

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

PREAMENDED

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

LLS NO. 21-0203.03 Megan Waples x4348

SENATE BILL 21-131

SENATE SPONSORSHIP

Gonzales, Jaquez Lewis, Rodriguez

HOUSE SPONSORSHIP

Gonzales-Gutierrez, Benavidez, Caraveo, Ortiz

Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO PROTECT PERSONAL IDENTIFYING**
102 **INFORMATION KEPT BY STATE AGENCIES.**

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 specifies measures in several categories to protect personal identifying information (PII) kept by state agencies.

Limitations on PII shared by state agencies: A state agency employee is prohibited from disclosing or making accessible PII that is not available to the public for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration

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.

enforcement, except as required by federal or state law or as required to comply with a court-issued subpoena, warrant, or order.

Reduction of PII collected by state agencies: Beginning January 1, 2022, a state agency employee is prohibited from inquiring into, or requesting information or documents to ascertain, a person's immigration status for the purpose of identifying if the person has complied with federal immigration laws except as required by state or federal law or as necessary to perform state agency duties. In addition, beginning January 1, 2022, a state agency shall not collect data regarding a person's place of birth, immigration or citizenship status, or information from passports, permanent resident cards, alien registration cards, or employment authorization documents, except as required by state or federal law or as necessary to perform state agency duties.

Access to state agency records: Beginning January 1, 2022, to be granted access to PII through a database or automated network maintained by a state agency that is not otherwise available to the public, a third party must have, within the past year, certified under penalty of perjury that the third party will not use or disclose PII obtained for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, unless required by federal or state law or to comply with a court-issued subpoena, warrant, or order that is not related to prosecution for a violation of specified provisions of federal immigration law. The attorney general's office is required to create a model certification form and provide it to state agencies.

Record keeping and reporting: The bill specifies what a request for records includes and does not include for purposes of the bill. Beginning January 1, 2022, if a third party requests a record from a state agency and the record contains PII, the state agency is required to retain a written record of the request that contains specified information (written record).

Beginning January 1, 2022, and on a quarterly basis thereafter, the state agency is required to provide the information contained in the written record to the governor's office of legal counsel and to attest that no request was granted for any purpose prohibited by the bill. On March 1, 2022, and on a quarterly basis thereafter, the governor's office is required to provide a report to the joint budget committee of the general assembly containing quarterly and year-to-date summaries of the information provided by state agencies in the written record.

Data privacy breaches: Any state agency employee who intentionally violates the provisions of the bill is subject to an injunction and is liable for a civil penalty of not more than \$50,000 for each violation.

The bill includes an identification document issued to an individual who is not lawfully present in the United States in the list of records that the department of revenue shall not allow a person to inspect

pursuant to the "Colorado Open Records Act". In addition, the bill specifies that the provisions of the bill are included in the laws that the department of revenue is required to follow when releasing records for public inspection.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 74 to title
3 24 as follows:

4 **ARTICLE 74**

5 **Protection of Personal Identifying Information**

6 **24-74-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY
7 HEREBY FINDS AND DECLARES THAT:

8 (a) STATE AGENCIES INCREASINGLY COLLECT RESIDENTS'
9 PERSONAL INFORMATION TO BE ABLE TO PROVIDE A VARIETY OF SERVICES,
10 INCLUDING EDUCATION, HEALTHCARE, FINANCIAL ASSISTANCE, AND
11 REGULATORY AND ENFORCEMENT ACTIVITIES DESIGNED TO ENSURE THE
12 SAFETY OF COLORADO RESIDENTS;

13 (b) COLORADO RESIDENTS HAVE A REASONABLE EXPECTATION
14 THAT STATE AGENCIES WILL NOT DISCLOSE THIS INFORMATION WITH
15 OUTSIDE ACTORS FOR UNINTENDED PURPOSES;

16 (c) COLORADANS' ACCESS TO GOVERNMENT SERVICES, INCLUDING
17 SERVICES THAT CAN BE CRUCIAL IN A TIME OF CRISIS, IS KEY TO THE
18 COLLECTIVE HEALTH AND WELLNESS OF THE STATE;

19 (d) ALL COLORADANS SHOULD FEEL WELCOME TO BE THE
20 RECIPIENTS OF STATE SERVICES WITHOUT FEAR OF ABUSE OF THEIR
21 PRIVACY OR DATA;

