

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

PREAMENDED

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

LLS NO. 24-0634.01 Richard Sweetman x4333

SENATE BILL 24-129

SENATE SPONSORSHIP

Pelton B. and Kolker,

HOUSE SPONSORSHIP

deGruy Kennedy and Frizell,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTING THE PRIVACY OF PERSONS ASSOCIATED**
102 **WITH NONPROFIT ENTITIES, AND, IN CONNECTION THEREWITH,**
103 **PROHIBITING PUBLIC AGENCIES FROM TAKING CERTAIN ACTIONS**
104 **RELATING TO THE COLLECTION AND DISCLOSURE OF DATA THAT**
105 **MAY IDENTIFY SUCH PERSONS.**

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>.)

With certain exceptions, the bill prohibits a public agency from:

- Requiring any person to provide the public agency with

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
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.

data that may identify a member of a nonprofit entity (member-specific data) or compelling the disclosure of member-specific data;

- Disclosing member-specific data to any person; or
- Requesting or requiring a current or prospective contractor or a current or prospective grantee of a grant program administered by the public agency to provide a list of nonprofit entities to which the current or prospective contractor or grantee has provided financial or nonfinancial support.

A nonprofit entity or any of its members affected adversely by a public agency's violation of the bill's provisions may initiate a civil action against the public agency in district court for injunctive relief, damages, or such other relief as is appropriate. Notwithstanding existing laws concerning governmental immunity, a court may award damages against a public agency that violates the bill's provisions as follows:

- Not less than \$2,500 for each violation; and
- Not less than \$7,500 for each intentional violation.

A court may also award the costs of litigation to a complainant that prevails in such an action.

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

2 **SECTION 1.** In Colorado Revised Statutes, 7-90-102, **add** (36.5)
3 and (53.5) as follows:

4 **7-90-102. Definitions.** As used in this title 7, except as otherwise
5 defined for the purpose of any section, subpart, part, or article of this title
6 7, or unless the context otherwise requires:

7 (36.5) "MEMBER-SPECIFIC DATA" MEANS ANY DOCUMENT, LIST,
8 RECORD, OR COMPILATION OF ONE OR MORE CATEGORIES OF "PERSONAL
9 IDENTIFYING INFORMATION", AS DEFINED IN SECTION 18-5-901 (13), THAT
10 IDENTIFIES, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, A PERSON AS
11 A MEMBER, VOLUNTEER, OR DONOR TO ANY NONPROFIT ENTITY.

12 (53.5) "PUBLIC AGENCY" MEANS ANY STATE OR LOCAL
13 GOVERNMENTAL UNIT, INCLUDING:

14 (a) THE STATE;

1 (b) ANY DEPARTMENT, AGENCY, OFFICE, COMMISSION, BOARD,
2 DIVISION, OR OTHER AGENCY OF THE STATE;

3 (c) ANY INSTITUTION, AS DEFINED IN SECTION 24-72-202 (1.5);
4 AND

5 (d) ANY POLITICAL SUBDIVISION, AS DEFINED IN SECTION
6 24-72-202 (5).

7 **SECTION 2.** In Colorado Revised Statutes, **add** 7-90-107 as
8 follows:

9 **7-90-107. Protection of member-specific data - nonprofit**
10 **entities - rights and remedies - legislative declaration.** (1) THE
11 GENERAL ASSEMBLY FINDS AND DECLARES THAT:

12 (a) GIVEN THE LONG-HELD PROTECTION OF THE FUNDAMENTAL
13 RIGHTS OF ASSOCIATION AND PRIVACY UNDER THE CONSTITUTIONS OF THE
14 UNITED STATES AND THE STATE OF COLORADO, IT IS IN THE PUBLIC
15 INTEREST TO PROHIBIT PUBLIC AGENCIES FROM COLLECTING OR
16 DISCLOSING MEMBER-SPECIFIC DATA ABOUT MEMBERS OF, VOLUNTEERS
17 OF, AND FINANCIAL AND NONFINANCIAL DONORS TO NONPROFIT ENTITIES
18 THAT ARE EXEMPT FROM TAXATION UNDER THE FEDERAL "INTERNAL
19 REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c), AS AMENDED, EXCEPT
20 AS SUCH COLLECTION OR DISCLOSURE IS PERMITTED BY LAW OR RULE OR
21 IS NECESSARY TO ENFORCE OR ENSURE COMPLIANCE WITH THE LAW OR
22 RULES OF THE STATE; AND

23 (b) THE PROVISIONS OF THIS SECTION CONCERNING A PUBLIC
24 AGENCY'S ACCESS TO OR USE OF MEMBER-SPECIFIC DATA ARE CONSISTENT
25 WITH:

26 (I) SECTION 7-136-105, WHICH PROHIBITS ANY PERSON FROM
27 OBTAINING OR USING A NONPROFIT CORPORATION'S MEMBERSHIP LIST FOR

1 ANY PURPOSE UNRELATED TO A MEMBER'S INTEREST AS A MEMBER; AND

2 (II) SECTION 24-73-102, WHICH REQUIRES GOVERNMENTAL
3 ENTITIES TO PROTECT ACCESS TO CERTAIN TYPES OF PERSONAL
4 IDENTIFYING INFORMATION.

