THE CONTROLLER BEARS THE BURDEN OF
DEMONSTRATING THAT THE PROCESSING QUALIFIES FOR THE EXEMPTION
AND COMPLIES WITH THE REQUIREMENTS IN SUBSECTION (5) OF THIS
SECTION.

6-1-1305. Responsibility according to role. (1) A CONTROLLER
SHALL MEET THE OBLIGATIONS ESTABLISHED UNDER THIS PART 13. A
CONTROLLER DOES NOT AVOID AN OBLIGATION BY DELEGATING
PROCESSING TO A PROCESSOR.

(2) A PROCESSOR SHALL ADHERE TO THE INSTRUCTIONS OF THE
CONTROLLER AND ASSIST THE CONTROLLER TO MEET ITS OBLIGATIONS
UNDER THIS PART 13.

(3) PROCESSING BY A PROCESSOR MUST BE GOVERNED BY A
BINDING CONTRACT BETWEEN THE CONTROLLER AND THE PROCESSOR
THAT SETS OUT THE PROCESSING INSTRUCTIONS TO WHICH THE PROCESSOR
IS BOUND.

(4) IF A PROCESSOR BEGINS, ALONE OR JOINTLY WITH OTHERS,
DETERMINING THE PURPOSES AND MEANS OF THE PROCESSING OF
PERSONAL DATA, IT IS A CONTROLLER WITH RESPECT TO THE PROCESSING.

6-1-1306. Consumer personal data rights. (1) CONSUMERS MAY
EXERCISE THE FOLLOWING RIGHTS BY SUBMITTING A REQUEST, AT ANY
TIME, TO A CONTROLLER THAT SPECIFIES WHICH RIGHTS THE CONSUMER
WISHES TO EXERCISE:

(a) **Right to opt out.** (I) A CONSUMER HAS THE RIGHT TO OPT OUT
OF THE PROCESSING OF PERSONAL DATA CONCERNING THE CONSUMER.

(II) A CONSUMER MAY AUTHORIZE ANOTHER PERSON, ACTING ON
THE CONSUMER'S BEHALF, TO OPT OUT OF THE PROCESSING OF THE
CONSUMER'S PERSONAL DATA FOR PURPOSES OF TARGETED ADVERTISING
OR THE SALE OF THE CONSUMER'S PERSONAL DATA. A CONTROLLER SHALL
COMPLY WITH AN OPT-OUT REQUEST RECEIVED FROM A PERSON
AUTHORIZED BY THE CONSUMER TO ACT ON THE CONSUMER'S BEHALF IF
THE CONTROLLER IS ABLE TO AUTHENTICATE, WITH REASONABLE EFFORT,
THE IDENTITY OF THE CONSUMER AND THE AUTHORIZED AGENT'S
AUTHORITY TO ACT ON THE CONSUMER'S BEHALF.

(b) **Right of access.** A CONSUMER HAS THE RIGHT TO CONFIRM
WHETHER A CONTROLLER IS PROCESSING PERSONAL DATA CONCERNING
THE CONSUMER AND TO ACCESS THE CONSUMER'S PERSONAL DATA.

(c) **Right to correction.** A CONSUMER HAS THE RIGHT TO CORRECT
INACCURATE PERSONAL DATA COLLECTED FROM THE CONSUMER.

(d) **Right to deletion.** A CONSUMER HAS THE RIGHT TO DELETE
PERSONAL DATA CONCERNING THE CONSUMER.

(e) **Right to data portability.** WHEN EXERCISING THE RIGHT TO
ACCESS PERSONAL DATA PURSUANT TO SUBSECTION (1)(b) OF THIS
SECTION, A CONSUMER HAS THE RIGHT TO OBTAIN THE PERSONAL DATA IN
A PORTABLE AND, TO THE EXTENT TECHNICALLY FEASIBLE, READILY
USABLE FORMAT THAT ALLOWS THE CONSUMER TO TRANSMIT THE DATA
TO ANOTHER ENTITY WITHOUT HINDRANCE. A CONSUMER MAY EXERCISE
THIS RIGHT NO MORE THAN TWO TIMES PER CALENDAR YEAR.

