

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0634.01 Richard Sweetman x4333

SENATE BILL 24-129

SENATE SPONSORSHIP

Pelton B. and Kolker,

HOUSE SPONSORSHIP

deGruy Kennedy and Frizell,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING PROTECTING THE PRIVACY OF PERSONS ASSOCIATED
102 WITH NONPROFIT ENTITIES, AND, IN CONNECTION THEREWITH,
103 PROHIBITING PUBLIC AGENCIES FROM TAKING CERTAIN ACTIONS
104 RELATING TO THE COLLECTION AND DISCLOSURE OF DATA THAT
105 MAY IDENTIFY SUCH PERSONS.

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>.)

With certain exceptions, the bill prohibits a public agency from:

- Requiring any person to provide the public agency with

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

data that may identify a member of a nonprofit entity (member-specific data) or compelling the disclosure of member-specific data;

- Disclosing member-specific data to any person; or
- Requesting or requiring a current or prospective contractor or a current or prospective grantee of a grant program administered by the public agency to provide a list of nonprofit entities to which the current or prospective contractor or grantee has provided financial or nonfinancial support.

A nonprofit entity or any of its members affected adversely by a public agency's violation of the bill's provisions may initiate a civil action against the public agency in district court for injunctive relief, damages, or such other relief as is appropriate. Notwithstanding existing laws concerning governmental immunity, a court may award damages against a public agency that violates the bill's provisions as follows:

- Not less than \$2,500 for each violation; and
- Not less than \$7,500 for each intentional violation.

A court may also award the costs of litigation to a complainant that prevails in such an action.

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

2 **SECTION 1.** In Colorado Revised Statutes, 7-90-102, **add** (36.5)
3 and (53.5) as follows:

4 **7-90-102. Definitions.** As used in this title 7, except as otherwise
5 defined for the purpose of any section, subpart, part, or article of this title
6 7, or unless the context otherwise requires:

7 (36.5) "MEMBER-SPECIFIC DATA" MEANS ANY DOCUMENT, LIST,
8 RECORD, OR COMPILATION OF ONE OR MORE CATEGORIES OF "PERSONAL
9 IDENTIFYING INFORMATION", AS DEFINED IN SECTION 18-5-901 (13), THAT
10 IDENTIFIES, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, A PERSON AS
11 A MEMBER, SUPPORTER, VOLUNTEER, OR DONOR TO ANY NONPROFIT
12 ENTITY.

13 (53.5) "PUBLIC AGENCY" MEANS ANY STATE OR LOCAL
14 GOVERNMENTAL UNIT, INCLUDING:

- 1 (a) THE STATE;
- 2 (b) ANY DEPARTMENT, AGENCY, OFFICE, COMMISSION, BOARD,
3 DIVISION, OR OTHER AGENCY OF THE STATE;
- 4 (c) ANY INSTITUTION, AS DEFINED IN SECTION 24-72-202 (1.5);
5 AND
- 6 (d) ANY POLITICAL SUBDIVISION, AS DEFINED IN SECTION
7 24-72-202 (5).

8 **SECTION 2.** In Colorado Revised Statutes, **add** 7-90-107 as
9 follows:

10 **7-90-107. Protection of member-specific data - nonprofit**
11 **entities - rights and remedies - legislative declaration.** (1) THE
12 GENERAL ASSEMBLY FINDS AND DECLARES THAT:

13 (a) GIVEN THE LONG-HELD PROTECTION OF THE FUNDAMENTAL
14 RIGHTS OF ASSOCIATION AND PRIVACY UNDER THE CONSTITUTIONS OF THE
15 UNITED STATES AND THE STATE OF COLORADO, IT IS IN THE PUBLIC
16 INTEREST TO PROHIBIT PUBLIC AGENCIES FROM COLLECTING OR
17 DISCLOSING MEMBER-SPECIFIC DATA ABOUT MEMBERS OF, VOLUNTEERS
18 OF, AND FINANCIAL AND NONFINANCIAL DONORS TO NONPROFIT ENTITIES
19 THAT ARE EXEMPT FROM TAXATION UNDER THE FEDERAL "INTERNAL
20 REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c), AS AMENDED, EXCEPT
21 AS SUCH COLLECTION OR DISCLOSURE IS REQUIRED BY LAW; AND

22 (b) THE PROVISIONS OF THIS SECTION CONCERNING A PUBLIC
23 AGENCY'S ACCESS TO OR USE OF MEMBER-SPECIFIC DATA ARE CONSISTENT
24 WITH:

25 (I) SECTION 7-136-105, WHICH PROHIBITS ANY PERSON FROM
26 OBTAINING OR USING A NONPROFIT CORPORATION'S MEMBERSHIP LIST FOR
27 ANY PURPOSE UNRELATED TO A MEMBER'S INTEREST AS A MEMBER; AND

1 (II) SECTION 24-73-102, WHICH REQUIRES GOVERNMENTAL
2 ENTITIES TO PROTECT ACCESS TO CERTAIN TYPES OF PERSONAL
3 IDENTIFYING INFORMATION.

