

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0077.01 Thomas Morris x4218

SENATE BILL 21-190

SENATE SPONSORSHIP

Rodriguez and Lundeen,

HOUSE SPONSORSHIP

(None),

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL PROTECTION OF DATA RELATING TO**
102 **PERSONAL PRIVACY.**

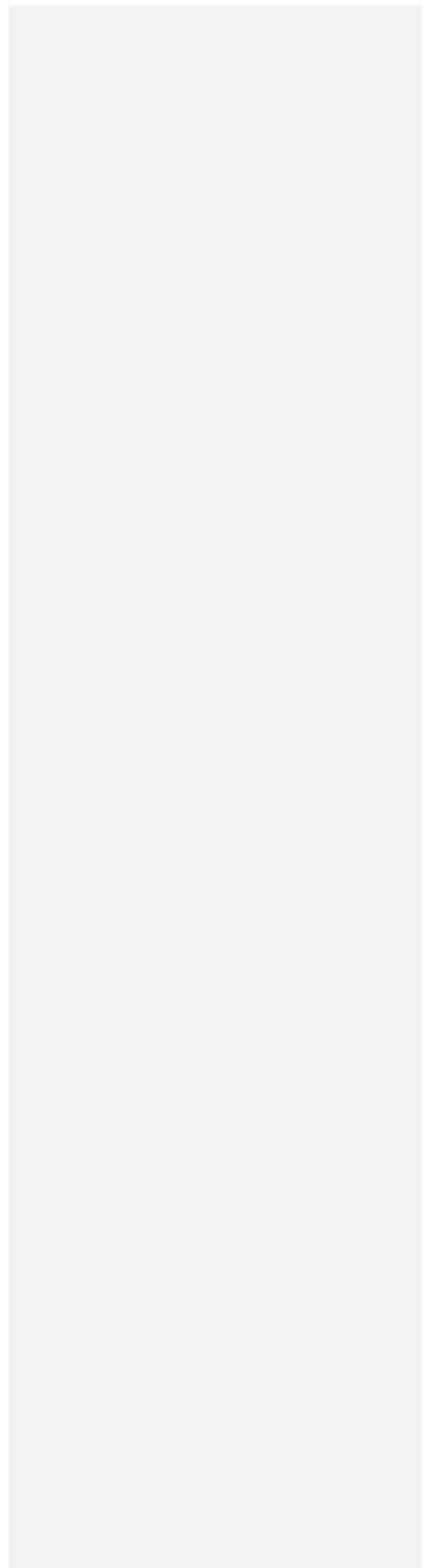
Bill Summary

(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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.



1 FREEDOM;

2 (II) COLORADO'S CONSTITUTION EXPLICITLY PROVIDES THE RIGHT
3 TO PRIVACY UNDER SECTION 7 OF ARTICLE II, AND FUNDAMENTAL PRIVACY
4 RIGHTS HAVE LONG BEEN, AND CONTINUE TO BE, INTEGRAL TO
5 PROTECTING COLORADANS AND TO SAFEGUARDING OUR DEMOCRATIC
6 REPUBLIC;

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

11 (IV) THE ABILITY TO HARNESS AND USE DATA IN POSITIVE WAYS
12 IS DRIVING INNOVATION AND BRINGS BENEFICIAL TECHNOLOGIES TO
13 SOCIETY, BUT IT HAS ALSO CREATED RISKS TO PRIVACY AND FREEDOM;
14 AND

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

21 (b) DETERMINES THAT:

22 (I) TECHNOLOGICAL INNOVATION AND NEW USES OF DATA CAN
23 HELP SOLVE SOCIETAL PROBLEMS AND IMPROVE LIVES, AND IT IS POSSIBLE
24 TO BUILD A WORLD WHERE TECHNOLOGICAL INNOVATION AND PRIVACY
25 CAN COEXIST;

26 (II) THE EUROPEAN UNION'S GENERAL DATA PROTECTION
27 REGULATION IS EMERGING AS A MODEL FOR COUNTRIES ACROSS THE

1 GLOBE IN DATA PRIVACY; AND

2 (III) STATES ACROSS THE UNITED STATES ARE LOOKING TO THIS
3 AND SIMILAR MODELS TO ENACT STATE-BASED DATA PRIVACY
4 REQUIREMENTS AND TO EXERCISE THE LEADERSHIP THAT IS LACKING AT
5 THE NATIONAL LEVEL; AND

6 (c) DECLARES THAT:

7 (I) BY ENACTING THIS PART 13, COLORADO WILL BE AMONG THE
8 STATES THAT EMPOWER CONSUMERS TO PROTECT THEIR PRIVACY AND
9 REQUIRE COMPANIES TO BE RESPONSIBLE CUSTODIANS OF DATA AS THEY
10 CONTINUE TO INNOVATE;

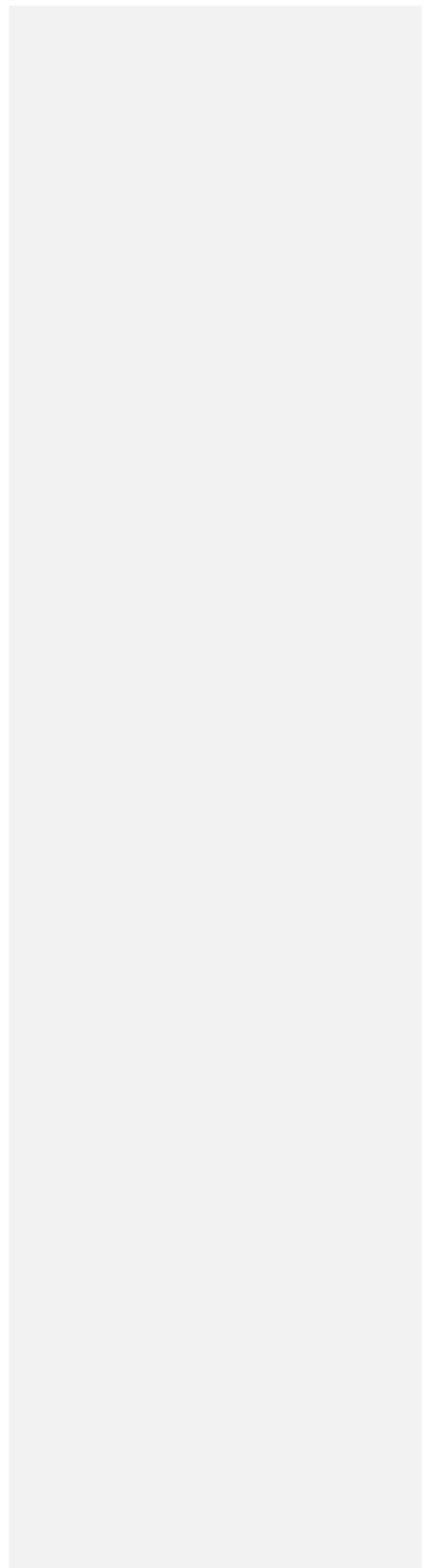
11 (II) THIS PART 13 ADDRESSES ISSUES OF STATEWIDE CONCERN
12 AND:

13 (A) PROVIDES CONSUMERS THE RIGHT TO ACCESS, CORRECT, AND
14 DELETE PERSONAL DATA AND THE RIGHT TO OPT OUT NOT ONLY OF THE
15 SALE OF PERSONAL DATA BUT ALSO OF THE COLLECTION AND USE OF
16 PERSONAL DATA;

17 (B) IMPOSES AN AFFIRMATIVE OBLIGATION UPON COMPANIES TO
18 SAFEGUARD PERSONAL DATA; TO PROVIDE CLEAR, UNDERSTANDABLE, AND
19 TRANSPARENT INFORMATION TO CONSUMERS ABOUT HOW THEIR PERSONAL
20 DATA ARE USED; AND TO STRENGTHEN COMPLIANCE AND ACCOUNTABILITY
21 BY REQUIRING DATA PROTECTION ASSESSMENTS IN THE COLLECTION AND
22 USE OF PERSONAL DATA; AND

23 (C) EMPOWERS THE ATTORNEY GENERAL AND DISTRICT
24 ATTORNEYS TO ACCESS AND EVALUATE A COMPANY'S DATA PROTECTION
25 ASSESSMENTS, TO IMPOSE PENALTIES WHERE VIOLATIONS OCCUR, AND TO
26 PREVENT FUTURE VIOLATIONS.