(2) **Notifying third parties of consumer requests.** A
CONTROLLER SHALL TAKE REASONABLE STEPS TO COMMUNICATE A
CONSUMER'S REQUEST TO OPT OUT OF THE PROCESSING OF PERSONAL DATA
OR TO ACCESS, CORRECT, DELETE, OR OBTAIN PERSONAL DATA IN A
PORTABLE FORMAT UNDER SUBSECTION (1) OF THIS SECTION TO EACH
THIRD PARTY TO WHOM THE CONTROLLER DISCLOSED THE PERSONAL DATA
WITHIN ONE YEAR PRECEDING THE CONSUMER'S REQUEST UNLESS THIS
PROVES FUNCTIONALLY IMPRACTICAL OR TECHNICALLY INFEASIBLE OR
INVOlVES DISPROPORTIONATE EFFORT.

(3) **Responding to consumer requests.** (a) A CONTROLLER
SHALL INFORM A CONSUMER OF ANY ACTION TAKEN ON A REQUEST UNDER
SUBSECTION (1) OF THIS SECTION WITHOUT UNDUE DELAY AND, IN ANY
EVENT, WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE REQUEST. THE
CONTROLLER MAY EXTEND THE FORTY-FIVE-DAY PERIOD BY FORTY-FIVE
ADDITIONAL DAYS WHERE REASONABLY NECESSARY, TAKING INTO
ACCOUNT THE COMPLEXITY AND NUMBER OF THE REQUESTS. THE
CONTROLLER SHALL INFORM THE CONSUMER OF AN EXTENSION WITHIN
FORTY-FIVE DAYS AFTER RECEIPT OF THE REQUEST, TOGETHER WITH THE
REASONS FOR THE DELAY.

(b) IF A CONTROLLER DOES NOT TAKE ACTION ON THE REQUEST OF
A CONSUMER, THE CONTROLLER SHALL INFORM THE CONSUMER, WITHOUT
UNDUE DELAY AND, AT THE LATEST, WITHIN FORTY-FIVE DAYS AFTER
RECEIPT OF THE REQUEST, OF THE REASONS FOR NOT TAKING ACTION AND
INSTRUCTIONS FOR HOW TO APPEAL THE DECISION WITH THE CONTROLLER
AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

(c) UPON REQUEST, A CONTROLLER SHALL PROVIDE TO THE
CONSUMER THE INFORMATION SPECIFIED IN THIS SECTION FREE OF
CHARGE; EXCEPT THAT, FOR A SECOND OR SUBSEQUENT REQUEST WITHIN
A TWELVE-MONTH PERIOD, THE CONTROLLER MAY CHARGE AN AMOUNT
CALCULATED IN THE MANNER SPECIFIED IN SECTION 24-72-205 (5)(a).

(d) A CONTROLLER IS NOT REQUIRED TO COMPLY WITH A REQUEST
TO EXERCISE ANY OF THE RIGHTS UNDER SUBSECTION (1) OF THIS SECTION
IF THE CONTROLLER IS UNABLE TO AUTHENTICATE THE REQUEST USING
COMMERCIAL REASONABLE EFFORTS, IN WHICH CASE THE CONTROLLER
MAY REQUEST THE PROVISION OF ADDITIONAL INFORMATION REASONABLY
NECESSARY TO AUTHENTICATE THE REQUEST.

(4) (a) A CONTROLLER SHALL ESTABLISH AN INTERNAL PROCESS
WHEREBY CONSUMERS MAY APPEAL A REFUSAL TO TAKE ACTION ON A
REQUEST TO EXERCISE ANY OF THE RIGHTS UNDER SUBSECTION (1) OF THIS
SECTION WITHIN A REASONABLE PERIOD AFTER THE CONSUMER'S RECEIPT
OF THE NOTICE SENT BY THE CONTROLLER UNDER SUBSECTION (3)(b) OF
THIS SECTION. THE APPEAL PROCESS MUST BE CONSPICUOUSLY AVAILABLE
AND AS EASY TO USE AS THE PROCESS FOR SUBMITTING A REQUEST UNDER
THIS SECTION.