22 (e) ANY ROLE THAT A STATE AGENCY PLAYS IN ENFORCING
23 FEDERAL IMMIGRATION LAWS CAN UNDERMINE PUBLIC TRUST AND DETER

1 PERSONS FROM ACCESSING THESE SERVICES OFFERED BY STATE AGENCIES;

2 (f) THE UNITED STATES AND COLORADO CONSTITUTIONS
3 GUARANTEE PERSONS A LEGITIMATE EXPECTATION OF PRIVACY FROM
4 UNREASONABLE GOVERNMENT INTRUSIONS;

5 (g) THE FEDERAL GOVERNMENT DOES NOT HAVE THE AUTHORITY
6 TO COMMAND STATE OR LOCAL OFFICIALS TO ENFORCE OR ADMINISTER A
7 FEDERAL REGULATORY PROGRAM, AS DOING SO WOULD VIOLATE THE
8 TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; AND

9 (h) THIS ARTICLE 74 IS NOT INTENDED TO INTERFERE WITH
10 CRIMINAL INVESTIGATIONS AND PROCEEDINGS AUTHORIZED BY JUDICIAL
11 PROCESS OR WITH THE COLLECTION OR SHARING OF INFORMATION THAT
12 MAY BE NECESSARY TO PROVIDE COLORADANS WITH GOVERNMENT
13 SERVICES AND BENEFITS.

14 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
15 IT IS NECESSARY TO ADOPT THIS ARTICLE 74 TO PROTECT INDIVIDUAL
16 RIGHTS AND TO FURTHER THE PRESERVATION OF THE PEACE, HEALTH, AND
17 SAFETY OF COLORADO RESIDENTS.

18 **24-74-102. Definitions.** AS USED IN THIS ARTICLE 74, UNLESS THE
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "PERSONAL IDENTIFYING INFORMATION" MEANS INFORMATION
21 THAT MAY BE USED, ALONG OR IN CONJUNCTION WITH ANY OTHER
22 INFORMATION, TO IDENTIFY A SPECIFIC INDIVIDUAL, INCLUDING BUT NOT
23 LIMITED TO A NAME; A DATE OF BIRTH; A PLACE OF BIRTH; A SOCIAL
24 SECURITY NUMBER OR TAX IDENTIFICATION NUMBER; A PASSWORD OR
25 PASS CODE; AN OFFICIAL GOVERNMENT-ISSUED DRIVER'S LICENSE OR
26 IDENTIFICATION CARD NUMBER; INFORMATION CONTAINED IN AN
27 EMPLOYMENT AUTHORIZATION DOCUMENT; INFORMATION CONTAINED IN

1 A PERMANENT RESIDENT CARD; VEHICLE REGISTRATION INFORMATION; A
2 LICENSE PLATE NUMBER; A PHOTOGRAPH, ELECTRONICALLY STORED
3 PHOTOGRAPH, OR DIGITIZED IMAGE; A FINGERPRINT; A RECORD OF A
4 PHYSICAL FEATURE, A PHYSICAL CHARACTERISTIC, A BEHAVIORAL
5 CHARACTERISTIC, OR HANDWRITING; A GOVERNMENT PASSPORT NUMBER;
6 A HEALTH INSURANCE IDENTIFICATION NUMBER; AN EMPLOYER, STUDENT,
7 OR MILITARY IDENTIFICATION NUMBER; A FINANCIAL TRANSACTION
8 DEVICE; A SCHOOL OR EDUCATIONAL INSTITUTION ATTENDED; A SOURCE
9 OF INCOME; MEDICAL INFORMATION; BIOMETRIC DATA; FINANCIAL AND
10 TAX RECORDS; HOME OR WORK ADDRESSES OR OTHER CONTACT
11 INFORMATION; FAMILY OR EMERGENCY CONTACT INFORMATION; STATUS
12 AS A RECIPIENT OF PUBLIC ASSISTANCE OR AS A CRIME VICTIM; RACE;
13 ETHNICITY; NATIONAL ORIGIN; IMMIGRATION OR CITIZENSHIP STATUS;
14 SEXUAL ORIENTATION; GENDER IDENTITY; PHYSICAL DISABILITY;
15 INTELLECTUAL AND DEVELOPMENTAL DISABILITY; OR RELIGION.

16 (2) "STATE AGENCY" MEANS A DEPARTMENT OF THE EXECUTIVE
17 BRANCH OF STATE GOVERNMENT, INCLUDING ANY DIVISION, OFFICE,
18 AGENCY, OR OTHER UNIT CREATED WITHIN A DEPARTMENT OR THE
19 GOVERNOR'S OFFICE, INCLUDING INSTITUTIONS OF HIGHER EDUCATION AND
20 THE COLORADO COMMISSION ON HIGHER EDUCATION.

