

# D R A F T

## SUMMARY

Permits consumers to obtain from a controller that processes consumer personal data confirmation as to whether controller is processing consumer's personal data and categories of personal data controller is processing, list of specific third parties to which controller has disclosed consumer's personal data and copy of all of consumer's personal data that controller has processed or is processing. Permits consumer to require controller to correct inaccuracies in personal data about consumer, require controller to delete personal data about consumer or opt out from controller's processing of consumer's personal data under certain circumstances.

Requires controller to provide to consumers reasonably accessible, clear and meaningful privacy notice that lists categories of personal data controller processes, describes controller's purpose for processing personal data, describes how consumer may exercise consumer's rights with respect to personal data, lists categories of personal data that controller shares with third parties, list all categories of third parties with which the controller shares personal data and provides other information.

Specifies duties of, and prohibits specified actions of, controller and of processor that acts at controller's direction.

Permits Attorney General to investigate violations of Act and to bring action to seek civil penalty of not more than \$7,500 for each violation.

Permits consumer or class of consumers to bring action after specified date for ascertainable loss of money or property resulting from violation of Act.

## A BILL FOR AN ACT

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Relating to protections for the personal data of consumers; creating new provisions; and amending ORS 180.095.

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

**SECTION 1. As used in sections 1 to 10 of this 2023 Act:**

1 (1) “Affiliate” means a person that, directly or indirectly through  
2 one or more intermediaries, controls, is controlled by or is under  
3 common control with another person such that:

4 (a) The person owns or has the power to vote more than 50 percent  
5 of the outstanding shares of any voting class of the other person’s  
6 securities;

7 (b) The person has the power to elect or influence the election of  
8 a majority of the directors, members or managers of the other person;

9 (c) The person has the power to direct the management of another  
10 person; or

11 (d) The person is subject to another person’s exercise of the powers  
12 described in paragraph (a), (b) or (c) of this subsection.

13 (2) “Authenticate” means to determine, using a commercially rea-  
14 sonable method, whether a consumer with the rights described in  
15 section 3 of this 2023 Act, or a person acting on behalf of the con-  
16 sumer, has asked to exercise any of the consumer’s rights.

17 (3)(a) “Biometric data” means data generated by automatic meas-  
18 urements of a consumer’s biological characteristics, such as the  
19 consumer’s fingerprint, voiceprint, retinal pattern, iris pattern or  
20 other unique biological characteristics.

21 (b) “Biometric data” does not include:

22 (A) A photograph recorded digitally or otherwise;

23 (B) An audio or video recording; or

24 (C) Data from a photograph or from an audio or video recording,  
25 unless the data were generated for the purpose of identifying a specific  
26 consumer.

27 (4) “Business associate” has the meaning given that term in 45  
28 C.F.R. 160.103, as in effect on the effective date of this 2023 Act.

29 (5) “Child” means an individual under the age of 13.

30 (6) “Consent” means an affirmative act by means of which a con-  
31 sumer clearly and conspicuously communicates the consumer’s assent

1 to another person's act or practice under the following conditions:

2 (a) The user interface by means of which the consumer performs  
3 the act does not have any mechanism that has the purpose or sub-  
4 stantial effect of obtaining consent by obscuring, subverting or im-  
5 pairing the consumer's autonomy, decision making or choice; and

6 (b) The consumer's inaction does not constitute consent.

7 (7) "Consumer" means a natural person who resides in this state  
8 and acts in any capacity other than engaging in commercial activity  
9 or performing duties as an employer or employee.

10 (8) "Controller" means a person that acts alone or in concert with  
11 another person to determine purposes and means for processing per-  
12 sonal data.

13 (9) "Covered entity" has the meaning given that term in 45 C.F.R.  
14 160.103, as in effect on the effective date of this 2023 Act.

