

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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

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.

HOUSE
3rd Reading Unamended
February 19, 2010

HOUSE
Amended 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), and (6) (a), Colorado
3 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 BUSINESS ENTITY DOES NOT NEED TO
9 PROVIDE AN ORIGINAL OF THE ATTESTATION OF ACCURACY AT THE TIME
10 OF PROVIDING THE RECORDS TO THE OFFICER BUT MAY PROVIDE THE
11 ATTESTATION TO THE OFFICER WITHIN A REASONABLE TIME AFTER
12 PROVIDING THE RECORDS. The records and the attestation of accuracy
13 shall be sufficient to establish ~~the authenticity of~~ THAT the records
14 produced ARE AUTHENTIC, THAT THE RECORDS ARE KEPT IN THE COURSE
15 OF A REGULAR BUSINESS ACTIVITY, AND THAT IT IS THE REGULAR
16 PRACTICE OF THE BUSINESS TO RECORD THE INFORMATION CONTAINED IN
17 THE RECORDS, without further necessity of extrinsic evidence. A COURT
18 SHALL NOT REQUIRE FURTHER FOUNDATION WITH REGARD TO THE
19 RECORDS TO ESTABLISH AN EXCEPTION TO THE HEARSAY RULES AS
20 CONTAINED IN RULE 803 (6) OF THE COLORADO RULES OF EVIDENCE.

21 **SECTION 2. Act subject to petition - effective date.** This act
22 shall take effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly (August
24 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within such period, then the act, item, section, or part shall not take effect

1 unless approved by the people at the general election to be held in
2 November 2010 and shall take effect on the date of the official
3 declaration of the vote thereon by the governor.