

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 10-0610.01 Michael Dohr

HOUSE BILL 10-1132

HOUSE SPONSORSHIP

Gardner B., McNulty, Nikkel, Waller

SENATE SPONSORSHIP

Hodge,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING THE PRODUCTION OF RECORDS BY A BUSINESS IN A**
102 **CRIMINAL MATTER.**

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://www.leg.state.co.us/billsummaries>.)

The bill allows a peace officer to serve a court order for production of records to a business at a convenient time for the business that may be outside its normal business hours. The peace officer may serve the court order electronically or by any other means used by the business to receive service of process. The business does not have to provide an attestation

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.*

SENATE
Am ended 2nd Reading
March 19, 2010

HOUSE
3rd Reading Unam ended
February 19, 2010

HOUSE
Am ended 2nd Reading
February 18, 2010

when it produces the records but may provide the attestation within a reasonable time thereafter. The production of the records and the attestation to those records are sufficient to show that the records are kept in the regular course of business and that it is the regular practice of the business to record the information in the records. A court cannot require any further foundation to establish that the records are of a regularly conducted activity.

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

2 **SECTION 1.** 16-3-301.1 (4) (c) (I), (5) (c), (6) (a), and (11) (c),

3 Colorado Revised Statutes, are amended to read:

4 **16-3-301.1. Court orders for the production of records -**
5 **definitions.** (4) (c) Unless the court otherwise directs, every court order
6 for the production of records shall authorize a Colorado criminal
7 investigator or peace officer:

8 (I) To serve the order during normal business hours of the
9 business entity OR AT ANY OTHER CONVENIENT TIME FOR THE BUSINESS
10 ENTITY that is in actual or constructive control of the records; and

11 (5) (c) A court order for production of records may be served in
12 the same manner as a summons in a civil action or by personal service on
13 a manager or supervisor of the business entity that is in actual or
14 constructive control of the records OR THROUGH ANY ELECTRONIC OR
15 OTHER MEANS ESTABLISHED AND UTILIZED BY THE BUSINESS TO RECEIVE
16 SERVICE OF PROCESS.

17 (6) (a) A business entity that is properly served with a court order
18 for the production of records shall deliver the records, or copies of the
19 records, identified in the court order to the officer who is designated in
20 the court order within thirty days after the date the court order is served.
21 The business entity shall also provide a notarized ~~statement~~ ATTESTATION
22 OF ACCURACY that the records produced represent complete and accurate

1 copies of all records identified in the court order that are in the actual or
2 constructive control of the business entity. If the business entity does not
3 produce all records identified in the court order for production of records,
4 the records not produced shall be identified. The ~~statement~~ ATTESTATION
5 OF ACCURACY shall be signed by the records custodian, or an officer or
6 director of the business entity, who shall attest to the truth of the
7 ~~statement~~ ATTESTATION to the best of the person's knowledge,
8 information and belief. THE ATTESTATION MAY ALSO ATTEST TO ANY ONE
9 OR ALL OF THE FOLLOWING: THAT THE RECORDS WERE MADE AT OR NEAR
10 THE TIME BY, OR FROM INFORMATION TRANSMITTED BY, A PERSON WITH
11 KNOWLEDGE; THAT THE RECORDS WERE KEPT IN THE COURSE OF A
12 REGULAR BUSINESS ACTIVITY; AND THAT IT WAS THE REGULAR PRACTICE
13 OF THE BUSINESS TO RECORD THE INFORMATION CONTAINED IN THE
14 RECORDS. THE BUSINESS ENTITY NEED ONLY PROVIDE A COPY OF THE
15 ATTESTATION AT THE TIME OF PROVIDING THE RECORDS TO THE OFFICER
16 AND MAY PROVIDE THE ORIGINAL OF THE ATTESTATION TO THE OFFICER
17 WITHIN TEN DAYS AFTER PROVIDING THE RECORDS. The records and
18 attestation of accuracy shall be sufficient to establish the authenticity of
19 the records produced, without further necessity of extrinsic evidence.

20 (11) As used in this section, unless the context otherwise requires:

21 (c) "Colorado criminal investigator" means an employee of the
22 Colorado department of regulatory agencies, THE COLORADO
23 DEPARTMENT OF LABOR AND EMPLOYMENT, or the Colorado department
24 of revenue who has been classified as a criminal investigator by the
25 director of the employing department.

26 **SECTION 2. Act subject to petition - effective date.** This act
27 shall take effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August
2 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
3 referendum petition is filed pursuant to section 1 (3) of article V of the
4 state constitution against this act or an item, section, or part of this act
5 within such period, then the act, item, section, or part shall not take effect
6 unless approved by the people at the general election to be held in
7 November 2010 and shall take effect on the date of the official
8 declaration of the vote thereon by the governor.