## Second Regular Session Seventy-fourth General Assembly STATE OF COLORADO

## PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 24-0667.03 Christy Chase x2008

SENATE BILL 24-041

### SENATE SPONSORSHIP

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# A BILL FOR AN ACT

#### 101 CONCERNING ADDING DATA PROTECTIONS FOR A MINOR'S ONLINE

102 **ACTIVITY.** 

### **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 <u>http://leg.colorado.gov.</u>)

The bill amends the "Colorado Privacy Act" to add enhanced protections when a minor's data is processed and there is a heightened risk of harm to the minor. The bill applies to any entity that controls consumer personal data (controller) and that conducts business in Colorado or delivers products or services that are targeted at Colorado residents, regardless of the volume of or amount of revenue derived from that





activity.

A controller that offers an online service, product, or feature to a consumer that the controller knows or willfully disregards is a minor is required to:

- Use reasonable care to avoid any heightened risk of harm to minors caused by the service, product, or feature; and
- Conduct, and review as necessary, a data protection assessment for the service, product, or feature and maintain documentation regarding the assessment for a specified period.

Unless the minor or, for a minor who is under 13 years of age, the minor's parent or legal guardian has consented, a controller is prohibited from processing a minor's personal data:

- For targeted advertising, selling the minor's personal data, or profiling the minor's personal data;
- For any processing purpose other than the purpose disclosed at the time the minor's personal data is collected or a purpose reasonably necessary for the disclosed processing purpose; or
- For longer than reasonably necessary to provide the service, product, or feature.

A controller is also prohibited from:

- Using a system design feature to significantly increase, sustain, or extend a minor's use of the service, product, or feature; or
- Collecting a minor's precise geolocation, except under specified circumstances.

The attorney general and district attorneys are authorized to enforce the requirements of the bill in the same manner as authorized under the "Colorado Privacy Act", including notifying a controller of, and allowing a controller time to cure, a violation.

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

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SECTION 1. In Colorado Revised Statutes, 6-1-1302, amend

- 3 (1)(a)(III), (1)(a)(V), (1)(b)(II), and (1)(c)(I); and **add** (1)(c)(II)(A.5) as
- 4 follows:

5 6-1-1302

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

- 6 hereby:
  - (a) Finds that:

(III) Ongoing advances in technology have produced exponential
 growth in the volume and variety of personal data FROM INDIVIDUALS,
 INCLUDING MINORS, being generated, collected, stored, and analyzed and
 these advances present both promise and potential peril;

5 (V) The unauthorized disclosure of personal information, 6 INCLUDING A MINOR'S PERSONAL INFORMATION, and loss of privacy can 7 have devastating impacts ranging from financial fraud, identity theft, and 8 unnecessary costs in personal time and finances to destruction of 9 property, harassment, reputational damage, emotional distress, and 10 physical harm;

11

(b) Determines that:

(II) States across the United States are looking to this part 13 and
similar models to enact state-based data privacy requirements, INCLUDING
DATA PRIVACY REQUIREMENTS SPECIFICALLY TARGETED AT MINORS'
DATA, and to exercise the leadership that is lacking at the national level;
and

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(c) Declares that:

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

22

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

23 (A.5) PROVIDES MINORS THE RIGHT TO CONTROL THEIR PERSONAL
24 DATA;

25 SECTION 2. In Colorado Revised Statutes, 6-1-1303, amend (1);
26 and add (1.5), (14.5), (16.5), (16.7), and (17.5) as follows:

27 **6-1-1303. Definitions.** As used in this part 13, unless the context

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1 otherwise requires:

2 (1) "Affiliate" means a legal entity that controls, is controlled by,
3 or is under common control with another legal entity. As used in this
4 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 "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN
YEARS OF AGE OR OLDER.

16 (1.5) (a) "AFFILIATE" MEANS A LEGAL ENTITY THAT CONTROLS, IS
17 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER LEGAL
18 ENTITY.

19 (b) AS USED IN SUBSECTION (1.5)(a) OF THIS SECTION, "CONTROL"
20 MEANS:

(I) 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;

(II) 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

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(III) 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.

