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

### REVISED

This Version Includes All Amendments Adopted on Second Reading in the Second House

LLS NO. 24-0667.03 Christy Chase x2008

**SENATE BILL 24-041** 

#### SENATE SPONSORSHIP

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#### A BILL FOR AN ACT

101 CONCERNING ADDING DATA PROTECTIONS FOR A MINOR'S ONLINE
102 ACTIVITY.

## **Bill Summary**

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <a href="http://leg.colorado.gov">http://leg.colorado.gov</a>.)

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

HOUSE Amended 2nd Reading May 4, 2024

SENATE ord Reading Unamended April 23, 2024

SENATE Amended 2nd Reading April 22, 2024

Shading denotes HOUSE amendment. <u>Double underlining denotes SENATE amendment.</u>

Capital letters or bold & italic numbers indicate new material to be added to existing law.

Dashes through the words or numbers indicate deletions from existing law.

activity.

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

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

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

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

A controller is also prohibited from:

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

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

- 1 Be it enacted by the General Assembly of the State of Colorado:
- 2 SECTION 1. In Colorado Revised Statutes, 6-1-1302, amend
- 3 (1)(a)(III), (1)(a)(V), (1)(b)(II), and (1)(c)(I); and add (1)(c)(II)(A.5) as
- 4 follows:
- 5 **6-1-1302.** Legislative declaration. (1) The general assembly
- 6 hereby:
- 7 (a) Finds that:

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1	(III) Ongoing advances in technology have produced exponential
2	growth in the volume and variety of personal data FROM INDIVIDUALS,
3	INCLUDING MINORS, being generated, collected, stored, and analyzed and
4	these advances present both promise and potential peril;
5	(V) The unauthorized disclosure of personal information,
6	INCLUDING A MINOR'S PERSONAL INFORMATION, and loss of privacy can
7	have devastating impacts ranging from financial fraud, identity theft, and
8	unnecessary costs in personal time and finances to destruction of
9	property, harassment, reputational damage, emotional distress, and
10	physical harm;
11	(b) Determines that:
12	(II) States across the United States are looking to this part 13 and
13	similar models to enact state-based data privacy requirements, INCLUDING
14	DATA PRIVACY REQUIREMENTS SPECIFICALLY TARGETED AT MINORS'
15	DATA, and to exercise the leadership that is lacking at the national level;
16	and
17	(c) Declares that:
18	(I) By enacting this part 13, Colorado will be among the states that
19	empower consumers, INCLUDING MINORS, to protect their privacy and
20	require companies to be responsible custodians of data as they continue
21	to innovate;
22	(II) This part 13 addresses issues of statewide concern and:
23	$(A.5)\ Provides\ minors\ the\ right\ to\ control\ their\ personal$
24	DATA;
25	<b>SECTION 2.</b> In Colorado Revised Statutes, 6-1-1303, amend (1):
26	and <b>add</b> (1.5), (14.5), (16.5), (16.7), and (17.5) as follows:
27	<b>6-1-1303. Definitions.</b> As used in this part 13, unless the context

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1	otherwise requires:
2	(1) "Affiliate" means a legal entity that controls, is controlled by,
3	or is under common control with another legal entity. As used in this
4	subsection (1), "control" means:
5	(a) Ownership of, control of, or power to vote twenty-five percent
6	or more of the outstanding shares of any class of voting security of the
7	entity, directly or indirectly, or acting through one or more other persons;
8	(b) Control in any manner over the election of a majority of the
9	directors, trustees, or general partners of the entity or of individuals
10	exercising similar functions; or
11	(c) The power to exercise, directly or indirectly, a controlling
12	influence over the management or policies of the entity as determined by
13	the applicable prudential regulator, as that term is defined in 12 U.S.C.
14	sec. 5481 (24), if any "Adult" means an individual who is eighteen
15	YEARS OF AGE OR OLDER.
16	(1.5) (a) "Affiliate" means a legal entity that controls, is
17	CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER LEGAL
18	ENTITY.
19	(b) As used in subsection (1.5)(a) of this section, "control"
20	MEANS:
21	(I) OWNERSHIP OF, CONTROL OF, OR POWER TO VOTE TWENTY-FIVE
22	PERCENT OR MORE OF THE OUTSTANDING SHARES OF ANY CLASS OF
23	VOTING SECURITY OF THE ENTITY, DIRECTLY OR INDIRECTLY, OR ACTING
24	THROUGH ONE OR MORE OTHER PERSONS;
25	(II) CONTROL IN ANY MANNER OVER THE ELECTION OF A MAJORITY
26	OF THE DIRECTORS, TRUSTEES, OR GENERAL PARTNERS OF THE ENTITY OR
27	OF INDIVIDUALS EXERCISING SIMILAR FUNCTIONS; OR