(b) WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF AN APPEAL, A
CONTROLLER SHALL INFORM THE CONSUMER OF ANY ACTION TAKEN OR
NOT TAKEN IN RESPONSE TO THE APPEAL, ALONG WITH A WRITTEN
EXPLANATION OF THE REASONS IN SUPPORT OF THE RESPONSE. THE
CONTROLLER MAY EXTEND THE FORTY-FIVE-DAY PERIOD BY SIXTY
ADDITIONAL DAYS WHERE REASONABLY NECESSARY, TAKING INTO
ACCOUNT THE COMPLEXITY AND NUMBER OF REQUESTS SERVING AS THE
BASIS FOR THE APPEAL. THE CONTROLLER SHALL INFORM THE CONSUMER
OF AN EXTENSION WITHIN FORTY-FIVE DAYS AFTER RECEIPT OF THE
APPEAL, TOGETHER WITH THE REASONS FOR THE DELAY.

(c) THE CONTROLLER SHALL INFORM THE CONSUMER OF THE
CONSUMER’S ABILITY TO CONTACT THE ATTORNEY GENERAL IF THE
CONSUMER HAS CONCERNS ABOUT THE RESULT OF THE APPEAL.

6-1-1307. Processing de-identified data or pseudonymous data.

(1) THIS PART 13 DOES NOT REQUIRE A CONTROLLER OR PROCESSOR TO DO
ANY OF THE FOLLOWING SOLELY FOR PURPOSES OF COMPLYING WITH THIS
PART 13:

(a) REIDENTIFY DE-IDENTIFIED DATA;

(b) COMPLY WITH AN AUTHENTICATED CONSUMER REQUEST TO
ACCESS, CORRECT, DELETE, OR PROVIDE PERSONAL DATA IN A PORTABLE
FORMAT PURSUANT TO SECTION 6-1-1306 (1), IF ALL OF THE FOLLOWING
ARE TRUE:

(I) (A) THE CONTROLLER IS NOT REASONABLY CAPABLE OF
ASSOCIATING THE REQUEST WITH THE PERSONAL DATA; OR

(B) IT WOULD BE UNREASONABLY BURDENSOME FOR THE
CONTROLLER TO ASSOCIATE THE REQUEST WITH THE PERSONAL DATA;

(II) THE CONTROLLER DOES NOT USE THE PERSONAL DATA TO
RECOGNIZE OR RESPOND TO THE SPECIFIC CONSUMER WHO IS THE SUBJECT
OF THE PERSONAL DATA OR ASSOCIATE THE PERSONAL DATA WITH OTHER
PERSONAL DATA ABOUT THE SAME SPECIFIC CONSUMER; AND

(III) THE CONTROLLER DOES NOT SELL THE PERSONAL DATA TO
ANY THIRD PARTY OR OTHERWISE VOLUNTARILY DISCLOSE THE PERSONAL
DATA TO ANY THIRD PARTY OTHER THAN A PROCESSOR, EXCEPT AS
OTHERWISE PERMITTED BY THIS PART 13; OR

(c) MAINTAIN DATA IN IDENTIFIABLE FORM OR COLLECT, OBTAIN,
RETAIN, OR ACCESS ANY DATA OR TECHNOLOGY IN ORDER TO ENABLE THE
CONTROLLER TO ASSOCIATE AN AUTHENTICATED CONSUMER REQUEST
WITH PERSONAL DATA.
(2) The rights contained in Section 6-1-1306 (1) do not apply to pseudonymous data if the controller can demonstrate that the information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.

(3) A controller that uses pseudonymous data or de-identified data shall exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or de-identified data are subject and shall take appropriate steps to address any breaches of contractual commitments.

(4) A controller may determine that data are de-identified only if:

(a) A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable:

(I) applying those principles and methods, determines that the risk is very small, as determined under 45 CFR 164.514, that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information; and

(II) documents the methods and results of the analysis that justify the determination; or

(b) (I) the following identifiers of the individual or of
RELATIVES, EMPLOYERS, OR HOUSEHOLD MEMBERS OF THE INDIVIDUAL, ARE REMOVED:

(A) NAMES;

