

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

INTRODUCED

LLS NO. 17-0050.02 Jerry Barry x4341

HOUSE BILL 17-1053

HOUSE SPONSORSHIP

Landgraf,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ORDERS FOR ELECTRONIC COMMUNICATIONS.**

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 provides that a governmental entity may only require an electronic communication service or remote computing service provider to disclose the contents of an electronic or wire communication pursuant to a valid search warrant or court order for production of documents. The warrant or order must include a finding of probable cause to search and seize or produce the electronic or wire communication. An exception to the search warrant or order requirement is established if the time required to obtain the warrant or order would result in a risk of death or substantial

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

bodily injury to a person or if certain persons consent to the release of the contents.

The bill also excludes from its provisions situations when a peace officer may lawfully obtain the information from an electronic device in the officer's lawful possession or when only location information is sought pursuant to another statute.

The bill also requires the governmental entity to give the customer notice of the search warrant and the disclosure unless the court orders that the notice need not be given due to specified circumstances.

The bill prohibits any evidence obtained in violation of the bill from being introduced as evidence or used to obtain a search warrant or court order and provides immunity to an electronic communication service or remote computing service for complying with or objecting to a search warrant.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 16-3-301.3 as
3 follows:

4 **16-3-301.3. Search warrant or court order for content of**
5 **electronic communications - definitions.** (1) **Definitions.** AS USED IN
6 THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "ELECTRONIC COMMUNICATION" MEANS THE TRANSFER OF
8 SIGNS, SIGNALS, WRITINGS, IMAGES, SOUNDS, DATA, OR INTELLIGENCE OF
9 ANY NATURE IN WHOLE OR IN PART BY A WIRE, RADIO, ELECTROMAGNETIC,
10 PHOTOELECTRIC, OR PHOTO-OPTICAL SYSTEM.

11 (b) "ELECTRONIC COMMUNICATION INFORMATION" MEANS ANY
12 INFORMATION ABOUT AN ELECTRONIC COMMUNICATION OR THE USE OF AN
13 ELECTRONIC COMMUNICATION SERVICE, INCLUDING, BUT NOT LIMITED TO,
14 THE CONTENTS, SENDER, RECIPIENTS, FORMAT, OR LOCATION OF THE
15 SENDER OR RECIPIENTS AT ANY POINT DURING THE COMMUNICATION; THE
16 TIME OR DATE THE COMMUNICATION WAS CREATED, SENT, OR RECEIVED;
17 OR ANY INFORMATION PERTAINING TO ANY INDIVIDUAL OR DEVICE

1 PARTICIPATING IN THE COMMUNICATION, INCLUDING, BUT NOT LIMITED TO,
2 AN INTERNET PROVIDER ADDRESS. "ELECTRONIC COMMUNICATION
3 INFORMATION" DOES NOT INCLUDE SUBSCRIBER INFORMATION.

4 (c) "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE
5 THAT PROVIDES TO ITS SUBSCRIBERS OR USERS THE ABILITY TO SEND OR
6 RECEIVE ELECTRONIC COMMUNICATIONS, INCLUDING ANY SERVICE THAT
7 ACTS AS AN INTERMEDIARY IN THE TRANSMISSION OF ELECTRONIC
8 COMMUNICATIONS OR STORES ELECTRONIC COMMUNICATION
9 INFORMATION.

10 (d) "ELECTRONIC COMMUNICATIONS SYSTEM" HAS THE SAME
11 MEANING AS PROVIDED IN 18 U.S.C. SEC. 2510 (14).

12 (e) "ELECTRONIC DEVICE INFORMATION" MEANS ANY
13 INFORMATION STORED ON OR GENERATED THROUGH THE OPERATION OF AN
14 ELECTRONIC DEVICE, INCLUDING THE CURRENT AND PRIOR LOCATIONS OF
15 THE DEVICE.

16 (f) "GOVERNMENTAL ENTITY" MEANS A DEPARTMENT OR AGENCY
17 OF THE STATE OR A POLITICAL SUBDIVISION THEREOF, OR AN INDIVIDUAL
18 ACTING FOR OR ON BEHALF OF THE STATE OR A POLITICAL SUBDIVISION
19 THEREOF.

