

**First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 05-0751.01 Michael Dohr

SENATE BILL 05-137

SENATE SPONSORSHIP

Grossman

HOUSE SPONSORSHIP

Paccione, and Frangas

Senate Committees
Business, Labor and Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING IDENTITY THEFT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Permits a consumer to put a security freeze on his or her credit report. Allows the consumer to temporarily lift the freeze to allow a particular entity access to the credit report for the purpose of issuing or extending credit to the consumer. Requires the freeze to be maintained until the consumer specifically requests its removal.

Requires that a consumer be notified of the right to place a security freeze on his or her credit report each time the consumer receives a summary of the rights relating to credit reports.

Compels a consumer reporting agency to notify the consumer

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
Amended 2nd Reading
March 1, 2005

1 CONSUMER REPORTING AGENCY FROM RELEASING ALL OR ANY PART OF
2 THE CONSUMER'S CREDIT REPORT OR ANY INFORMATION DERIVED FROM IT
3 WITHOUT THE EXPRESS AUTHORIZATION OF THE CONSUMER.

4 **12-14.7-103. Security freeze - timing - covered entities - cost.**

5 (1) A CONSUMER MAY ELECT TO PLACE A SECURITY FREEZE ON HIS OR HER
6 CREDIT REPORT BY:

7 (a) MAKING A REQUEST BY CERTIFIED MAIL;

8 (b) MAKING A REQUEST BY TELEPHONE AND PROVIDING CERTAIN
9 PERSONAL IDENTIFICATION; OR

10 (c) MAKING A REQUEST DIRECTLY TO A CONSUMER REPORTING
11 AGENCY THROUGH A SECURE ELECTRONIC MAIL CONNECTION IF SUCH A
12 CONNECTION IS MADE AVAILABLE BY THE AGENCY.

13 (2) (a) A CONSUMER REPORTING AGENCY SHALL PLACE A SECURITY
14 FREEZE ON A CONSUMER'S CREDIT REPORT NO LATER THAN FIVE BUSINESS
15 DAYS AFTER RECEIVING A WRITTEN OR TELEPHONE REQUEST FROM THE
16 CONSUMER PURSUANT TO PARAGRAPH (a) OR (b) OF SUBSECTION (1) OF
17 THIS SECTION OR THREE BUSINESS DAYS AFTER RECEIVING A SECURE
18 ELECTRONIC MAIL REQUEST PURSUANT TO PARAGRAPH (c) OF SUBSECTION
19 (1) OF THIS SECTION.

20 (b) THE CONSUMER REPORTING AGENCY SHALL SEND A WRITTEN
21 CONFIRMATION OF THE SECURITY FREEZE TO THE CONSUMER WITHIN FIVE
22 BUSINESS DAYS AFTER PLACING THE SECURITY FREEZE AND, AT THE SAME
23 TIME, SHALL PROVIDE THE CONSUMER WITH A UNIQUE PERSONAL
24 IDENTIFICATION NUMBER OR PASSWORD TO BE USED BY THE CONSUMER
25 WHEN PROVIDING AUTHORIZATION FOR THE RELEASE OF HIS OR HER CREDIT
26 TO A SPECIFIC PARTY OR FOR A SPECIFIC PERIOD OF TIME.

27 (3) IF THE CONSUMER CHOOSES TO ALLOW HIS OR HER CREDIT

1 REPORT TO BE ACCESSED BY A SPECIFIC PARTY OR FOR A SPECIFIC PERIOD
2 OF TIME WHILE A SECURITY FREEZE IS IN PLACE, HE OR SHE SHALL CONTACT
3 THE CONSUMER REPORTING AGENCY VIA TELEPHONE, CERTIFIED MAIL, OR
4 SECURE ELECTRONIC MAIL, TO REQUEST THAT THE SECURITY FREEZE BE
5 TEMPORARILY LIFTED, AND PROVIDE THE FOLLOWING:

6 (a) PROPER IDENTIFICATION;

7 (b) THE UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD
8 PROVIDED BY THE CONSUMER REPORTING AGENCY PURSUANT TO
9 PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION; AND

10 (c) THE NECESSARY INFORMATION REGARDING THE THIRD PARTY
11 WHO MAY RECEIVE THE CREDIT REPORT OR THE TIME PERIOD DURING
12 WHICH THE REPORT SHALL BE AVAILABLE TO USERS OF THE CREDIT
13 REPORT.