15 (10) "Deidentified data" means data that:

16 (a) Cannot reasonably be used to infer information about, or oth-  
17 erwise be linked to, an identified or identifiable consumer, or to a de-  
18 vice that identifies, is linked to or is reasonably linkable to a  
19 consumer; or

20 (b) Is:

21 (A) Derived from patient information that was originally created,  
22 collected, transmitted or maintained by an entity subject to regulation  
23 under the Health Insurance Portability and Accountability Act of 1996,  
24 P.L. 104-191, as in effect on the effective date of this 2023 Act, or the  
25 Federal Policy for the Protection of Human Subjects, codified as 45  
26 C.F.R. part 46 and in various other deferral regulations, as codified in  
27 various sections of the Code of Federal Regulations and as in effect  
28 on the effective date of this 2023 Act; and

29 (B) Deidentified as provided in 45 C.F.R. 164.514, as in effect on the  
30 effective date of this 2023 Act.

31 (11) "Device" means electronic equipment designed for a consumer's

1 use that can transmit or receive personal data.

2 (12)(a) “Personal data” means data, derived data or a unique identifier that is linked to or is reasonably linkable to a consumer or to a  
3 device that identifies, is linked to or is reasonably linkable to one or  
4 more consumers.  
5

6 (b) “Personal data” does not include deidentified data or data that:

7 (A) Is lawfully available through federal, state or local government  
8 records or through widely distributed media; or

9 (B) A controller reasonably has understood to have been lawfully  
10 made available to the public by a consumer.

11 (13) “Process” or “processing” means an action, operation or set of  
12 actions or operations that is performed, automatically or otherwise,  
13 on personal data or on sets of personal data, such as collecting, using,  
14 storing, disclosing, analyzing, deleting or modifying the personal data.

15 (14) “Processor” means a person that processes personal data on  
16 behalf of a controller.

17 (15) “Profiling” means an automated processing of personal data for  
18 the purpose of evaluating, analyzing or predicting an identified or  
19 identifiable consumer’s economic circumstances, health, personal  
20 preferences, interests, reliability, behavior, location or movements.

21 (16)(a) “Sale” or “sell” means a controller’s act of exchanging personal  
22 data with a third party for money or other valuable consideration or,  
23 as appropriate, the completion of such an exchange.

24 (b) “Sale” or “sell” does not include:

25 (A) A disclosure of personal data to a processor;

26 (B) A disclosure of personal data to an affiliate of a controller or  
27 to a third party for the purpose of enabling the controller to provide  
28 a product or service to a consumer that requested the product or service;  
29

30 (C) A disclosure or transfer of personal data from a controller to a  
31 third party as part of a proposed or completed merger, acquisition,

1 **bankruptcy or other transaction in which the third party assumes**  
2 **control of all or part of the controller’s assets, including the personal**  
3 **data; or**

4 **(D) A disclosure of personal data that occurs because a consumer:**

5 **(i) Directs a controller to disclose the personal data;**

6 **(ii) Intentionally discloses the personal data in the course of di-**  
7 **recting a controller to interact with a third party; or**

8 **(iii) Intentionally discloses the personal data to the public by means**  
9 **of mass media.**

10 **(17) “Sensitive data” means personal data that:**

11 **(a) Reveals a consumer’s racial or ethnic background, national or-**  
12 **igin, religious beliefs, mental or physical condition or diagnosis, sexual**  
13 **orientation, gender identity, status as a victim of crime or citizenship**  
14 **or immigration status;**

15 **(b) Is a child’s personal data;**

16 **(c) Accurately identifies within a radius of 1,750 feet a consumer’s**  
17 **present or past location, or the present or past location of a device**  
18 **that links or is linkable to a consumer by means of technology that**  
19 **includes, but is not limited to, a global positioning system that pro-**  
20 **vides latitude and longitude coordinates; or**

21 **(d) Is genetic or biometric data.**

22 **(18)(a) “Targeted advertising” means advertising that is selected for**  
23 **display to a consumer on the basis of personal data obtained from the**  
24 **consumer’s activities over time and across one or more unaffiliated**  
25 **websites or online applications and is used to predict the consumer’s**  
26 **preferences or interests.**

27 **(b) “Targeted advertising” does not include:**

28 **(A) Advertisements that are based on activities within a controller’s**  
29 **own websites or online applications;**

30 **(B) Advertisements based on the context of a consumer’s current**  
31 **search query, visit to a specific website or use of an online application;**

1 (C) Advertisements that are directed to a consumer in response to  
2 the consumer's request for information or feedback; or

3 (D) A processing of personal data solely for the purpose of meas-  
4 uring or reporting an advertisement's frequency, performance or  
5 reach.