20 (g) "REMOTE COMPUTING SERVICE" HAS THE SAME MEANING AS
21 PROVIDED IN 18 U.S.C. SEC. 2711 (2).

22 (h) "SUBSCRIBER INFORMATION" MEANS ANY INFORMATION
23 CONTAINED IN THE FORM OF COMPUTER DATA OR ANY OTHER FORM THAT
24 IS HELD BY A SERVICE PROVIDER AND RELATES TO SUBSCRIBERS OF ITS
25 SERVICES, OTHER THAN TRAFFIC OR CONTENT DATA, AND BY WHICH CAN
26 BE ESTABLISHED:

27 (I) THE TYPE OF COMMUNICATION SERVICE USED, THE TECHNICAL

1 PROVISIONS TAKEN THERETO, AND THE PERIOD OF SERVICE;

2 (II) THE SUBSCRIBER'S IDENTITY, POSTAL OR GEOGRAPHIC
3 ADDRESS, TELEPHONE AND OTHER ACCESS NUMBER, AND BILLING AND
4 PAYMENT INFORMATION, AVAILABLE ON THE BASIS OF THE SERVICE
5 AGREEMENT OR ARRANGEMENT; OR

6 (III) ANY OTHER INFORMATION ON THE SITE OF THE INSTALLATION
7 OF COMMUNICATION EQUIPMENT, AVAILABLE ON THE BASIS OF THE
8 SERVICE AGREEMENT OR ARRANGEMENT.

9 (i) "WIRE COMMUNICATIONS" HAS THE SAME MEANING AS
10 PROVIDED IN 18 U.S.C. SEC. 2510 (1).

11 (2) **Search warrant or court order required for electronic**
12 **communication information or electronic device information.** (a) A
13 GOVERNMENTAL ENTITY MAY REQUIRE A PROVIDER OF AN ELECTRONIC
14 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE TO DISCLOSE
15 THE CONTENTS OF AN ELECTRONIC OR WIRE COMMUNICATION, ELECTRONIC
16 COMMUNICATION INFORMATION, OR ELECTRONIC DEVICE INFORMATION
17 THAT IS STORED, HELD, OR MAINTAINED BY THAT SERVICE ONLY PURSUANT
18 TO A VALID SEARCH WARRANT OR COURT ORDER FOR PRODUCTION OF
19 RECORDS. PURSUANT TO A VALID SEARCH WARRANT OR COURT ORDER FOR
20 PRODUCTION OF RECORDS ONLY, A GOVERNMENTAL ENTITY MAY:

21 (I) REQUIRE DISCLOSURE OF OR ACCESS TO ELECTRONIC
22 COMMUNICATION INFORMATION THAT IS STORED, HELD, OR MAINTAINED
23 BY A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE
24 COMPUTING SERVICE;

25 (II) REQUIRE DISCLOSURE OF OR ACCESS TO ELECTRONIC DEVICE
26 INFORMATION FROM ANY PERSON OR ENTITY OTHER THAN THE
27 AUTHORIZED POSSESSOR OF THE DEVICE; OR

1 (III) ACCESS ELECTRONIC DEVICE INFORMATION BY MEANS OF
2 PHYSICAL INTERACTION OR ELECTRONIC COMMUNICATION WITH THE
3 ELECTRONIC DEVICE. THIS SUBSECTION (2)(a)(III) DOES NOT PROHIBIT THE
4 INTENDED RECIPIENT OF AN ELECTRONIC COMMUNICATION FROM
5 VOLUNTARILY DISCLOSING ELECTRONIC COMMUNICATION INFORMATION
6 CONCERNING THAT COMMUNICATION TO A GOVERNMENTAL ENTITY.