5 (14.5) "HEIGHTENED RISK OF HARM TO <u>MINORS</u>" MEANS
6 PROCESSING THE PERSONAL DATA OF <u>MINORS</u> IN A MANNER THAT
7 PRESENTS <u>A REASONABLY FORESEEABLE RISK THAT COULD CAUSE:</u>

8 (a) <u>UNFAIR</u> OR DECEPTIVE TREATMENT OF, OR <u>UNLAWFUL</u>
9 DISPARATE IMPACT ON, <u>MINORS</u>;

10 (b) <u>Financial</u>, physical, <u>or reputational injury to 11 <u>Minors</u>;</u>

12 (c) UNAUTHORIZED DISCLOSURE OF THE PERSONAL <u>DATA</u> OF
13 MINORS AS A RESULT OF A SECURITY BREACH, AS DEFINED IN SECTION
14 6-1-716 (1)(h); OR

15 (d) <u>Physical</u> or other intrusion upon the solitude or
16 SECLUSION, OR THE PRIVATE AFFAIRS OR CONCERNS, OF <u>MINORS</u> IF THE
17 INTRUSION WOULD BE OFFENSIVE TO A REASONABLE PERSON.

- 18 (16.5) "MINOR" MEANS ANY CONSUMER WHO IS UNDER EIGHTEEN
  19 YEARS OF AGE.
- 20 (16.7) "Online service, product, or feature":
- 21 (a) MEANS ANY SERVICE, PRODUCT, OR FEATURE THAT IS
  22 PROVIDED ONLINE; AND
- 23 (b) DOES NOT INCLUDE:
- $24 \qquad (I) \ Telecommunications \ service, \ as \ defined \ in \ 47 \ U.S.C. \ sec.$
- 25 153 (53), AS AMENDED;
- 26 (II) BROADBAND INTERNET ACCESS SERVICE, AS DEFINED IN 47
- 27 CFR 54.400 (l), AS AMENDED; OR
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1	(III) THE DELIVERY OR USE OF A PHYSICAL PRODUCT.
2	(17.5) "PRECISE GEOLOCATION DATA":
3	(a) MEANS INFORMATION DERIVED FROM TECHNOLOGY, INCLUDING
4	GLOBAL POSITIONING SYSTEM LEVEL LATITUDE AND LONGITUDE
5	COORDINATES OR OTHER MECHANISMS, THAT DIRECTLY IDENTIFIES THE
6	SPECIFIC LOCATION OF AN INDIVIDUAL WITH PRECISION AND ACCURACY
7	WITHIN A RADIUS OF ONE THOUSAND SEVEN HUNDRED FIFTY FEET; AND
8	(b) DOES NOT INCLUDE:
9	(I) The content of communications regarding location; or
10	(II) ANY DATA GENERATED BY OR CONNECTED TO ADVANCED
11	<u>UTILITY</u> METERING INFRASTRUCTURE SYSTEMS OR EQUIPMENT FOR USE BY
12	A UTILITY.
13	
14	SECTION 3. In Colorado Revised Statutes, 6-1-1304, amend (1).
15	(3)(d), and (3)(e); and add (3)(f) and (3)(g) as follows:
15 16	<ul> <li>(3)(d), and (3)(e); and add (3)(f) and (3)(g) as follows:</li> <li>6-1-1304. Applicability of part. (1) Except as specified in</li> </ul>
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16	6-1-1304. Applicability of part. (1) Except as specified in
16 17	<b>6-1-1304.</b> Applicability of part. (1) Except as specified in subsection (2) of this section:
16 17 18	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5,</li> </ul>
16 17 18 19	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> </ul>
16 17 18 19 20	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> <li>(a) (I) Conducts business in Colorado or produces or delivers</li> </ul>
16 17 18 19 20 21	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> <li>(a) (I) Conducts business in Colorado or produces or delivers commercial products or services that are intentionally targeted to</li> </ul>
16 17 18 19 20 21 22	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> <li>(a) (I) Conducts business in Colorado or produces or delivers commercial products or services that are intentionally targeted to residents of Colorado; and</li> </ul>
16 17 18 19 20 21 22 23	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> <li>(a) (I) Conducts business in Colorado or produces or delivers commercial products or services that are intentionally targeted to residents of Colorado; and</li> <li>(b) (II) Satisfies one or both of the following thresholds:</li> </ul>
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> <li>(a) (I) Conducts business in Colorado or produces or delivers commercial products or services that are intentionally targeted to residents of Colorado; and</li> <li>(b) (II) Satisfies one or both of the following thresholds:</li> <li>(f) (A) Controls or processes the personal data of one hundred</li> </ul>
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	<ul> <li>6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:</li> <li>(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5, applies to a controller that:</li> <li>(a) (I) Conducts business in Colorado or produces or delivers commercial products or services that are intentionally targeted to residents of Colorado; and</li> <li>(b) (II) Satisfies one or both of the following thresholds:</li> <li>(f) (A) Controls or processes the personal data of one hundred thousand consumers or more during a calendar year; or</li> </ul>

