

D R A F T

SUMMARY

Expands definition of “personal information” for purposes of Oregon Consumer Identity Theft Protection Act. Requires person that owns, maintains or otherwise possesses personal information, or person that maintains or possesses personal information on another person’s behalf, to report breach of security to Attorney General in addition to reporting breach of security to affected consumer.

Makes violation of notification requirement unlawful practice that is subject to enforcement or action under Unlawful Trade Practices Act.

A BILL FOR AN ACT

1
2 Relating to enforcement of notification requirements for breaches of security
3 involving personal information; creating new provisions; and amending
4 ORS 646.607, 646A.602 and 646A.604.

Be It Enacted by the People of the State of Oregon:

6 **SECTION 1.** ORS 646A.602 is amended to read:

7 646A.602. As used in ORS 646A.600 to 646A.628:

8 (1)(a) “Breach of security” means an unauthorized acquisition of comput-
9 erized data that materially compromises the security, confidentiality or in-
10 tegrity of personal information that a person maintains.

11 (b) “Breach of security” does not include an inadvertent acquisition of
12 personal information by a person or the person’s employee or agent if the
13 personal information is not used in violation of applicable law or in a man-
14 ner that harms or poses an actual threat to the security, confidentiality or
15 integrity of the personal information.

16 (2) “Consumer” means an individual resident of this state.

17 (3) “Consumer report” means a consumer report as described in section

1 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)), as that
2 Act existed on [*October 1, 2007*] **the effective date of this 2015 Act**, that a
3 consumer reporting agency compiles and maintains.

4 (4) “Consumer reporting agency” means a consumer reporting agency as
5 described in section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C.
6 1681a(p)) as that Act existed on [*October 1, 2007*] **the effective date of this**
7 **2015 Act**.

8 (5) “Debt” means any obligation or alleged obligation arising out of a
9 consumer transaction[, *as defined in ORS 646.639*].

10 (6) “Encryption” means [*the use of*] an algorithmic process [*to transform*]
11 **that renders** data [*into a form in which the data is rendered*] unreadable or
12 unusable without the use of a confidential process or key.

13 (7) “Extension of credit” means a right to defer paying debt or a right to
14 incur debt and defer paying the debt, that is offered or granted primarily for
15 personal, family or household purposes.

16 (8) “Identity theft” has the meaning set forth in ORS 165.800.

17 (9) “Identity theft declaration” means a completed and signed statement
18 that documents alleged identity theft, using the form available from the
19 Federal Trade Commission, or another substantially similar form.

20 (10) “Person” means [*any*] **an** individual, private or public corporation,
21 partnership, cooperative, association, estate, limited liability company, or-
22 ganization or other entity, whether or not organized to operate at a profit,
23 or a public body as defined in ORS 174.109.

24 (11) “Personal information” **means:**

25 (a) [*Means*] A consumer’s first name or first initial and last name [*in*
26 *combination with*] **and** any one or more of the following data elements, **if**
27 **encryption, redaction or other methods have not rendered the data**
28 **elements unusable** [*when the data elements are not rendered unusable*
29 *through encryption, redaction or other methods, or when*] **or if** the data ele-
30 ments are encrypted and the encryption key has [*also*] been acquired:

31 (A) **A consumer’s** Social Security number;

1 (B) **A consumer's** driver license number or state identification card
2 number issued by the Department of Transportation;

3 (C) **A consumer's** passport number or other [*United States issued*] iden-
4 tification number **issued by the United States**; [*or*]

5 (D) **A consumer's** financial account number, credit **card number** or de-
6 bit card number, in combination with any required security code, access code
7 or password that would permit access to a consumer's financial account[.];

8 (E) **A consumer's unique biometric data, such as the consumer's**
9 **fingerprint, retina or iris image or another unique physical or digital**
10 **representation of biometric data;**

11 (F) **A consumer's insurance policy number; or**

12 (G) **A consumer's medical or health insurance information.**

13 (b) [*Means*] Any of the data elements or any combination of the data
14 elements described in paragraph (a) of this subsection [*when not combined*
15 *with*] **without** the consumer's first name or first initial and last name [*and*
16 *when the data elements are not rendered unusable through encryption,*
17 *redaction or other methods, if the information obtained would be sufficient to*
18 *permit a person to commit identity theft against the consumer whose informa-*
19 *tion was compromised.*] **if:**

20 (i) **Encryption, redaction or other methods have not rendered the**
21 **data element or combination of data elements unusable; and**

22 (ii) **The data element or combination of data elements would enable**
23 **a person to commit identity theft against a consumer.**

24 (c) **"Personal information"** does not include information[, *other than a*
25 *Social Security number,*] in a federal, state or local government record, **other**
26 **than a Social Security number**, that is lawfully made available to the
27 public.

28 (12) "Proper identification" means written information or documentation
29 that a consumer or representative can present to another person as evidence
30 of the consumer's or representative's identity, examples of which include:

31 (a) A valid Social Security number or a copy of a valid Social Security

1 card;

2 (b) A certified or otherwise official copy of a birth certificate that a
3 governmental body issued; and

4 (c) A copy of a driver license or other government-issued identification.

5 (13) "Protected consumer" means an individual who is:

6 (a) Not older than 16 years old at the time a representative requests a
7 security freeze on the individual's behalf; or

8 (b) Incapacitated or for whom a court or other authority has appointed
9 a guardian or conservator.

10 (14) "Protective record" means information that a consumer reporting
11 agency compiles to identify a protected consumer for whom the consumer
12 reporting agency has not prepared a consumer report.

13 (15) "Redacted" means altered or truncated so that no more than the last
14 four digits of a Social Security number, driver license number, state iden-
15 tification card number, **passport number or other number issued by the**
16 **United States, financial** account number, [or] credit **card number** or debit
17 card number is **visible or** accessible [*as part of the data*].

18 (16) "Representative" means a consumer who provides a consumer re-
19 porting agency with sufficient proof of the consumer's authority to act on a
20 protected consumer's behalf.

21 (17) "Security freeze" means a notice placed in a consumer report at a
22 consumer's request or a representative's request or in a protective record at
23 a representative's request that, subject to certain exemptions, prohibits a
24 consumer reporting agency from releasing information in the consumer re-
25 port or the protective record for an extension of credit, unless the consumer
26 temporarily lifts the security freeze on the consumer's consumer report or a
27 protected consumer or representative removes the security freeze on or de-
28 letes the protective record.

29 **SECTION 2.** ORS 646A.604 is amended to read:

30 646A.604. (1) [*Any*] **A** person that owns, maintains or otherwise possesses
31 [*data that includes a consumer's personal information that is used in the*

1 *course of the person's business, vocation, occupation or volunteer activities*
2 *and]* **personal information that the person uses in the course of the**
3 **person's business, vocation, occupation or volunteer activities and**
4 **that** was subject to a breach of security shall give notice of the breach of
5 security [*following discovery of such breach of security, or receipt of notifica-*
6 *tion under subsection (2) of this section, to any consumer whose personal in-*
7 *formation was included in the information that was breached. The disclosure*
8 *notification shall be made in]* **to:**

9 (a) **The consumer to whom the personal information pertains after**
10 **the person discovers the breach of security or after the person receives**
11 **notice of a breach of security under subsection (2) of this section. The**
12 **person shall notify the consumer in** the most expeditious [*time*] **manner**
13 possible, [*and*] without unreasonable delay, consistent with the legitimate
14 needs of law enforcement [*as provided*] **described** in subsection (3) of this
15 section[,] and consistent with any measures **that are** necessary to determine
16 sufficient contact information for the [*consumers*] **affected consumer**, de-
17 termine the scope of the breach **of security** and restore the reasonable in-
18 tegrity, security and confidentiality of the [*data*] **personal information.**