5 (2) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION
6 OR AS OTHERWISE PERMITTED BY LAW OR AS IS NECESSARY TO ENFORCE
7 OR ENSURE COMPLIANCE WITH THE STATE CONSTITUTION OR AN
8 APPLICABLE FEDERAL, STATE, OR LOCAL STATUTE, CHARTER PROVISION,
9 RESOLUTION, ORDINANCE, RULE, OR REGULATION, A PUBLIC AGENCY
10 SHALL NOT:

11 (a) REQUIRE ANY PERSON, INCLUDING A NONPROFIT ENTITY OR AN
12 OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF A NONPROFIT ENTITY, TO
13 PROVIDE THE PUBLIC AGENCY WITH MEMBER-SPECIFIC DATA OR
14 OTHERWISE COMPEL THE DISCLOSURE OF MEMBER-SPECIFIC DATA;

15 (b) DISCLOSE TO ANY PERSON ONE OR MORE ITEMS OF
16 MEMBER-SPECIFIC DATA, INCLUDING A COMPLETE OR PARTIAL LIST OF
17 NONPROFIT ENTITY MEMBERS WHO ARE EMPLOYED BY A PUBLIC AGENCY
18 OR ANY INFORMATION INCLUDED IN A NONPROFIT ENTITY MEMBER'S
19 PERSONNEL FILES AS DEFINED IN SECTION 24-72-202 (4.5); OR

20 (c) REQUEST OR REQUIRE A CURRENT OR PROSPECTIVE
21 CONTRACTOR OR A CURRENT OR PROSPECTIVE GRANTEE OF A GRANT
22 PROGRAM ADMINISTERED BY THE PUBLIC AGENCY TO PROVIDE A LIST OF
23 NONPROFIT ENTITIES TO WHICH THE CURRENT OR PROSPECTIVE
24 CONTRACTOR OR GRANTEE HAS PROVIDED FINANCIAL OR NONFINANCIAL
25 SUPPORT.

26
27 (3) THIS SECTION DOES NOT PRECLUDE A PUBLIC AGENCY FROM

1 REQUIRING PRODUCTION OF A NONPROFIT ENTITY'S MEMBER-SPECIFIC
2 DATA IF:

3 (a) THE MEMBER-SPECIFIC DATA IS SPECIFICALLY IDENTIFIED IN A
4 LAWFUL SUBPOENA OR WARRANT THAT IS:

5 (I) ISSUED BY A COURT OF COMPETENT JURISDICTION OR IS ISSUED
6 UNDER THE AGENCY'S STATUTORY OR CONSTITUTIONAL AUTHORITY IN AN
7 ADMINISTRATIVE, CIVIL, OR CRIMINAL MATTER OR FOR AN
8 ADMINISTRATIVE PROCEEDING BEFORE AN ADMINISTRATIVE LAW JUDGE,
9 A HEARING OFFICER, OR OTHER DULY AUTHORIZED, QUASI-JUDICIAL
10 OFFICIAL, INCLUDING THE INDEPENDENT ETHICS COMMISSION AS
11 AUTHORIZED BY ARTICLE XXIX OF THE STATE CONSTITUTION; OR

12 (II) SERVED UPON A STATE OR LOCAL AGENCY FOR PURPOSES OF
13 FACILITATING A LAWFUL INVESTIGATION, SUBJECT TO THE CONDITIONS OF
14 A PROTECTIVE ORDER AS DIRECTED BY THE COURT OR AGENCY THAT
15 ISSUED THE SUBPOENA;

16 (b) (I) THE MEMBER-SPECIFIC DATA IS PRODUCED IN DISCOVERY
17 UNDER THE COLORADO RULES OF CIVIL PROCEDURE BEFORE A COURT OF
18 COMPETENT JURISDICTION OR AS AUTHORIZED BY JURISDICTION, AN
19 ADMINISTRATIVE LAW JUDGE, A HEARING OFFICER, OR OTHER DULY
20 AUTHORIZED, QUASI-JUDICIAL OFFICIAL, INCLUDING THE INDEPENDENT
21 ETHICS COMMISSION AS AUTHORIZED BY ARTICLE XXIX OF THE STATE
22 CONSTITUTION, SO LONG AS THE PRESIDING OFFICIAL ENTERS A
23 PROTECTIVE ORDER PROHIBITING OR LIMITING THE DISCLOSURE OF THE
24 MEMBER-SPECIFIC DATA TO THE PUBLIC.

