

CHAPTER 296

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 24-041

BY SENATOR(S) Rodriguez and Lundeen, Baisley, Bridges, Buckner, Coleman, Cutter, Exum, Fields, Gardner, Ginal, Gonzales, Hansen, Jaquez Lewis, Kirkmeyer, Kolker, Liston, Marchman, Michaelson Jenet, Mullica, Pelton B., Priola, Roberts, Smallwood, Will, Fenberg;

also REPRESENTATIVE(S) Frizell and Mabrey, Amabile, Bacon, Bird, Bradley, Brown, Duran, English, Epps, Froelich, Garcia, Hamrick, Hernandez, Jodeh, Joseph, Lieder, Lindsay, Lukens, Lynch, Marshall, Marvin, McLachlan, Rutinel, Sirota, Story, Titone, Valdez, Velasco, Vigil, Weinberg, Weissman, Willford, Young, McCluskie.

AN ACT**CONCERNING ADDING DATA PROTECTIONS FOR A MINOR'S ONLINE ACTIVITY.**

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

SECTION 1. In Colorado Revised Statutes, 6-1-1302, **amend** (1)(a)(III), (1)(a)(V), (1)(b)(II), and (1)(c)(I); and **add** (1)(c)(II)(A.5) as follows:

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

(V) The unauthorized disclosure of personal information, INCLUDING A MINOR'S 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:

(II) States across the United States are looking to this part 13 and similar models

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

(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;

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

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

SECTION 2. In Colorado Revised Statutes, 6-1-1303, **amend** (1); and **add** (1.5), (14.5), (16.5), (16.8), and (17.5) as follows:

6-1-1303. Definitions. As used in this part 13, unless the context otherwise requires:

(1) ~~"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 "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF AGE OR OLDER.~~

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

(b) AS USED IN SUBSECTION (1.5)(a) OF THIS SECTION, "CONTROL" 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

(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.

(14.5) "HEIGHTENED RISK OF HARM TO MINORS" MEANS PROCESSING THE PERSONAL DATA OF MINORS IN A MANNER THAT PRESENTS A REASONABLY FORESEEABLE RISK THAT COULD CAUSE:

(a) UNFAIR OR DECEPTIVE TREATMENT OF, OR UNLAWFUL DISPARATE IMPACT ON, MINORS;

(b) FINANCIAL, PHYSICAL, OR REPUTATIONAL INJURY TO MINORS;

(c) UNAUTHORIZED DISCLOSURE OF THE PERSONAL DATA OF MINORS AS A RESULT OF A SECURITY BREACH, AS DEFINED IN SECTION 6-1-716 (1)(h); OR

(d) PHYSICAL OR OTHER INTRUSION UPON THE SOLITUDE OR SECLUSION, OR THE PRIVATE AFFAIRS OR CONCERNS, OF MINORS IF THE INTRUSION WOULD BE OFFENSIVE TO A REASONABLE PERSON.

(16.5) "MINOR" MEANS ANY CONSUMER WHO IS UNDER EIGHTEEN YEARS OF AGE.

(16.8) "ONLINE SERVICE, PRODUCT, OR FEATURE":

(a) MEANS ANY SERVICE, PRODUCT, OR FEATURE THAT IS PROVIDED ONLINE; AND

(b) DOES NOT INCLUDE:

(I) TELECOMMUNICATIONS SERVICE, AS DEFINED IN 47 U.S.C. SEC. 153 (53), AS AMENDED;

(II) BROADBAND INTERNET ACCESS SERVICE, AS DEFINED IN 47 CFR 54.400 (1), AS AMENDED; OR

(III) THE DELIVERY OR USE OF A PHYSICAL PRODUCT.

(17.5) "PRECISE GEOLOCATION DATA":

(a) MEANS INFORMATION DERIVED FROM TECHNOLOGY, INCLUDING GLOBAL POSITIONING SYSTEM LEVEL LATITUDE AND LONGITUDE COORDINATES OR OTHER MECHANISMS, THAT DIRECTLY IDENTIFIES THE SPECIFIC LOCATION OF AN INDIVIDUAL WITH PRECISION AND ACCURACY WITHIN A RADIUS OF ONE THOUSAND SEVEN HUNDRED FIFTY FEET; AND

(b) DOES NOT INCLUDE:

(I) THE CONTENT OF COMMUNICATIONS REGARDING LOCATION; OR

(II) ANY DATA GENERATED BY OR CONNECTED TO ADVANCED UTILITY METERING INFRASTRUCTURE SYSTEMS OR EQUIPMENT FOR USE BY A UTILITY.