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1	(III) THE POWER TO EXERCISE, DIRECTLY OR INDIRECTLY, A
2	CONTROLLING INFLUENCE OVER THE MANAGEMENT OR POLICIES OF THE
3	ENTITY AS DETERMINED BY THE APPLICABLE PRUDENTIAL REGULATOR, AS
4	THAT TERM IS DEFINED IN 12 U.S.C. SEC. 5481 (24), IF ANY.
5	(14.5) "Heightened risk of harm to <u>minors</u> " means
6	PROCESSING THE PERSONAL DATA OF MINORS IN A MANNER THAT
7	PRESENTS A REASONABLY FORESEEABLE RISK THAT COULD CAUSE:
8	(a) <u>Unfair</u> or deceptive treatment of, or <u> </u>
9	DISPARATE IMPACT ON, <u>MINORS</u> ;
10	(b) <u>Financial</u> , physical, <u> </u>
11	<u>MINORS</u> ;
12	(c) Unauthorized disclosure of the personal <u>data</u> of
13	MINORS AS A RESULT OF A SECURITY BREACH, AS DEFINED IN SECTION
14	6-1-716 (1)(h); OR
15	(d) <u>Physical</u> or other intrusion upon the solitude or
16	SECLUSION, OR THE PRIVATE AFFAIRS OR CONCERNS, OF $\underline{\text{MINORS}}$ IF THE
17	INTRUSION WOULD BE OFFENSIVE TO A REASONABLE PERSON.
18	(16.5) "MINOR" MEANS ANY CONSUMER WHO IS UNDER EIGHTEEN
19	YEARS OF AGE.
20	(16.7) "Online service, product, or feature":
21	(a) Means any service, product, or feature that is
22	PROVIDED ONLINE; AND
23	(b) Does not include:
24	(I) Telecommunications service, as defined in $47\mathrm{U.S.C.}$ sec.
25	153 (53), AS AMENDED;
26	(II) Broadband internet access service, as defined in 47
27	CFR 54.400 (1), AS AMENDED; OR

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1	(III) THE DELIVERY OR USE OF A PHYSICAL PRODUCT.
2	(17.5) "PRECISE GEOLOCATION DATA":
3	(a) MEANS INFORMATION DERIVED FROM TECHNOLOGY, INCLUDING
4	GLOBAL POSITIONING SYSTEM LEVEL LATITUDE AND LONGITUDE
5	COORDINATES OR OTHER MECHANISMS, THAT DIRECTLY IDENTIFIES THE
6	SPECIFIC LOCATION OF AN INDIVIDUAL WITH PRECISION AND ACCURACY
7	WITHIN A RADIUS OF ONE THOUSAND SEVEN HUNDRED FIFTY FEET; AND
8	(b) Does not include:
9	(I) The content of communications regarding location; or
10	(II) Any data generated by or connected to advanced
11	<u>UTILITY</u> METERING INFRASTRUCTURE SYSTEMS OR EQUIPMENT FOR USE BY
12	A UTILITY.
13	
14	<b>SECTION 3.</b> In Colorado Revised Statutes, 6-1-1304, amend (1).
15	(3)(d), and (3)(e); and add (3)(f) and (3)(g) as follows:
16	6-1-1304. Applicability of part. (1) Except as specified in
17	subsection (2) of this section:
18	(a) This part 13, OTHER THAN SECTIONS 6-1-1305.5, 6-1-1308.5,
19	AND 6-1-1309.5, applies to a controller that:
20	(a) (I) Conducts business in Colorado or produces or delivers
21	commercial products or services that are intentionally targeted to
22	residents of Colorado; and
23	(b) (II) Satisfies one or both of the following thresholds:
24	(I) (A) Controls or processes the personal data of one hundred
25	thousand consumers or more during a calendar year; or
26	(II) (B) Derives revenue or receives a discount on the price of
27	goods or services from the sale of personal data and processes or controls