14 (4) A CONSUMER REPORTING AGENCY THAT RECEIVES A REQUEST
15 FROM A CONSUMER TO TEMPORARILY LIFT A SECURITY FREEZE ON A CREDIT
16 REPORT PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL COMPLY
17 WITH THE REQUEST NO LATER THAN THREE BUSINESS DAYS AFTER
18 RECEIVING THE REQUEST.

19 (5) (a) A CONSUMER REPORTING AGENCY SHALL ONLY REMOVE OR
20 TEMPORARILY LIFT A SECURITY FREEZE PLACED ON A CONSUMER'S CREDIT
21 REPORT UPON THE CONSUMER'S REQUEST PURSUANT TO:

22 (I) SUBSECTION (3) OR (7) OF THIS SECTION; OR

23 (II) IF THE CONSUMER'S CREDIT REPORT WAS FROZEN DUE TO A
24 MATERIAL MISREPRESENTATION OF FACT BY THE CONSUMER.

25 (b) IF A CONSUMER REPORTING AGENCY INTENDS TO REMOVE A
26 SECURITY FREEZE PLACED ON A CONSUMER'S CREDIT REPORT PURSUANT TO
27 SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (5), THE

1 CONSUMER REPORTING AGENCY SHALL NOTIFY THE CONSUMER IN WRITING
2 FIVE BUSINESS DAYS PRIOR TO REMOVING THE FREEZE ON THE CONSUMER'S
3 CREDIT REPORT.

4 (6) IF A THIRD PARTY REQUESTS ACCESS TO A CONSUMER CREDIT
5 REPORT ON WHICH A SECURITY FREEZE IS IN EFFECT FOR THE PURPOSE OF
6 RECEIVING, EXTENDING, OR OTHERWISE UTILIZING THE CREDIT THEREIN,
7 AND NOT FOR THE SOLE PURPOSE OF ACCOUNT REVIEW, THE CONSUMER
8 REPORTING AGENCY SHALL NOTIFY THE CONSUMER THAT AN ATTEMPT HAS
9 BEEN MADE TO ACCESS THE CREDIT REPORT.

10 (7) A SECURITY FREEZE SHALL REMAIN IN PLACE UNTIL THE
11 CONSUMER REQUESTS THAT THE SECURITY FREEZE BE REMOVED. A
12 CONSUMER REPORTING AGENCY SHALL REMOVE A SECURITY FREEZE
13 WITHIN THREE BUSINESS DAYS AFTER RECEIVING A REQUEST FOR REMOVAL
14 FROM THE CONSUMER, WHO PROVIDES BOTH OF THE FOLLOWING:

15 (a) PROPER IDENTIFICATION; AND

16 (b) THE UNIQUE PERSONAL IDENTIFICATION NUMBER OR PASSWORD
17 PROVIDED BY THE CONSUMER REPORTING AGENCY PURSUANT TO
18 PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

19 (8) A CONSUMER REPORTING AGENCY SHALL REQUIRE PROPER
20 IDENTIFICATION OF THE PERSON MAKING A REQUEST TO PLACE OR REMOVE
21 A SECURITY FREEZE.

22 (9) A CONSUMER REPORTING AGENCY SHALL NOT SUGGEST OR
23 OTHERWISE STATE OR IMPLY TO A THIRD PARTY THAT THE CONSUMER'S
24 SECURITY FREEZE REFLECTS A NEGATIVE CREDIT SCORE, HISTORY, REPORT,
25 OR RATING.

26 (10) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE
27 USE OF A CONSUMER CREDIT REPORT BY ANY OF THE FOLLOWING:

1 (a) A PERSON, OR THE PERSON'S SUBSIDIARY, AFFILIATE, AGENT, OR
2 ASSIGNEE, WITH WHICH THE CONSUMER HAS OR, PRIOR TO ASSIGNMENT,
3 HAD AN ACCOUNT, CONTRACT, OR DEBTOR-CREDITOR RELATIONSHIP FOR
4 THE PURPOSES OF REVIEWING THE ACCOUNT OR COLLECTING THE
5 FINANCIAL OBLIGATION OWING FOR THE ACCOUNT, CONTRACT, OR DEBT;