27 **6-1-1303. Definitions.** AS USED IN THIS PART 13, UNLESS THE



1 CONTEXT OTHERWISE REQUIRES:

2 (1) "AFFILIATE" MEANS A LEGAL ENTITY THAT CONTROLS, IS
3 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER LEGAL
4 ENTITY. AS USED IN THIS SUBSECTION (1), "CONTROL" MEANS:

5 (a) OWNERSHIP OF, CONTROL OF, OR POWER TO VOTE TWENTY-FIVE
6 PERCENT OR MORE OF THE OUTSTANDING SHARES OF ANY CLASS OF
7 VOTING SECURITY OF THE ENTITY, DIRECTLY OR INDIRECTLY, OR ACTING
8 THROUGH ONE OR MORE OTHER PERSONS;

9 (b) CONTROL IN ANY MANNER OVER THE ELECTION OF A MAJORITY
10 OF THE DIRECTORS, TRUSTEES, OR GENERAL PARTNERS OF THE ENTITY OR
11 OF INDIVIDUALS EXERCISING SIMILAR FUNCTIONS; OR

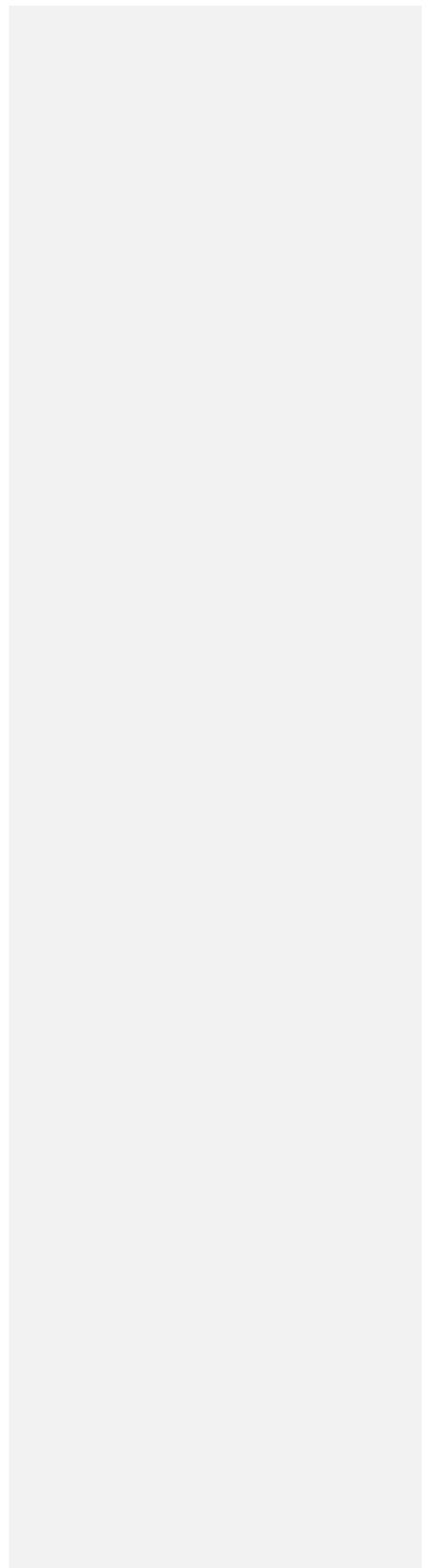
12 (c) THE POWER TO EXERCISE, DIRECTLY OR INDIRECTLY, A
13 CONTROLLING INFLUENCE OVER THE MANAGEMENT OR POLICIES OF THE
14 ENTITY AS DETERMINED BY THE APPLICABLE PRUDENTIAL REGULATOR, AS
15 THAT TERM IS DEFINED IN 12 U.S.C. SEC. 5481 (24), IF ANY.

16 (2) "AUTHENTICATE" MEANS TO USE REASONABLE MEANS TO
17 DETERMINE THAT A REQUEST TO EXERCISE ANY OF THE RIGHTS IN SECTION
18 6-1-1306 (1) IS BEING MADE BY OR ON BEHALF OF THE CONSUMER WHO IS
19 ENTITLED TO EXERCISE THE RIGHTS.

20 (3) "BUSINESS ASSOCIATE" HAS THE MEANING ESTABLISHED IN 45
21 CFR 160.103.

22 (4) "CHILD" MEANS AN INDIVIDUAL UNDER THIRTEEN YEARS OF
23 AGE.

24 (5) "CONSENT" MEANS A CLEAR, AFFIRMATIVE ACT SIGNIFYING A
25 CONSUMER'S FREELY GIVEN, SPECIFIC, INFORMED, AND UNAMBIGUOUS
26 AGREEMENT, SUCH AS BY A WRITTEN STATEMENT, INCLUDING BY
27 ELECTRONIC MEANS, OR OTHER CLEAR, AFFIRMATIVE ACTION.



1 (6) "CONSUMER":

2 (a) MEANS AN INDIVIDUAL WHO IS A COLORADO RESIDENT ACTING
3 ONLY IN AN INDIVIDUAL OR HOUSEHOLD CONTEXT, AS A JOB APPLICANT,
4 OR AS A BENEFICIARY OF SOMEONE ACTING IN AN EMPLOYMENT CONTEXT; AND

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

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

10 (8) "COVERED ENTITY" HAS THE MEANING ESTABLISHED IN 45 CFR
11 160.103.

12 (9) "DECISIONS THAT PRODUCE LEGAL OR SIMILARLY
13 SIGNIFICANT EFFECTS CONCERNING A CONSUMER" MEANS A
14 DECISION BASED SOLELY ON AUTOMATED PROCESSING MADE BY
15 THE CONTROLLER THAT RESULTS IN THE PROVISION OR DENIAL
16 BY THE CONTROLLER OF FINANCIAL AND LENDING SERVICES,
17 HOUSING, INSURANCE, EDUCATION ENROLLMENT, CRIMINAL
18 JUSTICE, EMPLOYMENT OPPORTUNITIES, HEALTH CARE
19 SERVICES, OR ACCESS TO BASIC NECESSITIES, SUCH AS FOOD
20 AND WATER.

(10) "DE-IDENTIFIED DATA" MEANS DATA THAT DO NOT
IDENTIFY

12 AN INDIVIDUAL AND WITH RESPECT TO WHICH THERE IS NO REASONABLE
13 BASIS TO BELIEVE THAT THE INFORMATION CAN BE USED TO IDENTIFY AN
14 INDIVIDUAL.

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

18 (11) "HEALTH CARE INFORMATION" MEANS INDIVIDUALLY
19 IDENTIFIABLE INFORMATION RELATING TO THE PAST, PRESENT, OR FUTURE
20 HEALTH STATUS OF AN INDIVIDUAL.

21 (12) "HEALTH CARE PROVIDER" MEANS A PERSON LICENSED,
22 CERTIFIED, OR REGISTERED IN THIS STATE TO PRACTICE MEDICINE,
23 PHARMACY, CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY,
24 DENTISTRY, OPTOMETRY, OCCUPATIONAL THERAPY, OR OTHER HEALING
25 ARTS.

26 (13) "HIPAA" MEANS THE FEDERAL "HEALTH INSURANCE
27 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, 42

1 U.S.C. SECS. 1320d TO 1320d-9.

2 (14) "IDENTIFIED OR IDENTIFIABLE INDIVIDUAL" MEANS AN
3 INDIVIDUAL WHO CAN BE READILY IDENTIFIED, DIRECTLY OR INDIRECTLY,
4 IN PARTICULAR BY REFERENCE TO AN IDENTIFIER SUCH AS A NAME, AN
5 IDENTIFICATION NUMBER, SPECIFIC GEOLOCATION DATA, OR AN ONLINE
6 IDENTIFIER.

7 (165) "PERSONAL DATA":

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

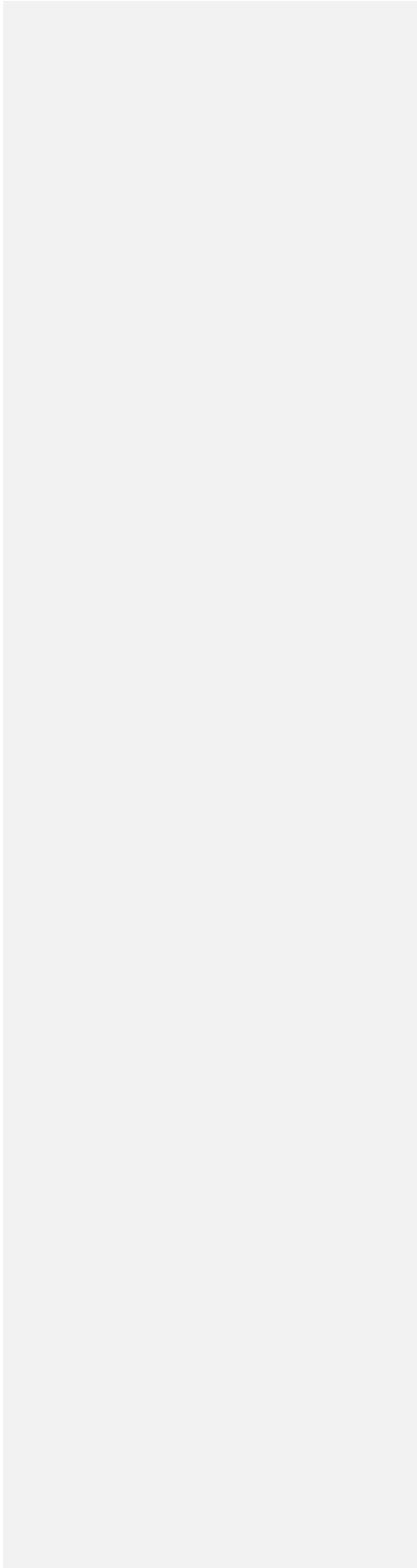
10 (b) DOES NOT INCLUDE AGGREGATE DATA DE-IDENTIFIED DATA
OR PUBLICLY

11 AVAILABLE INFORMATION. AS USED IN THIS SUBSECTION (15)(b),
12 "PUBLICLY AVAILABLE INFORMATION" MEANS INFORMATION THAT IS
13 LAWFULLY MADE AVAILABLE FROM FEDERAL, STATE, OR LOCAL
14 GOVERNMENT RECORDS; INFORMATION THAT A CONTROLLER HAS A
15 REASONABLE BASIS TO BELIEVE THE CONSUMER HAS LAWFULLY MADE
16 AVAILABLE TO THE GENERAL PUBLIC ~~OR TO WIDELY DISTRIBUTED MEDIA;~~
17 ~~AND INFORMATION MADE AVAILABLE TO THE GENERAL PUBLIC BY A~~
18 ~~PERSON TO WHOM THE CONSUMER HAS DISCLOSED THE INFORMATION IF~~
19 ~~THE CONSUMER HAS NOT RESTRICTED THE INFORMATION TO A SPECIFIC~~
20 ~~AUDIENCE.~~

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

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

27 (18) "PROFILING" MEANS ANY FORM OF AUTOMATED PROCESSING



1 OF PERSONAL DATA TO EVALUATE, ANALYZE, OR PREDICT PERSONAL
2 ASPECTS CONCERNING AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL'S
3 ECONOMIC SITUATION, HEALTH, PERSONAL PREFERENCES, INTERESTS,
4 RELIABILITY, BEHAVIOR, LOCATION, OR MOVEMENTS.

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

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

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

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

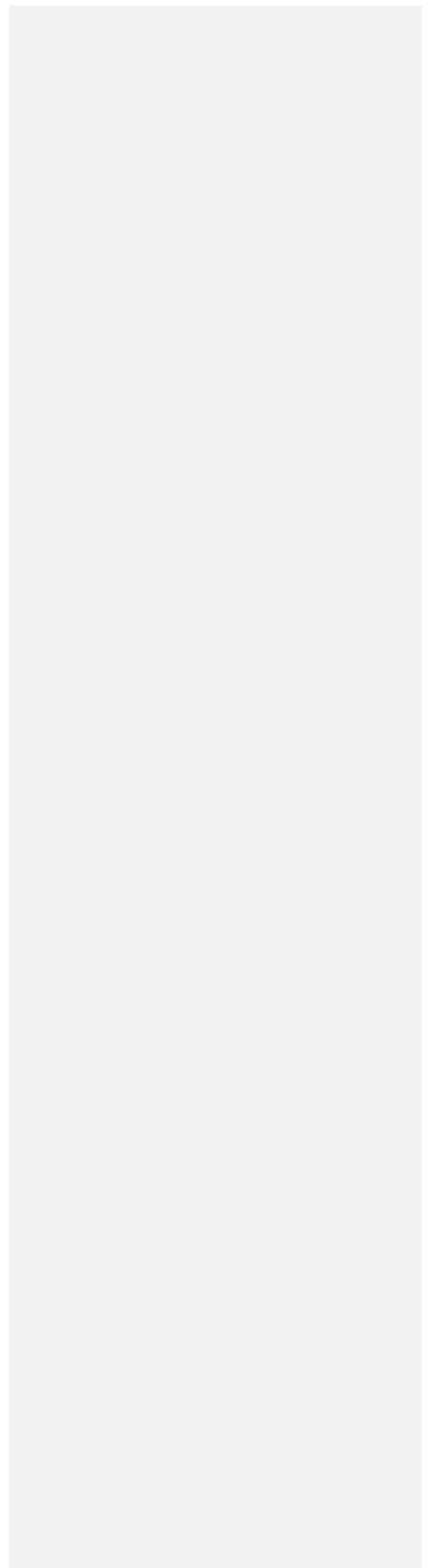
19 (I) THE DISCLOSURE OF PERSONAL DATA TO A PROCESSOR THAT
20 PROCESSES THE PERSONAL DATA ON BEHALF OF A CONTROLLER;

21 (II) THE DISCLOSURE OF PERSONAL DATA TO A THIRD PARTY ~~WITH~~
~~22 WHOM THE CONSUMER HAS A DIRECT RELATIONSHIP~~ FOR PURPOSES OF
23 PROVIDING A PRODUCT OR SERVICE REQUESTED BY THE CONSUMER OR
24 OTHERWISE IN A MANNER THAT IS CONSISTENT WITH ~~A~~ CONSUMER'S
25 REASONABLE EXPECTATIONS CONSIDERING THE CONTEXT IN WHICH THE
26 CONSUMER PROVIDED THE PERSONAL DATA TO THE CONTROLLER;

27 (III) THE DISCLOSURE OR TRANSFER OF PERSONAL DATA TO AN

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1 AFFILIATE OF THE CONTROLLER; ~~OR~~
2 (IV) THE DISCLOSURE OR TRANSFER TO A THIRD PARTY OF
3 PERSONAL DATA AS AN ASSET THAT IS PART OF AN ACTUAL OR PROPOSED
4 MERGER, ACQUISITION,
5 BANKRUPTCY, OR OTHER TRANSACTION IN WHICH THE THIRD PARTY
6 ASSUMES CONTROL OF ALL OR PART OF THE CONTROLLER'S ASSETS; OR
7 (V) THE DISCLOSURE OF PERSONAL DATA

(A) THAT A CONSUMER DIRECTS THE BUSINESS TO DISCLOSE OR
INTENTIONALLY DISCLOSES BY USING THE BUSINESS TO INTERACT
WITH A THIRD PARTY; OR

(B) INTENTIONALLY MADE AVAILABLE TO THE GENERAL PUBLIC VIA A
CHANNEL OF MASS MEDIA AND DID NOT RESTRICT TO A SPECIFIC
AUDIENCE. ~~OR~~

6 (22) "SENSITIVE DATA" MEANS PERSONAL DATA THAT IS:

7 (a) RACIAL OR ETHNIC ORIGIN,
8 RELIGIOUS BELIEFS, TREATMENT FOR OR DIAGNOSIS OF A MENTAL OR
9 PHYSICAL HEALTH CONDITION OR
10 DIAGNOSIS, SEX LIFE OR SEXUAL ORIENTATION, OR
11 CITIZENSHIP STATUS;

12 (b) GENETIC OR BIOMETRIC DATA THAT IS PROCESSED FOR
13 THE PURPOSE OF UNIQUELY IDENTIFYING AN INDIVIDUAL; OR

14 (c) THE PERSONAL DATA FROM A KNOWN CHILD.

14 ~~(23) "STUDENT" MEANS AN INDIVIDUAL WHO:~~
15 ~~(a) IS AT LEAST THIRTEEN YEARS OF AGE AND LESS THAN EIGHTEEN~~
16 ~~YEARS OF AGE; AND~~

17 ~~(b) INTERACTS WITH A CONTROLLER IN CONNECTION WITH A~~
18 ~~FORMAL EDUCATIONAL SETTING.~~

19 (24) "TARGETED ADVERTISING":

20 (a) MEANS DISPLAYING TO A CONSUMER AN ADVERTISEMENT THAT
21 IS SELECTED BASED ON PERSONAL DATA OBTAINED OR INFERRED OVER

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22 TIME FROM THE CONSUMER'S ACTIVITIES ACROSS NONAFFILIATED
23 WEBSITES, APPLICATIONS, OR ONLINE SERVICES TO PREDICT CONSUMER
24 PREFERENCES OR INTERESTS; AND

25 (b) DOES NOT INCLUDE

(I) ADVERTISING TO A CONSUMER IN RESPONSE

26 TO THE CONSUMER'S REQUEST FOR INFORMATION OR FEEDBACK.

(II) ADVERTISEMENTS BASED ON ACTIVITIES WITHIN A CONTROLLER'S
OWN WEBSITES OR ONLINE APPLICATIONS;

(III) ADVERTISEMENTS BASED ON THE CONTEXT OF A CONSUMER'S
CURRENT SEARCH QUERY, VISIT TO A WEBSITE, OR ONLINE APPLICATION; OR

OR

(IV) PROCESSING PERSONAL DATA SOLELY FOR MEASURING OR
REPORTING ADVERTISING PERFORMANCE, REACH, OR FREQUENCY.