4 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION
5 OR AS EXPRESSLY REQUIRED BY LAW, A PUBLIC AGENCY SHALL NOT:

6 (I) REQUIRE ANY PERSON, INCLUDING A NONPROFIT ENTITY OR AN
7 OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF A NONPROFIT ENTITY, TO
8 PROVIDE THE PUBLIC AGENCY WITH MEMBER-SPECIFIC DATA OR
9 OTHERWISE COMPEL THE DISCLOSURE OF MEMBER-SPECIFIC DATA;

10 (II) DISCLOSE TO ANY PERSON ONE OR MORE ITEMS OF
11 MEMBER-SPECIFIC DATA, INCLUDING A COMPLETE OR PARTIAL LIST OF
12 NONPROFIT ENTITY MEMBERS WHO ARE EMPLOYED BY A PUBLIC AGENCY
13 OR ANY INFORMATION INCLUDED IN A NONPROFIT ENTITY MEMBER'S
14 PERSONNEL FILES AS DEFINED IN SECTION 24-72-202 (4.5); OR

15 (III) REQUEST OR REQUIRE A CURRENT OR PROSPECTIVE
16 CONTRACTOR OR A CURRENT OR PROSPECTIVE GRANTEE OF A GRANT
17 PROGRAM ADMINISTERED BY THE PUBLIC AGENCY TO PROVIDE A LIST OF
18 NONPROFIT ENTITIES TO WHICH THE CURRENT OR PROSPECTIVE
19 CONTRACTOR OR GRANTEE HAS PROVIDED FINANCIAL OR NONFINANCIAL
20 SUPPORT.

21 (b) A PUBLIC AGENCY SHALL NOT REQUIRE A NONPROFIT ENTITY
22 TO PRODUCE MEMBER-SPECIFIC DATA CONTAINED IN PUBLIC RECORDS
23 WHERE SUCH RECORDS ARE NOT SUBJECT TO INSPECTION AND COPYING
24 PURSUANT TO SECTION 24-72-204. A PUBLIC AGENCY'S CUSTODIAN SHALL
25 DENY ANY REQUEST TO INSPECT, COPY, OR REPRODUCE ANY
26 MEMBER-SPECIFIC DATA IN THE POSSESSION OF THE PUBLIC AGENCY AND
27 PROVIDED TO SUCH AGENCY BY A NONPROFIT ENTITY.

1 (3) THIS SECTION DOES NOT PRECLUDE A PUBLIC AGENCY FROM
2 REQUIRING PRODUCTION OF A NONPROFIT ENTITY'S MEMBER-SPECIFIC
3 DATA IF:

4 (a) THE MEMBER-SPECIFIC DATA IS SPECIFICALLY IDENTIFIED IN A
5 LAWFUL SUBPOENA OR WARRANT ISSUED BY A COURT OF COMPETENT
6 JURISDICTION OR, AS AUTHORIZED BY SECTION 24-4-105, AN
7 ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER;

8 (b) IN DISCOVERY UNDER THE COLORADO RULES OF CIVIL
9 PROCEDURE, A COURT OF COMPETENT JURISDICTION OR, AS AUTHORIZED
10 BY SECTION 24-4-105, AN ADMINISTRATIVE LAW JUDGE OR A HEARING
11 OFFICER ENTERS A PROTECTIVE ORDER PROHIBITING THE PUBLIC
12 DISCLOSURE OF THE MEMBER-SPECIFIC DATA TO ANY PERSON OTHER THAN
13 COUNSEL IN AND THE PARTIES TO A LEGAL ACTION;

14 (c) THE MEMBER-SPECIFIC DATA IS ADMITTED INTO EVIDENCE AS
15 RELEVANT TO PROVING OR DISPROVING THE CLAIMS OR DEFENSES AT ISSUE
16 BEFORE A COURT OF COMPETENT JURISDICTION OR, AS AUTHORIZED BY
17 SECTION 24-4-105, AN ADMINISTRATIVE LAW JUDGE OR A HEARING
18 OFFICER;

19 (d) THE MEMBER-SPECIFIC DATA IS VOLUNTARILY AND PUBLICLY
20 DISCLOSED BY THE PERSON OR THE NONPROFIT ENTITY TO WHICH IT
21 RELATES;

22 (e) THE MEMBER-SPECIFIC DATA IS SOUGHT BY A NONPROFIT
23 ENTITY THAT REQUESTS INFORMATION CONCERNING ITS OWN MEMBERS
24 FROM A PUBLIC AGENCY BY WHICH THE MEMBERS ARE EMPLOYED;