(B) ALL GEOGRAPHIC SUBDIVISIONS SMALLER THAN A STATE, INCLUDING STREET ADDRESS, CITY, COUNTY, PRECINCT, ZIP CODE, AND THEIR EQUIVALENT GEOCODES, EXCEPT FOR THE INITIAL THREE DIGITS OF A ZIP CODE IF, ACCORDING TO THE CURRENT PUBLICLY AVAILABLE DATA FROM THE FEDERAL CENSUS BUREAU: THE GEOGRAPHIC UNIT FORMED BY COMBINING ALL ZIP CODES WITH THE SAME THREE INITIAL DIGITS CONTAINS MORE THAN TWENTY THOUSAND PEOPLE; AND THE INITIAL THREE DIGITS OF A ZIP CODE FOR ALL SUCH GEOGRAPHIC UNITS CONTAINING TWENTY THOUSAND OR FEWER PEOPLE IS CHANGED TO 000;

(C) ALL ELEMENTS OF DATES, EXCEPT THE YEAR, FOR DATES DIRECTLY RELATED TO AN INDIVIDUAL, INCLUDING BIRTH DATE, ADMISSION DATE, DISCHARGE DATE, AND DATE OF DEATH; AND ALL AGES NINETY OR OLDER AND ALL ELEMENTS OF DATES, INCLUDING YEAR, INDICATIVE OF THAT AGE; EXCEPT THAT THE AGES AND ELEMENTS MAY BE AGGREGATED INTO A SINGLE CATEGORY OF AGE NINETY OR OLDER;

(D) TELEPHONE NUMBERS;

(E) FAX NUMBERS;

(F) E-MAIL ADDRESSES;

(G) SOCIAL SECURITY NUMBERS;

(H) MEDICAL RECORD NUMBERS;

(I) HEALTH PLAN BENEFICIARY NUMBERS;

(J) ACCOUNT NUMBERS;

(K) CERTIFICATE AND LICENSE NUMBERS;

(L) VEHICLE IDENTIFIERS AND SERIAL NUMBERS, INCLUDING
LICENSE PLATE NUMBERS;

(M) DEVICE IDENTIFIERS AND SERIAL NUMBERS;

(N) WEB UNIVERSAL RESOURCE LOCATORS;

(O) INTERNET PROTOCOL ADDRESS NUMBERS;

(P) BIOMETRIC IDENTIFIERS, INCLUDING FINGERPRINTS AND VOICEPRINTS;

(Q) FULL FACE PHOTOGRAPHIC IMAGES AND ANY COMPARABLE IMAGES; AND

(R) ANY OTHER UNIQUE IDENTIFYING NUMBER, CHARACTERISTIC, OR CODE, EXCEPT AS PERMITTED BY SUBSECTION (4)(b)(I)(B) OR (4)(b)(I)(C) OF THIS SECTION; AND

(II) THE CONTROLLER DOES NOT HAVE ACTUAL KNOWLEDGE THAT THE INFORMATION COULD BE USED ALONE OR IN COMBINATION WITH OTHER INFORMATION TO IDENTIFY AN INDIVIDUAL WHO IS A SUBJECT OF THE INFORMATION.


(a) A CONTROLLER SHALL PROVIDE CONSUMERS WITH A REASONABLY ACCESSIBLE, CLEAR, AND MEANINGFUL PRIVACY NOTICE THAT INCLUDES:

(I) THE CATEGORIES OF PERSONAL DATA COLLECTED OR PROCESSED BY THE CONTROLLER OR A PROCESSOR;

(II) THE PURPOSES FOR WHICH THE CATEGORIES OF PERSONAL DATA ARE PROCESSED;

(III) AN ESTIMATE OF HOW LONG THE CONTROLLER MAY OR WILL MAINTAIN THE CONSUMER'S PERSONAL DATA;

(IV) HOW AND WHERE CONSUMERS MAY EXERCISE THE RIGHTS PURSUANT TO SECTION 6-1-1306, INCLUDING THE CONTROLLER'S CONTACT INFORMATION AND HOW A CONSUMER MAY APPEAL A CONTROLLER'S
ACTION WITH REGARD TO THE CONSUMER'S REQUEST;

(V) THE CATEGORIES OF PERSONAL DATA THAT THE CONTROLLER
SHARES WITH THIRD PARTIES, IF ANY; AND

(VI) THE CATEGORIES OF THIRD PARTIES, IF ANY, WITH WHOM THE
CONTROLLER SHARES PERSONAL DATA.

