

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0292.02 Owen Hatch x2698

HOUSE BILL 26-1037

HOUSE SPONSORSHIP

Bacon and DeGraaf,

SENATE SPONSORSHIP

Cutter,

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PROHIBITING A GOVERNMENT ENTITY FROM OBTAINING
102 CERTAIN PERSONAL DATA FROM A THIRD PARTY FOR USE BY A
103 GOVERNMENT ENTITY IN EXCHANGE FOR ANYTHING OF VALUE.

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 prohibits law enforcement and other government entities from purchasing, or otherwise obtaining for anything of value, certain personal data from third parties. Law enforcement agencies and other government entities are also prohibited from sharing individuals' personal data between themselves.

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.

Exceptions are created for obtaining personal data, including after obtaining a judicial warrant, subpoena, or court order, when an individual consents to sharing their data and, in the case of an emergency, involving a threat to a person's life or physical safety.

The bill creates a private cause of action for an individual who has their personal data obtained or shared in violation of the prohibitions in the bill. Personal data obtained or shared is excluded from trial and other court proceedings, subject to certain exceptions.

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

2 **SECTION 1. Short title.** The short title of this act is the "Fourth
3 Amendment is Not for Sale Act".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 finds and declares that:

6 (a) The fourth amendment to the United States constitution
7 guarantees that "[t]he right of the people to be secure in their persons,
8 houses, papers, and effects, against unreasonable searches and seizures,
9 shall not be violated, and no Warrants shall issue, but upon probable
10 cause, supported by Oath or affirmation, and particularly describing the
11 place to be searched, and the persons or things to be seized";

12 (b) The United States supreme court has observed, "Few
13 protections are as essential to individual liberty as the right to be free
14 from unreasonable searches and seizures. The Framers made that right
15 explicit in the Bill of Rights following their experience with the
16 indignities and invasions of privacy wrought by general warrants and
17 warrantless searches that had so alienated the colonists and had helped
18 speed the movement for independence. Ever mindful of the Fourth
19 Amendment and its history, the Court has viewed with disfavor practices
20 that permit police officers unbridled discretion to rummage at will among
21 a person's private effects." *Byrd v. United States*, 584 U.S. 395, 402-403

1 (2018). Accordingly, "As technology has enhanced the Government's
2 capacity to encroach upon areas normally guarded from inquisitive eyes,
3 [the United States Supreme] Court has sought to assure preservation of
4 that degree of privacy against government that existed when the Fourth
5 Amendment was adopted." *Carpenter v. United States*, 585 U.S. 296, 305
6 (2018).

7 (c) In *People v. Seymour*, 536 P.3d 1260 (Colo. 2023), the
8 Colorado supreme court stated that Colorado is not bound by the United
9 States supreme court's interpretation of the fourth amendment when
10 determining the scope of state constitutional protections. The court stated
11 that article II, section 7 provides even greater privacy protections than the
12 fourth amendment, and Colorado has "long rejected the third-party
13 doctrine under that provision of the Colorado Constitution," further
14 stating that "[g]iven the enduring and related privacy concerns presented
15 by a search of an individual's online search history, we see no reason to
16 change course here."

17 (d) Law enforcement has been able to effectively and efficiently
18 enforce our criminal laws for more than 230 years without needing to
19 evade fourth amendment warrant requirements that are essential to
20 protecting Americans' liberty and privacy in the digital age.

21 **SECTION 3.** In Colorado Revised Statutes, **add** 16-3-303.3 as
22 follows:

23 **16-3-303.3. Prohibition on the bulk purchase of data from
24 third parties by law enforcement - evidence inadmissible in court -
25 definitions.**

26 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
27 REQUIRES:

1 (a) "EXCHANGE FOR ANYTHING OF VALUE" MEANS TO OBTAIN OR
2 RECEIVE ACCESS TO AN ITEM, DATA, OR INFORMATION:

3 (I) IN EXCHANGE FOR MONEY OR OTHER VALUABLE
4 CONSIDERATION;

5 (II) IN CONNECTION WITH SERVICES OR BENEFITS PROVIDED AS
6 CONSIDERATION; OR

7 (III) AS PART OF THE PROVISION OF A FEE, INCLUDING AN ACCESS
8 FEE, SERVICE FEE, MAINTENANCE FEE, OR LICENSING FEE.

9 (b) "GOVERNMENT ENTITY" HAS THE SAME MEANING SET FORTH
10 IN SECTION 16-3-303.5, INCLUDING A POLITICAL SUBDIVISION.

11 (c) "LAW ENFORCEMENT ENTITY" MEANS AN AGENCY OR OTHER
12 INSTRUMENTALITY OF A GOVERNMENT ENTITY, INCLUDING AN EMPLOYEE
13 OR AGENT OF THE ENTITY, THAT IS AUTHORIZED BY LAW, REGULATION, OR
14 GOVERNMENTAL POLICY TO ENGAGE IN OR SUPERVISE THE PREVENTION,
15 DETECTION, INVESTIGATION, OR PROSECUTION OF A VIOLATION OF
16 CRIMINAL LAW.