25 (II) A PROTECTIVE ORDER MAY BE ISSUED AS DESCRIBED IN THIS
26 SUBSECTION (3)(b) AT THE COURT'S DISCRETION IN DISCOVERY BY STATE
27 OR LOCAL AGENCIES ENGAGED IN SECURITIES AND COMMODITIES

1 ENFORCEMENT, LICENSING, OR EXAMINATION PROCEDURES.

2 (c) THE MEMBER-SPECIFIC DATA IS ADMITTED INTO EVIDENCE AS
3 RELEVANT TO PROVING OR DISPROVING THE CLAIMS OR DEFENSES AT ISSUE
4 BEFORE A COURT OF COMPETENT JURISDICTION, AN ADMINISTRATIVE LAW
5 JUDGE, A HEARING OFFICER, OR OTHER DULY AUTHORIZED, QUASI-JUDICIAL
6 OFFICIAL, INCLUDING THE INDEPENDENT ETHICS COMMISSION AS
7 AUTHORIZED BY ARTICLE XXIX OF THE STATE CONSTITUTION;

8 (d) THE MEMBER-SPECIFIC DATA IS VOLUNTARILY AND PUBLICLY
9 DISCLOSED BY THE PERSON OR THE NONPROFIT ENTITY TO WHICH IT
10 RELATES;

11 (e) THE MEMBER-SPECIFIC DATA IS SOUGHT BY A NONPROFIT
12 ENTITY THAT REQUESTS INFORMATION CONCERNING ITS OWN MEMBERS
13 FROM A PUBLIC AGENCY BY WHICH THE MEMBERS ARE EMPLOYED;

14 (f) INFORMATION DISCLOSING THE IDENTITY OF ANY DIRECTOR,
15 OFFICER, REGISTERED AGENT, OR INCORPORATOR OF A NONPROFIT ENTITY
16 IN A REPORT OR DISCLOSURE IS REQUIRED BY STATUTE TO BE FILED WITH
17 THE SECRETARY OF STATE OR, FOR UNINCORPORATED ASSOCIATIONS, AN
18 AGENCY THAT IS DESIGNATED BY LAW; EXCEPT THAT INFORMATION THAT
19 DIRECTLY IDENTIFIES A PERSON SOLELY BECAUSE THE PERSON IS A
20 FINANCIAL DONOR TO A NONPROFIT ENTITY SHALL NOT BE DISCLOSED
21 UNLESS DISCLOSURE IS REQUIRED BY SUBSECTION (3)(g) OF THIS SECTION;

22 (g) THE MEMBER-SPECIFIC DATA IS REQUIRED TO BE MADE PUBLIC
23 BECAUSE DISCLOSURE OF A CONTRIBUTION OR DONATION MADE BY ONE OR
24 MORE MEMBERS OF A NONPROFIT ENTITY IS EXPRESSLY REQUIRED BY
25 FEDERAL, STATE, OR LOCAL CAMPAIGN FINANCE LAWS;

26 (h) THE MEMBER-SPECIFIC DATA IS REQUIRED BY STATUTE OR
27 REGULATION IN ORDER FOR AN APPLICANT TO QUALIFY FOR OR TO

1 OPERATE A BUSINESS ACTIVITY IN THE STATE OR IN ORDER FOR LICENSEES
2 OR REGISTRANTS TO COMPLY WITH ONGOING REGULATORY
3 REQUIREMENTS, SO LONG AS THE MEMBER-SPECIFIC DATA IS USED ONLY IN
4 CONNECTION WITH LAWFUL REGULATORY OR ENFORCEMENT ACTIVITY TO
5 WHICH THE REQUEST RELATES AND FOR ANY RELATED PROCEEDINGS;

6 (i) THE MEMBER-SPECIFIC DATA IS NECESSARY TO DETERMINE
7 COMPLIANCE WITH FEDERAL OR STATE ANTITRUST STATUTES;

8 (j) THE MEMBER-SPECIFIC DATA IS SOUGHT BY A PUBLIC AGENCY
9 INVESTIGATING ALLEGED VIOLATIONS OF STATE OR LOCAL CIVIL OR
10 CRIMINAL LAWS AS PERMITTED OR EXPRESSLY REQUIRED BY LAW;