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

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1	CONTROLLER'S OBLIGATIONS UNDER SECTIONS 6-1-1308.5 AND
2	6-1-1309.5, TAKING INTO ACCOUNT THE NATURE OF THE PROCESSING AND
3	THE INFORMATION AVAILABLE TO THE PROCESSOR. THE PROCESSOR SHALL
4	ASSIST THE CONTROLLER BY:
5	(a) TAKING APPROPRIATE TECHNICAL AND ORGANIZATIONAL
6	MEASURES, INSOFAR AS THIS IS POSSIBLE, FOR THE FULFILLMENT OF THE
7	CONTROLLER'S OBLIGATIONS UNDER SECTION 6-1-1308.5; AND
8	(b) Providing information to enable the controller to
9	CONDUCT AND DOCUMENT DATA PROTECTION ASSESSMENTS PURSUANT TO
10	SECTION 6-1-1309.5.
11	(2) A CONTRACT BETWEEN A CONTROLLER AND A PROCESSOR
12	MUST SATISFY THE REQUIREMENTS IN SECTION 6-1-1305 (5).
13	(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RELIEVE
14	A CONTROLLER OR PROCESSOR FROM THE LIABILITIES IMPOSED ON THE
15	CONTROLLER OR PROCESSOR BY VIRTUE OF THE CONTROLLER'S OR
16	PROCESSOR'S ROLE IN THE PROCESSING RELATIONSHIP AS DESCRIBED IN
17	SECTIONS 6-1-1308.5 AND 6-1-1309.5.
18	(4) DETERMINING WHETHER A PERSON IS ACTING AS A
19	CONTROLLER OR PROCESSOR WITH RESPECT TO A SPECIFIC PROCESSING OF
20	DATA IS A FACT-BASED DETERMINATION THAT DEPENDS UPON THE
21	CONTEXT IN WHICH PERSONAL DATA IS TO BE PROCESSED. A PERSON THAT
22	IS NOT LIMITED IN THE PERSON'S PROCESSING OF PERSONAL DATA
23	PURSUANT TO A CONTROLLER'S INSTRUCTIONS, OR THAT FAILS TO ADHERE
24	TO THE INSTRUCTIONS, IS A CONTROLLER AND NOT A PROCESSOR WITH
25	RESPECT TO A SPECIFIC PROCESSING OF DATA. A PROCESSOR THAT
26	CONTINUES TO ADHERE TO A CONTROLLER'S INSTRUCTIONS WITH RESPECT
27	TO A SPECIFIC PROCESSING OF PERSONAL DATA REMAINS A PROCESSOR. IF