1	the personal data of twenty-five thousand consumers or more; AND
2	(b) SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5 TO
3	6-1-1313 APPLY TO A CONTROLLER THAT CONDUCTS BUSINESS IN
4	COLORADO OR DELIVERS COMMERCIAL PRODUCTS OR SERVICES THAT ARE
5	INTENTIONALLY TARGETED TO RESIDENTS OF COLORADO.
6	(3) The obligations imposed on controllers or processors under
7	<u>this part 13 do not:</u>
8	(d) Apply to information made available by a third party that the
9	controller has a reasonable basis to believe is protected speech pursuant
10	to applicable law; and
11	(e) Apply to the processing of personal data by an individual in
12	the course of a purely personal or household activity;
13	(f) REQUIRE A CONTROLLER OR PROCESSOR TO IMPLEMENT AN AGE
14	VERIFICATION OR AGE-GATING SYSTEM OR OTHERWISE AFFIRMATIVELY
15	COLLECT THE AGE OF CONSUMERS, BUT A CONTROLLER THAT CHOOSES TO
16	CONDUCT COMMERCIALLY REASONABLE AGE ESTIMATION TO DETERMINE
17	WHICH CONSUMERS ARE MINORS IS NOT LIABLE FOR AN ERRONEOUS AGE
18	ESTIMATION; AND
19	(g) IMPOSE ANY OBLIGATION ON A CONTROLLER OR PROCESSOR
20	THAT ADVERSELY AFFECTS THE RIGHTS OF ANY PERSON TO FREEDOM OF
21	SPEECH OR FREEDOM OF THE PRESS GUARANTEED BY THE FIRST
22	AMENDMENT TO THE UNITED STATES CONSTITUTION.
23	SECTION 4. In Colorado Revised Statutes, add 6-1-1305.5,
24	6-1-1308.5, and 6-1-1309.5 as follows:
25	6-1-1305.5. Responsibility according to role - processing data
26	of minors. (1) A PROCESSOR SHALL ADHERE TO THE INSTRUCTIONS OF A
27	CONTROLLER AND SHALL ASSIST THE CONTROLLER TO MEET THE

1 <u>CONTROLLER'S OBLIGATIONS UNDER SECTIONS 6-1-1308.5 AND</u>

2 <u>6-1-1309.5, TAKING INTO ACCOUNT THE NATURE OF THE PROCESSING AND</u>

3 THE INFORMATION AVAILABLE TO THE PROCESSOR. THE PROCESSOR SHALL

4 ASSIST THE CONTROLLER BY:

5 (a) TAKING APPROPRIATE TECHNICAL AND ORGANIZATIONAL
 6 MEASURES, INSOFAR AS THIS IS POSSIBLE, FOR THE FULFILLMENT OF THE
 7 CONTROLLER'S OBLIGATIONS UNDER SECTION 6-1-1308.5; AND

8 (b) PROVIDING INFORMATION TO ENABLE THE CONTROLLER TO
 9 CONDUCT AND DOCUMENT DATA PROTECTION ASSESSMENTS PURSUANT TO
 10 SECTION 6-1-1309.5.

11 (2) A CONTRACT BETWEEN A CONTROLLER AND A PROCESSOR
12 MUST SATISFY THE REQUIREMENTS IN SECTION 6-1-1305 (5).

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RELIEVE
A CONTROLLER OR PROCESSOR FROM THE LIABILITIES IMPOSED ON THE
CONTROLLER OR PROCESSOR BY VIRTUE OF THE CONTROLLER'S OR
PROCESSOR'S ROLE IN THE PROCESSING RELATIONSHIP AS DESCRIBED IN
SECTIONS 6-1-1308.5 AND 6-1-1309.5.