(b) IF A CONTROLLER SELLS PERSONAL DATA TO THIRD PARTIES OR
PROCESSES PERSONAL DATA FOR TARGETED ADVERTISING, THE
CONTROLLER SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE SALE
OR PROCESSING, AS WELL AS THE MANNER IN WHICH A CONSUMER MAY
EXERCISE THE RIGHT TO OBJECT TO THE SALE OR PROCESSING.

(c) A CONTROLLER SHALL NOT:

(I) REQUIRE A CONSUMER TO CREATE A NEW ACCOUNT IN ORDER
TO EXERCISE A RIGHT; OR

(II) BASED SOLELY ON THE EXERCISE OF A RIGHT, INCREASE THE
COST OF, OR DECREASE THE AVAILABILITY OF, THE PRODUCT OR SERVICE.

(2) Duty of purpose specification. A CONTROLLER SHALL SPECIFY
THE EXPRESS PURPOSES FOR WHICH PERSONAL DATA IS COLLECTED AND
PROCESSED.

(3) Duty of data minimization. A CONTROLLER'S COLLECTION OF
PERSONAL DATA MUST BE ADEQUATE, RELEVANT, AND LIMITED TO WHAT
IS NECESSARY IN RELATION TO THE SPECIFIED AND EXPRESS PURPOSES FOR
WHICH THE DATA ARE PROCESSED.

(4) Duty to avoid secondary use. A CONTROLLER SHALL NOT
PROCESS PERSONAL DATA FOR PURPOSES THAT ARE NOT NECESSARY TO OR
COMPATIBLE WITH THE SPECIFIED AND EXPRESS PURPOSES FOR WHICH THE
PERSONAL DATA ARE PROCESSED, UNLESS THE CONTROLLER OBTAINS THE
CONSUMER'S CONSENT.
(5) **Duty of care.** A CONTROLLER SHALL TAKE REASONABLE MEASURES TO SECURE PERSONAL DATA DURING BOTH STORAGE AND USE FROM UNAUTHORIZED ACQUISITION.

(6) **Duty to avoid unlawful discrimination.** A CONTROLLER SHALL NOT PROCESS PERSONAL DATA IN VIOLATION OF STATE AND FEDERAL LAWS THAT PROHIBIT UNLAWFUL DISCRIMINATION AGAINST CONSUMERS.

(7) **Duty regarding sensitive data.** A CONTROLLER SHALL NOT PROCESS SENSITIVE DATA CONCERNING A CONSUMER WITHOUT OBTAINING THE CONSUMER'S CONSENT OR, IN THE CASE OF THE PROCESSING OF PERSONAL DATA CONCERNING A KNOWN CHILD OR STUDENT, WITHOUT OBTAINING CONSENT FROM THE CHILD'S OR STUDENT'S PARENT OR LAWFUL GUARDIAN.

6-1-1309. Data protection assessments - attorney general access and evaluation. (1) A CONTROLLER SHALL NOT CONDUCT PROCESSING THAT PRESENTS A HEIGHTENED RISK OF HARM TO A CONSUMER WITHOUT CONDUCTING AND DOCUMENTING A DATA PROTECTION ASSESSMENT OF EACH OF ITS PROCESSING ACTIVITIES THAT INVOLVE PERSONAL DATA ACQUIRED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION THAT PRESENT A HEIGHTENED RISK OF HARM TO A CONSUMER.

(2) FOR PURPOSES OF THIS SECTION, "PROCESSING THAT PRESENTS A HEIGHTENED RISK OF HARM TO A CONSUMER" INCLUDES THE FOLLOWING:

   (a) PROCESSING PERSONAL DATA FOR PURPOSES OF TARGETED ADVERTISING OR PROFILING;