27 (25) "THIRD PARTY" MEANS A PERSON, PUBLIC AUTHORITY,

1 AGENCY, OR BODY OTHER THAN A CONSUMER, CONTROLLER, PROCESSOR,
2 OR AFFILIATE OF THE PROCESSOR OR THE CONTROLLER.

3 **6-1-1304. Applicability of part.** (1) EXCEPT AS SPECIFIED IN
4 SUBSECTION (2) OF THIS SECTION, THIS PART 13 APPLIES TO A CONTROLLER
5 THAT:

6 (a) CONDUCTS BUSINESS IN COLORADO OR PRODUCES PRODUCTS
7 OR SERVICES THAT ARE INTENTIONALLY TARGETED TO RESIDENTS OF
8 COLORADO; AND

9 (b) SATISFIES ONE OR BOTH OF THE FOLLOWING THRESHOLDS:

10 (I) CONTROLS OR PROCESSES THE PERSONAL DATA OF ONE
11 HUNDRED THOUSAND CONSUMERS OR MORE DURING A CALENDAR YEAR;
12 OR

13 (II) DERIVES REVENUE OR RECEIVES A DISCOUNT ON THE PRICE OF
14 GOODS OR SERVICES FROM THE SALE OF PERSONAL DATA AND PROCESSES
15 OR CONTROLS THE PERSONAL DATA OF TWENTY-FIVE THOUSAND
16 CONSUMERS OR MORE.

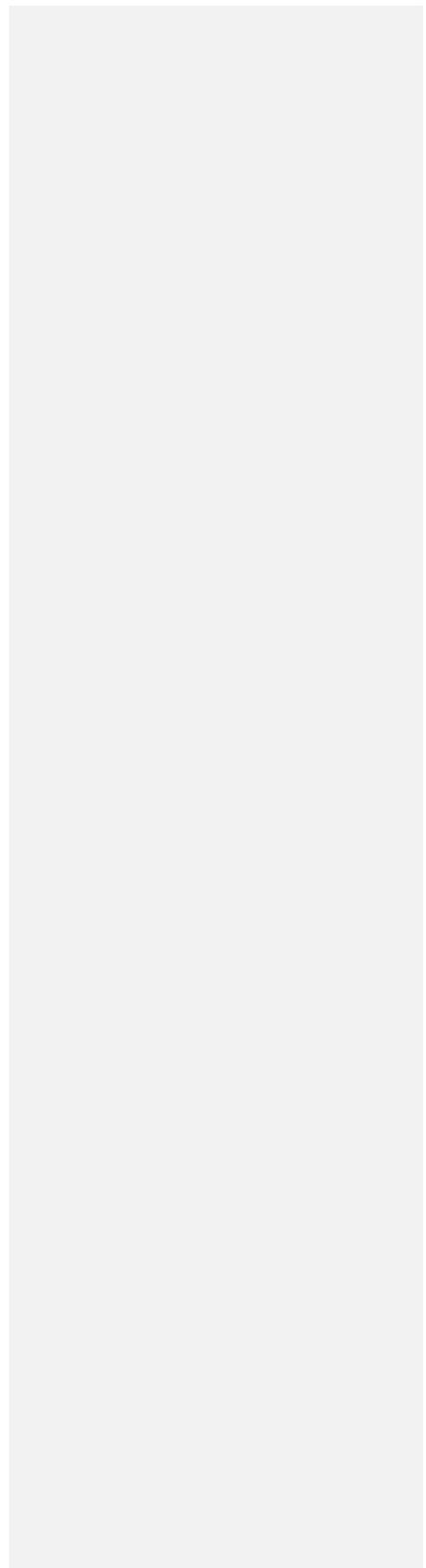
17 (2) THIS PART 13 DOES NOT APPLY TO:

18 (a) PROTECTED HEALTH INFORMATION;

19 (b) HEALTH CARE INFORMATION FOR PURPOSES OF PATIENT ACCESS
20 TO MEDICAL RECORDS PURSUANT TO PART 8 OF ARTICLE 1 OF TITLE 25;

21 (c) PATIENT IDENTIFYING INFORMATION, AS DEFINED IN 42 CFR
22 2.11, FOR PURPOSES OF 42 CFR 2, ESTABLISHED PURSUANT TO 42 U.S.C.
23 SEC. 290dd-2;

24 (d) IDENTIFIABLE PRIVATE INFORMATION, AS DEFINED IN 45 CFR
25 46.102, FOR PURPOSES OF THE FEDERAL POLICY FOR THE PROTECTION OF
26 HUMAN SUBJECTS PURSUANT TO 45 CFR 46; IDENTIFIABLE PRIVATE
27 INFORMATION THAT IS OTHERWISE INFORMATION COLLECTED AS PART OF



1 HUMAN SUBJECTS RESEARCH PURSUANT TO THE GOOD CLINICAL PRACTICE
2 GUIDELINES ISSUED BY THE INTERNATIONAL COUNCIL FOR
3 HARMONISATION OF TECHNICAL REQUIREMENTS FOR PHARMACEUTICALS
4 FOR HUMAN USE OR THE PROTECTION OF HUMAN SUBJECTS UNDER 21 CFR
5 50 AND 56; OR PERSONAL DATA USED OR SHARED IN RESEARCH
6 CONDUCTED IN ACCORDANCE WITH ONE OF MORE OF THE CATEGORIES SET
7 FORTH IN THIS SUBSECTION (2)(d);

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

10 (f) PATIENT SAFETY WORK PRODUCT, AS DEFINED IN 42 CFR 3.20,
11 FOR PURPOSES OF PATIENT SAFETY IMPROVEMENT PURSUANT TO 42 CFR
12 3, ESTABLISHED PURSUANT TO 42 U.S.C. SECS. 299b-21 TO 299b-26;

13 (g) INFORMATION THAT IS:

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

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

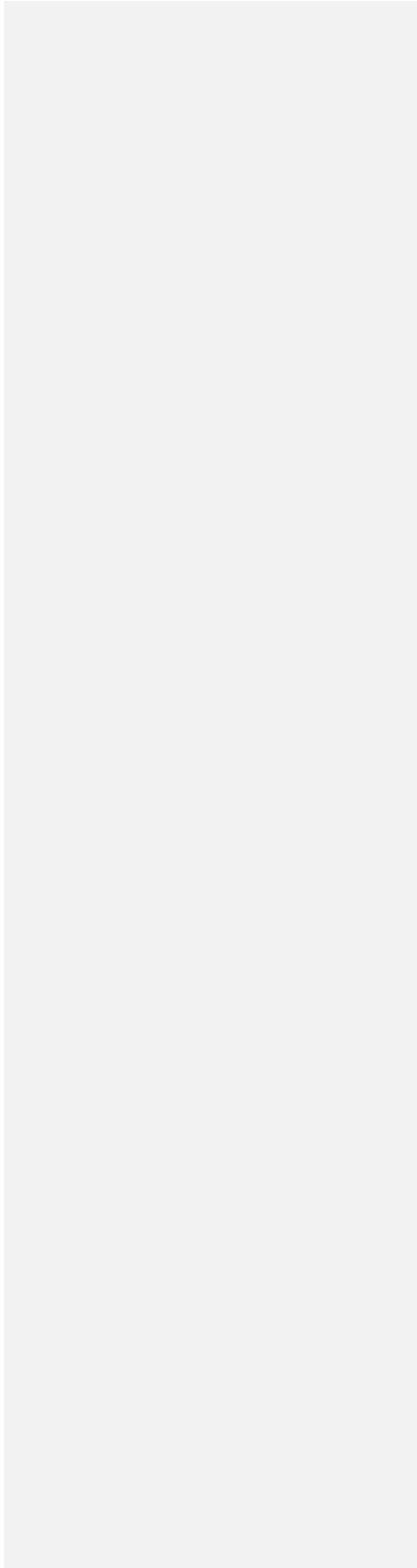
18 (h) INFORMATION MAINTAINED IN THE SAME MANNER AS
19 INFORMATION UNDER SUBSECTIONS (2)(a) TO (2)(g) OF THIS SECTION
20 BY:

21 (I) A COVERED ENTITY OR BUSINESS ASSOCIATE;

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

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

25 (i) (I) EXCEPT AS PROVIDED IN SUBSECTION (2)(i)(II) OF THIS
26 SECTION, AN ACTIVITY INVOLVING THE COLLECTION, MAINTENANCE,
27 DISCLOSURE, SALE, COMMUNICATION, OR USE OF ANY PERSONAL DATA
BEARING ON A CONSUMER'S CREDITWORTHINESS, CREDIT STANDING,



1 CREDIT CAPACITY, CHARACTER, GENERAL REPUTATION, PERSONAL
2 CHARACTERISTICS, OR MODE OF LIVING BY A CONSUMER REPORTING
3 AGENCY AS DEFINED IN 15 U.S.C. SEC. 1681a (f); BY A FURNISHER OF
4 INFORMATION AS SET FORTH IN 15 U.S.C. SEC. 1681s-2 THAT PROVIDES
5 INFORMATION FOR USE IN A CONSUMER REPORT, AS DEFINED IN 15 U.S.C.
6 SEC. 1681a (d); OR BY A USER OF A CONSUMER REPORT AS SET FORTH IN 15
7 U.S.C. SEC. 1681b.