18 (4) DETERMINING WHETHER A PERSON IS ACTING AS A 19 CONTROLLER OR PROCESSOR WITH RESPECT TO A SPECIFIC PROCESSING OF 20 DATA IS A FACT-BASED DETERMINATION THAT DEPENDS UPON THE 21 CONTEXT IN WHICH PERSONAL DATA IS TO BE PROCESSED. A PERSON THAT 22 IS NOT LIMITED IN THE PERSON'S PROCESSING OF PERSONAL DATA 23 PURSUANT TO A CONTROLLER'S INSTRUCTIONS, OR THAT FAILS TO ADHERE 24 TO THE INSTRUCTIONS, IS A CONTROLLER AND NOT A PROCESSOR WITH 25 RESPECT TO A SPECIFIC PROCESSING OF DATA. A PROCESSOR THAT 26 CONTINUES TO ADHERE TO A CONTROLLER'S INSTRUCTIONS WITH RESPECT 27 TO A SPECIFIC PROCESSING OF PERSONAL DATA REMAINS A PROCESSOR. IF

A PROCESSOR BEGINS, ALONE OR JOINTLY WITH OTHERS, DETERMINING THE
 PURPOSES AND MEANS OF THE PROCESSING OF PERSONAL DATA, THE
 PROCESSOR IS A CONTROLLER WITH RESPECT TO THE PROCESSING AND MAY
 BE SUBJECT TO AN ENFORCEMENT ACTION UNDER SECTION 6-1-1311.

6-1-1308.5. Duties of controllers - duty of care - rebuttable
presumption. (1) (a) A CONTROLLER THAT OFFERS ANY ONLINE SERVICE,
PRODUCT, OR FEATURE TO A CONSUMER WHOM THE CONTROLLER
ACTUALLY KNOWS OR WILLFULLY DISREGARDS IS A MINOR SHALL USE
REASONABLE CARE TO AVOID ANY HEIGHTENED RISK OF HARM TO MINORS
CAUSED BY THE ONLINE SERVICE, PRODUCT, OR FEATURE.

(b) IN ANY ENFORCEMENT ACTION BROUGHT BY THE ATTORNEY
GENERAL OR A DISTRICT ATTORNEY PURSUANT TO SECTION 6-1-1311,
THERE IS A REBUTTABLE PRESUMPTION THAT A CONTROLLER USED
REASONABLE CARE AS REQUIRED UNDER THIS SECTION IF THE CONTROLLER
COMPLIED WITH THIS SECTION.

16 (2) UNLESS A CONTROLLER HAS OBTAINED CONSENT IN
17 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, A CONTROLLER
18 THAT OFFERS ANY ONLINE SERVICE, PRODUCT, OR FEATURE TO A
19 CONSUMER WHOM THE CONTROLLER ACTUALLY KNOWS OR WILLFULLY
20 DISREGARDS IS A MINOR SHALL NOT:

21

(a) PROCESS A MINOR'S PERSONAL DATA:

- 22 (I) FOR THE PURPOSES OF:
- 23 (A) TARGETED ADVERTISING;
- 24 (B) THE SALE OF PERSONAL DATA; OR

25 (C) PROFILING IN FURTHERANCE OF DECISIONS THAT PRODUCE

26 LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING A CONSUMER;

27 (II) FOR ANY PROCESSING PURPOSE OTHER THAN THE PROCESSING

PURPOSE THAT THE CONTROLLER DISCLOSED AT THE TIME THE
 CONTROLLER COLLECTED THE MINOR'S PERSONAL DATA OR THAT IS
 REASONABLY NECESSARY FOR, AND COMPATIBLE WITH, THE PROCESSING
 PURPOSE THAT THE CONTROLLER DISCLOSED AT THE TIME THE
 CONTROLLER COLLECTED THE MINOR'S PERSONAL DATA; OR

6 (III) FOR LONGER THAN IS REASONABLY NECESSARY TO PROVIDE
7 THE ONLINE SERVICE, PRODUCT, OR FEATURE;

8 (b) USE ANY SYSTEM DESIGN FEATURE TO SIGNIFICANTLY
9 INCREASE, SUSTAIN, OR EXTEND A MINOR'S USE OF THE ONLINE SERVICE,
10 PRODUCT, OR FEATURE; OR

11

12

(c) COLLECT A MINOR'S PRECISE GEOLOCATION DATA UNLESS:

13 (I) THE MINOR'S PRECISE GEOLOCATION DATA IS REASONABLY
14 NECESSARY FOR THE CONTROLLER TO PROVIDE THE ONLINE SERVICE,
15 PRODUCT, OR FEATURE;

16 (II) THE CONTROLLER ONLY COLLECTS <u>AND RETAINS</u> THE MINOR'S
17 PRECISE GEOLOCATION DATA FOR THE TIME NECESSARY TO PROVIDE THE
18 ONLINE SERVICE, PRODUCT, OR FEATURE; AND

19 THE CONTROLLER PROVIDES TO THE MINOR A SIGNAL (III) 20 INDICATING THAT THE CONTROLLER IS COLLECTING THE MINOR'S PRECISE 21 GEOLOCATION DATA AND MAKES THE SIGNAL AVAILABLE TO THE MINOR 22 FOR THE ENTIRE DURATION OF THE COLLECTION OF THE MINOR'S PRECISE 23 GEOLOCATION DATA; EXCEPT THAT THIS SUBSECTION (2)(c)(III) DOES NOT 24 APPLY TO ANY SERVICE OR APPLICATION THAT IS USED BY AND UNDER THE 25 DIRECTION OF A SKI AREA OPERATOR, AS DEFINED IN SECTION 33-44-103 26 (7).

27 (3) (a) A CONTROLLER SHALL NOT ENGAGE IN THE ACTIVITIES

DESCRIBED IN SUBSECTION (2) OF THIS SECTION UNLESS THE CONTROLLER
 OBTAINS:

- Z OBTAINS.
- 3

(I) THE MINOR'S CONSENT; OR

4 (II) (A) IF THE MINOR IS A CHILD, THE CONSENT OF THE MINOR'S
5 PARENT OR LEGAL GUARDIAN.

6 (B) A CONTROLLER THAT COMPLIES WITH THE VERIFIABLE 7 PARENTAL CONSENT REQUIREMENTS ESTABLISHED IN THE "CHILDREN'S 8 ONLINE PRIVACY PROTECTION ACT OF 1998", 15 U.S.C. SEC. 6501 ET 9 SEQ., AS AMENDED, AND THE REGULATIONS, RULES, GUIDANCE, AND 10 EXEMPTIONS ADOPTED PURSUANT TO SAID ACT, AS AMENDED, IS DEEMED 11 TO HAVE SATISFIED ANY REQUIREMENT TO OBTAIN PARENTAL CONSENT 12 UNDER THIS SUBSECTION (3)(a)(II).

13 (b) (I) A CONTROLLER THAT OFFERS ANY ONLINE SERVICE,
14 PRODUCT, OR FEATURE TO A CONSUMER WHOM THAT CONTROLLER
15 ACTUALLY KNOWS OR WILLFULLY DISREGARDS IS A MINOR SHALL NOT:

16 (A) PROVIDE ANY CONSENT MECHANISM THAT IS DESIGNED TO
17 SUBSTANTIALLY SUBVERT OR IMPAIR, OR IS MANIPULATED WITH THE
18 EFFECT OF SUBSTANTIALLY SUBVERTING OR IMPAIRING, USER AUTONOMY,
19 DECISION-MAKING, OR CHOICE; OR

(B) EXCEPT AS PROVIDED IN SUBSECTION (3)(b)(II) OF THIS
SECTION, OFFER ANY DIRECT MESSAGING APPARATUS FOR USE BY A MINOR
WITHOUT PROVIDING READILY ACCESSIBLE AND EASY-TO-USE
SAFEGUARDS TO LIMIT THE ABILITY OF AN ADULT TO SEND UNSOLICITED
COMMUNICATIONS TO THE MINOR WITH WHOM THE ADULT IS NOT
CONNECTED.

26 (II) SUBSECTION (3)(b)(I)(B) OF THIS SECTION DOES NOT APPLY TO
 27 AN ONLINE SERVICE, PRODUCT, OR FEATURE OF WHICH THE PREDOMINANT

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#### 1 OR EXCLUSIVE FUNCTION IS:

2 (A) ELECTRONIC MAIL; OR

3 (B) DIRECT MESSAGING CONSISTING OF TEXT, PHOTOS, OR VIDEOS 4 THAT ARE SENT BETWEEN DEVICES BY ELECTRONIC MEANS, WHERE 5 MESSAGES ARE: SHARED BETWEEN THE SENDER AND THE RECIPIENT; ONLY 6 VISIBLE TO THE SENDER AND THE RECIPIENT; AND NOT POSTED PUBLICLY. 7 (4) SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION DO NOT APPLY 8 TO ANY SERVICE OR APPLICATION THAT IS USED BY AND UNDER THE 9 DIRECTION OF AN EDUCATIONAL ENTITY, INCLUDING A LEARNING 10 MANAGEMENT SYSTEM OR A STUDENT ENGAGEMENT PROGRAM.

