

# An Act

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.

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:

*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.*

(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 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:~~





(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:

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

(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, INsofar 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







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.



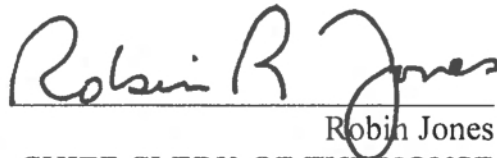
Steve Fenberg  
PRESIDENT OF  
THE SENATE



Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

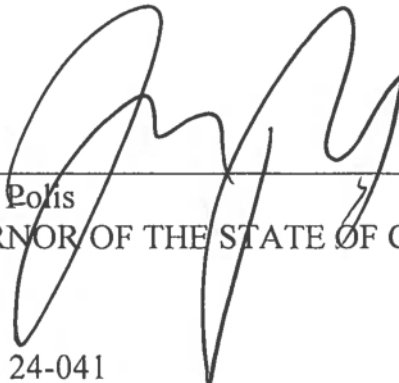


Cindi L. Markwell  
SECRETARY OF  
THE SENATE



Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED Friday May 31<sup>st</sup> 2024 at 12:15 pm  
(Date and Time)



Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO