An Act

HOUSE BILL 24-1058

BY REPRESENTATIVE(S) Kipp and Soper, Amabile, Bacon, Bird, Boesenecker, Brown, English, Froelich, Garcia, Hamrick, Hernandez, Jodeh, Joseph, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Marshall, Martinez, Marvin, Mauro, McCormick, Ortiz, Parenti, Ricks, Rutinel, Sirota, Snyder, Story, Valdez, Velasco, Vigil, Weissman, Young, McCluskie;
also SENATOR(S) Baisley and Priola, Bridges, Buckner, Cutter, Exum, Gardner, Ginal, Marchman, Michaelson Jenet, Mullica, Van Winkle.

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

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) The people of Colorado regard their privacy as a fundamental right and an essential element of individual freedom; and

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(b)   Section 7 of article II of the state constitution protects individuals' privacy, and fundamental privacy rights have long been, and continue to be, integral to protecting Coloradans.

(2)   The general assembly further finds that:

(a)   Ongoing advances in technology have produced exponential growth in the volume and variety of personal data being generated, collected, stored, and analyzed, and these advances present both great promise and potential risks;

(b)   Technology that collects data about the user's bodily and mental functions are transforming the volume and sensitivity of personal data collected from individuals and stored by companies;

(c)   Neurotechnologies, including devices capable of recording, 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 of innovation and economic growth as well as new risks regarding the collection, storage, and disclosure of highly sensitive data.

(i) Neurotechnologies that are deployed in medical settings or otherwise utilize the surgical implantation of invasive devices are typically regulated as medical tools that produce health information. Both invasive and noninvasive wearable neurotechnologies used in medical settings are also regulated by health data privacy laws. However, when noninvasive neurotechnologies are used outside of medical settings, they are generally considered consumer products and operate without regulation or data protection standards.

(3) The general assembly further finds that:

(a) In 2021, the general assembly enacted Senate Bill 21-190, which established the "Colorado Privacy Act" as part of the "Colorado Consumer Protection Act"; and

(b) The "Colorado Privacy Act" protects the privacy of consumers by establishing specific requirements for entities that process consumers' personal data. The "Colorado Privacy Act" also describes certain rights that consumers may exercise regarding the processing of their personal data and includes heightened protections for collected data about bodily or mental functions.

(4) Therefore, the general assembly determines that it is necessary and appropriate to expand the definition in the "Colorado Privacy Act" of "sensitive data" to include:

(a) "Biological data", which is data generated by the technological processing, measurement, or analysis of an individual's biological, genetic, biochemical, physiological, or neural properties, compositions, or activities or of an individual's body or bodily functions, which data is used or

intended to be used, singly or in combination with other personal data, for identification purposes; and

(b) "Neural data", which is information that is generated by the measurement of the activity of an individual's central or peripheral nervous systems and that can be processed by or with the assistance of a device.

SECTION 2. In Colorado Revised Statutes, 6-1-1303, **amend** (24)(b) and (24)(c); and **add** (2.5), (16.7), and (24)(d) as follows:

6-1-1303. Definitions. As used in this part 13, unless the context otherwise requires:

(2.5) "BIOLOGICAL DATA" MEANS DATA GENERATED BY THE TECHNOLOGICAL PROCESSING, MEASUREMENT, OR ANALYSIS OF AN INDIVIDUAL'S BIOLOGICAL, GENETIC, BIOCHEMICAL, PHYSIOLOGICAL, OR NEURAL PROPERTIES, COMPOSITIONS, OR ACTIVITIES OR OF AN INDIVIDUAL'S BODY OR BODILY FUNCTIONS, WHICH DATA IS USED OR INTENDED TO BE USED, SINGLY OR IN COMBINATION WITH OTHER PERSONAL DATA, FOR IDENTIFICATION PURPOSES. "BIOLOGICAL DATA" INCLUDES NEURAL DATA.

(16.7) "NEURAL DATA" MEANS INFORMATION THAT IS GENERATED BY THE MEASUREMENT OF THE ACTIVITY OF AN INDIVIDUAL'S CENTRAL OR PERIPHERAL NERVOUS SYSTEMS AND THAT CAN BE PROCESSED BY OR WITH THE ASSISTANCE OF A DEVICE.

(24) "Sensitive data" means:

(b) Genetic or biometric data that may be processed for the purpose of uniquely identifying an individual; ~~or~~

(c) Personal data from a known child; OR

(d) BIOLOGICAL DATA.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item,

section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to the processing of a consumer's sensitive data on or after the effective date of this act.

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Julie McCluskie   Steve Fenberg
SPEAKER OF THE HOUSE   PRESIDENT OF
OF REPRESENTATIVES   THE SENATE

_____   _____
Robin Jones   Cindi L. Markwell
CHIEF CLERK OF THE HOUSE   SECRETARY OF
OF REPRESENTATIVES   THE SENATE

APPROVED_____
(Date and Time)

_____
Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

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