17 (d) "PERSONAL DATA" MEANS INFORMATION COLLECTED FROM OR
18 GENERATED BY A SPECIFIC PERSON AS PART OF A CONSUMER TRANSACTION
19 OR THE USE OF A CONSUMER PRODUCT OR SERVICE, WHETHER THE
20 INFORMATION WAS COLLECTED BY THE ORIGINAL THIRD PARTY OR
21 OBTAINED BY A DIFFERENT THIRD PARTY, THAT IS CONNECTED OR
22 REASONABLY CONNECTED TO THE SPECIFIC PERSON OR THE SPECIFIC
23 PERSON'S ELECTRONIC DEVICE. PERSONAL DATA INCLUDES, BUT IS NOT
24 LIMITED TO, A PERSON'S:

25 (I) NAME;

26 (II) BILLING INFORMATION OR ADDRESS;

27 (III) SOCIAL SECURITY NUMBER;

- 1 (IV) HOME ADDRESS;
- 2 (V) DEMOGRAPHIC DATA;
- 3 (VI) WEB BROWSING OR SEARCH HISTORY;
- 4 (VII) APPLICATION USAGE HISTORY;
- 5 (VIII) PRECISE GEOLOCATION DATA, AS DEFINED IN SECTION
- 6 6-1-1303;

7 (IX) FINANCIAL INFORMATION;

8 (X) HEALTH INFORMATION;

9 (XI) BIOMETRIC IDENTIFIER, AS DEFINED IN SECTION 6-1-1303;

10 (XII) BIOLOGICAL DATA, AS DEFINED IN SECTION 6-1-1303;

11 (XIII) CHARACTERISTICS OF PROTECTED CLASSIFICATIONS UNDER
12 STATE OR FEDERAL LAW;

13 (XIV) DEVICE IDENTIFIER, INCLUDING A MEDIA ACCESS CONTROL

14 ADDRESS, INTERNATIONAL MOBILE EQUIPMENT IDENTIFIER, OR INTERNET
15 PROTOCOL ADDRESS;

16 (XV) COMMUNICATIONS CONTENT; AND

(XVI) PROFILES OR INFERENCES ABOUT AN INDIVIDUAL BASED ON
DATA POINTS COLLECTED OR ACQUIRED FROM THIRD PARTIES.

19 (e) "THIRD PARTY" MEANS A PERSON WHO:

20 (I) IS NOT A GOVERNMENT ENTITY; AND

21 (II) IS NOT THE PERSON TO WHOM THE PERSONAL DATA PERTAINS.

(f) "WIDELY DISTRIBUTED MEDIA" MEANS CONTENT THAT IS MADE AVAILABLE TO A LARGE, GENERAL AUDIENCE THROUGH CHANNELS THAT ALLOW BROAD ACCESS AND REGULAR DISSEMINATION, AS OPPOSED TO PRIVATE, NICHE, OR RESTRICTED COMMUNICATIONS.

26 (2) IN CONNECTION WITH A CRIMINAL, CIVIL, OR OTHER
27 INVESTIGATORY OR ENFORCEMENT ACTIVITY:

4 (b) A LAW ENFORCEMENT ENTITY SHALL NOT REQUEST, OBTAIN, OR
5 RECEIVE ACCESS TO AN INDIVIDUAL'S PERSONAL DATA FROM A FEDERAL,
6 STATE, OR LOCAL LAW ENFORCEMENT OR OTHER GOVERNMENT AGENCY OR
7 DEPARTMENT IF THE DATA WAS OBTAINED FROM A THIRD PARTY IN
8 EXCHANGE FOR ANYTHING OF VALUE;

9 (c) A LAW ENFORCEMENT ENTITY SHALL NOT SHARE ON A
10 THIRD-PARTY PLATFORM OR SELL, IN EXCHANGE FOR ANYTHING OF VALUE,
11 AN INDIVIDUAL'S PERSONAL DATA TO A FEDERAL, STATE, OR LOCAL LAW
12 ENFORCEMENT OR OTHER GOVERNMENT AGENCY OR DEPARTMENT, OR A
13 THIRD PARTY IF THE PERSONAL DATA WAS DIRECTLY OR INDIRECTLY
14 COLLECTED BY THE LAW ENFORCEMENT AGENCY; AND

15 (d) A GOVERNMENT ENTITY, INCLUDING A LAW ENFORCEMENT
16 ENTITY, SHALL NOT PROVIDE OR SHARE WITH A FEDERAL, STATE, OR LOCAL
17 LAW ENFORCEMENT AGENCY OR DEPARTMENT AN INDIVIDUAL'S PERSONAL
18 DATA OBTAINED FROM A THIRD PARTY IN EXCHANGE FOR ANYTHING OF
19 VALUE.