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1	A PROCESSOR BEGINS, ALONE OR JOINTLY WITH OTHERS, DETERMINING THE
2	PURPOSES AND MEANS OF THE PROCESSING OF PERSONAL DATA, THE
3	PROCESSOR IS A CONTROLLER WITH RESPECT TO THE PROCESSING AND MAY
4	BE SUBJECT TO AN ENFORCEMENT ACTION UNDER SECTION 6-1-1311.
5	6-1-1308.5. Duties of controllers - duty of care - rebuttable
6	presumption. (1) (a) A CONTROLLER THAT OFFERS ANY ONLINE SERVICE,
7	PRODUCT, OR FEATURE TO A CONSUMER WHOM THE CONTROLLER
8	ACTUALLY KNOWS OR WILLFULLY DISREGARDS IS A MINOR SHALL USE
9	REASONABLE CARE TO AVOID ANY HEIGHTENED RISK OF HARM TO MINORS
10	CAUSED BY THE ONLINE SERVICE, PRODUCT, OR FEATURE.
11	(b) IN ANY ENFORCEMENT ACTION BROUGHT BY THE ATTORNEY
12	GENERAL OR A DISTRICT ATTORNEY PURSUANT TO SECTION 6-1-1311,
13	THERE IS A REBUTTABLE PRESUMPTION THAT A CONTROLLER USED
14	REASONABLE CARE AS REQUIRED UNDER THIS SECTION IF THE CONTROLLER
15	COMPLIED WITH THIS SECTION.
16	(2) Unless a controller has obtained consent in
17	ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, A CONTROLLER
18	THAT OFFERS ANY ONLINE SERVICE, PRODUCT, OR FEATURE TO A
19	CONSUMER WHOM THE CONTROLLER ACTUALLY KNOWS OR WILLFULLY
20	DISREGARDS IS A MINOR SHALL NOT:
21	(a) PROCESS A MINOR'S PERSONAL DATA:
22	(I) FOR THE PURPOSES OF:
23	(A) TARGETED ADVERTISING;
24	(B) THE SALE OF PERSONAL DATA; OR
25	(C) Profiling in furtherance of decisions that produce
26	LEGAL OR SIMILARLY SIGNIFICANT EFFECTS CONCERNING A CONSUMER;
2.7	(II) FOR ANY PROCESSING PURPOSE OTHER THAN THE PROCESSING

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1	PURPOSE THAT THE CONTROLLER DISCLOSED AT THE TIME THE
2	CONTROLLER COLLECTED THE MINOR'S PERSONAL DATA OR THAT IS
3	REASONABLY NECESSARY FOR, AND COMPATIBLE WITH, THE PROCESSING
4	PURPOSE THAT THE CONTROLLER DISCLOSED AT THE TIME THE
5	CONTROLLER COLLECTED THE MINOR'S PERSONAL DATA; OR
6	(III) FOR LONGER THAN IS REASONABLY NECESSARY TO PROVIDE
7	THE ONLINE SERVICE, PRODUCT, OR FEATURE;
8	(b) USE ANY SYSTEM DESIGN FEATURE TO SIGNIFICANTLY
9	INCREASE, SUSTAIN, OR EXTEND A MINOR'S USE OF THE ONLINE SERVICE,
10	PRODUCT, OR <u>FEATURE</u> ; <u>OR</u>
11	<del></del>
12	(c) COLLECT A MINOR'S PRECISE GEOLOCATION DATA UNLESS:
13	(I) THE MINOR'S PRECISE GEOLOCATION DATA IS REASONABLY
14	NECESSARY FOR THE CONTROLLER TO PROVIDE THE ONLINE SERVICE,
15	PRODUCT, OR FEATURE;
16	(II) The controller only collects $\underline{\text{and retains}}$ the minor's
17	PRECISE GEOLOCATION DATA FOR THE TIME NECESSARY TO PROVIDE THE
18	ONLINE SERVICE, PRODUCT, OR FEATURE; AND
19	(III) THE CONTROLLER PROVIDES TO THE MINOR A SIGNAL
20	INDICATING THAT THE CONTROLLER IS COLLECTING THE MINOR'S PRECISE
21	GEOLOCATION DATA AND MAKES THE SIGNAL AVAILABLE TO THE MINOR
22	FOR THE ENTIRE DURATION OF THE COLLECTION OF THE MINOR'S PRECISE
23	GEOLOCATION DATA; EXCEPT THAT THIS SUBSECTION (2)(c)(III) DOES NOT
24	APPLY TO ANY SERVICE OR APPLICATION THAT IS USED BY AND UNDER THE
25	DIRECTION OF A SKI AREA OPERATOR, AS DEFINED IN SECTION 33-44-103
26	<u>(7).</u>
27	(3) (a) A CONTROLLER SHALL NOT ENGAGE IN THE ACTIVITIES