   (b) SELLING PERSONAL DATA; AND
3 (3) DATA PROTECTION ASSESSMENTS MUST IDENTIFY AND WEIGH
4 THE BENEFITS THAT MAY FLOW, DIRECTLY AND INDIRECTLY, FROM THE
5 PROCESSING TO THE CONTROLLER, THE CONSUMER, OTHER
6 STAKEHOLDERS, AND THE PUBLIC AGAINST THE POTENTIAL RISKS TO THE
7 RIGHTS OF THE CONSUMER ASSOCIATED WITH THE PROCESSING, AS
8 MITIGATED BY SAFEGUARDS THAT THE CONTROLLER CAN EMPLOY TO
9 REDUCE THE RISKS. THE CONTROLLER SHALL FACTOR INTO THIS
10 ASSESSMENT THE USE OF DE-IDENTIFIED DATA AND THE REASONABLE
11 EXPECTATIONS OF CONSUMERS, AS WELL AS THE CONTEXT OF THE
12 PROCESSING AND THE RELATIONSHIP BETWEEN THE CONTROLLER AND THE
13 CONSUMER WHOSE PERSONAL DATA WILL BE PROCESSED.

13 (4) A CONTROLLER SHALL MAKE THE DATA PROTECTION
14 ASSESSMENT AVAILABLE TO THE ATTORNEY GENERAL UPON REQUEST. THE
15 ATTORNEY GENERAL MAY EVALUATE THE DATA PROTECTION ASSESSMENT
16 FOR COMPLIANCE WITH THE DUTIES CONTAINED IN SECTION 6-1-1308 AND
17 WITH OTHER LAWS, INCLUDING THIS ARTICLE 1. DATA PROTECTION
18 ASSESSMENTS ARE CONFIDENTIAL AND EXEMPT FROM PUBLIC INSPECTION
19 AND COPYING UNDER PART 2 OF ARTICLE 72 OF TITLE 24. THE DISCLOSURE
20 OF A DATA PROTECTION ASSESSMENT PURSUANT TO A REQUEST FROM THE
21 ATTORNEY GENERAL UNDER THIS SUBSECTION (4) DOES NOT CONSTITUTE
22 A WAIVER OF ANY ATTORNEY-CLIENT PRIVILEGE OR WORK-PRODUCT
23 PROTECTION THAT MIGHT OTHERWISE EXIST WITH RESPECT TO THE
24 ASSESSMENT AND ANY INFORMATION CONTAINED IN THE ASSESSMENT.

6-1-1310. Liability. (1) NOTWITHSTANDING ANY PROVISION IN
26 PART 1 OF THIS ARTICLE 1, THIS PART 13 DOES NOT AUTHORIZE A PRIVATE
27 RIGHT OF ACTION FOR A VIOLATION OF THIS PART 13 OR ANY OTHER
provision of law. This subsection (1) neither relieves any party
from any duties or obligations imposed, nor alters any
independent rights that consumers have, under other laws,
including this article 1, the state constitution, or the United
States constitution.

(2) Where more than one controller or processor, or both
a controller and a processor, involved in the same processing
violates this part 13, the liability shall be allocated among the
parties according to principles of comparative fault, unless the
liability is otherwise allocated by contract among the parties.

6-1-1311. Enforcement. (1) Notwithstanding any other
provision of this article 1:

(a) The attorney general and district attorneys have
exclusive authority to enforce this part 13 by bringing an action
in the name of the state or as parens patriae on behalf of persons
residing in the state to enforce this part 13, including seeking an
injunction to enjoin a violation of this part 13; and

(b) A controller or processor that violates this part 13:
(I) Is subject to a civil penalty as specified in section
6-1-112; and

(II) May be enjoined from violating this part 13.

(2) The state treasurer shall credit all receipts from the
imposition of civil penalties under this part 13 pursuant to
section 24-31-108.

6-1-1312. Preemption - local governments. This part 13
supercedes and preempts laws, ordinances, resolutions,
regulations, or the equivalent adopted by any statutory or
HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY REGARDING
THE PROCESSING OF PERSONAL DATA BY CONTROLLERS OR PROCESSORS.

SECTION 2. Act subject to petition - effective date -
applicability. (1) This act takes effect January 1, 2023; except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within the ninety-day period after final adjournment of the general
assembly, then the act, item, section, or part will not take effect unless
approved by the people at the general election to be held in November
2022 and, in such case, will take effect January 1, 2023, or on the date of
the official declaration of the vote thereon by the governor, whichever is
later.

(2) This act applies to conduct occurring on or after the applicable
effective date of this act.