

## SENATE AMENDMENTS TO SENATE BILL 1551

By COMMITTEE ON JUDICIARY

February 19

1 On page 1 of the printed bill, delete lines 6 through 21 and delete pages 2 through 11 and insert:

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

3 “646A.602. As used in ORS 646A.600 to 646A.628:

4 “(1)(a) ‘Breach of security’ means an unauthorized acquisition of computerized data that mate-  
5 rially compromises the security, confidentiality or integrity of personal information that a person  
6 maintains.

7 “(b) ‘Breach of security’ does not include an inadvertent acquisition of personal information by  
8 a person or the person’s employee or agent if the personal information is not used in violation of  
9 applicable law or in a manner that harms or poses an actual threat to the security, confidentiality  
10 or integrity of the personal information.

11 “(2) ‘Consumer’ means an individual resident of this state.

12 “(3) ‘Consumer report’ means a consumer report as described in section 603(d) of the federal Fair  
13 Credit Reporting Act (15 U.S.C. 1681a(d)), as that Act existed on [*January 1, 2016*] **the effective**  
14 **date of this 2018 Act**, that a consumer reporting agency compiles and maintains.

15 “(4) ‘Consumer reporting agency’ means a consumer reporting agency as described in section  
16 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as that Act existed on [*January*  
17 *1, 2016*] **the effective date of this 2018 Act**.

18 “(5) ‘Debt’ means any obligation or alleged obligation arising out of a consumer transaction.

19 “(6) ‘Encryption’ means an algorithmic process that renders data unreadable or unusable with-  
20 out the use of a confidential process or key.

21 “(7) ‘Extension of credit’ means a right to defer paying debt or a right to incur debt and defer  
22 paying the debt, that is offered or granted primarily for personal, family or household purposes.

23 “(8) ‘Identity theft’ has the meaning set forth in ORS 165.800.

24 “(9) ‘Identity theft declaration’ means a completed and signed statement that documents alleged  
25 identity theft, using [*the*] **a** form available from the Federal Trade Commission, or another substan-  
26 tially similar form.

27 “(10) ‘Person’ means an individual, private or public corporation, partnership, cooperative, as-  
28 sociation, estate, limited liability company, organization or other entity, whether or not organized  
29 to operate at a profit, or a public body as defined in ORS 174.109.

30 “(11)(a) ‘Personal information’ means:

31 “[*a*] **(A)** A consumer’s first name or first initial and last name in combination with any one or  
32 more of the following data elements, if encryption, redaction or other methods have not rendered  
33 the data elements unusable or if the data elements are encrypted and the encryption key has been  
34 acquired:

35 “[*A*] **(i)** A consumer’s Social Security number;

1 “[(B)] (ii) A consumer’s driver license number or state identification card number issued by the  
2 Department of Transportation;

3 “[(C)] (iii) A consumer’s passport number or other identification number issued by the United  
4 States;

5 “[(D)] (iv) A consumer’s financial account number, credit card number or debit card number, in  
6 combination with any required security code, access code or password that would permit access to  
7 a consumer’s financial account, **or any other information or combination of information that**  
8 **a person reasonably knows or should know would permit access to the consumer’s financial**  
9 **account;**

10 “[(E)] (v) Data from automatic measurements of a consumer’s physical characteristics, such as  
11 an image of a fingerprint, retina or iris, that are used to authenticate the consumer’s identity in the  
12 course of a financial transaction or other transaction;

13 “[(F)] (vi) A consumer’s health insurance policy number or health insurance subscriber iden-  
14 tification number in combination with any other unique identifier that a health insurer uses to  
15 identify the consumer; [or] **and**

16 “[(G)] (vii) Any information about a consumer’s medical history or mental or physical condition  
17 or about a health care professional’s medical diagnosis or treatment of the consumer.

18 “[(b)] (B) Any of the data elements or any combination of the data elements described in [*par-*  
19 *agraph (a) of this subsection*] **subparagraph (A) of this paragraph** without the consumer’s first  
20 name or first initial and last name if:

21 “[(A)] (i) Encryption, redaction or other methods have not rendered the data element or combi-  
22 nation of data elements unusable; and

23 “[(B)] (ii) The data element or combination of data elements would enable a person to commit  
24 identity theft against a consumer.