SECTION 3. In Colorado Revised Statutes, 6-1-1304, **amend** (1), (3)(d), and (3)(e); and **add** (3)(f) and (3)(g) as follows:

6-1-1304. Applicability of part. (1) Except as specified in subsection (2) of this section:

(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:

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

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

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

~~(b)~~ (B) 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; AND

(b) SECTIONS 6-1-1305.5, 6-1-1308.5, AND 6-1-1309.5 TO 6-1-1313 APPLY TO A CONTROLLER THAT CONDUCTS BUSINESS IN COLORADO OR DELIVERS COMMERCIAL PRODUCTS OR SERVICES THAT ARE INTENTIONALLY TARGETED TO RESIDENTS OF COLORADO.

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

(d) Apply to information made available by a third party that the controller has a reasonable basis to believe is protected speech pursuant to applicable law; ~~and~~

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

(f) REQUIRE A CONTROLLER OR PROCESSOR TO IMPLEMENT AN AGE VERIFICATION OR AGE-GATING SYSTEM OR OTHERWISE AFFIRMATIVELY COLLECT THE AGE OF CONSUMERS, BUT A CONTROLLER THAT CHOOSES TO CONDUCT COMMERCIALY REASONABLE AGE ESTIMATION TO DETERMINE WHICH CONSUMERS ARE MINORS IS NOT LIABLE FOR AN ERRONEOUS AGE ESTIMATION; AND

(g) IMPOSE ANY OBLIGATION ON A CONTROLLER OR PROCESSOR THAT ADVERSELY AFFECTS THE RIGHTS OF ANY PERSON TO FREEDOM OF SPEECH OR FREEDOM OF THE PRESS GUARANTEED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

SECTION 4. In Colorado Revised Statutes, **add** 6-1-1305.5, 6-1-1308.5, and 6-1-1309.5 as follows:

6-1-1305.5. Responsibility according to role - processing data of minors.

(1) A PROCESSOR SHALL ADHERE TO THE INSTRUCTIONS OF A CONTROLLER AND

SHALL ASSIST THE CONTROLLER TO MEET THE CONTROLLER'S OBLIGATIONS UNDER SECTIONS 6-1-1308.5 AND 6-1-1309.5, TAKING INTO ACCOUNT THE NATURE OF THE PROCESSING AND THE INFORMATION AVAILABLE TO THE PROCESSOR. THE PROCESSOR SHALL ASSIST THE CONTROLLER BY:

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

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

(2) A CONTRACT BETWEEN A CONTROLLER AND A PROCESSOR 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.

(4) DETERMINING WHETHER A PERSON IS ACTING AS A CONTROLLER OR PROCESSOR WITH RESPECT TO A SPECIFIC PROCESSING OF DATA IS A FACT-BASED DETERMINATION THAT DEPENDS UPON THE CONTEXT IN WHICH PERSONAL DATA IS TO BE PROCESSED. A PERSON THAT IS NOT LIMITED IN THE PERSON'S PROCESSING OF PERSONAL DATA PURSUANT TO A CONTROLLER'S INSTRUCTIONS, OR THAT FAILS TO ADHERE TO THE INSTRUCTIONS, IS A CONTROLLER AND NOT A PROCESSOR WITH RESPECT TO A SPECIFIC PROCESSING OF DATA. A PROCESSOR THAT CONTINUES TO ADHERE TO A CONTROLLER'S INSTRUCTIONS WITH RESPECT 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.