7 (b) THE SEARCH WARRANT OR COURT ORDER FOR PRODUCTION OF
8 RECORDS MUST BE ISSUED BY A JUDGE OF A COURT OF RECORD PURSUANT
9 TO THE PROCEDURES DESCRIBED IN SECTION 16-3-301. THE JUDGE SHALL
10 NOT ISSUE THE WARRANT OR COURT ORDER UNLESS THE JUDGE FINDS,
11 BASED ON A SWORN AFFIDAVIT, THAT THERE IS PROBABLE CAUSE TO
12 SEARCH FOR AND SEIZE THE ELECTRONIC COMMUNICATION INFORMATION
13 OR ELECTRONIC DEVICE INFORMATION OR TO ORDER ITS PRODUCTION.

14 (3) **Exception to warrant requirement.** (a) NOTWITHSTANDING
15 THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, ANY SUPERVISING
16 REPRESENTATIVE OF A LAW ENFORCEMENT AGENCY MAY ORDER A
17 PREVIOUSLY DESIGNATED SECURITY EMPLOYEE OF AN ELECTRONIC
18 COMMUNICATION SERVICE OR A REMOTE COMPUTING SERVICE TO DISCLOSE
19 TO THE LAW ENFORCEMENT AGENCY, WITHOUT REQUIRING THE AGENCY
20 TO OBTAIN A COURT ORDER, ELECTRONIC OR WIRE COMMUNICATIONS,
21 ELECTRONIC COMMUNICATION INFORMATION, OR ELECTRONIC DEVICE
22 INFORMATION CONCERNING A NAMED PERSON IF THE SUPERVISING
23 REPRESENTATIVE HAS PROBABLE CAUSE TO BELIEVE THAT:

24 (I) AN EMERGENCY SITUATION EXISTS THAT INVOLVES THE RISK
25 OF DEATH OR SERIOUS BODILY INJURY TO THE NAMED PERSON OR TO
26 ANOTHER PERSON WHO IS IN THE NAMED PERSON'S COMPANY; AND

27 (II) THE TIME REQUIRED TO OBTAIN A SEARCH WARRANT OR OTHER

1 COURT ORDER AUTHORIZING THE ACQUISITION OF THE INFORMATION
2 WOULD INCREASE SUCH RISK.

3 (b) AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE
4 COMPUTING SERVICE MAY ESTABLISH PROTOCOLS BY WHICH THE SERVICE
5 DISCLOSES OR ALLOWS ACCESS TO ELECTRONIC OR WIRE
6 COMMUNICATIONS, ELECTRONIC COMMUNICATION INFORMATION, OR
7 ELECTRONIC DEVICE INFORMATION, PROVIDED THAT SUCH PROTOCOLS
8 MUST INCLUDE KEEPING A RECORD OF:

9 (I) THE NAME OF THE SUPERVISING REPRESENTATIVE OF A LAW
10 ENFORCEMENT AGENCY THAT REQUESTED THE LOCATION INFORMATION;
11 AND

12 (II) THE TIME AND DATE WHEN THE REQUEST WAS MADE.

13 (c) WITH REGARD TO COMPLIANCE WITH THE REQUIREMENTS OF
14 THIS SUBSECTION (3), NO CAUSE OF ACTION MAY BE BROUGHT AGAINST
15 ANY ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING
16 SERVICE, ITS OFFICERS, EMPLOYEES, AGENTS, OR OTHER SPECIFIED
17 PERSONS FOR DISCLOSING OR PROVIDING ACCESS TO ELECTRONIC OR WIRE
18 COMMUNICATIONS, ELECTRONIC COMMUNICATION INFORMATION, OR
19 ELECTRONIC DEVICE INFORMATION IN RESPONSE TO A REQUEST FROM A
20 LAW ENFORCEMENT AGENT WITH ACTUAL OR APPARENT AUTHORITY TO
21 ACT AS A SUPERVISING REPRESENTATIVE UNDER THIS SUBSECTION (3).