25 “[(c)] (b) ‘Personal information’ does not include information in a federal, state or local govern-  
26 ment record, other than a Social Security number, that is lawfully made available to the public.

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

30 “(a) A valid Social Security number or a copy of a valid Social Security card;

31 “(b) A certified or otherwise official copy of a birth certificate that a governmental body issued;  
32 and

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

34 “(13) ‘Protected consumer’ means an individual who is:

35 “(a) Not older than 16 years old at the time a representative requests a security freeze on the  
36 individual’s behalf; or

37 “(b) Incapacitated or for whom a court or other authority has appointed a guardian or  
38 conservator.

39 “(14) ‘Protective record’ means information that a consumer reporting agency compiles to iden-  
40 tify a protected consumer for whom the consumer reporting agency has not prepared a consumer  
41 report.

42 “(15) ‘Redacted’ means altered or truncated so that no more than the last four digits of a Social  
43 Security number, driver license number, state identification card number, passport number or other  
44 number issued by the United States, financial account number, credit card number or debit card  
45 number is visible or accessible.

1 “(16) ‘Representative’ means a consumer who provides a consumer reporting agency with suffi-  
2 cient proof of the consumer’s authority to act on a protected consumer’s behalf.

3 “(17) ‘Security freeze’ means a notice placed in a consumer report at a consumer’s request or  
4 a representative’s request or in a protective record at a representative’s request that, subject to  
5 certain exemptions, prohibits a consumer reporting agency from releasing information in the con-  
6 sumer report or the protective record for an extension of credit, unless the consumer temporarily  
7 lifts the security freeze on the consumer’s consumer report or a protected consumer or represen-  
8 tative removes the security freeze on or deletes the protective record.

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

10 “646A.604. (1) **If** a person [*that*] owns, [*or*] licenses, **has control over or has access to** personal  
11 information that the person uses in the course of the person’s business, vocation, occupation or  
12 volunteer activities and [*that*] **the person** was subject to a breach of security, **the person** shall give  
13 notice of the breach of security to:

14 “(a) The consumer to whom the personal information pertains [*after the person discovers the*  
15 *breach of security or after the person receives notice of a breach of security under subsection (2) of this*  
16 *section. The person shall notify the consumer in the most expeditious manner possible, without unrea-*  
17 *sonable delay, consistent with the legitimate needs of law enforcement described in subsection (3) of this*  
18 *section and consistent with any measures that are necessary to determine sufficient contact information*  
19 *for the affected consumer, determine the scope of the breach of security and restore the reasonable in-*  
20 *tegrity, security and confidentiality of the personal information].*

21 “(b) The Attorney General, either in writing or electronically, if the number of consumers to  
22 whom the person must send the notice described in paragraph (a) of this subsection exceeds 250.  
23 [*The person shall disclose the breach of security to the Attorney General in the manner described in*  
24 *paragraph (a) of this subsection.*]

25 “(2) A person that maintains or otherwise possesses personal information on behalf of, or under  
26 license of, another person shall notify the other person after discovering a breach of security.

27 “(3)(a) **Except as provided in paragraph (b) of this subsection, a person that must give**  
28 **notice of a breach of security under subsection (1) or (2) of this section shall give the notice**  
29 **in the most expeditious manner possible, without unreasonable delay, but not later than 45**  
30 **days after discovering or receiving notification of the breach of security. In providing the**  
31 **notice, the person shall undertake reasonable measures that are necessary to:**

32 “(A) **Determine sufficient contact information for the intended recipient of the notice;**

33 “(B) **Determine the scope of the breach of security; and**

34 “(C) **Restore the reasonable integrity, security and confidentiality of the personal infor-**  
35 **mation.**

36 “[3] (b) A person that [*owns or licenses personal information*] **must give notice of a breach**  
37 **of security under subsection (1) or (2) of this section** may delay [*notifying a consumer of a breach*  
38 *of security*] **giving the notice** only if a law enforcement agency determines that a notification will  
39 impede a criminal investigation and if the law enforcement agency requests in writing that the  
40 person delay the notification.