21 (3) "STATE AGENCY EMPLOYEE" MEANS EVERY PERSON IN THE
22 SERVICE OF A STATE AGENCY, INCLUDING ALL OFFICERS AND EMPLOYEES,
23 WHETHER FULL-TIME, PART-TIME, OR TEMPORARY, AND WHETHER
24 CLASSIFIED IN OR EXEMPT FROM THE STATE PERSONNEL SYSTEM. "STATE
25 AGENCY EMPLOYEE" ALSO INCLUDES ALL INDEPENDENT CONTRACTORS OF
26 A STATE AGENCY.

27 (4) "THIRD PARTY" MEANS ANY PERSON OR ENTITY, INCLUDING

1 ANY LAW ENFORCEMENT OFFICER OR AGENCY, THAT IS NOT A STATE
2 AGENCY, A STATE AGENCY EMPLOYEE, OR OTHERWISE PART OF THE STATE
3 GOVERNMENT.

4 **24-74-103. Personal identifying information shared by state**
5 **agencies - limitation - responsibilities - state agency employee.** A
6 STATE AGENCY EMPLOYEE SHALL NOT DISCLOSE OR MAKE ACCESSIBLE,
7 INCLUDING THROUGH A DATABASE OR AUTOMATED NETWORK, PERSONAL
8 IDENTIFYING INFORMATION NOT AVAILABLE TO THE PUBLIC FOR THE
9 PURPOSE OF INVESTIGATING FOR, PARTICIPATING IN, COOPERATING WITH,
10 OR ASSISTING IN FEDERAL IMMIGRATION ENFORCEMENT, INCLUDING
11 ENFORCEMENT OF CIVIL IMMIGRATION LAWS AND 8 U.S.C. SEC. 1325 OR
12 1326, EXCEPT AS REQUIRED BY FEDERAL OR STATE LAW OR AS REQUIRED
13 TO COMPLY WITH A COURT-ISSUED SUBPOENA, WARRANT, OR ORDER.

14 **24-74-104. Reduce personal identifying information collected**
15 **by state agencies.** (1) BEGINNING JANUARY 1, 2022, A STATE AGENCY
16 EMPLOYEE SHALL NOT INQUIRE INTO, OR REQUEST INFORMATION OR
17 DOCUMENTS TO ASCERTAIN, A PERSON'S IMMIGRATION STATUS FOR THE
18 PURPOSE OF IDENTIFYING IF THE PERSON HAS COMPLIED WITH FEDERAL
19 IMMIGRATION LAWS, INCLUDING CIVIL IMMIGRATION LAWS AND 8 U.S.C.
20 SEC. 1325 OR 1326, EXCEPT AS REQUIRED BY STATE OR FEDERAL LAW OR
21 AS NECESSARY TO PERFORM STATE AGENCY DUTIES.

22 (2) BEGINNING JANUARY 1, 2022, A STATE AGENCY SHALL NOT
23 COLLECT THE FOLLOWING, EXCEPT AS REQUIRED BY STATE OR FEDERAL
24 LAW OR AS NECESSARY TO PERFORM STATE AGENCY DUTIES:

- 25 (a) PLACE OF BIRTH;
- 26 (b) IMMIGRATION OR CITIZENSHIP STATUS; OR
- 27 (c) INFORMATION FROM PASSPORTS, PERMANENT RESIDENT CARDS,

1 ALIEN REGISTRATION CARDS, OR EMPLOYMENT AUTHORIZATION
2 DOCUMENTS.

3 (3) THIS SECTION DOES NOT APPLY TO A DATABASE OR
4 AUTOMATED NETWORK COLLECTING DATA OR DOCUMENTS THAT WAS
5 ACTIVATED BY A STATE AGENCY ON OR BEFORE DECEMBER 31, 2021.