11 **6-1-1309.5.** Data protection assessments. (1) A CONTROLLER 12 THAT, ON OR AFTER OCTOBER 1, 2025, OFFERS ANY ONLINE SERVICE, 13 PRODUCT, OR FEATURE TO A CONSUMER WHOM SUCH CONTROLLER 14 ACTUALLY KNOWS OR WILLFULLY DISREGARDS IS A MINOR SHALL 15 CONDUCT A DATA PROTECTION ASSESSMENT FOR THE ONLINE SERVICE, 16 PRODUCT, OR FEATURE IF THERE IS A HEIGHTENED RISK OF HARM TO 17 MINORS. THE CONTROLLER SHALL CONDUCT THE DATA PROTECTION 18 ASSESSMENT:

19 (a) IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS
20 ESTABLISHED IN SECTION 6-1-1309; AND

21 (b) THAT ADDRESSES:

22 (I) THE PURPOSE OF THE ONLINE SERVICE, PRODUCT, OR FEATURE;

23 (II) THE CATEGORIES OF A MINOR'S PERSONAL DATA THAT THE
24 ONLINE SERVICE, PRODUCT, OR FEATURE PROCESSES;

(III) THE PURPOSES FOR WHICH THE CONTROLLER PROCESSES A
MINOR'S PERSONAL DATA WITH RESPECT TO THE ONLINE SERVICE,
PRODUCT, OR FEATURE; AND

(IV) ANY HEIGHTENED RISK OF HARM TO <u>MINORS</u> THAT IS A
 REASONABLY FORESEEABLE RESULT OF OFFERING THE ONLINE SERVICE,
 PRODUCT, OR FEATURE TO <u>MINORS</u>.

4 (2) A CONTROLLER THAT CONDUCTS A DATA PROTECTION
5 ASSESSMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL:

6 (a) REVIEW THE DATA PROTECTION ASSESSMENT AS NECESSARY TO
7 ACCOUNT FOR ANY MATERIAL CHANGE TO THE PROCESSING OPERATIONS
8 OF THE ONLINE SERVICE, PRODUCT, OR FEATURE THAT IS THE SUBJECT OF
9 THE DATA PROTECTION ASSESSMENT; AND

10 (b) MAINTAIN DOCUMENTATION CONCERNING THE DATA
11 PROTECTION ASSESSMENT FOR THE LONGER OF:

12 (I) THREE YEARS AFTER THE DATE ON WHICH THE PROCESSING13 OPERATIONS CEASE; OR

14 (II) THE DATE THE CONTROLLER CEASES OFFERING THE ONLINE
15 SERVICE, PRODUCT, OR FEATURE.

16 (3) A SINGLE DATA PROTECTION ASSESSMENT MAY ADDRESS A
17 COMPARABLE SET OF PROCESSING OPERATIONS THAT INCLUDE SIMILAR
18 ACTIVITIES.

(4) IF A CONTROLLER CONDUCTS A DATA PROTECTION ASSESSMENT
FOR THE PURPOSE OF COMPLYING WITH ANOTHER APPLICABLE LAW OR
REGULATION, THE DATA PROTECTION ASSESSMENT IS DEEMED TO SATISFY
THE REQUIREMENTS ESTABLISHED IN THIS SECTION IF THE DATA
PROTECTION ASSESSMENT IS REASONABLY SIMILAR IN SCOPE AND EFFECT
TO THE DATA PROTECTION ASSESSMENT THAT WOULD OTHERWISE BE
CONDUCTED PURSUANT TO THIS SECTION.