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1	DESCRIBED IN SUBSECTION (2) OF THIS SECTION UNLESS THE CONTROLLER
2	OBTAINS:
3	(I) THE MINOR'S CONSENT; OR
4	(II) (A) IF THE MINOR IS A CHILD, THE CONSENT OF THE MINOR'S
5	PARENT OR LEGAL GUARDIAN.
6	(B) A CONTROLLER THAT COMPLIES WITH THE VERIFIABLE
7	PARENTAL CONSENT REQUIREMENTS ESTABLISHED IN THE "CHILDREN'S
8	Online Privacy Protection Act of 1998", 15 U.S.C. sec. 6501 et
9	SEQ., AS AMENDED, AND THE REGULATIONS, RULES, GUIDANCE, AND
10	EXEMPTIONS ADOPTED PURSUANT TO SAID ACT, AS AMENDED, IS DEEMED
11	TO HAVE SATISFIED ANY REQUIREMENT TO OBTAIN PARENTAL CONSENT
12	UNDER THIS SUBSECTION (3)(a)(II).
13	(b) (I) A CONTROLLER THAT OFFERS ANY ONLINE SERVICE,
14	PRODUCT, OR FEATURE TO A CONSUMER WHOM THAT CONTROLLER
15	ACTUALLY KNOWS OR WILLFULLY DISREGARDS IS A MINOR SHALL NOT:
16	(A) PROVIDE ANY CONSENT MECHANISM THAT IS DESIGNED TO
17	SUBSTANTIALLY SUBVERT OR IMPAIR, OR IS MANIPULATED WITH THE
18	EFFECT OF SUBSTANTIALLY SUBVERTING OR IMPAIRING, USER AUTONOMY,
19	DECISION-MAKING, OR CHOICE; OR
20	(B) EXCEPT AS PROVIDED IN SUBSECTION (3)(b)(II) OF THIS
21	SECTION, OFFER ANY DIRECT MESSAGING APPARATUS FOR USE BY A MINOR
22	WITHOUT PROVIDING READILY ACCESSIBLE AND EASY-TO-USE
23	SAFEGUARDS TO LIMIT THE ABILITY OF AN ADULT TO SEND UNSOLICITED
24	COMMUNICATIONS TO THE MINOR WITH WHOM THE ADULT IS NOT
25	CONNECTED.
26	(II) Subsection (3)(b)(I)(B) of this section does not apply to
27	AN ONLINE SERVICE, PRODUCT, OR FEATURE OF WHICH THE PREDOMINANT