(2) UNLESS A CONTROLLER HAS OBTAINED CONSENT IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, 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 NOT:

(a) PROCESS A MINOR'S PERSONAL DATA:

(I) FOR THE PURPOSES OF:

(A) TARGETED ADVERTISING;

(B) THE SALE OF PERSONAL DATA; OR

(C) PROFILING IN FURTHERANCE OF DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING A CONSUMER;

(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

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

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

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

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

(II) THE CONTROLLER ONLY COLLECTS AND RETAINS THE MINOR'S PRECISE GEOLOCATION DATA FOR THE TIME NECESSARY TO PROVIDE THE ONLINE SERVICE, PRODUCT, OR FEATURE; AND

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

(3) (a) A CONTROLLER SHALL NOT ENGAGE IN THE ACTIVITIES DESCRIBED IN SUBSECTION (2) OF THIS SECTION UNLESS THE CONTROLLER OBTAINS:

(I) THE MINOR'S CONSENT; OR

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

(B) A CONTROLLER THAT COMPLIES WITH THE VERIFIABLE PARENTAL CONSENT REQUIREMENTS ESTABLISHED IN THE "CHILDREN'S ONLINE PRIVACY PROTECTION ACT OF 1998", 15 U.S.C. SEC. 6501 ET SEQ., AS AMENDED, AND THE REGULATIONS, RULES, GUIDANCE, AND EXEMPTIONS ADOPTED PURSUANT TO SAID ACT, AS

AMENDED, IS DEEMED TO HAVE SATISFIED ANY REQUIREMENT TO OBTAIN PARENTAL CONSENT UNDER THIS SUBSECTION (3)(a)(II).

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

(A) PROVIDE ANY CONSENT MECHANISM THAT IS DESIGNED TO SUBSTANTIALLY SUBVERT OR IMPAIR, OR IS MANIPULATED WITH THE EFFECT OF SUBSTANTIALLY SUBVERTING OR IMPAIRING, USER AUTONOMY, 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.

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

(A) ELECTRONIC MAIL; OR

(B) DIRECT MESSAGING CONSISTING OF TEXT, PHOTOS, OR VIDEOS THAT ARE SENT BETWEEN DEVICES BY ELECTRONIC MEANS, WHERE MESSAGES ARE: SHARED BETWEEN THE SENDER AND THE RECIPIENT; ONLY VISIBLE TO THE SENDER AND THE RECIPIENT; AND NOT POSTED PUBLICLY.

(4) SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION DO NOT APPLY TO ANY SERVICE OR APPLICATION THAT IS USED BY AND UNDER THE DIRECTION OF AN EDUCATIONAL ENTITY, INCLUDING A LEARNING MANAGEMENT SYSTEM OR A STUDENT ENGAGEMENT PROGRAM.

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

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

(b) THAT ADDRESSES:

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

(II) THE CATEGORIES OF A MINOR'S PERSONAL DATA THAT THE 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 MINORS THAT IS A REASONABLY FORESEEABLE RESULT OF OFFERING THE ONLINE SERVICE, PRODUCT, OR FEATURE TO MINORS.

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

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

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

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

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

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

(5) IF A CONTROLLER CONDUCTS A DATA PROTECTION ASSESSMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION OR A DATA PROTECTION 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 MINORS, THE CONTROLLER SHALL ESTABLISH AND IMPLEMENT A PLAN TO MITIGATE OR ELIMINATE THE HEIGHTENED RISK.

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

(I) IS CONFIDENTIAL, EXCEPT AS PROVIDED IN SUBSECTION (6)(b) 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.

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

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

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

(II) PRIOR TO ANY ENFORCEMENT ACTION PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION TO ENFORCE SECTION 6-1-1305.5, 6-1-1308.5, OR 6-1-1309.5, THE ATTORNEY GENERAL OR DISTRICT ATTORNEY MUST ISSUE A NOTICE OF VIOLATION TO THE CONTROLLER IF A CURE IS DEEMED POSSIBLE. IF THE CONTROLLER FAILS TO CURE THE VIOLATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE OF VIOLATION, AN ACTION MAY BE BROUGHT PURSUANT TO THIS SECTION. THIS SUBSECTION (1)(d)(II) IS REPEALED, EFFECTIVE DECEMBER 31, 2026.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect October 1, 2025; 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 2024 and, in such case, will take effect October 1, 2025, 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.

Approved: May 31, 2024