41 “(4) For purposes of this section, a person that owns, [*or*] licenses, **has control over or has**  
42 **access to** personal information **as a result of a transaction with a consumer**, may notify [*a*] **the**  
43 consumer of a breach of security:

44 “(a) In writing;

45 “(b) Electronically, if the person customarily communicates with the consumer electronically or

1 if the notice is consistent with the provisions regarding electronic records and signatures set forth  
2 in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001) as that Act ex-  
3 isted on [January 1, 2016] **the effective date of this 2018 Act;**

4 “(c) By telephone, if the person contacts the affected consumer directly; or

5 “(d) With substitute notice, if the person demonstrates that the cost of notification otherwise  
6 would exceed \$250,000 or that the affected class of consumers exceeds 350,000, or if the person does  
7 not have sufficient contact information to notify affected consumers. For the purposes of this para-  
8 graph, ‘substitute notice’ means:

9 “(A) Posting the notice or a link to the notice conspicuously on the person’s website if the  
10 person maintains a website; and

11 “(B) Notifying major statewide television and newspaper media.

12 “(5) Notice under this section must include, at a minimum:

13 “(a) A description of the breach of security in general terms;

14 “(b) The approximate date of the breach of security;

15 “(c) The type of personal information that was subject to the breach of security;

16 “(d) Contact information for the person that owned, [or] licensed, **had control over or had**  
17 **access to personal information as a result of a transaction with a consumer and** [*the personal*  
18 *information that*] was subject to the breach of security;

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

20 “(f) Advice to the consumer to report suspected identity theft to law enforcement, including the  
21 Attorney General and the Federal Trade Commission.

22 “(6) If a person discovers a breach of security that affects more than 1,000 consumers, the per-  
23 son shall notify, without unreasonable delay, all consumer reporting agencies that compile and  
24 maintain reports on consumers on a nationwide basis of the timing, distribution and content of the  
25 notice the person gave to affected consumers and shall include in the notice any police report  
26 number assigned to the breach of security. A person may not delay notifying affected consumers of  
27 a breach of security in order to notify consumer reporting agencies.

28 “(7)(a) **If a person must notify a consumer of a breach of security under this section, and**  
29 **in connection with the notification the person offers to provide credit monitoring services**  
30 **or identity theft prevention and mitigation services without charge to the consumer, the**  
31 **person may not condition the person’s provision of the services on the consumer’s providing**  
32 **the person with a credit or debit card number or on the consumer’s acceptance of any other**  
33 **service the person offers to provide for a fee.**

34 “(b) **If a person offers additional credit monitoring services or identity theft prevention**  
35 **and mitigation services for a fee to a consumer under the circumstances described in para-**  
36 **graph (a) of this subsection, the person must separately, distinctly, clearly and conspicuously**  
37 **disclose in the offer for the additional credit monitoring services or identity theft prevention**  
38 **and mitigation services that the person will charge the consumer a fee.**

39 “(c) **The terms and conditions of any contract under which one person offers or provides**  
40 **credit monitoring services or identity theft prevention and mitigation services on behalf of**  
41 **another person under the circumstances described in paragraph (a) of this subsection must**  
42 **require compliance with the requirements of paragraphs (a) and (b) of this subsection.**

43 “[7] (8) Notwithstanding subsection (1) of this section, a person does not need to notify con-  
44 sumers of a breach of security if, after an appropriate investigation or after consultation with rele-  
45 vant federal, state or local law enforcement agencies, the person reasonably determines that the

1 consumers whose personal information was subject to the breach of security are unlikely to suffer  
2 harm. The person must document the determination in writing and maintain the documentation for  
3 at least five years.

4 “[8] (9) This section does not apply to:

5 “(a) A person that complies with notification requirements or procedures for a breach of secu-  
6 rity that the person’s primary or functional federal regulator adopts, promulgates or issues in rules,  
7 regulations, procedures, guidelines or guidance, if the rules, regulations, procedures, guidelines or  
8 guidance provides greater protection to personal information and disclosure requirements at least  
9 as thorough as the protections and disclosure requirements provided under this section.