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1	OR EXCLUSIVE FUNCTION IS:
2	(A) ELECTRONIC MAIL; OR
3	(B) DIRECT MESSAGING CONSISTING OF TEXT, PHOTOS, OR VIDEOS
4	THAT ARE SENT BETWEEN DEVICES BY ELECTRONIC MEANS, WHERE
5	MESSAGES ARE: SHARED BETWEEN THE SENDER AND THE RECIPIENT; ONLY
6	VISIBLE TO THE SENDER AND THE RECIPIENT; AND NOT POSTED PUBLICLY
7	(4) SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION DO NOT APPLY
8	TO ANY SERVICE OR APPLICATION THAT IS USED BY AND UNDER THE
9	DIRECTION OF AN EDUCATIONAL ENTITY, INCLUDING A LEARNING
10	MANAGEMENT SYSTEM OR A STUDENT ENGAGEMENT PROGRAM.
11	6-1-1309.5. Data protection assessments. (1) A CONTROLLER
12	THAT, ON OR AFTER OCTOBER 1, 2025, OFFERS ANY ONLINE SERVICE
13	PRODUCT, OR FEATURE TO A CONSUMER WHOM SUCH CONTROLLER
14	ACTUALLY KNOWS OR WILLFULLY DISREGARDS IS A MINOR SHALL
15	CONDUCT A DATA PROTECTION ASSESSMENT FOR THE ONLINE SERVICE
16	PRODUCT, OR FEATURE IF THERE IS A HEIGHTENED RISK OF HARM TO
17	MINORS. THE CONTROLLER SHALL CONDUCT THE DATA PROTECTION
18	ASSESSMENT:
19	(a) In a manner that is consistent with the requirements
20	ESTABLISHED IN SECTION 6-1-1309; AND
21	(b) THAT ADDRESSES:
22	(I) THE PURPOSE OF THE ONLINE SERVICE, PRODUCT, OR FEATURE
23	(II) THE CATEGORIES OF A MINOR'S PERSONAL DATA THAT THE
24	ONLINE SERVICE, PRODUCT, OR FEATURE PROCESSES;
25	(III) THE PURPOSES FOR WHICH THE CONTROLLER PROCESSES A
26	MINOR'S PERSONAL DATA WITH RESPECT TO THE ONLINE SERVICE.
27	PRODUCT, OR FEATURE; AND

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1	(IV) Any heightened risk of harm to $\underline{\text{minors}}$ that is a
2	REASONABLY FORESEEABLE RESULT OF OFFERING THE ONLINE SERVICE,
3	PRODUCT, OR FEATURE TO MINORS.
4	(2) A CONTROLLER THAT CONDUCTS A DATA PROTECTION
5	ASSESSMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL:
6	(a) REVIEW THE DATA PROTECTION ASSESSMENT AS NECESSARY TO
7	ACCOUNT FOR ANY MATERIAL CHANGE TO THE PROCESSING OPERATIONS
8	OF THE ONLINE SERVICE, PRODUCT, OR FEATURE THAT IS THE SUBJECT OF
9	THE DATA PROTECTION ASSESSMENT; AND
10	(b) Maintain documentation concerning the data
11	PROTECTION ASSESSMENT FOR THE LONGER OF:
12	(I) THREE YEARS AFTER THE DATE ON WHICH THE PROCESSING
13	OPERATIONS CEASE; OR
14	(II) THE DATE THE CONTROLLER CEASES OFFERING THE ONLINE
15	SERVICE, PRODUCT, OR FEATURE.
16	(3) A SINGLE DATA PROTECTION ASSESSMENT MAY ADDRESS A
17	COMPARABLE SET OF PROCESSING OPERATIONS THAT INCLUDE SIMILAR
18	ACTIVITIES.
19	(4) IF A CONTROLLER CONDUCTS A DATA PROTECTION ASSESSMENT
20	FOR THE PURPOSE OF COMPLYING WITH ANOTHER APPLICABLE LAW OR
21	REGULATION, THE DATA PROTECTION ASSESSMENT IS DEEMED TO SATISFY
22	THE REQUIREMENTS ESTABLISHED IN THIS SECTION IF THE DATA
23	PROTECTION ASSESSMENT IS REASONABLY SIMILAR IN SCOPE AND EFFECT
24	TO THE DATA PROTECTION ASSESSMENT THAT WOULD OTHERWISE BE
25	CONDUCTED PURSUANT TO THIS SECTION.
26	(5) IF A CONTROLLER CONDUCTS A DATA PROTECTION ASSESSMENT
27	PURSUANT TO SUBSECTION (1) OF THIS SECTION OR A DATA PROTECTION