11 (k) THE MEMBER-SPECIFIC DATA IS COLLECTED AND USED FOR THE
12 PURPOSE OF EVALUATING THE SUITABILITY OF APPLICANTS FOR, AND ANY
13 POTENTIAL CONFLICTS OF INTEREST RESULTING FROM, EMPLOYMENT BY A
14 PUBLIC AGENCY OR APPOINTMENTS TO STATE OR LOCAL BOARDS,
15 COMMISSIONS, ADVISORY COMMITTEES, TASK FORCES, GRANT
16 APPLICATION REVIEW COMMITTEES, OR COMPARABLE ENTITIES, SO LONG
17 AS THE MEMBER-SPECIFIC DATA IS USED ONLY IN CONNECTION WITH THE
18 SPECIFIC APPLICATION FOR AN APPOINTMENT TO WHICH THE REQUEST
19 RELATES AND FOR ANY RELATED PROCEEDINGS;

20 (l) THE MEMBER-SPECIFIC DATA IS COLLECTED AND USED IN ORDER
21 TO DETERMINE WHETHER A PERSON THAT IS APPLYING FOR OR BEING
22 EVALUATED FOR ANY GRANT, BENEFITS, FINANCING, OR PAYMENTS FROM
23 OR THROUGH, OR ANY CONTRACT WITH, A PUBLIC AGENCY SHOULD BE
24 AWARDED THE GRANT, BENEFITS, FINANCING, PAYMENTS, OR CONTRACT
25 AND INCLUDES INFORMATION PERTAINING TO PERSONS RELATED TO OR
26 AFFILIATED WITH THE APPLICANT, AS WELL AS PERSONS CONDUCTING THE
27 EVALUATION, SO LONG AS THE MEMBER-SPECIFIC DATA IS USED ONLY IN

1 CONNECTION WITH THE SPECIFIC APPLICATION FOR, OR EVALUATION FOR,
2 A GRANT, BENEFITS, FINANCING, OR PAYMENTS TO WHICH THE REQUEST
3 RELATES AND FOR ANY RELATED PROCEEDINGS;

4 (m) THE MEMBER-SPECIFIC DATA IS COLLECTED AND USED BY THE
5 OFFICE OF THE STATE AUDITOR FOR THE PURPOSE OF PERFORMING THE
6 FUNCTIONS OF THAT OFFICE OR IN AN AUDIT, EVALUATION, OR STUDY
7 CONDUCTED BY A PUBLIC AGENCY TO PERFORM ITS FUNCTIONS, SO LONG
8 AS THE MEMBER-SPECIFIC DATA IS USED ONLY FOR OFFICIAL STATE
9 BUSINESS;

10 (n) THE MEMBER-SPECIFIC DATA IS COLLECTED AND USED BY A
11 PUBLIC AGENCY THAT IS FORMED AS A NONPROFIT ENTITY WHERE SUCH
12 MEMBER-SPECIFIC DATA IS USED, EITHER DIRECTLY BY THE PUBLIC
13 AGENCY OR THROUGH ITS AUTHORIZED AGENT, SOLELY TO CONTACT,
14 INFORM, OR SOLICIT ITS DUES-PAYING MEMBERS OR DONORS, OR TO SEEK
15 UPDATES OF THEIR MEMBER-SPECIFIC DATA;

16 (o) THE MEMBER-SPECIFIC DATA IS SOUGHT BY THE DEPARTMENT
17 OF REVENUE TO DETERMINE A TAXPAYER'S COMPLIANCE WITH LAWS
18 RELATING TO THE DEDUCTION OR CREDITS ARISING FROM CONTRIBUTIONS
19 TO A NONPROFIT ENTITY FROM A PERSON'S TAXABLE INCOME;

20 (p) THE MEMBER-SPECIFIC DATA IS PRODUCED FOR THE PURPOSES
21 OF ENFORCEMENT, EXAMINATION, OR OTHER SECURITIES AND
22 COMMODITIES REGULATORY MATTERS, INCLUDING COLLABORATION WITH
23 OTHER SECURITIES AND COMMODITIES ENFORCEMENT AND REGULATORY
24 AGENCIES, INCLUDING, BUT NOT LIMITED TO, INTERNATIONAL, FOREIGN,
25 FEDERAL, STATE, AND SELF-REGULATORY AGENCIES, SUCH AS THE
26 FINANCIAL INDUSTRY REGULATORY AUTHORITY;

27 (q) THE MEMBER-SPECIFIC DATA CONCERNS A MEMBER WHO HAS

1 BEEN ISSUED OR IS PRACTICING UNDER ANY CLASS OF LICENSE UNDER
2 SECTION 44-20-108 OR 44-20-408; OR

3 (r) THE MEMBER-SPECIFIC DATA WAS VOLUNTARILY RELEASED TO
4 THE PUBLIC AGENCY BY THE PERSON OR THE NONPROFIT ENTITY TO WHICH
5 THE DATA RELATES.