10 “(b) A person that complies with a state or federal law that provides greater protection to per-  
11 sonal information and disclosure requirements at least as thorough as the protections and disclosure  
12 requirements provided under this section.

13 “(c) A person that is subject to and complies with regulations promulgated pursuant to Title V  
14 of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as that Act existed on [January 1,  
15 2016] **the effective date of this 2018 Act.**

16 “(d)(A) Except as provided in subparagraph (B) of this paragraph, a covered entity, as defined  
17 in 45 C.F.R. 160.103, as in effect on [January 1, 2016] **the effective date of this 2018 Act**, that is  
18 governed under 45 C.F.R. parts 160 and 164, as in effect on [January 1, 2016] **the effective date**  
19 **of this 2018 Act**, if the covered entity sends the Attorney General a copy of the notice the covered  
20 entity sent to consumers under this section or a copy of the notice that the covered entity sent to  
21 the primary functional regulator designated for the covered entity under the Health Insurance Por-  
22 tability and Availability Act of 1996, (P.L. 104-191, 110 Stat. 1936, 42 U.S.C. 300(gg), 29 U.S.C. 118  
23 et seq., 42 U.S.C. 1320(d) et seq., 45 C.F.R. parts 160 and 164).

24 “(B) A covered entity is subject to the provisions of this section if the covered entity does not  
25 send a copy of a notice described in subparagraph (A) of this paragraph to the Attorney General  
26 within a reasonable time after the Attorney General requests the copy.

27 “(10) **Notwithstanding the exemptions set forth in subsection (9) of this section, a person**  
28 **that owns or licenses personal information shall provide to the Attorney General within a**  
29 **reasonable time at least one copy of any notice the person sends to consumers or to the**  
30 **person’s primary or functional regulator in compliance with this section or with other state**  
31 **or federal laws or regulations that apply to the person as a consequence of a breach of se-**  
32 **curity.**

33 “[9)(a)] (11)(a) A person’s violation of a provision of ORS 646A.600 to 646A.628 is an unlawful  
34 practice under ORS 646.607.

35 “(b) The rights and remedies available under this section are cumulative and are in addition to  
36 any other rights or remedies that are available under law.

37 “**SECTION 3.** ORS 646A.606 is amended to read:

38 “646A.606. (1) A consumer may elect to place a security freeze on the consumer’s consumer re-  
39 port or, if the consumer is a representative, on a protected consumer’s consumer report or protec-  
40 tive record by sending a written request to a consumer reporting agency at an address the agency  
41 designates to receive such requests, or a secure electronic request at a website the agency desig-  
42 nates to receive such requests if the consumer reporting agency, at the agency’s discretion, makes  
43 a secure electronic method available.

44 “(2) If the consumer or protected consumer is the victim of identity theft or has reported a theft  
45 of personal information to a law enforcement agency, the consumer or representative may include

1 a copy of the police report, incident report or identity theft declaration.

2 “(3)(a) The consumer or representative must provide proper identification [*and any fee author-*  
3 *ized by ORS 646A.610*].

4 “(b)(A) In addition to the information [*and fee*] described in paragraph (a) of this subsection, a  
5 representative who seeks to place a security freeze on a protected consumer’s consumer report or  
6 protective record shall provide sufficient proof of the representative’s authority to act on the pro-  
7 tected consumer’s behalf.

8 “(B) For purposes of subparagraph (A) of this paragraph, sufficient proof of authority consists  
9 of:

10 “(i) A court order that identifies or describes the relationship between the representative and  
11 the protected consumer;

12 “(ii) A valid and lawfully executed power of attorney that permits the representative to act on  
13 the protected consumer’s behalf; or

14 “(iii) A written affidavit that the representative signs and has notarized in which the represen-  
15 tative expressly describes the relationship between the representative and the protected consumer  
16 and the representative’s authority to act on the protected consumer’s behalf.

17 “(4)(a) Except as provided in ORS 646A.614, if a security freeze is in place for a consumer re-  
18 port, information from the consumer report may not be released without prior express authorization  
19 from the consumer.

20 “(b) Information from a protective record may not be released until the protected consumer for  
21 whom the consumer reporting agency created the protective record, or a representative of the pro-  
22 tected consumer, removes the security freeze.