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1	ASSESSMENT REVIEW PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION
2	AND DETERMINES THAT THE ONLINE SERVICE, PRODUCT, OR FEATURE THAT
3	IS THE SUBJECT OF THE ASSESSMENT POSES A HEIGHTENED RISK OF HARM
4	TO $\underline{\text{MINORS}},$ THE CONTROLLER SHALL ESTABLISH AND IMPLEMENT A PLAN
5	TO MITIGATE OR ELIMINATE THE HEIGHTENED RISK.
6	(6) (a) A DATA PROTECTION ASSESSMENT CONDUCTED PURSUANT
7	TO THIS SECTION:
8	(I) IS CONFIDENTIAL, EXCEPT AS PROVIDED IN SUBSECTION (6)(b)
9	OF THIS SECTION; AND
10	(II) IS NOT A PUBLIC RECORD, AND IS EXEMPT FROM PUBLIC
11	INSPECTION AND COPYING, UNDER THE "COLORADO OPEN RECORDS ACT",
12	PART 2 OF ARTICLE 72 OF TITLE 24.
13	(b) (I) A CONTROLLER SHALL MAKE A DATA PROTECTION
14	ASSESSMENT CONDUCTED PURSUANT TO THIS SECTION AVAILABLE TO THE
15	ATTORNEY GENERAL UPON REQUEST. THE ATTORNEY GENERAL MAY
16	EVALUATE THE DATA PROTECTION ASSESSMENT FOR COMPLIANCE WITH
17	SECTION $6$ -1-1308.5 and with other laws, including this article 1.
18	(II) THE DISCLOSURE OF A DATA PROTECTION ASSESSMENT
19	PURSUANT TO A REQUEST FROM THE ATTORNEY GENERAL DOES NOT
20	CONSTITUTE A WAIVER OF ANY ATTORNEY-CLIENT PRIVILEGE OR
21	WORK-PRODUCT PROTECTION THAT MIGHT OTHERWISE EXIST WITH
22	RESPECT TO THE ASSESSMENT AND ANY INFORMATION IN THE ASSESSMENT.
23	(7) Data protection assessment requirements apply to
24	PROCESSING ACTIVITIES CREATED OR GENERATED AFTER OCTOBER 1,
25	2025, AND ARE NOT RETROACTIVE.
26	SECTION 5. In Colorado Revised Statutes, 6-1-1311, amend
27	(1)(d) as follows:

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1	<b>6-1-1311.</b> Enforcement - penalties - repeal. (1) (d) (I) Prior to
2	any enforcement action pursuant to subsection (1)(a) of this section,
3	OTHER THAN AN ENFORCEMENT ACTION DESCRIBED IN SUBSECTION
4	(1)(d)(II) OF THIS SECTION, the attorney general or district attorney must
5	issue a notice of violation to the controller if a cure is deemed possible.
6	If the controller fails to cure the violation within sixty days after receipt
7	of the notice of violation, an action may be brought pursuant to this
8	section. This $\frac{\text{subsection}(1)(d)}{\text{SUBSECTION}(1)(d)(I)}$ is repealed, effective
9	January 1, 2025.
10	(II) PRIOR TO ANY ENFORCEMENT ACTION PURSUANT TO
11	SUBSECTION (1)(a) OF THIS SECTION TO ENFORCE SECTION 6-1-1305.5,
12	6-1-1308.5, or 6-1-1309.5, the attorney general or district
13	ATTORNEY MUST ISSUE A NOTICE OF VIOLATION TO THE CONTROLLER IF A
14	CURE IS DEEMED POSSIBLE. IF THE CONTROLLER FAILS TO CURE THE
15	VIOLATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE OF
16	VIOLATION, AN ACTION MAY BE BROUGHT PURSUANT TO THIS SECTION.
17	This subsection (1)(d)(II) is repealed, effective December 31, 2026.
18	SECTION 6. Act subject to petition - effective date -
19	applicability. (1) This act takes effect October 1, 2025; except that, if a
20	referendum petition is filed pursuant to section 1 (3) of article V of the
21	state constitution against this act or an item, section, or part of this act
22	within the ninety-day period after final adjournment of the general
23	assembly, then the act, item, section, or part will not take effect unless
24	approved by the people at the general election to be held in November
25	2024 and, in such case, will take effect October 1, 2025, or on the date of
26	the official declaration of the vote thereon by the governor, whichever is
27	later.

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

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