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A BILL FOR AN ACT

101   **CONCERNING PROTECTING THE PRIVACY OF INDIVIDUALS' BIOLOGICAL**
102   **DATA, AND, IN CONNECTION THEREWITH, PROTECTING THE**
103   **PRIVACY OF NEURAL DATA AND EXPANDING THE SCOPE OF THE**
104   **"COLORADO PRIVACY ACT" ACCORDINGLY.**

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.)

In 2021, the general assembly enacted Senate Bill 21-190, which established the "Colorado Privacy Act" (privacy act) as part of the "Colorado Consumer Protection Act". The privacy act protects the

privacy of individuals' personal data by establishing certain requirements for entities that process personal data. The privacy act also describes certain rights that consumers may exercise regarding the processing of their personal data. The privacy act includes additional protections for sensitive data.

For the purposes of the privacy act, the bill expands the definition of "sensitive data" to include biological data, which is data that provides a characterization of the biological, genetic, biochemical, or physiological properties, compositions, or activities of an individual's body or bodily functions. Biological data includes neural data, which is information that concerns the activity of an individual's central nervous system or peripheral nervous systems, including the brain and spinal cord, and that can be processed by or with the assistance of a device.

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

2   **SECTION 1. Legislative declaration.** (1) The general assembly

3   finds and declares that:

4   (a) The people of Colorado regard their privacy as a fundamental

5   right and an essential element of individual freedom; and

6   (b) Section 7 of article II of the state constitution protects

7   individuals' privacy, and fundamental privacy rights have long been, and

8   continue to be, integral to protecting Coloradans.

9   (2) The general assembly further finds that:

10   (a) Ongoing advances in technology have produced exponential

11   growth in the volume and variety of personal data being generated,

12   collected, stored, and analyzed, and these advances present both great

13   promise and potential risks;

14   (b) Technology that collects data about the user's bodily and

15   mental functions are transforming the volume and sensitivity of personal

16   data collected from individuals and stored by companies;

17   (c) Neurotechnologies, including devices capable of recording,

18   interpreting, or altering the response of an individual's central or

peripheral nervous system to its internal or external environment, raise
particularly pressing privacy concerns given their ability to monitor,
decode, and manipulate brain activity;

(d) Data concerning the activity of the human brain and wider
nervous systems, or "neural data", is extremely sensitive and can reveal
intimate information about individuals, including information about
health, mental states, emotions, and cognitive functioning;

(e) Every human brain is unique, meaning that neural data is
specific to the individual from whom it was collected. Because neural
data contains distinctive information about the structure and functioning
of individual brains and nervous systems, it always contains sensitive
information that may link the data to an identified or identifiable
individual.

(f) The collection of neural data always involves involuntary
disclosure of information. Even if individuals consent to the collection
and processing of their data for a narrow use, they are unlikely to be fully
aware of the content or quantity of information they are sharing.

(g) Neurotechnology users cannot decide what specific neural
information they would like to disclose, and they are unlikely to
understand the extent to which their neural data can be decoded, currently
or in the future. Neurotechnologies can even collect and process
information about an individual that the individual did not even know
existed.

(h) Neurotechnologies are no longer confined to the realms of
research and rehabilitation. Devices that were once used only in labs and
hospitals are increasingly available to consumers around the world,
including in Colorado. This development brings both exciting promises

1   of innovation and economic growth as well as new risks regarding the

2   collection, storage, and disclosure of highly sensitive data.

3   (i)   Neurotechnologies that are deployed in medical settings or

4   otherwise utilize the surgical implantation of invasive devices are

5   typically regulated as medical tools that produce health information. Both

6   invasive and noninvasive wearable neurotechnologies used in medical

7   settings are also regulated by health data privacy laws. However, when

8   noninvasive neurotechnologies are used outside of medical settings, they

9   are generally considered consumer products and operate without

10   regulation or data protection standards.

11   (3)   The general assembly further finds that:

12   (a)   In 2021, the general assembly enacted Senate Bill 21-190,

13   which established the "Colorado Privacy Act" as part of the "Colorado

14   Consumer Protection Act"; and

15   (b)   The "Colorado Privacy Act" protects the privacy of consumers

16   by establishing specific requirements for entities that process consumers'

17   personal data. The "Colorado Privacy Act" also describes certain rights

18   that consumers may exercise regarding the processing of their personal

19   data and includes heightened protections for collected data about bodily

20   or mental functions.

21   (4)   Therefore, the general assembly determines that it is necessary

22   and appropriate to expand the definition in the "Colorado Privacy Act" of

23   "sensitive data" to include:

24

25   (a) "Biological data", which is data generated by the technological

26   processing, measurement, or analysis of an individual's biological,

27   genetic, biochemical, physiological, or neural properties, compositions,

1 or activities or of an individual's body or bodily functions, which data is

2 used or intended to be used, singly or in combination with other personal

3 data, for identification purposes; and

4 (b) "Neural data", which is information that is generated by the

5 measurement of the activity of an individual's central or peripheral

6 nervous systems and that can be processed by or with the assistance of a

7 device.

8 **SECTION 2.** In Colorado Revised Statutes, 6-1-1303, **amend**

9 (24)(b) and (24)(c); and **add** (2.5), (16.7), and (24)(d) as follows:

10 **6-1-1303. Definitions.** As used in this part 13, unless the context

11 otherwise requires:

12 (2.5) "BIOLOGICAL DATA" MEANS DATA GENERATED BY THE

13 TECHNOLOGICAL PROCESSING, MEASUREMENT, OR ANALYSIS OF AN

14 INDIVIDUAL'S BIOLOGICAL, GENETIC, BIOCHEMICAL, PHYSIOLOGICAL, OR

15 NEURAL PROPERTIES, COMPOSITIONS, OR ACTIVITIES OR OF AN

16 INDIVIDUAL'S BODY OR BODILY FUNCTIONS, WHICH DATA IS USED OR

17 INTENDED TO BE USED, SINGLY OR IN COMBINATION WITH OTHER

18 PERSONAL DATA, FOR IDENTIFICATION PURPOSES. "BIOLOGICAL DATA"

19 INCLUDES NEURAL DATA.

20 (16.7) "NEURAL DATA" MEANS INFORMATION THAT IS GENERATED

21 BY THE MEASUREMENT OF THE ACTIVITY OF AN INDIVIDUAL'S CENTRAL OR

22 PERIPHERAL NERVOUS SYSTEMS AND THAT CAN BE PROCESSED BY OR WITH

23 THE ASSISTANCE OF A DEVICE.

24 (24) "Sensitive data" means:

25 (b) Genetic or biometric data that may be processed for the

26 purpose of uniquely identifying an individual; or

27 (c) Personal data from a known child; OR

1   (d) BIOLOGICAL DATA.

2   **SECTION 3. Act subject to petition - effective date -**

3   **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

4   the expiration of the ninety-day period after final adjournment of the

5   general assembly; except that, if a referendum petition is filed pursuant

6   to section 1 (3) of article V of the state constitution against this act or an

7   item, section, or part of this act within such period, then the act, item,

8   section, or part will not take effect unless approved by the people at the

9   general election to be held in November 2024 and, in such case, will take

10   effect on the date of the official declaration of the vote thereon by the

11   governor.

12   (2) This act applies to the processing of a consumer's sensitive

13   data on or after the effective date of this act.