8 (II) THIS SUBSECTION (2)(i) APPLIES ONLY TO THE EXTENT THAT
9 THE ACTIVITY IS REGULATED BY THE FEDERAL "FAIR CREDIT REPORTING
10 ACT", 15 U.S.C. SEC. 1681 ET SEQ., AS AMENDED, AND THE PERSONAL
11 DATA ARE NOT COLLECTED, MAINTAINED, DISCLOSED, SOLD,
12 COMMUNICATED, OR USED EXCEPT AS AUTHORIZED BY THE FEDERAL "FAIR
13 CREDIT REPORTING ACT", AS AMENDED.

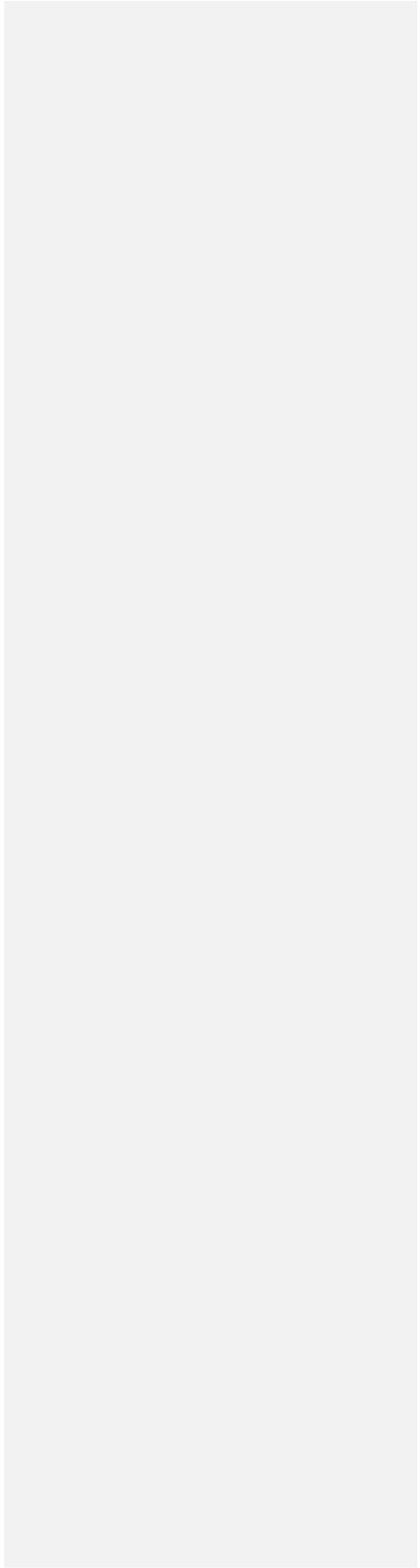
14 (j) PERSONAL DATA:

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

17 (II) COLLECTED, PROCESSED, SOLD, OR DISCLOSED PURSUANT TO
18 THE FEDERAL "GRAMM-LEACH-BLILEY ACT", 15 U.S.C. SEC. 6801 ET
19 SEQ., AS AMENDED, AND IMPLEMENTING REGULATIONS, IF THE
20 COLLECTION, PROCESSING, SALE, OR DISCLOSURE IS IN COMPLIANCE WITH
21 THAT LAW;

22 (III) COLLECTED, PROCESSED, SOLD, OR DISCLOSED PURSUANT TO
23 THE FEDERAL "DRIVER'S PRIVACY PROTECTION ACT OF 1994", 18 U.S.C.
24 SEC. 2721 ET SEQ., AS AMENDED, IF THE COLLECTION, PROCESSING, SALE,
25 OR DISCLOSURE IS REGULATED BY THAT LAW;

26 (IV) REGULATED BY THE FEDERAL "CHILDREN'S ONLINE PRIVACY
27 PROTECTION ACT OF 1998", 15 U.S.C. SECS. 6501 TO 6506, AS AMENDED,



1 IF COLLECTED, PROCESSED, AND MAINTAINED IN COMPLIANCE WITH THAT
2 LAW; OR

3 (V) REGULATED BY THE FEDERAL "FAMILY EDUCATIONAL RIGHTS
4 AND PRIVACY ACT OF 1974", 20 U.S.C. SEC. 1232g ET SEQ., AS AMENDED,
5 AND ITS IMPLEMENTING REGULATIONS;

6 (k) DATA MAINTAINED FOR EMPLOYMENT RECORDS PURPOSES;

7 (l) AIR CARRIER EXEMPTION

(m) INFORMATION USED AND DISCLOSED IN COMPLIANCE WITH

45

8 CFR 164.512; OR

9 (m) A FINANCIAL INSTITUTION OR AN AFFILIATE OF A FINANCIAL
10 INSTITUTION THAT IS SUBJECT TO THE FEDERAL "GRAMM-LEACH-BLILEY
11 ACT", 15 U.S.C. SEC. 6801 ET SEQ., AS AMENDED, AND IMPLEMENTING
12 REGULATIONS.

13 (3) THE OBLIGATIONS IMPOSED ON CONTROLLERS OR PROCESSORS
14 UNDER THIS PART 13 SHALL NOT BE CONSTRUED TO:

15 (a) RESTRICT A CONTROLLER'S OR PROCESSOR'S ABILITY TO:

16 (I) COMPLY WITH FEDERAL, STATE, OR LOCAL LAWS, RULES, OR
17 REGULATIONS;

18 (II) COMPLY WITH A CIVIL, CRIMINAL, OR REGULATORY INQUIRY,
19 INVESTIGATION, SUBPOENA, OR SUMMONS BY FEDERAL, STATE, LOCAL, OR
20 OTHER GOVERNMENTAL AUTHORITIES;

21 (III) COOPERATE WITH LAW ENFORCEMENT AGENCIES CONCERNING
22 CONDUCT OR ACTIVITY THAT THE CONTROLLER OR PROCESSOR

23 REASONABLY AND IN GOOD FAITH BELIEVES MAY VIOLATE FEDERAL,
24 STATE, OR LOCAL LAW;

25 (IV) INVESTIGATE, EXERCISE, PREPARE FOR, OR DEFEND LEGAL
26 CLAIMS;

1 DEVELOP PRODUCTS, SERVICES, OR TECHNOLOGY;

2 (VI) IDENTIFY AND REPAIR TECHNICAL ERRORS THAT IMPAIR
3 EXISTING OR INTENDED FUNCTIONALITY OR EFFECTUATE A PRODUCT
4 RECALL;

5 (VII) PERFORM INTERNAL OPERATIONS THAT ARE REASONABLY
6 ALIGNED WITH THE EXPECTATIONS OF THE CONSUMER BASED ON THE
7 CONSUMER'S EXISTING RELATIONSHIP WITH THE CONTROLLER OR THE
8 CONTEXT IN WHICH THE CONSUMER PROVIDED THE PERSONAL DATA;

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

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

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

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

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

26 (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

27 FORTH IN THIS SUBSECTION (3);

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1 (b) APPLY WHERE COMPLIANCE BY THE CONTROLLER OR
2 PROCESSOR WITH THIS PART 13 WOULD VIOLATE AN EVIDENTIARY
3 PRIVILEGE UNDER COLORADO LAW;

4 (c) PREVENT A CONTROLLER OR PROCESSOR FROM PROVIDING
5 PERSONAL DATA CONCERNING A CONSUMER TO A PERSON COVERED BY AN
6 EVIDENTIARY PRIVILEGE UNDER COLORADO LAW AS PART OF A PRIVILEGED
7 COMMUNICATION;

8 (d) ADVERSELY AFFECT THE RIGHTS OR FREEDOMS OF ANY
9 PERSONS SUCH AS EXERCISING THE RIGHT OF FREE SPEECH PURUSANT TO
THE FIRST AMENDMENT TO THE US CONSTITION, AND A CONSUMER'S EXERCISE
OF THE RIGHTS CONTAINED IN SECITON 6-1-1306(1)(a) AND (1)(d) DO NOT REQUIRE
THE DELETION OF INFOMRATION THAT A CONTROLLER HAS A REASONABLE
BASIS TO BELIEVE IS LAWFULLY MADE AVIALABLE TO THE GENERAL PUBLIC
BY A PERSON OTHER THAN THE CONSUMER IN THE VALID EXERCISE OF THE
PERSON'S FIRST AMENDMENT RIGHTS; AND

10 (e) APPLY TO THE PROCESSING OF PERSONAL DATA BY AN
11 INDIVIDUAL IN THE COURSE OF A PURELY PERSONAL OR HOUSEHOLD
12 ACTIVITY.