6 (b) A SUBSIDIARY, AFFILIATE, AGENT, ASSIGNEE, OR PROSPECTIVE
7 ASSIGNEE OF A PERSON TO WHOM ACCESS HAS BEEN GRANTED UNDER
8 SUBSECTION (3) OF THIS SECTION FOR PURPOSES OF FACILITATING THE
9 EXTENSION OF CREDIT OR OTHER PERMISSIBLE USE;

10 (c) A PERSON ACTING PURSUANT TO A COURT ORDER, WARRANT,
11 OR SUBPOENA;

12 (d) A STATE OR LOCAL AGENCY THAT ADMINISTERS A PROGRAM
13 FOR ESTABLISHING AND ENFORCING CHILD SUPPORT OBLIGATIONS;

14 (e) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING OR
15 ITS AGENTS OR ASSIGNEES ACTING TO INVESTIGATE FRAUD;

16 (f) THE DEPARTMENT OF HUMAN SERVICES OR ITS AGENTS OR
17 ASSIGNEES ACTING TO INVESTIGATE FRAUD;

18 (g) THE DEPARTMENT OF REVENUE OR ITS AGENTS OR ASSIGNEES
19 ACTING TO INVESTIGATE OR COLLECT DELINQUENT TAXES OR UNPAID
20 COURT ORDERS OR TO FULFILL ITS OTHER STATUTORY RESPONSIBILITIES;

21 (h) A PERSON FOR THE PURPOSES OF PRESCREENING AS DEFINED BY
22 THE "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681, ET SEQ.;

23 (i) A PERSON OR ENTITY ADMINISTERING A CREDIT FILE
24 MONITORING SUBSCRIPTION SERVICE TO WHICH THE CONSUMER HAS
25 SUBSCRIBED; =

26 (j) A PERSON OR ENTITY FOR THE PURPOSE OF PROVIDING A
27 CONSUMER WITH A COPY OF HIS OR HER CREDIT REPORT UPON THE

1 CONSUMER'S REQUEST;

2 (k) A PERSON REQUESTING THE CONSUMER'S CREDIT REPORT FOR
3 USE BY AN INSURANCE BUSINESS TO SET A RATE, ADJUST A RATE, OR
4 UNDERWRITE FOR INSURANCE PURPOSES PURSUANT TO SECTION
5 12-14.3-103;

6 (l) A PUBLIC PENSION PLAN ACTING TO DETERMINE THE
7 CONSUMER'S ELIGIBILITY FOR PLAN BENEFITS OR PAYMENTS AUTHORIZED
8 BY LAW OR TO INVESTIGATE FRAUD.

9 (m) A PERSON CONDUCTING A PRE-SENTENCE INVESTIGATION IN A
10 CRIMINAL MATTER OR A PROBATION OFFICER USING THIS INFORMATION FOR
11 SUPERVISION OF AN OFFENDER; OR

12 (n) A COLLECTIONS INVESTIGATOR OR OTHER PERSON ENGAGED IN
13 THE COLLECTING OF FEES, FINES, OR RESTITUTION ASSESSED IN A COURT
14 PROCEEDING.

15 (o) A LAW ENFORCEMENT AGENCY OR ITS AGENTS ACTING TO
16 INVESTIGATE A CRIME OR CONDUCTING A CRIMINAL BACKGROUND CHECK.

17 (11) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
18 THIS SUBSECTION (11), A CONSUMER SHALL NOT BE CHARGED FOR ANY
19 SECURITY FREEZE SERVICES, INCLUDING BUT NOT LIMITED TO THE
20 PLACEMENT OR LIFTING OF A SECURITY FREEZE.

21 (b) IF A CONSUMER FAILS TO RETAIN THE ORIGINAL PERSONAL
22 IDENTIFICATION NUMBER PROVIDED BY THE CONSUMER REPORTING
23 AGENCY, THE AGENCY SHALL NOT CHARGE THE CONSUMER FOR A
24 ONE-TIME REISSUE OF THE SAME OR A NEW PERSONAL IDENTIFICATION
25 NUMBER. THE CONSUMER REPORTING AGENCY MAY CHARGE THE
26 CONSUMER NO MORE THAN FIVE DOLLARS FOR SUBSEQUENT INSTANCES OF
27 LOSS AND REISSUANCE OR REPLACEMENT OF THE PERSONAL

1 IDENTIFICATION NUMBER.

2 (12) THE FOLLOWING PERSONS ARE NOT REQUIRED TO PLACE A
3 SECURITY FREEZE ON A CONSUMER REPORT PURSUANT TO THIS SECTION:

4 (a) A CHECK SERVICES COMPANY THAT ISSUES REPORTS ON
5 INCIDENTS OF FRAUD OR AUTHORIZATIONS FOR THE PURPOSE OF
6 APPROVING OR PROCESSING NEGOTIABLE INSTRUMENTS, ELECTRONIC FUND
7 TRANSFERS, OR SIMILAR METHODS OF PAYMENT;

8 (b) A DEPOSIT ACCOUNT INFORMATION SERVICE COMPANY THAT
9 ISSUES REPORTS REGARDING ACCOUNT DISCLOSURE DUE TO FRAUD,
10 SUBSTANTIAL OVERDRAFTS, AUTOMATED TELLER MACHINE ABUSE, OR
11 SIMILAR NEGATIVE INFORMATION REGARDING A CONSUMER TO INQUIRING
12 BANKS OR FINANCIAL INSTITUTION; AND

13 (c) A FRAUD PREVENTION SERVICES COMPANY ISSUING REPORTS TO
14 PREVENT OR INVESTIGATE FRAUD.

15 **12-14.7-104. Notice of rights.** (1) AT ANY TIME THAT A
16 CONSUMER IS REQUIRED TO RECEIVE A SUMMARY OF RIGHTS REQUIRED
17 UNDER SECTION 609 OF THE "FAIR CREDIT REPORTING ACT" OR UNDER
18 STATE LAW, THE FOLLOWING NOTICE SHALL BE INCLUDED:

19 STATE CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE.

20 YOU MAY OBTAIN A SECURITY FREEZE ON YOUR
21 CREDIT REPORT AT NO CHARGE TO PROTECT YOUR PRIVACY
22 AND ENSURE THAT CREDIT IS NOT GRANTED IN YOUR NAME
23 WITHOUT YOUR KNOWLEDGE. YOU HAVE A RIGHT TO PLACE
24 A SECURITY FREEZE ON YOUR CREDIT REPORT PURSUANT TO
25 STATE LAW.

26 THE SECURITY FREEZE WILL PROHIBIT A CONSUMER
27 REPORTING AGENCY FROM RELEASING ANY INFORMATION IN

1 YOUR CREDIT REPORT WITHOUT YOUR EXPRESS
2 AUTHORIZATION OR APPROVAL.

3 THE SECURITY FREEZE IS DESIGNED TO PREVENT
4 CREDIT, LOANS, AND SERVICES FROM BEING APPROVED IN
5 YOUR NAME WITHOUT YOUR CONSENT. WHEN YOU PLACE A
6 SECURITY FREEZE ON YOUR CREDIT REPORT, WITHIN FIVE
7 BUSINESS DAYS YOU WILL BE PROVIDED A PERSONAL
8 IDENTIFICATION NUMBER OR PASSWORD TO USE IF YOU
9 CHOOSE TO REMOVE THE SECURITY FREEZE ON YOUR CREDIT
10 REPORT OR TO TEMPORARILY AUTHORIZE THE RELEASE OF
11 YOUR CREDIT REPORT TO A SPECIFIC PARTY OR PARTIES OR
12 FOR A PERIOD OF TIME AFTER THE SECURITY FREEZE IS IN
13 PLACE. TO PROVIDE THAT AUTHORIZATION, YOU MUST
14 CONTACT THE CONSUMER REPORTING AGENCY AND PROVIDE
15 ALL OF THE FOLLOWING: THE UNIQUE PERSONAL
16 IDENTIFICATION NUMBER OR PASSWORD PROVIDED BY THE
17 CONSUMER REPORTING AGENCY; PROPER IDENTIFICATION TO
18 VERIFY YOUR IDENTITY; AND THE PROPER INFORMATION
19 REGARDING THE THIRD PARTY OR PARTIES WHO ARE TO
20 RECEIVE THE CREDIT REPORT OR THE PERIOD OF TIME FOR
21 WHICH THE REPORT SHALL BE AVAILABLE TO USERS OF THE
22 CREDIT REPORT.

23 A CONSUMER REPORTING AGENCY THAT RECEIVES A
24 REQUEST FROM A CONSUMER TO TEMPORARILY LIFT A
25 SECURITY FREEZE ON A CREDIT REPORT SHALL COMPLY WITH
26 THE REQUEST NO LATER THAN THREE BUSINESS DAYS AFTER
27 RECEIVING THE REQUEST.

1 A SECURITY FREEZE DOES NOT APPLY TO
2 CIRCUMSTANCES WHERE YOU HAVE AN EXISTING ACCOUNT
3 RELATIONSHIP AND A COPY OF YOUR REPORT IS REQUESTED
4 BY YOUR EXISTING CREDITOR OR ITS AGENTS OR AFFILIATES
5 FOR CERTAIN TYPES OF ACCOUNT REVIEW, COLLECTION,
6 FRAUD CONTROL OR SIMILAR ACTIVITIES.

7 YOU SHOULD BE AWARE THAT USING A SECURITY
8 FREEZE TO TAKE CONTROL OVER WHO GAINS ACCESS TO THE
9 PERSONAL AND FINANCIAL INFORMATION IN YOUR CREDIT
10 REPORT MAY DELAY, INTERFERE WITH, OR PROHIBIT THE
11 TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR
12 APPLICATION YOU MAKE REGARDING NEW LOANS, CREDIT,
13 MORTGAGE, INSURANCE, GOVERNMENT SERVICES OR
14 PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT,
15 LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE,
16 INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES,
17 INCLUDING AN EXTENSION OF CREDIT AT THE POINT OF SALE.

18 ===== YOU SHOULD PLAN AHEAD AND LIFT A SECURITY
19 FREEZE EITHER COMPLETELY IF YOU ARE SHOPPING AROUND,
20 OR SPECIFICALLY FOR A CERTAIN CREDITOR A FEW DAYS
21 BEFORE ACTUALLY APPLYING FOR NEW CREDIT.

22 YOU HAVE A RIGHT TO BRING A CIVIL ACTION
23 AGAINST A PERSON OR AGENCY WHO VIOLATES YOUR
24 RIGHTS UNDER THE CREDIT REPORTING LAWS. THE ACTION
25 CAN BE BROUGHT AGAINST A CONSUMER REPORTING
26 AGENCY OR A USER OF YOUR CREDIT REPORT.

27 **12-14.7-105. Violations - penalties.** (1) IF A CONSUMER

1 REPORTING AGENCY ERRONEOUSLY, INTENTIONALLY OR
2 UNINTENTIONALLY, VIOLATES THE SECURITY FREEZE BY RELEASING CREDIT
3 INFORMATION THAT HAS BEEN PLACED UNDER A SECURITY FREEZE, THE
4 AFFECTED CONSUMER IS ENTITLED TO:

5 (a) NOTIFICATION FROM THE CONSUMER REPORTING AGENCY
6 WITHIN FIVE BUSINESS DAYS AFTER RELEASE OF THE INFORMATION,
7 INCLUDING SPECIFICITY AS TO THE INFORMATION RELEASED AND THE
8 THIRD-PARTY RECIPIENT OF THE INFORMATION;

9 (b) FILE A COMPLAINT WITH THE FEDERAL TRADE COMMISSION AND
10 THE STATE ATTORNEY GENERAL; AND

11 (c) FILE A CIVIL ACTION AGAINST THE CONSUMER REPORTING
12 AGENCY AND RECOVER:

13 (I) INJUNCTIVE RELIEF TO PREVENT OR RESTRAIN FURTHER
14 VIOLATIONS OF THE SECURITY FREEZE; AND

15 (II) A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED TEN
16 THOUSAND DOLLARS FOR EACH VIOLATION PLUS ANY DAMAGES AVAILABLE
17 UNDER OTHER CIVIL LAWS AND REASONABLE EXPENSES, COURT COSTS,
18 INVESTIGATIVE COSTS, AND ATTORNEY FEES.

19 (2) EACH VIOLATION OF A SECURITY FREEZE SHALL BE COUNTED AS
20 A SEPARATE INCIDENT FOR PURPOSES OF IMPOSING PENALTIES UNDER THIS
21 SECTION.

22 **SECTION 2.** Title 12, Colorado Revised Statutes, is amended
23 **BY THE ADDITION OF A NEW ARTICLE to read:**

24 **ARTICLE 14.8**

25 **Security Breach Information Act**

26 **12-14.8-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
27 **CONTEXT OTHERWISE REQUIRES:**

1 (1) "BREACH OF THE SECURITY OF THE SYSTEM DATA" MEANS
2 UNAUTHORIZED ACQUISITION OF COMPUTERIZED DATA THAT COMPROMISES
3 THE SECURITY AND CONFIDENTIALITY, OR INTEGRITY, OF PERSONAL
4 INFORMATION MAINTAINED BY THE AGENCY. GOOD FAITH ACQUISITION OF
5 PERSONAL INFORMATION BY AN EMPLOYEE OR AGENT OF THE AGENCY
6 SUBJECT TO THE PROVISIONS OF THIS ARTICLE FOR A LEGITIMATE PURPOSE
7 OF THE AGENCY IS NOT A BREACH OF THE SECURITY OF THE SYSTEM DATA,
8 PROVIDED THAT THE PERSONAL INFORMATION IS NOT USED FOR A PURPOSE
9 UNRELATED TO THE AGENCY OR SUBJECT TO FURTHER UNAUTHORIZED
10 DISCLOSURE. BREACH OF THE SECURITY OF NON-COMPUTERIZED DATA
11 MAY INCLUDE, BUT IS NOT LIMITED TO, UNAUTHORIZED PHOTOCOPYING,
12 FACSIMILES, OR OTHER PAPER-BASED TRANSMITTAL OF DOCUMENTS.

13 (2) "DATA COLLECTOR" MEANS A GOVERNMENT AGENCY, A PUBLIC
14 OR PRIVATE UNIVERSITY, A PRIVATELY OR PUBLICLY HELD CORPORATION,
15 A FINANCIAL INSTITUTION, A RETAIL OPERATOR, AND ANY OTHER ENTITY
16 THAT, FOR ANY PURPOSE, WHETHER BY AUTOMATED COLLECTION OR
17 OTHERWISE, HANDLES, COLLECTS, DISSEMINATES, OR OTHERWISE DEALS
18 WITH NONPUBLIC PERSONAL INFORMATION.

19 (3) "PERSONAL INFORMATION" MEANS AN INDIVIDUAL'S FIRST
20 NAME, OR FIRST INITIAL, AND LAST NAME IN COMBINATION WITH ANY ONE
21 OR MORE OF THE FOLLOWING DATA ELEMENTS, WHEN EITHER THE NAME OR
22 THE DATA ELEMENTS ARE NOT ENCRYPTED OR REDACTED: SOCIAL
23 SECURITY NUMBER, DRIVER'S LICENSE NUMBER OR STATE IDENTIFICATION
24 CARD NUMBER, ACCOUNT NUMBER, CREDIT OR DEBIT CARD NUMBER IF
25 CIRCUMSTANCES EXIST WHEREIN SUCH A NUMBER COULD BE USED
26 WITHOUT ADDITIONAL IDENTIFYING INFORMATION, ACCESS CODES OR
27 PASSWORDS, ACCOUNT PASSWORDS OR PERSONAL IDENTIFICATION

1 NUMBERS OR OTHER ACCESS CODES, ANY OF THE ITEMS LISTED HEREIN
2 WHEN NOT IN CONNECTION WITH THE INDIVIDUAL'S FIRST NAME, OR FIRST
3 INITIAL, AND LAST NAME, IF THE INFORMATION COMPROMISED WOULD BE
4 SUFFICIENT TO PERFORM OR ATTEMPT TO PERFORM IDENTITY THEFT
5 AGAINST THE PERSON WHOSE INFORMATION WAS COMPROMISED.
6 "PERSONAL INFORMATION" DOES NOT INCLUDE PUBLICLY AVAILABLE
7 INFORMATION THAT IS LAWFULLY MADE AVAILABLE TO THE GENERAL
8 PUBLIC FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS.

9 **12-14.8-102. Notice of breach.** (1) EXCEPT AS PROVIDED IN
10 SUBSECTION (2) OF THIS SECTION , A DATA COLLECTOR THAT OWNS OR
11 USES PERSONAL INFORMATION IN ANY FORM WHETHER COMPUTERIZED,
12 PAPER, OR OTHERWISE THAT INCLUDES PERSONAL INFORMATION
13 CONCERNING A COLORADO RESIDENT SHALL NOTIFY THE RESIDENT THAT
14 THERE HAS BEEN A BREACH OF THE SECURITY OF THE SYSTEM DATA
15 FOLLOWING THE DISCOVERY OR NOTIFICATION OF THE BREACH, WITHOUT
16 REGARD FOR WHETHER OR NOT THE DATA HAS OR HAS NOT BEEN ACCESSED
17 BY AN UNAUTHORIZED THIRD PARTY FOR LEGAL OR ILLEGAL PURPOSES.
18 THE NOTIFICATION SHALL BE MADE IN THE MOST EXPEDIENT TIME POSSIBLE
19 AND WITHOUT UNREASONABLE DELAY, CONSISTENT WITH THE LEGITIMATE
20 NEEDS OF LAW ENFORCEMENT AS PROVIDED IN SUBSECTION (2) OF THIS
21 SECTION, OR WITH ANY MEASURES NECESSARY TO DETERMINE THE SCOPE
22 OF THE BREACH AND RESTORE THE REASONABLE INTEGRITY, SECURITY,
23 AND CONFIDENTIALITY OF THE DATA SYSTEM.

24 (2) THE NOTIFICATION REQUIRED BY THIS SECTION MAY BE
25 DELAYED IF A LAW ENFORCEMENT AGENCY DETERMINES THAT THE
26 NOTIFICATION MAY IMPEDE A CRIMINAL INVESTIGATION. IF SUCH
27 CIRCUMSTANCES SHALL ARISE, THE NOTIFICATION REQUIRED BY THIS

1 SECTION SHALL BE MADE AFTER THE LAW ENFORCEMENT AGENCY
2 DETERMINES THAT IT WILL NOT COMPROMISE THE INVESTIGATION.

3 (3) FOR PURPOSES OF THIS SECTION, NOTICE TO CONSUMERS MAY
4 BE PROVIDED BY ONE OF THE FOLLOWING METHODS:

5 (a) WRITTEN NOTICE;

6 (b) ELECTRONIC NOTICE, IF THE NOTICE PROVIDED IS CONSISTENT
7 WITH THE PROVISIONS REGARDING ELECTRONIC RECORDS AND
8 SIGNATURES, FOR NOTICES LEGALLY REQUIRED TO BE IN WRITING, SET
9 FORTH IN 15 U.S.C. SEC. 7001;

10 (c) SUBSTITUTE NOTICE, IF THE AGENCY DEMONSTRATES THAT THE
11 COST OF PROVIDING NOTICE WOULD EXCEED TWO HUNDRED FIFTY
12 THOUSAND DOLLARS, THE AFFECTED CLASS OF SUBJECT PERSONS TO BE
13 NOTIFIED EXCEEDS FIVE HUNDRED THOUSAND, OR THE AGENCY DOES NOT
14 HAVE SUFFICIENT CONTACT INFORMATION. SUBSTITUTE NOTICE SHALL
15 CONSIST OF ALL OF THE FOLLOWING:

16 (I) EMAIL NOTICE WHEN THE AGENCY HAS AN E-MAIL ADDRESS FOR
17 THE SUBJECT PERSONS;

18 (II) CONSPICUOUS POSTING OF THE NOTICE ON THE AGENCY'S WEB
19 SITE PAGE, IF THE AGENCY MAINTAINS ONE; AND

20 (III) NOTIFICATION TO MAJOR STATEWIDE MEDIA.

21 **12-14.8-103. Waiver.** ANY WAIVER OF THE PROVISIONS OF THIS
22 TITLE IS CONTRARY TO PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.

23 **12-14.8-104. Remedies.** (1) A PERSON INJURED BY A VIOLATION
24 OF THIS SECTION HAS A PRIVATE RIGHT OF ACTION AGAINST THE DATA
25 COLLECTOR FOR DAMAGES AND INJUNCTIVE RELIEF.

26 (2) THE RIGHTS AND REMEDIES AVAILABLE UNDER THIS SECTION
27 ARE CUMULATIVE TO EACH OTHER AND TO ANY OTHER RIGHTS AND

1 REMEDIES AVAILABLE UNDER LAW. _____

2 **SECTION 2. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.