19 (b) **The Attorney General, either in writing or electronically, if the**
20 **number of consumers to whom the person must send the notice de-**
21 **scribed in paragraph (a) of this subsection exceeds 100. The person**
22 **shall disclose the breach of security to the Attorney General in the**
23 **manner described in paragraph (a) of this subsection.**

24 (2) [*Any*] **A person that maintains or otherwise possesses personal infor-**
25 **mation on behalf of another person shall notify the** [*owner or licensor of the*
26 *information of any breach of security immediately following discovery of*
27 *such*] **other person and the Attorney General after discovering a breach**
28 **of security** [*if a consumer's personal information was included in the infor-*
29 *mation that was breached*]. **The person may notify the Attorney General**
30 **in writing or electronically.**

31 (3) [*The notification to the consumer required by this section may be de-*

1 *layed*] **A person may delay notifying a consumer of a breach of security**
2 **only** if a law enforcement agency determines that [*the*] a notification will
3 impede a criminal investigation and [*that*] **if the law enforcement agency**
4 [*has made a written request that the notification be delayed*] **requests in**
5 **writing that the person delay the notification.** [*The notification required*
6 *by this section shall be made after that law enforcement agency determines that*
7 *its disclosure will not compromise the investigation and notifies the person in*
8 *writing.*]

9 (4) For purposes of this section, [*notification to the consumer may be pro-*
10 *vided by one of the following methods*] **a person may notify a consumer**
11 **of a breach of security:**

12 [(a) *Written notice.*]

13 **(a) In writing;**

14 (b) [*Electronic notice*] **Electronically**, if the [*person's customary method*
15 *of communication*] **person customarily communicates** with the consumer
16 [*is by electronic means or*] **electronically or if the notice** is consistent with
17 the provisions regarding electronic records and signatures set forth in the
18 Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001)
19 as that Act existed on [*October 1, 2007.*] **the effective date of this 2015 Act;**

20 [(c) *Telephone notice, provided that contact is made directly with the af-*
21 *ected consumer.*]

22 **(c) By telephone, if the person contacts the affected consumer di-**
23 **rectly; or**

24 (d) **With** substitute notice, if the person demonstrates that the cost of
25 [*providing notice*] **notification otherwise** would exceed \$250,000[,] **or** that
26 the affected class of consumers [*to be notified*] exceeds 350,000, or if the
27 person does not have sufficient contact information to [*provide notice*] **notify**
28 **affected consumers. For the purposes of this paragraph, “substitute**
29 **notice”** [*consists of the following*] **means:**

30 (A) [*Conspicuous*] Posting [*of*] the notice or a link to the notice **con-**
31 **spicuously** on the [*Internet home page of the person*] **person's website and**

1 **social media sites** if the person maintains [*one*] **a website or a presence**
2 **on a social media site**; and

3 (B) [*Notification to*] **Notifying** major statewide television and newspaper
4 media.

5 (5) Notice under this section [*shall*] **must** include, at a minimum:

6 (a) A description of the [*incident*] **breach of security** in general terms;

7 (b) The approximate date of the breach of security;

8 (c) The type of personal information [*obtained as a result of*] **that was**
9 **subject to** the breach of security;

10 (d) Contact information [*of the person subject to this section*] **for the**
11 **person that owned, maintained, licensed or possessed the personal in-**
12 **formation that was subject to the breach of security**;

13 (e) Contact information for national consumer reporting agencies; and

14 (f) Advice to the consumer to report suspected identity theft to law
15 enforcement, including the **Attorney General and the** Federal Trade Com-
16 mission.