13 (4) (a) A CONTROLLER OR PROCESSOR THAT DISCLOSES PERSONAL
14 DATA TO ANOTHER CONTROLLER OR PROCESSOR IN COMPLIANCE WITH THIS
15 PART 13 DOES NOT VIOLATE THIS PART 13 IF THE RECIPIENT PROCESSES THE
16 PERSONAL DATA IN VIOLATION OF THIS PART 13, AND, AT THE TIME OF
17 DISCLOSING THE PERSONAL DATA, THE DISCLOSING CONTROLLER OR
18 PROCESSOR DID NOT HAVE ACTUAL KNOWLEDGE THAT THE RECIPIENT
19 INTENDED TO COMMIT A VIOLATION.

20 (b) A CONTROLLER OR PROCESSOR RECEIVING PERSONAL DATA
21 FROM A CONTROLLER OR PROCESSOR IN COMPLIANCE WITH THIS PART 13
22 AS SPECIFIED IN SUBSECTION (4)(a) OF THIS SECTION DOES NOT VIOLATE
23 THIS PART 13 IF THE CONTROLLER OR PROCESSOR FROM WHICH IT RECEIVES
24 THE PERSONAL DATA FAILS TO COMPLY WITH APPLICABLE OBLIGATIONS

25 UNDER THIS PART 13.
26 (5) PERSONAL DATA THAT ARE PROCESSED BY A CONTROLLER
27 PURSUANT TO AN EXCEPTION PROVIDED BY THIS SECTION:

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1 (a) SHALL NOT BE PROCESSED FOR ANY PURPOSE OTHER THAN
2 A PURPOSE ~~THOSE~~ EXPRESSLY LISTED IN THIS SECTION OR AS OTHERWISE
AUTHORIZED BY THIS PART 13; AND

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

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

11 **6-1-1305. Responsibility according to role.** (1) A CONTROLLER
12 SHALL MEET THE OBLIGATIONS ESTABLISHED UNDER THIS PART 13. A
13 CONTROLLER DOES NOT AVOID AN OBLIGATION BY DELEGATING
14 PROCESSING TO A PROCESSOR.

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

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

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

25 **6-1-1306. Consumer personal data rights.** (1) CONSUMERS MAY
26 REQUEST USING THE METHODS SPECIFIED BY THE CONTROLLER IN THE PRIVACY
NOTICE. SUCH METHOD SHALL TAKE INTO ACCOUNT THE WAYS IN WHICH CONSUMERS

NORMALLY INTERACT WITH THE CONTROLLER, THE NEED FOR SECURE AND RELIABLE COMMUNICATION OF SUCH REQUESTS, AND THE ABILITY OF THE CONTROLLER TO AUTHENTICATE THE IDENTITY OF THE CONSUMER MAKING THE REQUEST. CONTROLLERS SHALL NOT REQUIRE A CONSUMER TO CREATE A NEW ACCOUNT IN ORDER TO EXERCISE CONSUMER RIGHTS PURSUANT TO THIS SECTION BUT MAY REQUIRE A CONSUMER TO USE AN EXISTING ACCOUNT. A REQUEST MAY BE SUBMITTED AT ANY

27 TIME, TO A CONTROLLER THAT SPECIFIES WHICH RIGHTS THE CONSUMER

1 WISHES TO EXERCISE:

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

(A) TARGETED ADVERTISING,

(B) THE SALE OF PERSONAL DATA, OR

(C) PROFILING IN FURTHERANCE OF SOLELY AUTOMATED DECISIONS THAT
PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING THE
CONSUMER.

4 (II) A CONSUMER MAY AUTHORIZE ANOTHER PERSON OTHER
THAN A BUSINESS, ACTING ON

5 THE CONSUMER'S BEHALF, TO OPT OUT OF THE PROCESSING OF THE
6 CONSUMER'S PERSONAL DATA FOR PURPOSES OF TARGETED ADVERTISING
7 OR THE SALE OF THE CONSUMER'S PERSONAL DATA, **INCLUDING THROUGH A**
TECHNOLOGY INDICATING THE CONSUMERS INTENT TO OPT OUT SUCH AS A
BROWSER SETTING, BROWSER EXTENSION, OR GLOBAL DEVICE SETTING. A
CONTROLLER SHALL

8 COMPLY WITH AN OPT-OUT REQUEST RECEIVED FROM A PERSON
9 AUTHORIZED BY THE CONSUMER TO ACT ON THE CONSUMER'S BEHALF IF
10 THE CONTROLLER IS ABLE TO AUTHENTICATE, WITH REASONABLE EFFORT,
11 THE IDENTITY OF THE CONSUMER AND THE AUTHORIZED AGENT'S
12 AUTHORITY TO ACT ON THE CONSUMER'S BEHALF.

13 (b) **Right of access.** A CONSUMER HAS THE RIGHT TO CONFIRM
14 WHETHER A CONTROLLER IS PROCESSING PERSONAL DATA CONCERNING
15 THE CONSUMER AND TO ACCESS THE CONSUMER'S PERSONAL DATA THAT
HAS BEEN COLLECTED DURING THE 12 MONTHS PRECEDING THE CONSUMER'S
REQUEST.

16 (c) **Right to correction.** A CONSUMER HAS THE RIGHT TO CORRECT
17 INACCURATE PERSONAL DATA COLLECTED FROM THE CONSUMER,
TAKING INTO ACCOUNT THE NATURE OF THE PERSONAL DATA AND THE PURPOSES
OF THE PROCESSING OF THE CONSUMER'S PERSONAL DATA.

18 (d) **Right to deletion.** A CONSUMER HAS THE RIGHT TO DELETE

Author

Comment [1]: This change conforms to California's CPRA.

19 PERSONAL DATA CONCERNING THE CONSUMER THAT THE CONSUMER
20 PROVIDED TO THE CONTROLLER.

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

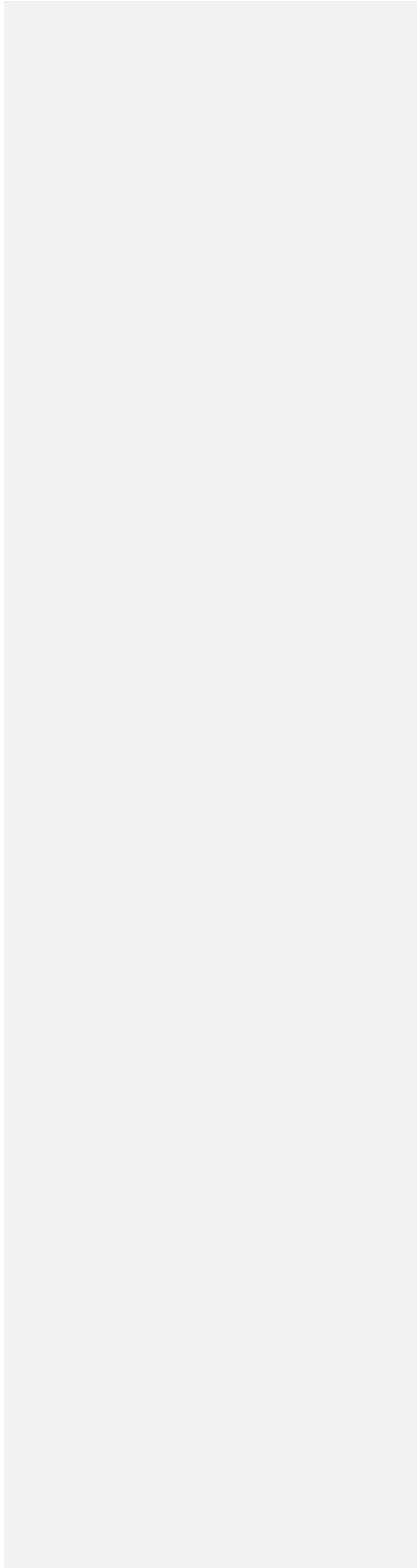
~~(2) **Notifying third parties of consumer requests.** A~~

~~1 CONTROLLER SHALL TAKE REASONABLE STEPS TO COMMUNICATE A
2 CONSUMER'S REQUEST TO OPT OUT OF THE PROCESSING OF PERSONAL DATA
3 OR TO ACCESS, CORRECT, DELETE, OR OBTAIN PERSONAL DATA IN A
4 PORTABLE FORMAT UNDER SUBSECTION (1) OF THIS SECTION TO EACH
5 THIRD PARTY TO WHOM THE CONTROLLER DISCLOSED THE PERSONAL DATA
6 WITHIN ONE YEAR PRECEDING THE CONSUMER'S REQUEST UNLESS THIS
7 PROVES FUNCTIONALLY IMPRACTICAL OR TECHNICALLY INFEASIBLE OR
8 INVOLVES DISPROPORTIONATE EFFORT.~~

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

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

25 (c) UPON REQUEST, A CONTROLLER SHALL PROVIDE TO THE
26 CONSUMER THE INFORMATION SPECIFIED IN THIS SECTION FREE OF
27 CHARGE; EXCEPT THAT, FOR A SECOND OR SUBSEQUENT REQUEST WITHIN