6 (19) "Third party" means a person or a public body, as defined in  
7 ORS 174.109, other than a consumer, a controller, a processor or an  
8 affiliate of a controller or processor.

9 **SECTION 2. (1) Sections 1 to 10 of this 2023 Act apply to any person**  
10 **that conducts business in this state, or that provides products or ser-**  
11 **vices to residents of this state, and that during a calendar year, con-**  
12 **trols or processes:**

13 (a) The personal data of 100,000 or more consumers, personal data  
14 from 100,000 or more devices that identify or that link to or are rea-  
15 sonably linkable to one or more consumers, or personal data from a  
16 combination of 100,000 or more consumers and devices; or

17 (b) The personal data of 25,000 or more consumers, while deriving  
18 25 percent or more of the person's annual gross revenue from selling  
19 personal data.

20 (2) Sections 1 to 10 of this 2023 Act do not apply to:

21 (a) A public body, as defined in ORS 174.109;

22 (b) Protected health information that a covered entity or business  
23 associate processes in accordance with the Health Insurance Portabil-  
24 ity and Accountability Act of 1996, P.L. 104-191, and regulations  
25 promulgated under the Act, as in effect on the effective date of this  
26 2023 Act;

27 (c) Information used only for public health activities and purposes  
28 described in 45 C.F.R. 164.512, as in effect on the effective date of this  
29 2023 Act;

30 (d) Information that identifies a consumer in connection with:

31 (A) Activities that are subject to the Federal Policy for the Pro-

1 **tection of Human Subjects, codified as 45 C.F.R. part 46 and in various**  
2 **other federal regulations, as in effect on the effective date of this 2023**  
3 **Act;**

4 **(B) Research on human subjects undertaken in accordance with**  
5 **good clinical practice guidelines issued by the International Council**  
6 **for Harmonisation of Technical Requirements for Pharmaceuticals for**  
7 **Human Use;**

8 **(C) Activities that are subject to the protections provided in 21**  
9 **C.F.R. parts 50 and 56, as in effect on the effective date of this 2023**  
10 **Act; or**

11 **(D) Research conducted in accordance with the requirements set**  
12 **forth in subparagraphs (A) to (C) of this paragraph or otherwise in**  
13 **accordance with applicable law;**

14 **(e) Information collected or maintained solely in connection with,**  
15 **and for the purpose of, enabling:**

16 **(A) An individual's employment or application for employment;**

17 **(B) An individual's ownership of, or function as a director or officer**  
18 **of, a business entity;**

19 **(C) An individual's contractual relationship with a business entity;**

20 **(D) An individual's receipt of benefits from an employer, including**  
21 **benefits for the individual's dependents or beneficiaries; or**

22 **(E) Notice of an emergency to persons that an individual specifies;**

23 **(f) Any activity that involves collecting, maintaining, disclosing,**  
24 **selling, communicating or using information for the purpose of eval-**  
25 **uating a consumer's creditworthiness, credit standing, credit capacity,**  
26 **character, general reputation, personal characteristics or mode of liv-**  
27 **ing if done strictly in accordance with the provisions of the Fair Credit**  
28 **Reporting Act, 15 U.S.C. 1681 et seq., as in effect on the effective date**  
29 **of this 2023 Act, by:**

30 **(A) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f),**  
31 **as in effect on the effective date of this 2023 Act;**