6 **24-74-105. Access to state agency records - limitations.**

7 (1) BEGINNING JANUARY 1, 2022, TO BE GRANTED ACCESS TO PERSONAL
8 IDENTIFYING INFORMATION THROUGH A STATE DATABASE OR AUTOMATED
9 NETWORK THAT IS NOT OTHERWISE AVAILABLE TO THE PUBLIC, A THIRD
10 PARTY MUST HAVE, WITHIN THE PAST YEAR, CERTIFIED UNDER PENALTY OF
11 PERJURY THAT:

12 (a) THE THIRD PARTY WILL NOT USE PERSONAL IDENTIFYING
13 INFORMATION OBTAINED FROM THE DATABASE OR AUTOMATED NETWORK
14 FOR THE PURPOSE OF INVESTIGATING FOR, PARTICIPATING IN,
15 COOPERATING WITH, OR ASSISTING IN FEDERAL IMMIGRATION
16 ENFORCEMENT, INCLUDING ENFORCEMENT OF CIVIL IMMIGRATION LAWS
17 AND 8 U.S.C. SEC. 1325 OR 1326, UNLESS REQUIRED BY FEDERAL OR STATE
18 LAW OR TO COMPLY WITH A COURT-ISSUED SUBPOENA, WARRANT, OR
19 ORDER; AND

20 (b) THE THIRD PARTY WILL NOT DISCLOSE PERSONAL IDENTIFYING
21 INFORMATION OBTAINED FROM THE DATABASE OR AUTOMATED NETWORK
22 TO INDIVIDUALS OR ENTITIES ENGAGED IN INVESTIGATING FOR,
23 PARTICIPATING IN, COOPERATING WITH, OR ASSISTING IN FEDERAL
24 IMMIGRATION ENFORCEMENT, INCLUDING ENFORCEMENT OF CIVIL
25 IMMIGRATION LAWS AND 8 U.S.C. SEC. 1325 OR 1326, UNLESS REQUIRED
26 BY FEDERAL OR STATE LAW OR TO COMPLY WITH A COURT-ISSUED
27 SUBPOENA, WARRANT, OR ORDER.

1 (2) THE ATTORNEY GENERAL'S OFFICE SHALL CREATE A MODEL
2 CERTIFICATION FORM AND PROVIDE IT TO STATE AGENCIES WITHIN SIXTY
3 DAYS OF THE EFFECTIVE DATE OF THIS SECTION.

4 **24-74-106. Record keeping and reporting - requests for**
5 **records or information - definition.** (1) FOR PURPOSES OF THIS SECTION,
6 "REQUEST" INCLUDES ANY TIME A THIRD PARTY COMMUNICATES,
7 WHETHER THROUGH WRITTEN OR ELECTRONIC FORM, WITH A STATE
8 AGENCY OR STATE AGENCY EMPLOYEE FOR THE PURPOSE OF OBTAINING
9 RECORDS OR INFORMATION THAT INCLUDES PERSONAL IDENTIFYING
10 INFORMATION. "REQUEST" DOES NOT INCLUDE:

11 (a) A REQUEST MADE UNDER THE "COLORADO OPEN RECORDS
12 ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24, OR THE "COLORADO
13 CRIMINAL JUSTICE RECORDS ACT", PARTS 2 AND 3 OF ARTICLE 72 OF THIS
14 TITLE 24;

15 (b) AN INQUIRY MADE THROUGH A DATABASE OR AUTOMATED
16 NETWORK;

17 (c) A REQUEST GOVERNED BY A DATA-SHARING AGREEMENT, AS
18 LONG AS THE AGREEMENT ENSURES THAT THE PARTIES OTHERWISE
19 COMPLY WITH THE PROVISIONS OF THIS ARTICLE 74;

20 (d) A REQUEST RELATED TO THE CONDUCT OF FEDERAL, STATE,
21 AND LOCAL ELECTIONS;

22 (e) A REQUEST MADE TO THE DEPARTMENT OF PUBLIC SAFETY; OR

23 (f) A REQUEST FOR PERSONAL IDENTIFYING INFORMATION THAT IS
24 PROTECTED BY THE "FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF
25 1974", AS AMENDED, 20 U.S.C. SEC. 1232g, OR THE "HEALTH INSURANCE
26 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, PUB.L.
27 104-191.

1 (2) BEGINNING JANUARY 1, 2022, IF A THIRD PARTY MAKES A
2 REQUEST FOR A RECORD FROM A STATE AGENCY AND THE RECORD
3 CONTAINS PERSONAL IDENTIFYING INFORMATION, THE STATE AGENCY
4 SHALL RETAIN A WRITTEN RECORD CONTAINING THE FOLLOWING
5 INFORMATION:

6 (a) THE REQUEST;

7 (b) THE DATE OF THE REQUEST;

8 (c) WHETHER THE REQUEST WAS GRANTED OR DENIED;

9 (d) THE NAME AND TITLE OF THE STATE AGENCY EMPLOYEE WHO
10 GRANTED OR DENIED THE REQUEST;

11 (e) A DESCRIPTION OF THE ARTICULATED PURPOSE OF THE
12 REQUEST;

13 (f) THE IDENTITY OF THE REQUESTOR, INCLUDING THE FEDERAL
14 OFFICE OR AGENCY OR OTHER ENTITY THAT REQUESTED INFORMATION,
15 THE NAME OF THE INDIVIDUAL REQUESTOR, AND, IF THE REQUESTOR IS A
16 LAW ENFORCEMENT OFFICER, THE INDIVIDUAL'S BADGE NUMBER; AND

17 (g) A SUMMARY OF WHY THE REQUEST WAS GRANTED OR DENIED.