17 (6) If a person discovers a breach of security [*affecting*] **that affects** more
18 than 1,000 consumers [*that requires disclosure under this section*], the person
19 shall notify, without unreasonable delay, all consumer reporting agencies
20 that compile and maintain reports on consumers on a nationwide basis of the
21 timing, distribution and content of the [*notification given by*] **notice** the
22 person **gave** to [*the*] **affected consumers and shall include in the notice**
23 **any police report number assigned to the breach of security. A person**
24 **may not delay notifying affected consumers of a breach of security in**
25 **order to notify consumer reporting agencies.** [*In no case shall a person*
26 *that is required to make a notification required by this section delay any no-*
27 *tification in order to make the notification to the consumer reporting agencies.*
28 *The person shall include the police report number, if available, in its notifi-*
29 *cation to the consumer reporting agencies.*]

30 (7) Notwithstanding subsection (1) of this section, [*notification is not re-*
31 *quired*] **a person does not need to notify consumers of a breach of se-**

1 **curity** if, after an appropriate investigation or after consultation with
2 relevant federal, state or local **law enforcement** agencies [*responsible for*
3 *law enforcement*], the person **reasonably** determines that [*no reasonable*
4 *likelihood of harm to*] the consumers whose personal information [*has been*
5 *acquired has resulted or will result from the breach. Such a determination*
6 *must be documented in writing and the documentation must be maintained for*
7 *five years*] **was subject to the breach of security are unlikely to suffer**
8 **harm. The person must document the determination in writing and**
9 **maintain the documentation for at least five years.**

10 (8) This section does not apply to:

11 (a) A person that complies with [*the*] notification requirements or breach
12 of security procedures that **are specified under rules, regulations, proce-**
13 **dures, guidelines or guidance adopted, promulgated or issued by the**
14 **person's primary or functional federal regulator, if the rules, regu-**
15 **lations, procedures, guidelines or guidance provides** [*provide*] greater
16 protection to personal information and **disclosure requirements** at least as
17 thorough **as the protections and disclosure requirements provided un-**
18 **der this section** [*disclosure requirements pursuant to the rules, regulations,*
19 *procedures, guidance or guidelines established by the person's primary or*
20 *functional federal regulator*].

21 (b) A person that complies with a state or federal law that provides
22 greater protection to personal information and [*at least as thorough disclo-*
23 *sure requirements for breach of security of personal information than that*
24 *provided by*] **more stringent disclosure requirements than the pro-**
25 **tections and disclosure requirements provided under** this section.

26 (c) A person that is subject to and complies with regulations promulgated
27 pursuant to Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801
28 to 6809) as that Act existed on [*October 1, 2007.*] **the effective date of this**
29 **2015 Act.**

30 (9)(a) **A person's violation of a provision of ORS 646A.600 to 646A.628**
31 **is an unlawful practice under ORS 646.607 that is subject to enforce-**

1 **ment under ORS 646.632.**

2 **(b) The rights and remedies available under this section are cumu-**
3 **lative and are in addition to any other rights or remedies that are**
4 **available under law.**

5 **SECTION 3.** ORS 646.607 is amended to read:

6 646.607. A person engages in an unlawful practice if in the course of the
7 person's business, vocation or occupation the person:

8 (1) Employs any unconscionable tactic in connection with selling, renting
9 or disposing of real estate, goods or services, or collecting or enforcing an
10 obligation;

11 (2) Fails to deliver all or any portion of real estate, goods or services as
12 promised, and at a customer's request, fails to refund money that the cus-
13 tomer gave to the person to purchase the undelivered real estate, goods or
14 services and that the person does not retain pursuant to any right, claim or
15 defense the person may assert in good faith. This subsection does not create
16 a warranty obligation and does not apply to a dispute over the quality of real
17 estate, goods or services delivered to a customer;

18 (3) Violates ORS 401.965 (2);

19 (4) Violates a provision of ORS 646A.725 to 646A.750;

20 (5) Violates ORS 646A.530;

21 (6) Employs a collection practice that is unlawful under ORS 646.639;

22 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
23 86.732 (1) or (2); [*or*]

24 (8) Violates ORS 646A.093[.]; **or**

25 **(9) Violates a provision of ORS 646A.600 to 646A.628.**

26 **SECTION 4.** **The amendments to ORS 646.607, 646A.602 and 646A.604**
27 **by sections 1 to 3 of this 2015 Act apply to breaches of security that**
28 **occur on or after the effective date of this 2015 Act.**

29