20 (3) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY WHEN:

26 (b) THE LAW ENFORCEMENT ENTITY ASSERTS IN GOOD FAITH THAT
27 AN EMERGENCY SITUATION EXISTS THAT INVOLVES THE RISK OF DEATH OR

1 SERIOUS BODILY INJURY TO A PERSON THAT REQUIRES IMMEDIATE
2 DISCLOSURE;

3 (c) THE PERSONAL DATA IS LAWFULLY AVAILABLE TO THE PUBLIC
4 THROUGH GOVERNMENT RECORDS OR WIDELY DISTRIBUTED MEDIA;

5 (d) THE PERSONAL DATA PERTAINS TO A SPECIFIC INDIVIDUAL, WAS
6 VOLUNTARILY MADE AVAILABLE TO THE PUBLIC BY THE SPECIFIC
7 INDIVIDUAL, AND WAS OBTAINED IN COMPLIANCE WITH ALL APPLICABLE
8 LAWS, REGULATIONS, CONTRACTS, PRIVACY POLICIES, AND TERMS OF
9 SERVICE;

10 (e) THE SPECIFIC INDIVIDUAL TO WHOM THE PERSONAL DATA
11 PERTAINS INTENDED LAW ENFORCEMENT TO BE A RECIPIENT OF THE
12 PERSONAL DATA, AS EVIDENCED BY CASE-SPECIFIC, EXPRESS CONSENT
13 FROM THE SPECIFIC INDIVIDUAL;

14 (f) THE THIRD PARTY PROVIDING THE PERSONAL DATA WAS
15 AUTHORIZED BY THE SPECIFIC INDIVIDUAL TO WHOM THE PERSONAL DATA
16 PERTAINS TO PROVIDE THE DATA TO THE LAW ENFORCEMENT ENTITY, AS
17 EVIDENCED BY CASE-SPECIFIC, EXPRESS CONSENT FROM THE SPECIFIC
18 INDIVIDUAL; OR

19 (g) THE PERSONAL DATA IS PROVIDED TO OR BY THE NATIONAL
20 CENTER FOR MISSING AND EXPLOITED CHILDREN OR ITS SUCCESSOR ENTITY
21 AND IS RELATED TO AN INVESTIGATION INVOLVING A MISSING OR
22 EXPLOITED CHILD.

23 (4) SUBSECTIONS (3)(d) TO (3)(f) OF THIS SECTION DO NOT
24 VIOLATE SUBSECTION (2) OF THIS SECTION IF THE PERSON MADE THEIR
25 PERSONAL DATA PUBLICLY AVAILABLE, EVEN IF A LAW ENFORCEMENT
26 ENTITY PURCHASES THE PERSONAL DATA FROM A THIRD PARTY.

27 (5) (a) A VIOLATION OF THIS SECTION CONSTITUTES AN INJURY,

1 AND A PERSON WHO IS INJURED MAY BRING A LEGAL ACTION FOR
2 INJUNCTIVE RELIEF, DECLARATORY RELIEF, OR OTHER RELIEF DEEMED
3 NECESSARY TO ENFORCE THIS SECTION IN A COURT OF COMPETENT
4 JURISDICTION. A PLAINTIFF MAY SEEK REASONABLE ATTORNEY FEES
5 PURSUANT TO THIS SECTION.

6 (b) (I) A COURT SHALL NOT ADMIT PERSONAL DATA ACQUIRED IN
7 VIOLATION OF THIS SECTION OR EVIDENCE DERIVED FROM THAT
8 INFORMATION AT A TRIAL, HEARING, OR OTHER PROCEEDING UNLESS THE
9 PARTY SEEKING TO INTRODUCE THE EVIDENCE PROVIDES A COPY OF THE
10 VALID JUDICIAL WARRANT, SUBPOENA, OR COURT ORDER AND ANY
11 ACCOMPANYING AFFIDAVIT TO EACH PARTY PURSUANT TO RULE 16 OF THE
12 COLORADO RULES OF CRIMINAL PROCEDURE, OR ANY SUCCESSOR RULE.

13 (II) A COURT MAY WAIVE THE REQUIREMENT IN SUBSECTION
14 (5)(b)(I) OF THIS SECTION IF THE COURT FINDS THAT IT WAS NOT POSSIBLE
15 TO PROVIDE A PARTY WITH THE VALID JUDICIAL WARRANT, SUBPOENA, OR
16 COURT ORDER AND ANY ACCOMPANYING APPLICATION WITHIN THE TIME
17 REQUIRED BY RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE,
18 OR ANY SUCCESSOR RULE, AND THE COURT FINDS THAT THE PARTY WILL
19 NOT BE PREJUDICED BY THE DELAY IN RECEIVING THE INFORMATION.

20 **SECTION 4.** In Colorado Revised Statutes, 16-3-303.5, **add (9)**
21 as follows:

22 **16-3-303.5. Location information - search warrant required
23 - definitions.**

24 (9) NOTHING IN THIS SECTION AUTHORIZES A GOVERNMENT ENTITY
25 TO OBTAIN LOCATION INFORMATION OF AN ELECTRONIC DEVICE IN
26 EXCHANGE FOR ANYTHING OF VALUE IN VIOLATION OF SECTION
27 16-3-303.3.

1 **SECTION 5. Safety clause.** The general assembly finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, or safety or for appropriations for
4 the support and maintenance of the departments of the state and state
5 institutions.