18 (3) BEGINNING JANUARY 1, 2022, AND ON A QUARTERLY BASIS
19 THEREAFTER, EACH STATE AGENCY SHALL:

20 (a) SUBMIT TO THE GOVERNOR'S OFFICE OF LEGAL COUNSEL THE
21 INFORMATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION; AND

22 (b) ATTEST THAT NO REQUEST WAS GRANTED FOR ANY PURPOSE
23 PROHIBITED BY THIS ARTICLE 74.

24 (4) BEGINNING MARCH 1, 2022, AND ON A QUARTERLY BASIS
25 THEREAFTER, THE GOVERNOR'S OFFICE SHALL PROVIDE A REPORT TO THE
26 JOINT BUDGET COMMITTEE CONTAINING QUARTERLY AND YEAR-TO-DATE
27 SUMMARIES OF THE INFORMATION IN SUBSECTION (2) OF THIS SECTION.

1 THE REPORT SHALL INCLUDE, AT A MINIMUM, QUARTERLY AND
2 YEAR-TO-DATE SUMMARIES OF THE TOTAL NUMBER OF REQUESTS,
3 RESPONSES TO REQUESTS, CATEGORIES OF REASONS FOR REQUESTS, AND
4 CATEGORIES OF THE THIRD PARTIES REQUESTING INFORMATION.

5 **24-74-107. Data privacy breaches - accountability provisions.**

6 ANY STATE AGENCY EMPLOYEE WHO INTENTIONALLY VIOLATES THE
7 PROVISIONS OF THIS ARTICLE 74 IS SUBJECT TO AN INJUNCTION AND IS
8 LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN FIFTY THOUSAND
9 DOLLARS FOR EACH VIOLATION.

10 **24-74-108. Severability.** IF ANY PROVISION OF THIS ARTICLE 74 OR
11 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
12 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
13 THIS ARTICLE 74 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
14 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
15 ARTICLE 74 ARE SEVERABLE.

16 **SECTION 2.** In Colorado Revised Statutes, 24-72-204, **amend**
17 (7)(a) as follows:

18 **24-72-204. Allowance or denial of inspection - grounds -**
19 **procedure - appeal - definitions - repeal.** (7) (a) Except as permitted in
20 ~~paragraph (b) of this subsection (7)~~ SUBSECTION (7)(b) OF THIS SECTION,
21 the department of revenue or an authorized agent of the department shall
22 not allow a person, other than the person in interest, to inspect
23 information contained in a driver's license application under section
24 42-2-107, ~~C.R.S.~~, a driver's license renewal application under section
25 42-2-118, ~~C.R.S.~~, a duplicate driver's license application under section
26 42-2-117, ~~C.R.S.~~, a commercial driver's license application under section
27 42-2-403, ~~C.R.S.~~, an identification card application under section

1 42-2-302, ~~C.R.S.~~, a motor vehicle title application under section
2 42-6-116, ~~C.R.S.~~, a motor vehicle registration application under section
3 42-3-113, ~~C.R.S.~~, AN IDENTIFICATION DOCUMENT UNDER SECTION
4 42-2-505, or other official record or document maintained by the
5 department under section 42-2-121. ~~C.R.S.~~

6 **SECTION 3.** In Colorado Revised Statutes, 42-1-206, **amend**
7 (1)(b)(I) introductory portion as follows:

8 **42-1-206. Records open to inspection - furnishing of copies -**
9 **rules.** (1) (b) (I) For purposes of subsections (1) to (3) and (5) of this
10 section, "law" means the federal "Driver's Privacy Protection Act of
11 1994", 18 U.S.C. sec. 2721 et seq., the federal "Fair Credit Reporting
12 Act", 15 U.S.C. sec. 1681 et seq., part 2 of article 72 of title 24, part 21
13 of article 30 of title 24, ARTICLE 74 OF TITLE 24, and this section. The
14 department shall prepare a requester release form and make the form
15 available to the department's authorized agents. The form must include
16 the following:

17 **SECTION 4. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, or safety.