25 (f) INFORMATION DISCLOSING THE IDENTITY OF ANY DIRECTOR,
26 OFFICER, REGISTERED AGENT, OR INCORPORATOR OF A NONPROFIT ENTITY
27 IN A REPORT OR DISCLOSURE IS REQUIRED BY STATUTE TO BE FILED WITH

1 THE SECRETARY OF STATE OR, FOR UNINCORPORATED ASSOCIATIONS, AN
2 AGENCY THAT IS DESIGNATED BY LAW; EXCEPT THAT INFORMATION THAT
3 DIRECTLY IDENTIFIES A PERSON SOLELY BECAUSE THE PERSON IS A
4 FINANCIAL DONOR TO A NONPROFIT ENTITY SHALL NOT BE DISCLOSED
5 UNLESS DISCLOSURE IS REQUIRED BY SUBSECTION (3)(g) OF THIS SECTION;

6 (g) THE MEMBER-SPECIFIC DATA IS REQUIRED TO BE MADE PUBLIC
7 BECAUSE DISCLOSURE OF A CONTRIBUTION OR DONATION MADE BY ONE OR
8 MORE MEMBERS OF A NONPROFIT ENTITY IS EXPRESSLY REQUIRED BY
9 FEDERAL, STATE, OR LOCAL CAMPAIGN FINANCE LAWS;

10 (h) THE MEMBER-SPECIFIC DATA IS REQUIRED BY STATUTE IN
11 ORDER FOR AN APPLICANT TO QUALIFY FOR OR OPERATE UNDER A LICENSE
12 TO CONDUCT A BUSINESS ACTIVITY IN THE STATE;

13 (i) THE MEMBER-SPECIFIC DATA IS NECESSARY TO DETERMINE
14 COMPLIANCE WITH FEDERAL OR STATE ANTITRUST STATUTES; OR

15 (j) THE MEMBER-SPECIFIC DATA IS SOUGHT BY LAW ENFORCEMENT
16 PERSONNEL INVESTIGATING ALLEGED VIOLATIONS OF STATE OR LOCAL
17 CIVIL OR CRIMINAL LAWS, SO LONG AS THE MEMBER-SPECIFIC DATA IS
18 USED ONLY IN CONNECTION WITH THE SPECIFIC INVESTIGATION TO WHICH
19 THE REQUEST RELATES OR FOR ANY RELATED PROCEEDINGS.

20 (4) (a) A NONPROFIT ENTITY OR ANY OF ITS MEMBERS AFFECTED
21 ADVERSELY BY A VIOLATION OF THIS SECTION MAY INITIATE A CIVIL
22 ACTION IN DISTRICT COURT FOR INJUNCTIVE RELIEF, DAMAGES, OR SUCH
23 OTHER RELIEF AS IS APPROPRIATE TO ADDRESS THE VIOLATION. SUCH AN
24 ACTION MUST BE INITIATED AGAINST THE PUBLIC AGENCY THAT SOUGHT
25 AND OBTAINED, OR IMPROPERLY DISCLOSED, MEMBER-SPECIFIC DATA OF
26 THE NONPROFIT ENTITY IN VIOLATION OF THIS SECTION.

27 (b) NOTWITHSTANDING THE LIMITATIONS OF THE "COLORADO

1 GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, DAMAGES
2 MAY BE AWARDED TO COMPENSATE A PERSON FOR INJURY OR LOSS
3 CAUSED BY A PUBLIC AGENCY WRONGFULLY REQUIRING THE PRODUCTION
4 OF, OR WRONGFULLY DISCLOSING, MEMBER-SPECIFIC DATA AS FOLLOWS:

5 (I) EXCEPT AS DESCRIBED IN SUBSECTION (4)(b)(II) OF THIS
6 SECTION, NOT LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS FOR
7 EACH VIOLATION OF THIS SECTION; AND

8 (II) NOT LESS THAN SEVEN THOUSAND FIVE HUNDRED DOLLARS
9 FOR EACH INTENTIONAL VIOLATION OF THIS SECTION.

10 (c) A COURT MAY AWARD THE COSTS OF LITIGATION, INCLUDING
11 REASONABLE ATTORNEY FEES AND WITNESS FEES, TO A COMPLAINANT
12 THAT PREVAILS IN AN ACTION DESCRIBED IN THIS SUBSECTION (4).

13 **SECTION 3. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly; except that, if a referendum petition is filed pursuant
17 to section 1 (3) of article V of the state constitution against this act or an
18 item, section, or part of this act within such period, then the act, item,
19 section, or part will not take effect unless approved by the people at the
20 general election to be held in November 2024 and, in such case, will take
21 effect on the date of the official declaration of the vote thereon by the
22 governor.

23 (2) This act applies to the collection and disclosure of data
24 concerning members of a nonprofit entity by a public agency on or after
25 the applicable effective date of this act.