22 (d) A LAW ENFORCEMENT AGENCY THAT ACQUIRES INFORMATION
23 PURSUANT TO THIS SUBSECTION (3) SHALL NOT DIVULGE THE ACQUIRED
24 INFORMATION TO ANY PERSON OTHER THAN TO ANOTHER LAW
25 ENFORCEMENT AGENCY, OR AN EMPLOYEE THEREOF, UNLESS THE LAW
26 ENFORCEMENT AGENCY HAS OBTAINED A COURT ORDER STATING THAT
27 THE INFORMATION WAS LAWFULLY OBTAINED AND AUTHORIZING THE LAW

1 ENFORCEMENT AGENCY TO RETAIN THE INFORMATION, AS DESCRIBED IN
2 SUBSECTION (3)(e)(I) OF THIS SECTION.

3 (e) (I) NOT MORE THAN FORTY-EIGHT HOURS AFTER ORDERING A
4 PREVIOUSLY DESIGNATED SECURITY EMPLOYEE OF AN ELECTRONIC
5 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE TO PROVIDE
6 INFORMATION AS DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION, A
7 LAW ENFORCEMENT AGENCY SHALL REQUEST A COURT ORDER STATING
8 WHETHER:

9 (A) AT THE TIME THAT THE SUPERVISING REPRESENTATIVE OF A
10 LAW ENFORCEMENT AGENCY ORDERED THE PREVIOUSLY DESIGNATED
11 SECURITY EMPLOYEE OF AN ELECTRONIC COMMUNICATION SERVICE OR
12 REMOTE COMPUTING SERVICE TO PROVIDE THE INFORMATION, THE
13 SUPERVISING REPRESENTATIVE HAD PROBABLE CAUSE TO BELIEVE THE
14 CONDITIONS DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION; AND

15 (B) THE LAW ENFORCEMENT AGENCY MAY RETAIN THE
16 INFORMATION FOR A BONA FIDE INVESTIGATIVE PURPOSE.

17 (II) UNLESS A COURT ORDERS THAT THE LAW ENFORCEMENT
18 AGENCY MAY RETAIN THE INFORMATION FOR A BONA FIDE INVESTIGATIVE
19 PURPOSE, AS DESCRIBED IN SUBSECTION (3)(e)(I) OF THIS SECTION, THE
20 LAW ENFORCEMENT AGENCY SHALL DESTROY THE INFORMATION AND NOT
21 RETAIN ANY COPY OF THE INFORMATION FOR ANY PURPOSE.

22 (III) IF THE COURT ISSUES AN ORDER STATING THAT THE
23 SUPERVISING REPRESENTATIVE OF THE LAW ENFORCEMENT AGENCY DID
24 NOT HAVE PROBABLE CAUSE TO BELIEVE THAT THE CONDITIONS
25 DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION EXISTED AND THAT THE
26 INFORMATION WAS NOT LAWFULLY OBTAINED, THEN NEITHER THE
27 INFORMATION NOR ANY OTHER EVIDENCE THAT IS OBTAINED AS A RESULT

1 OF THE LAW ENFORCEMENT AGENCY'S ACQUISITION OF THE INFORMATION
2 MAY BE ADMITTED IN ANY SUBSEQUENT CRIMINAL, CIVIL, OR
3 ADMINISTRATIVE PROCEEDING UNLESS THE INFORMATION OR OTHER
4 EVIDENCE WAS ALSO ACQUIRED INDEPENDENTLY IN A LAWFUL MANNER.

5 (IV) ANY RULING BY A COURT THAT THE INFORMATION OBTAINED
6 MAY BE RETAINED FOR A BONA FIDE INVESTIGATIVE PURPOSE IS NOT A
7 RULING ON THE ADMISSIBILITY OF THE EVIDENCE IN ANY CRIMINAL, CIVIL,
8 OR ADMINISTRATIVE PROCEEDING UNDER THE CONSTITUTIONAL AND
9 STATUTORY PROVISIONS OF THE UNITED STATES OR COLORADO.