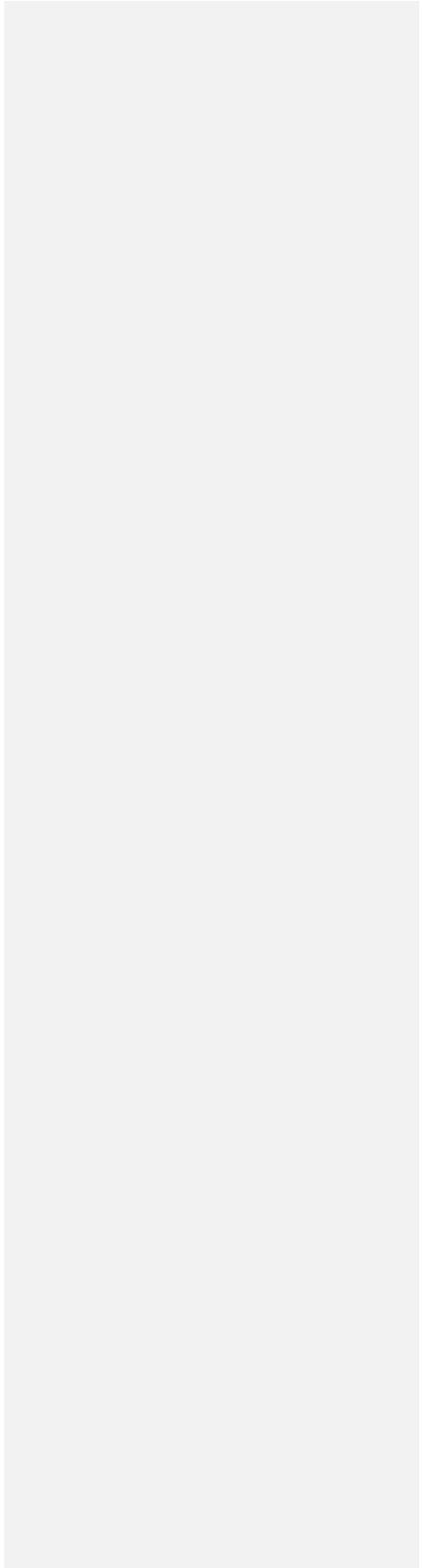
1 A TWELVE-MONTH PERIOD, THE CONTROLLER MAY CHARGE AN AMOUNT
2 CALCULATED IN THE MANNER SPECIFIED IN SECTION 24-72-205 (5)(a).

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

9 (34) (a) A CONTROLLER SHALL ESTABLISH AN INTERNAL PROCESS
10 WHEREBY CONSUMERS MAY APPEAL A REFUSAL TO TAKE ACTION ON A
11 REQUEST TO EXERCISE ANY OF THE RIGHTS UNDER SUBSECTION (1) OF THIS
12 SECTION WITHIN A REASONABLE PERIOD AFTER THE CONSUMER'S RECEIPT
13 OF THE NOTICE SENT BY THE CONTROLLER UNDER SUBSECTION (23)(b) OF
14 THIS SECTION. THE APPEAL PROCESS MUST BE CONSPICUOUSLY AVAILABLE
15 AND AS EASY TO USE AS THE PROCESS FOR SUBMITTING A REQUEST UNDER
16 THIS SECTION.

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

27 (c) THE CONTROLLER SHALL INFORM THE CONSUMER OF THE



1 CONSUMER'S ABILITY TO CONTACT THE ATTORNEY GENERAL IF THE
2 CONSUMER HAS CONCERNS ABOUT THE RESULT OF THE APPEAL.

3 **6-1-1307. Processing de-identified data or pseudonymous data.**

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

7 (a) REIDENTIFY DE-IDENTIFIED DATA;

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

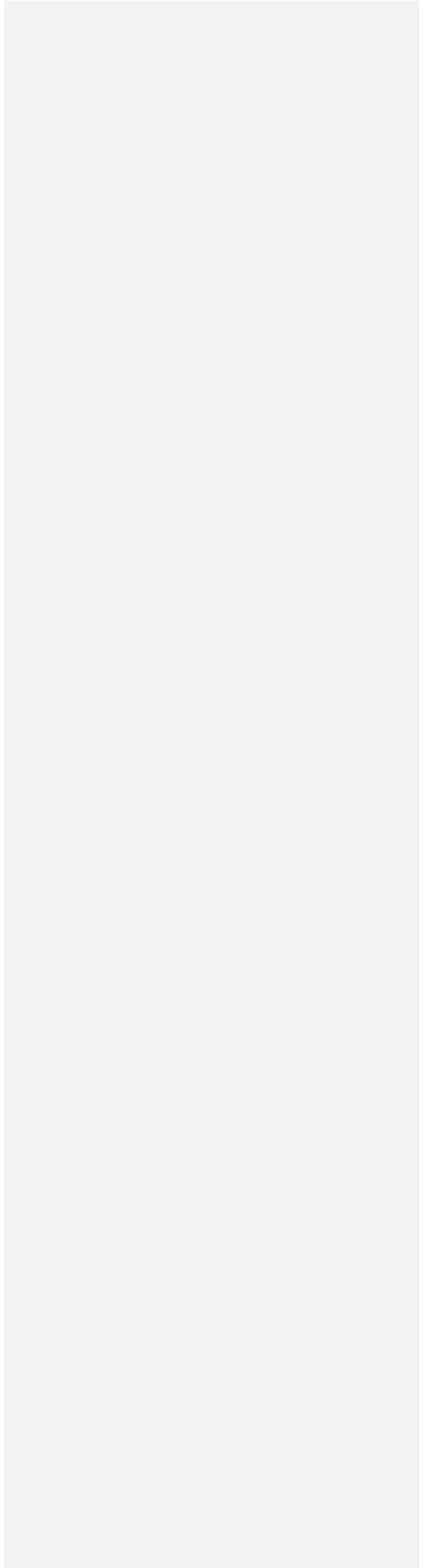
12 (I) (A) THE CONTROLLER IS NOT REASONABLY CAPABLE OF
13 ASSOCIATING THE REQUEST WITH THE PERSONAL DATA; OR

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

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

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

24 (c) MAINTAIN DATA IN IDENTIFIABLE FORM OR COLLECT, OBTAIN,
25 RETAIN, OR ACCESS ANY DATA OR TECHNOLOGY IN ORDER TO ENABLE THE
26 CONTROLLER TO ASSOCIATE AN AUTHENTICATED CONSUMER REQUEST
27 WITH PERSONAL DATA.



1 (2) THE RIGHTS CONTAINED IN SECTION 6-1-1306 (1) DO NOT
2 APPLY TO PSEUDONYMOUS DATA IF THE CONTROLLER CAN DEMONSTRATE
3 THAT THE INFORMATION NECESSARY TO IDENTIFY THE CONSUMER IS KEPT
4 SEPARATELY AND IS SUBJECT TO EFFECTIVE TECHNICAL AND
5 ORGANIZATIONAL CONTROLS THAT PREVENT THE CONTROLLER FROM
6 ACCESSING THE INFORMATION.

7 (3) A CONTROLLER THAT USES PSEUDONYMOUS DATA OR
8 DE-IDENTIFIED DATA SHALL EXERCISE REASONABLE OVERSIGHT TO
9 MONITOR COMPLIANCE WITH ANY CONTRACTUAL COMMITMENTS TO WHICH
10 THE PSEUDONYMOUS DATA OR DE-IDENTIFIED DATA ARE SUBJECT AND
11 SHALL TAKE APPROPRIATE STEPS TO ADDRESS ANY BREACHES OF
12 CONTRACTUAL COMMITMENTS.

13 (4) A CONTROLLER MAY DETERMINE THAT DATA ARE
14 DE-IDENTIFIED ONLY IF THE CONTROLLER:

15 (A) TAKES REASONABLE MEASURES TO ENSURE THAT THE DATA CANNOT BE
ASSOCIATED WITH A NATURAL PERSON;

(B) COMMITS TO MAINTAINING AND USING DE-IDENTIFIED DATA WITHOUT
ATTEMPTING TO RE-IDENTIFY THE DATA; AND

(C) CONTRACTUALLY OBLIGATES ANY RECIPIENTS OF THE DE-IDENTIFIED DATA TO
COMPLY WITH ALL PROVISIONS OF THIS PART 13.

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

16 **6-1-1308. Duties of controllers. (1) Duty of transparency.**

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

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

Jim 4/21/2021 11:57 AM

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Comment [2]: This is the Virginia bill language. It is simple and clear. Without these changes, the definition of de-identified data would be overly narrow – i.e., limited to the very specific ways of de-identifying protected health information under HIPAA. These changes track how CCPA, the FTC Privacy Framework, and other privacy laws define and treat de-identified data.