23 “(5) This section does not prevent a consumer reporting agency from advising a third party that  
24 a security freeze is in effect with respect to the consumer report or protective record.

25 “**SECTION 4.** ORS 646A.608 is amended to read:

26 “646A.608. (1)(a) A consumer reporting agency shall place a security freeze on a consumer re-  
27 port not later than five business days after receiving from a consumer:

28 “(A) The request described in ORS 646A.606 (1); **and**

29 “(B) Proper identification. [*and*]

30 “[*(C) A fee, if applicable.*]

31 “(b) If a consumer report does not exist for a protected consumer on behalf of whom a repre-  
32 sentative seeks to place a security freeze, a consumer reporting agency shall create a protective  
33 record after receiving from the representative the request described in ORS 646A.606 (1), proper  
34 identification for both the representative and the protected consumer and sufficient proof of au-  
35 thority, as described in ORS 646A.606 (3)(b). After creating a protective record for a protected con-  
36 sumer under this paragraph, the consumer reporting agency shall place the security freeze that the  
37 representative requested on the protected consumer’s protective record.

38 “(c) The protective record that the consumer reporting agency creates under paragraph (b) of  
39 this subsection does not need to contain any information other than the protected consumer’s per-  
40 sonal information, if other information for the protected consumer is not available. Except as pro-  
41 vided in ORS 646A.614, a consumer reporting agency may not use or release to another person the  
42 information in a protective record for the purpose of assessing a protected consumer’s eligibility or  
43 capacity for an extension of credit, as a basis for evaluating a protected consumer’s character,  
44 reputation or personal characteristics or for other purposes that are not related to protecting the  
45 protected consumer from identity theft.

1           “(2)(a) [*The*] **A** consumer reporting agency shall send a written confirmation of a security freeze  
2 on a consumer’s consumer report to the consumer at the last known address for the consumer shown  
3 in the consumer report that the consumer reporting agency maintains, within 10 business days after  
4 placing the security freeze and, with the confirmation, shall provide the consumer with a unique  
5 personal identification number or password or similar device the consumer must use to authorize the  
6 consumer reporting agency to release the consumer’s consumer report for a specific period of time  
7 or to permanently remove the security freeze. The consumer reporting agency shall include with the  
8 written confirmation information that describes how to remove a security freeze and how to tem-  
9 porarily lift a security freeze on a consumer report, other than a consumer report for a protected  
10 consumer, in order to allow access to information from the consumer’s consumer report for a period  
11 of time while the security freeze is in place.

12           “(b) This subsection does not require a consumer reporting agency to provide a consumer or  
13 representative with a personal identification number or password for the consumer or representative  
14 to use to authorize the consumer reporting agency to release information from a protective record.

15           “(3)(a) If a consumer wishes to allow the consumer’s consumer report to be accessed for a spe-  
16 cific period of time while a security freeze is in effect, the consumer shall contact the consumer  
17 reporting agency using a point of contact the consumer reporting agency designates, request that  
18 the security freeze be temporarily lifted and provide the following:

19           “(A) Proper identification;

20           “(B) The unique personal identification number or password or similar device the consumer re-  
21 porting agency provided under subsection (2) of this section; **and**

22           “(C) An indication of the period of time during which the consumer report must be available to  
23 users of the consumer report[; *and*].

24           “[(*D*) *A fee, if applicable.*]

25           “(b) A protective record is not subject to a temporary lift of a security freeze.

26           “(c) Except as provided in ORS 646A.612 (2)(a), a consumer report for a protected consumer is  
27 not subject to a temporary lift of a security freeze.

28           “(4) A consumer reporting agency that receives a request from [*the*] **a** consumer to temporarily  
29 lift a security freeze on a consumer report, other than a consumer report for a protected consumer,  
30 under subsection (3) of this section shall comply with the request not later than three business days  
31 after receiving from the consumer:

32           “(a) Proper identification;

33           “(b) The unique personal identification number or password or similar device the consumer re-  
34 porting agency provided under subsection (2) of this section; **and**

35           “(c) An indication of the period of time during which the consumer report must be available to  
36 users of the consumer report[; *and*].