10 (4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF
11 THIS SECTION, A PEACE OFFICER IS NOT PROHIBITED FROM OBTAINING THE
12 CONTENTS OF AN ELECTRONIC COMMUNICATION WITH THE CONSENT OF:

13 (a) ONE OF THE PARTICIPANTS OF THE COMMUNICATION; OR

14 (b) A PARENT OR LEGAL GUARDIAN IF THE COMMUNICATION
15 RELATES TO A CHILD UNDER EIGHTEEN YEARS OF AGE UNDER THE
16 CUSTODY OF THE PARENT OR GUARDIAN IF THE CHILD HAS BEEN REPORTED
17 MISSING TO A PEACE OR LAW ENFORCEMENT OFFICER ANYWHERE.

18 (5) (a) NOTHING IN THIS SECTION PROHIBITS A PEACE OFFICER
19 FROM CONDUCTING A LAWFUL SEARCH, EITHER PURSUANT TO A SEARCH
20 WARRANT OR A JUDICIALLY RECOGNIZED EXCEPTION TO THE SEARCH
21 WARRANT REQUIREMENT, OF THE CONTENTS OF AN ELECTRONIC DEVICE
22 LAWFULLY IN THE POSSESSION OF THE PEACE OFFICER.

23 (b) NOTHING IN THIS SECTION LIMITS A GOVERNMENTAL ENTITY'S
24 ABILITY TO OBTAIN LOCATION INFORMATION FROM AN ELECTRONIC DEVICE
25 OR ELECTRONIC SERVICE PROVIDER PURSUANT TO SECTION 16-3-303.5.

26 (6) **Notice.** EXCEPT AS PROVIDED IN SUBSECTION (7) OF THIS
27 SECTION, NOT LATER THAN WHEN THE GOVERNMENTAL ENTITY SERVES A

1 WARRANT OR ORDER FOR DISCLOSURE OF OR ACCESS TO ELECTRONIC OR
2 WIRE COMMUNICATIONS, ELECTRONIC COMMUNICATION INFORMATION, OR
3 ELECTRONIC DEVICE INFORMATION OF A SUBSCRIBER OR CUSTOMER FROM
4 A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE
5 COMPUTING SERVICE UNDER SUBSECTION (2) OF THIS SECTION, OR AFTER
6 RECEIPT OF ELECTRONIC OR WIRE COMMUNICATIONS, ELECTRONIC
7 COMMUNICATION INFORMATION, OR ELECTRONIC DEVICE INFORMATION
8 UNDER SUBSECTION (3) OF THIS SECTION, THE ENTITY SHALL SERVE UPON,
9 OR DELIVER TO BY REGISTERED OR FIRST-CLASS MAIL, ELECTRONIC MAIL,
10 OR OTHER MEANS REASONABLY CALCULATED TO BE EFFECTIVE AS
11 SPECIFIED BY THE COURT ISSUING THE WARRANT, THE SUBSCRIBER OR
12 CUSTOMER:

13 (a) A COPY OF THE WARRANT OR ORDER; AND

14 (b) A NOTICE THAT INFORMS THE SUBSCRIBER OR CUSTOMER:

15 (I) OF THE NATURE OF THE INQUIRY WITH REASONABLE
16 SPECIFICITY;

17 (II) THAT INFORMATION MAINTAINED FOR THE SUBSCRIBER OR
18 CUSTOMER BY THE PROVIDER OF AN ELECTRONIC COMMUNICATION
19 SERVICE OR REMOTE COMPUTING SERVICE NAMED IN THE PROCESS OR
20 REQUEST WAS SUPPLIED TO, OR REQUESTED BY, THE GOVERNMENTAL
21 ENTITY; AND

22 (III) THE DATE ON WHICH THE WARRANT WAS SERVED ON THE
23 PROVIDER.