1 (B) A person who furnishes information to a consumer reporting  
2 agency under 15 U.S.C. 1681s-2, as in effect on the effective date of this  
3 2023 Act; or

4 (C) A person who uses a consumer report as provided in 15 U.S.C.  
5 1681b(a)(3);

6 (g) Information collected, processed, sold or disclosed under and in  
7 accordance with the following federal laws, all as in effect on the ef-  
8 fective date of this 2023 Act:

9 (A) The Gramm-Leach-Bliley Act, P.L. 106-102, and regulations  
10 adopted to implement that Act;

11 (B) The Driver's Privacy Protection Act of 1994, 18 U.S.C. 2721 et  
12 seq.;

13 (C) The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g  
14 and regulations adopted to implement that Act; and

15 (D) The Airline Deregulation Act, P.L. 95-504, only to the extent  
16 that an air carrier collects information related to prices, routes or  
17 services and only to the extent that the provisions of the Airline De-  
18 regulation Act preempt sections 1 to 10 of this 2023 Act; or

19 (h) A financial institution or an affiliate of a financial institution,  
20 as defined in the Gramm-Leach-Bliley Act, P.L. 106-102, and in regu-  
21 lations adopted to implement that Act, as in effect on the effective  
22 date of this 2023 Act.

23 (3) Sections 1 to 10 of this 2023 Act do not prohibit a controller or  
24 processor from:

25 (a) Complying with federal, state or local statutes, ordinances, rules  
26 or regulations;

27 (b) Complying with a federal, state or local governmental inquiry,  
28 investigation, subpoena or summons related to a civil, criminal or  
29 administrative proceeding;

30 (c) Cooperating with a law enforcement agency concerning conduct  
31 or activity that the controller or processor reasonably and in good



1 **faith believes may violate federal, state or local statutes, ordinances,**  
2 **rules or regulations;**

3 **(d) Investigating, initiating or defending legal claims;**

4 **(e) Preventing, detecting, protecting against or responding to, and**  
5 **investigating, reporting or prosecuting persons responsible for, secu-**  
6 **rity incidents, identity theft, fraud, harassment or malicious, decep-**  
7 **tive or illegal activity;**

8 **(f) Identifying and repairing technical errors in a controller's or**  
9 **processor's information systems that impair existing or intended**  
10 **functionality;**

11 **(g) Providing a product or service that a consumer specifically re-**  
12 **quests from the controller or processor or requests as the parent or**  
13 **guardian of a child on the child's behalf or as the guardian or**  
14 **conservator of a person subject to a guardianship, conservatorship or**  
15 **other protective arrangement on the person's behalf;**

16 **(h) Negotiating, entering into or performing a contract with a**  
17 **consumer; or**

18 **(i) Protecting any person's health and safety.**

19 **(4) Sections 1 to 10 of this 2023 Act do not apply to the extent that**  
20 **a controller's or processor's compliance with sections 1 to 10 of this**  
21 **2023 Act would violate an evidentiary privilege under the laws of this**  
22 **state. Notwithstanding the provisions of sections 1 to 10 of this 2023**  
23 **Act, a controller or processor may provide personal data about a con-**  
24 **sumer in a privileged communication to a person that is covered by**  
25 **an evidentiary privilege under the laws of this state.**

26 **SECTION 3. (1) Subject to section 4 of this 2023 Act, a consumer**  
27 **or an authorized agent of the consumer may:**

28 **(a) Obtain from a controller:**

29 **(A) Confirmation as to whether the controller is processing or has**  
30 **processed the consumer's personal data and the categories of personal**  
31 **data the controller is processing or has processed;**

1 (B) A list of specific third parties to which the controller has dis-  
2 closed the consumer's personal data; and

3 (C) A copy of all of the consumer's personal data that the controller  
4 has processed or is processing;

5 (b) Require a controller to correct inaccuracies in personal data  
6 about the consumer, taking into account the nature of the personal  
7 data and the controller's purpose for processing the personal data;

8 (c) Require a controller to delete personal data about the consumer  
9 whether the consumer provided the personal data or the controller  
10 obtained the personal data from another source; or

11 (d) Opt out from a controller's processing of personal data of the  
12 consumer that the controller processes for any of the following pur-  
13 poses:

14 (A) Targeted advertising;

15 (B) Selling the personal data; or

16 (C) Profiling the consumer to support decisions that produce legal  
17 effects or effects of similar significance.