37           “[(*d*) *A fee, if applicable.*]

38           “(5)(a) A security freeze for a consumer report must remain in place until the consumer re-  
39 quests, using a point of contact the consumer reporting agency designates, that the security freeze  
40 be removed. A consumer reporting agency shall remove a security freeze within three business days  
41 after receiving a request for removal from the consumer, who provides:

42           “(A) Proper identification; **and**

43           “(B) The unique personal identification number or password or similar device the consumer re-  
44 porting agency provided under subsection (2) of this section.[; *and*]

45           “[(*C*) *A fee, if applicable.*]

1 “(b) A security freeze for a protective record must remain in place until the protected consumer  
2 or a representative requests, using a point of contact the consumer reporting agency designates,  
3 that the security freeze be removed or that the protective record be deleted. The consumer reporting  
4 agency does not have an affirmative duty to notify the protected consumer or the representative  
5 that a security freeze is in place or to remove the security freeze or delete the protective record  
6 once the protected consumer is no longer a protected consumer. A protected consumer or a repre-  
7 sentative has the affirmative duty to request that the consumer reporting agency remove the secu-  
8 rity freeze or delete the protective record. A consumer reporting agency shall remove a security  
9 freeze or delete a protective record within 30 business days after receiving a request for removal  
10 or deletion from the protected consumer or a representative, who provides:

11 “(A) Proper identification;

12 “(B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if the representative seeks  
13 to remove the security freeze or delete the protective record; **and**

14 “(C) Proof that the representative’s authority to act on the protected consumer’s behalf is no  
15 longer valid or applicable, if the protected consumer seeks to remove the security freeze or delete  
16 the protective record.]; *and*]

17 “[*(D) A fee, if applicable.*]

18 “**SECTION 5.** ORS 646A.610 is amended to read:

19 “646A.610. [*(1) A consumer reporting agency may not charge a fee to a consumer or a protected*  
20 *consumer who is the victim of identity theft or to a consumer who has reported or a protected consumer*  
21 *for whom a representative has reported to a law enforcement agency the theft of personal information,*  
22 *provided the consumer or the representative has submitted to the consumer reporting agency a copy of*  
23 *a valid police report, incident report or identity theft declaration.*]

24 “[*(2)(a) A consumer reporting agency may charge a reasonable fee of not more than \$10 to a con-*  
25 *sumer, other than a consumer described in subsection (1) of this section, for each placement of a secu-*  
26 *rity freeze, temporary lift of the security freeze, removal of the security freeze or replacing a lost*  
27 *personal identification number or password previously provided to the consumer.*]

28 “[*(b)(A) Except as provided in subsection (1) of this section and in subparagraph (B) of this para-*  
29 *graph, a consumer reporting agency may charge a reasonable fee of not more than \$10 to place or re-*  
30 *move a security freeze for a protected consumer’s consumer report or protective record or to create or*  
31 *delete a protective record for a protected consumer.*]

32 “[*(B) A consumer reporting agency may not charge a fee to place or remove a security freeze on*  
33 *an existing consumer report or protective record for a protected consumer who is under 16 years of age*  
34 *at the time a representative requests the consumer reporting agency to place or remove the security*  
35 *freeze.*]

36 “**A consumer reporting agency may not charge a consumer a fee or collect from a con-**  
37 **sumer any money or item of value for:**

38 “**(1) Placing, temporarily lifting or removing a security freeze on the consumer’s con-**  
39 **sumer report.**

40 “**(2) Creating or deleting a protective record.**

41 “**(3) Placing or removing a security freeze on a protective record for a protected con-**  
42 **sumer.**

43 “**(4) Replacing a lost personal identification number, password or similar device the con-**  
44 **sumer reporting agency previously provided to the consumer.**

45 “**SECTION 6.** ORS 646A.622 is amended to read:



1 “646A.622. (1) A person that owns, maintains or otherwise possesses, **or has control over or**  
2 **access to**, data that includes [*a consumer’s*] personal information that the person uses in the course  
3 of the person’s business, vocation, occupation or volunteer activities shall develop, implement and  
4 maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal  
5 information, including safeguards that protect the personal information when the person disposes  
6 of the personal information.