24 (7) **Exception to notice requirement.** (a) A GOVERNMENTAL
25 ENTITY THAT IS SEEKING A WARRANT OR ORDER UNDER SUBSECTION (2) OF
26 THIS SECTION MAY INCLUDE IN THE APPLICATION FOR THE WARRANT A
27 REQUEST FOR AN ORDER:

1 (I) THAT THE GOVERNMENTAL ENTITY NOT BE REQUIRED TO GIVE
2 THE NOTIFICATION REQUIRED BY SUBSECTION (6) OF THIS SECTION FOR THE
3 PERIOD OF TIME THAT THE COURT FINDS THERE IS REASON TO BELIEVE
4 THAT THE NOTIFICATION MAY HAVE AN ADVERSE RESULT DESCRIBED IN
5 SUBSECTION (7)(b) OF THIS SECTION, NOT TO EXCEED NINETY DAYS; AND

6 (II) DIRECTING THE PROVIDER OF AN ELECTRONIC
7 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE TO WHICH A
8 WARRANT UNDER SUBSECTION (2) OF THIS SECTION IS DIRECTED NOT TO
9 NOTIFY ANY OTHER PERSON, EXCEPT TO OBTAIN THE ADVICE OF COUNSEL,
10 OF THE WARRANT FOR THE PERIOD OF TIME THAT THE COURT FINDS THERE
11 IS REASON TO BELIEVE THAT THE NOTIFICATION MAY HAVE AN ADVERSE
12 RESULT DESCRIBED IN SUBSECTION (7)(b) OF THIS SECTION, NOT TO
13 EXCEED NINETY DAYS.

14 (b) A COURT SHALL GRANT THE REQUEST FOR AN ORDER UNDER
15 SUBSECTION (7)(a) OF THIS SECTION IF THE COURT DETERMINES THAT
16 THERE IS REASON TO BELIEVE THAT NOTIFICATION OF THE EXISTENCE OF
17 THE WARRANT MAY RESULT IN:

18 (I) ENDANGERING THE LIFE OR PHYSICAL SAFETY OF AN
19 INDIVIDUAL;

20 (II) FLIGHT FROM PROSECUTION;

21 (III) DESTRUCTION OF OR TAMPERING WITH EVIDENCE;

22 (IV) INTIMIDATION OF POTENTIAL WITNESSES; OR

23 (V) OTHERWISE SERIOUSLY JEOPARDIZING AN INVESTIGATION OR
24 UNDULY DELAYING A TRIAL.

25 (c) A COURT MAY GRANT EXTENSIONS OF THE DELAYED NOTICE
26 DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION OF UP TO NINETY DAYS
27 ON THE GROUNDS DESCRIBED IN SUBSECTION (7)(b) OF THIS SECTION.

1 (8) **Rules of construction.** EXCEPT AS OTHERWISE PROVIDED IN
2 THIS SECTION, THIS SECTION DOES NOT LIMIT:

3 (a) AN ELECTRONIC COMMUNICATION SERVICE, REMOTE
4 COMPUTING SERVICE, OR OTHER PARTY FROM DISCLOSING INFORMATION
5 ABOUT A REQUEST ISSUED BY A GOVERNMENTAL ENTITY FOR ELECTRONIC
6 COMMUNICATIONS;

7 (b) THE AUTHORITY OF A GOVERNMENTAL ENTITY TO USE A
8 SUBPOENA AUTHORIZED UNDER THE LAWS OF THIS STATE, OR TO USE A
9 GRAND JURY OR TRIAL SUBPOENA, TO REQUIRE AN ENTITY THAT PROVIDES
10 AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING
11 SERVICE FOR THE PURPOSE OF CARRYING OUT THEIR DUTIES TO ITS OWN
12 OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS OF THE ENTITY TO
13 DISCLOSE TO A GOVERNMENTAL ENTITY THE CONTENTS OF AN ELECTRONIC
14 COMMUNICATION TO OR FROM AN OFFICER, DIRECTOR, EMPLOYEE, OR
15 AGENT OF THE ENTITY, IF THE ELECTRONIC COMMUNICATION IS HELD,
16 STORED, OR MAINTAINED ON AN ELECTRONIC COMMUNICATIONS SYSTEM
17 OWNED OR OPERATED BY THE ENTITY; OR

18 (c) A GOVERNMENTAL ENTITY'S ABILITY TO USE, MAINTAIN, OR
19 STORE INFORMATION, OR DISSEMINATE INFORMATION, STORED ON ITS OWN
20 ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.