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

23 (III) ~~AN ESTIMATE OF HOW LONG THE CONTROLLER MAY OR WILL~~
~~24 MAINTAIN THE CONSUMER'S PERSONAL DATA;~~

~~25 (IV) HOW AND WHERE CONSUMERS MAY EXERCISE THE RIGHTS~~
26 PURSUANT TO SECTION 6-1-1306, INCLUDING THE CONTROLLER'S CONTACT
27 INFORMATION AND HOW A CONSUMER MAY APPEAL A CONTROLLER'S

1 ACTION WITH REGARD TO THE CONSUMER'S REQUEST;

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

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

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

11 (c) A CONTROLLER SHALL NOT:

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

14 (II) BASED SOLELY ON THE EXERCISE OF A RIGHT ~~AND UNRELATED TO~~
~~FEASIBILITY OR THE VALUE OF A SERVICE~~, INCREASE THE

15 COST OF, OR DECREASE THE AVAILABILITY OF, THE PRODUCT OR SERVICE. ~~NOTHING~~
~~IN THIS PART 13 SHALL BE CONSTRUED TO REQUIRE A CONTROLLER TO PROVIDE A PRODUCT OR~~
~~SERVICE THAT REQUIRES THE PERSONAL DATA OF A CONSUMER THAT THE CONTROLLER DOES~~
~~NOT COLLECT OR MAINTAIN OR TO PROHIBIT A CONTROLLER FROM OFFERING A DIFFERENT~~
~~PRICE, RATE, LEVEL, QUALITY, OR SELECTION OF GOODS OR SERVICES TO A CONSUMER,~~
~~INCLUDING OFFERING GOODS OR SERVICES FOR NO FEE, IF THE CONSUMER HAS EXERCISED HIS~~
~~RIGHT TO OPT OUT PURSUANT TO THIS PART 13 OR THE OFFER IS RELATED TO A CONSUMER'S~~
~~VOLUNTARY PARTICIPATION IN A BONA FIDE LOYALTY, REWARDS, PREMIUM FEATURES,~~
~~DISCOUNTS, OR CLUB CARD PROGRAM~~

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

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

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23 **(4) Duty to avoid secondary use.** A CONTROLLER SHALL NOT
24 PROCESS PERSONAL DATA FOR PURPOSES THAT ARE NOT REASONABLY NECESSARY TO
OR
25 COMPATIBLE WITH THE SPECIFIED PURPOSES FOR WHICH THE
26 PERSONAL DATA ARE PROCESSED, UNLESS THE CONTROLLER OBTAINS THE
27 CONSUMER'S CONSENT.

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1 (5) **Duty of security.** A CONTROLLER SHALL TAKE REASONABLE
2 MEASURES TO SECURE PERSONAL DATA DURING BOTH STORAGE AND TRANSMISS
3 FROM UNAUTHORIZED ACQUISITION.

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

8 (7) **Duty regarding sensitive data.** A CONTROLLER SHALL NOT
9 PROCESS SENSITIVE DATA ~~IT COLLECTS FROM CONCERNING~~ A CONSUMER WITHOUT
OBTAINING

10 THE CONSUMER'S ~~CONSENT~~ RECEIVING CLEAR NOTICE AND THE OPPORTUNITY TO
~~OPT OUT OF PROCESSING OF THE CONSUMER'S SENSITIVE PERSONAL INFORMATION~~ OR, IN
THE CASE OF THE PROCESSING OF

11 PERSONAL DATA CONCERNING A KNOWN CHILD ~~OR STUDENT~~, WITHOUT
12 OBTAINING CONSENT FROM THE CHILD'S ~~OR STUDENT'S~~ PARENT OR LAWFUL
13 GUARDIAN.

14 **6-1-1309. Data protection assessments - attorney general**
15 **access and evaluation.** (1) A CONTROLLER SHALL NOT CONDUCT
16 PROCESSING THAT PRESENTS A HEIGHTENED RISK OF HARM TO A
17 CONSUMER WITHOUT CONDUCTING AND DOCUMENTING A DATA
18 PROTECTION ASSESSMENT OF EACH OF ITS PROCESSING ACTIVITIES THAT
19 INVOLVE PERSONAL DATA ACQUIRED ON OR AFTER THE EFFECTIVE DATE
20 OF THIS SECTION THAT PRESENT A HEIGHTENED RISK OF HARM TO A
21 CONSUMER.

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

25 (a) PROCESSING PERSONAL DATA FOR PURPOSES OF TARGETED

26 ADVERTISING OR FOR PROFILING IF SUCH PROFILING PRESENTS A REASONABLY FORESEEABLE RISK OF

(I) UNFAIR OR DECEPTIVE TREATMENT OF, OR UNLAWFUL DISPARATE IMPACT ON, CONSUMERS;

(II) FINANCIAL OR PHYSICAL INJURY TO CONSUMERS;

(III) A PHYSICAL OR OTHER INTRUSION UPON THE SOLITUDE OR SECLUSION, OR THE PRIVATE AFFAIRS OR CONCERNS, OF CONSUMERS, WHERE SUCH INTRUSION WOULD BE OFFENSIVE TO A REASONABLE PERSON; OR

(IV) OTHER SUBSTANTIAL INJURY TO CONSUMERS;

27 (b) SELLING PERSONAL DATA; AND

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

(5) A SINGLE DATA PROTECTION ASSESSMENT MAY ADDRESS A
COMPARABLE SET OF PROCESSING OPERATIONS THAT INCLUDE SIMILAR
ACTIVITIES. DATA PROTECTION ASSESSMENTS CONDUCTED BY A
CONTROLLER FOR THE PURPOSE OF COMPLIANCE WITH OTHER LAWS OR
REGULATIONS MAY COMPLY UNDER THIS SECTION IF THE ASSESSMENTS HAVE
A REASONABLY COMPRABLE SCOPE AND EFFECT.

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(6) DATA PROTECTION ASSESSMENT REQUIREMENTS SHALL APPLY TO
PROCESSING ACTIVITIES CREATED OR GENERATED AFTER JANUARY 1, 2023,
AND ARE NOT RETROACTIVE.

25 **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

1 PROVISION OF LAW. THIS SUBSECTION (1) NEITHER RELIEVES ANY PARTY
2 FROM ANY DUTIES OR OBLIGATIONS IMPOSED, NOR ALTERS ANY
3 INDEPENDENT RIGHTS THAT CONSUMERS HAVE, UNDER OTHER LAWS,
4 INCLUDING THIS ARTICLE 1, THE STATE CONSTITUTION, OR THE UNITED
5 STATES CONSTITUTION.

6 (2) WHERE MORE THAN ONE CONTROLLER OR PROCESSOR, OR BOTH
7 A CONTROLLER AND A PROCESSOR, INVOLVED IN THE SAME PROCESSING
8 VIOLATES THIS PART 13, THE LIABILITY SHALL BE ALLOCATED AMONG THE
9 PARTIES ACCORDING TO PRINCIPLES OF COMPARATIVE FAULT, UNLESS THE
10 LIABILITY IS OTHERWISE ALLOCATED BY CONTRACT AMONG THE PARTIES.

11 **6-1-1311. Enforcement.** (1) NOTWITHSTANDING ANY OTHER
12 PROVISION OF THIS ARTICLE 1:

13 (a) THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS HAVE
14 EXCLUSIVE AUTHORITY TO ENFORCE THIS PART 13 BY **FIRST ISSUING A NOTICE OF
VIOLATION TO THE CONTROLLER, AND, IF THE CONTROLLER DOES NOT CURE THE
VIOLATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE,** BRINGING AN ACTION
15 IN THE NAME OF THE STATE OR AS PARENS PATRIAE ON BEHALF OF PERSONS
16 RESIDING IN THE STATE TO ENFORCE THIS PART 13, INCLUDING SEEKING AN
17 INJUNCTION TO ENJOIN A VIOLATION OF THIS PART 13; AND

18 (b) A CONTROLLER OR PROCESSOR THAT VIOLATES THIS PART 13:

19 (I) IS SUBJECT TO A CIVIL PENALTY AS SPECIFIED IN SECTION
20 6-1-112; AND

21 (II) MAY BE ENJOINED FROM VIOLATING THIS PART 13.

22 (2) THE STATE TREASURER SHALL CREDIT ALL RECEIPTS FROM THE
23 IMPOSITION OF CIVIL PENALTIES UNDER THIS PART 13 PURSUANT TO
24 SECTION 24-31-108.

25 **6-1-1312. Preemption - local governments.** THIS PART 13
26 SUPERSEDES AND PREEMPTS LAWS, ORDINANCES, RESOLUTIONS,

27 REGULATIONS, OR THE EQUIVALENT ADOPTED BY ANY STATUTORY OR

-27- SB21-190

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1 HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY REGARDING
2 THE PROCESSING OF PERSONAL DATA BY CONTROLLERS OR PROCESSORS.

3 **SECTION 2. Act subject to petition - effective date -**

4 **applicability.** (1) This act takes effect January 1, 2023; except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within the ninety-day period after final adjournment of the general
8 assembly, then the act, item, section, or part will not take effect unless
9 approved by the people at the general election to be held in November
10 2022 and, in such case, will take effect January 1, 2023, or on the date of
11 the official declaration of the vote thereon by the governor, whichever is
12 later.

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