7 “(2) A person complies with subsection (1) of this section if the person:

8 “(a) Complies with a state or federal law that provides greater protection to personal informa-  
9 tion than the protections that this section provides.

10 “(b) Complies with regulations promulgated under Title V of the Gramm-Leach-Bliley Act of 1999  
11 (15 U.S.C. 6801 to 6809) as in effect on [*January 1, 2016*] **the effective date of this 2018 Act**, if the  
12 person is subject to the Act.

13 “(c) Complies with regulations that implement the Health Insurance Portability and Account-  
14 ability Act of 1996 (45 C.F.R. parts 160 and 164) as in effect on [*January 1, 2016*] **the effective date**  
15 **of this 2018 Act**, if the person is subject to the Act.

16 “(d) Implements an information security program that includes:

17 “(A) Administrative safeguards such as:

18 “(i) Designating one or more employees to coordinate the security program;

19 “(ii) Identifying reasonably foreseeable internal and external risks **with reasonable**  
20 **regularity**;

21 “(iii) Assessing whether existing safeguards adequately control the identified risks;

22 “(iv) Training and managing employees in security program practices and procedures **with**  
23 **reasonable regularity**;

24 “(v) Selecting service providers that are capable of maintaining appropriate safeguards, and re-  
25 quiring the service providers by contract to maintain the safeguards; [*and*]

26 “(vi) Adjusting the security program in light of business changes, **potential threats** or new  
27 circumstances; **and**

28 “(vii) **Reviewing user access privileges with reasonable regularity**;

29 “(B) Technical safeguards such as:

30 “(i) Assessing risks in network and software design;

31 “[*ii*] *Assessing risks in information processing, transmission and storage*;

32 “(ii) **Applying security updates and a reasonable security patch management program to**  
33 **software that might reasonably be at risk of or vulnerable to a breach of security**;

34 “(iii) **Monitoring**, detecting, preventing and responding to attacks or system failures; and

35 “(iv) Testing and monitoring regularly the effectiveness of key controls, systems and procedures;  
36 and

37 “(C) Physical safeguards such as:

38 “(i) Assessing, **in light of current technology**, risks of information **collection**, storage, **usage**,  
39 **retention**, **access** and disposal **and implementing reasonable methods to remedy or mitigate**  
40 **identified risks**;

41 “(ii) **Monitoring**, detecting, preventing, **isolating** and responding to intrusions **timely and with**  
42 **reasonable regularity**;

43 “(iii) Protecting against unauthorized access to or use of personal information during or after  
44 collecting, **using**, **storing**, transporting, **retaining**, destroying or disposing of the personal infor-  
45 mation; and

1           “(iv) Disposing of personal information, **whether on or off the person’s premises or property,**  
2 after the person no longer needs the personal information for business purposes or as required by  
3 local, state or federal law by burning, pulverizing, shredding or modifying a physical record and by  
4 destroying or erasing electronic media so that the information cannot be read or reconstructed.

5           “(3) A person complies with subsection (2)(d)(C)(iv) of this section if the person contracts with  
6 another person engaged in the business of record destruction to dispose of personal information in  
7 a manner that is consistent with subsection (2)(d)(C)(iv) of this section.

8           “(4) Notwithstanding subsection (2) of this section, a person that is an owner of a small business  
9 as defined in ORS 285B.123 (2) complies with subsection (1) of this section if the person’s information  
10 security and disposal program contains administrative, technical and physical safeguards and dis-  
11 posal measures that are appropriate for the size and complexity of the small business, the nature  
12 and scope of the small business’s activities, and the sensitivity of the personal information the small  
13 business collects from or about consumers.

14           “**SECTION 7. The amendments to ORS 646A.602, 646A.604, 646A.606, 646A.608, 646A.610**  
15 **and 646A.622 by sections 1 to 6 of this 2018 Act apply to contracts into which a person enters**  
16 **with another person on or after the effective date of this 2018 Act.**

17           “**SECTION 8. This 2018 Act takes effect on the 91st day after the date on which the 2018**  
18 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.”.**

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