6 (4) (a) A NONPROFIT ENTITY OR ANY OF ITS MEMBERS AFFECTED
7 ADVERSELY BY A VIOLATION OF THIS SECTION MAY INITIATE A CIVIL
8 ACTION IN DISTRICT COURT FOR INJUNCTIVE RELIEF, DAMAGES, OR SUCH
9 OTHER RELIEF AS IS APPROPRIATE TO ADDRESS THE VIOLATION. SUCH AN
10 ACTION MUST BE INITIATED AGAINST THE PUBLIC AGENCY THAT SOUGHT
11 AND OBTAINED, OR IMPROPERLY DISCLOSED, MEMBER-SPECIFIC DATA OF
12 THE NONPROFIT ENTITY IN VIOLATION OF THIS SECTION.

13 (b) NOTWITHSTANDING THE LIMITATIONS OF THE "COLORADO
14 GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, DAMAGES
15 MAY BE AWARDED TO COMPENSATE A PERSON FOR INJURY OR LOSS
16 CAUSED BY A PUBLIC AGENCY WRONGFULLY REQUIRING THE PRODUCTION
17 OF, OR WRONGFULLY DISCLOSING, MEMBER-SPECIFIC DATA AS FOLLOWS:

18 (I) EXCEPT AS DESCRIBED IN SUBSECTION (4)(b)(II) OF THIS
19 SECTION, NOT LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS FOR
20 EACH RECKLESS VIOLATION OF THIS SECTION; AND

21 (II) NOT LESS THAN SEVEN THOUSAND FIVE HUNDRED DOLLARS
22 FOR EACH INTENTIONAL VIOLATION OF THIS SECTION.

23 (c) A COURT MAY AWARD THE COSTS OF LITIGATION, INCLUDING
24 REASONABLE ATTORNEY FEES AND WITNESS FEES, TO A COMPLAINANT
25 THAT PREVAILS IN AN ACTION DESCRIBED IN THIS SUBSECTION (4).

26 **SECTION 3. In Colorado Revised Statutes, 24-72-204, add (10)**
27 as follows:

1 **24-72-204. Allowance or denial of inspection - grounds -**
2 **procedure - appeal - definitions - repeal.** (10) THE CUSTODIAN OF ANY
3 PUBLIC RECORDS SHALL NOT REQUIRE A NONPROFIT ENTITY TO PRODUCE
4 MEMBER-SPECIFIC DATA, AS DEFINED IN SECTION 7-90-102 (36.5), THAT IS
5 CONTAINED IN PUBLIC RECORDS WHERE SUCH RECORDS ARE NOT SUBJECT
6 TO INSPECTION AND COPYING PURSUANT TO THIS SECTION. A CUSTODIAN
7 SHALL DENY ANY REQUEST TO INSPECT, COPY, OR REPRODUCE ANY
8 MEMBER-SPECIFIC DATA IN THE POSSESSION OF A PUBLIC AGENCY AND
9 PROVIDED TO THE PUBLIC AGENCY BY A NONPROFIT ENTITY. A CUSTODIAN
10 SHALL NOT REQUIRE A NONPROFIT ENTITY TO PRODUCE RECORDS AND
11 INFORMATION RELATING TO THE IDENTIFICATION OF INDIVIDUAL
12 EMPLOYEES OF NONPROFIT ENTITIES WITH WHOM THE PUBLIC ENTITY
13 CONTRACTS FOR SERVICES OR OF INDIVIDUAL EMPLOYEES OF
14 SUBCONTRACTORS OF SUCH NONPROFIT ENTITIES.

15 **SECTION 4. Act subject to petition - effective date -**
16 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
17 the expiration of the ninety-day period after final adjournment of the
18 general assembly; except that, if a referendum petition is filed pursuant
19 to section 1 (3) of article V of the state constitution against this act or an
20 item, section, or part of this act within such period, then the act, item,
21 section, or part will not take effect unless approved by the people at the
22 general election to be held in November 2024 and, in such case, will take
23 effect on the date of the official declaration of the vote thereon by the
24 governor.

25 (2) This act applies to the collection and disclosure of data
26 concerning members of a nonprofit entity by a public agency on or after
27 the applicable effective date of this act.