26 (5) IF A CONTROLLER CONDUCTS A DATA PROTECTION ASSESSMENT
 27 PURSUANT TO SUBSECTION (1) OF THIS SECTION OR A DATA PROTECTION

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ASSESSMENT REVIEW PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION
 AND DETERMINES THAT THE ONLINE SERVICE, PRODUCT, OR FEATURE THAT
 IS THE SUBJECT OF THE ASSESSMENT POSES A HEIGHTENED RISK OF HARM
 TO <u>MINORS</u>, THE CONTROLLER SHALL ESTABLISH AND IMPLEMENT A PLAN
 TO MITIGATE OR ELIMINATE THE HEIGHTENED RISK.

6 (6) (a) A DATA PROTECTION ASSESSMENT CONDUCTED PURSUANT
7 TO THIS SECTION:

8 (I) IS CONFIDENTIAL, EXCEPT AS PROVIDED IN SUBSECTION (6)(b)
9 OF THIS SECTION; AND

(II) IS NOT A PUBLIC RECORD, AND IS EXEMPT FROM PUBLIC
INSPECTION AND COPYING, UNDER THE "COLORADO OPEN RECORDS ACT",
PART 2 OF ARTICLE 72 OF TITLE 24.

(b) (I) A CONTROLLER SHALL MAKE A DATA PROTECTION
ASSESSMENT CONDUCTED PURSUANT TO THIS SECTION AVAILABLE TO THE
ATTORNEY GENERAL UPON REQUEST. THE ATTORNEY GENERAL MAY
EVALUATE THE DATA PROTECTION ASSESSMENT FOR COMPLIANCE WITH
SECTION 6-1-1308.5 AND WITH OTHER LAWS, INCLUDING THIS ARTICLE 1.

(II) THE DISCLOSURE OF A DATA PROTECTION ASSESSMENT
PURSUANT TO A REQUEST FROM THE ATTORNEY GENERAL DOES NOT
CONSTITUTE A WAIVER OF ANY ATTORNEY-CLIENT PRIVILEGE OR
WORK-PRODUCT PROTECTION THAT MIGHT OTHERWISE EXIST WITH
RESPECT TO THE ASSESSMENT AND ANY INFORMATION IN THE ASSESSMENT.

23 (7) DATA PROTECTION ASSESSMENT REQUIREMENTS APPLY TO
24 PROCESSING ACTIVITIES CREATED OR GENERATED AFTER OCTOBER 1,
25 2025, AND ARE NOT RETROACTIVE.

26 SECTION 5. In Colorado Revised Statutes, 6-1-1311, amend
27 (1)(d) as follows:

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1 6-1-1311. Enforcement - penalties - repeal. (1) (d) (I) Prior to 2 any enforcement action pursuant to subsection (1)(a) of this section, 3 OTHER THAN AN ENFORCEMENT ACTION DESCRIBED IN SUBSECTION 4 (1)(d)(II) OF THIS SECTION, the attorney general or district attorney must 5 issue a notice of violation to the controller if a cure is deemed possible. 6 If the controller fails to cure the violation within sixty days after receipt 7 of the notice of violation, an action may be brought pursuant to this 8 section. This subsection (1)(d) SUBSECTION (1)(d)(I) is repealed, effective 9 January 1, 2025.

10 (II) PRIOR TO ANY ENFORCEMENT ACTION PURSUANT TO 11 SUBSECTION (1)(a) OF THIS SECTION TO ENFORCE SECTION 6-1-1305.5, 12 6-1-1308.5, OR 6-1-1309.5, THE ATTORNEY GENERAL OR DISTRICT 13 ATTORNEY MUST ISSUE A NOTICE OF VIOLATION TO THE CONTROLLER IF A 14 CURE IS DEEMED POSSIBLE. IF THE CONTROLLER FAILS TO CURE THE 15 VIOLATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE OF 16 VIOLATION, AN ACTION MAY BE BROUGHT PURSUANT TO THIS SECTION. 17 This subsection (1)(d)(II) is repealed, effective December 31, 2026.

18 SECTION 6. Act subject to petition - effective date -19 **applicability.** (1) This act takes effect October 1, 2025; except that, if a 20 referendum petition is filed pursuant to section 1 (3) of article V of the 21 state constitution against this act or an item, section, or part of this act 22 within the ninety-day period after final adjournment of the general 23 assembly, then the act, item, section, or part will not take effect unless 24 approved by the people at the general election to be held in November 25 2024 and, in such case, will take effect October 1, 2025, or on the date of 26 the official declaration of the vote thereon by the governor, whichever is 27 later.

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