21 (9) **Violations.** (a) EXCEPT AS PROOF OF A VIOLATION OF THIS
22 SECTION, EVIDENCE OBTAINED IN VIOLATION OF THIS SECTION IS NOT
23 ADMISSIBLE IN A CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING AND
24 MAY NOT BE USED IN AN AFFIDAVIT IN AN EFFORT TO OBTAIN A SEARCH
25 WARRANT.

26 (b) THE ATTORNEY GENERAL MAY APPLY TO A COURT FOR AN
27 INJUNCTION OR COMMENCE A CIVIL ACTION AGAINST ANY GOVERNMENTAL

1 ENTITY TO COMPEL COMPLIANCE WITH THE TERMS OF THIS SECTION.

2 (10) **Standing.** A PROVIDER OF AN ELECTRONIC COMMUNICATION
3 SERVICE OR A REMOTE COMPUTING SERVICE SUBJECT TO LEGAL PROCESS
4 UNDER THIS SECTION HAS STANDING TO CHALLENGE A WARRANT OR OTHER
5 LEGAL PROCESS:

6 (a) THAT IS INCONSISTENT WITH THIS SECTION, ANY OTHER
7 STATUTE OR LAW, OR THE STATE OR FEDERAL CONSTITUTION; OR

8 (b) ON THE GROUNDS THAT THE PROCESS IS UNDULY BURDENSOME.

9 (11) **Immunity.** NO CAUSE OF ACTION MAY BE BROUGHT AGAINST
10 A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE OR REMOTE
11 COMPUTING SERVICE, ITS OFFICERS, EMPLOYEES, OR AGENTS, FOR
12 PROVIDING INFORMATION OR ASSISTANCE IN ACCORDANCE WITH THE
13 TERMS OF A LEGAL PROCESS ISSUED UNDER THIS SECTION OR FOR
14 OBJECTING TO SUCH LEGAL PROCESS. A PROVIDER OF AN ELECTRONIC
15 COMMUNICATION SERVICE, ITS OFFICERS, EMPLOYEES, OR AGENTS ARE
16 IMMUNE FROM ALL CIVIL, CRIMINAL, OR ADMINISTRATIVE LIABILITY FOR
17 PROVIDING INFORMATION OR ASSISTANCE IN ACCORDANCE WITH THE
18 TERMS OF THIS SECTION.

19 (12) **Voluntary disclosure of electronic communication.** THIS
20 SECTION DOES NOT PROHIBIT THE VOLUNTARY DISCLOSURE OF ELECTRONIC
21 COMMUNICATION INFORMATION BY A PROVIDER OF AN ELECTRONIC
22 COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE PURSUANT TO
23 18 U.S.C. SEC. 2702 (b).

24 **SECTION 2.** In Colorado Revised Statutes, 16-3-301, **amend** (2)
25 introductory portion as follows:

26 **16-3-301. Search warrants - issuance - grounds.** (2) EXCEPT AS
27 PROVIDED IN SECTION 16-3-301.3, a search warrant may be issued under

1 this section to search for and seize any property:

2 **SECTION 3.** In Colorado Revised Statutes, 16-3-301.1, **amend**
3 (2) introductory portion as follows:

4 **16-3-301.1. Court orders for the production of records -**
5 **definitions.** (2) EXCEPT AS PROVIDED IN SECTION 16-3-301.3, a court may
6 order the production of records under this section to require the
7 production of records in the actual or constructive control of a business
8 entity:

9 **SECTION 4. Act subject to petition - effective date -**
10 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
11 the expiration of the ninety-day period after final adjournment of the
12 general assembly (August 9, 2017, if adjournment sine die is on May 10,
13 2017); except that, if a referendum petition is filed pursuant to section 1
14 (3) of article V of the state constitution against this act or an item, section,
15 or part of this act within such period, then the act, item, section, or part
16 will not take effect unless approved by the people at the general election
17 to be held in November 2018 and, in such case, will take effect on the
18 date of the official declaration of the vote thereon by the governor.

19 (2) This act applies to search warrants or other legal process
20 issued on or after the applicable effective date of this act.