18 (2) A controller that provides a copy of personal data to a consumer  
19 under subsection (1)(a)(C) of this section shall provide the personal  
20 data in a portable and, to the extent technically feasible, readily usable  
21 format that allows the consumer to transmit the personal data to an-  
22 other person without hindrance.

23 (3) This section does not require a controller to provide personal  
24 data to a consumer in a manner that would disclose the controller's  
25 trade secrets, as defined in ORS 646.461.

26 SECTION 4. (1) A consumer may exercise the rights described in  
27 section 3 of this 2023 Act by submitting a request to a controller using  
28 the method that the controller specifies in the privacy notice described  
29 in section 5 of this 2023 Act.

30 (2) A controller may not require a consumer to create an account  
31 for the purpose described in subsection (1) of this section, but the

1 controller may require the consumer to use an account the consumer  
2 created previously.

3 (3) A parent or legal guardian may exercise the rights described in  
4 section 3 of this 2023 Act on behalf of the parent's child or on behalf  
5 of a child for whom the guardian has legal responsibility. A guardian  
6 or conservator may exercise the rights described in subsection (1) of  
7 this section on behalf of a consumer that is subject to a guardianship,  
8 conservatorship or other protective arrangement.

9 (4) A consumer may designate another person to act on the  
10 consumer's behalf as the consumer's authorized agent for the purpose  
11 of opting out of a controller's processing of the consumer's personal  
12 data, as provided in section 3 (1)(d) of this 2023 Act. The consumer  
13 may designate an authorized agent by means of an internet link,  
14 browser setting, browser extension, global device setting or other  
15 technology that enables the consumer to opt out of the controller's  
16 processing of the consumer's personal data. A controller shall comply  
17 with a request to opt out that the controller receives from a  
18 consumer's authorized agent.

19 (5) Except as otherwise provided in sections 1 to 10 of this 2023 Act,  
20 in responding to a request under subsection (1) of this section, a con-  
21 troller shall:

22 (a) Respond to a request from a consumer or an authorized agent  
23 without undue delay and not later than 45 days after receiving the  
24 request. The controller may extend the period within which the con-  
25 troller responds by an additional 45 days if the extension is reasonably  
26 necessary to comply with the consumer's or authorized agent's re-  
27 quest, taking into consideration the complexity of the request and the  
28 number of requests the consumer makes. A controller that intends to  
29 extend the period for responding shall notify the consumer or author-  
30 ized agent within the initial 45-day response period and explain the  
31 reason for the extension.

1       **(b) Notify the consumer or authorized agent without undue delay**  
2 **and not later than 45 days after receiving the consumer’s or authorized**  
3 **agent’s request if the controller declines to take action on the request.**  
4 **The controller in the notice shall explain the justification for not**  
5 **taking action and include instructions for appealing the controller’s**  
6 **decision.**

7       **(c) Provide information the consumer or authorized agent requests**  
8 **once during any 12-month period without charge to the consumer or**  
9 **authorized agent. A controller may charge a reasonable fee to cover**  
10 **the administrative costs of complying with a second or subsequent**  
11 **request within the 12-month period.**

12       **(d) Notify the consumer or authorized agent if the controller can-**  
13 **not, using commercially reasonable methods, authenticate the**  
14 **consumer’s or authorized agent’s request without additional informa-**  
15 **tion from the consumer or authorized agent. A controller that sends**  
16 **a notification under this paragraph does not have to comply with the**  
17 **request until the consumer or authorized agent provides the informa-**  
18 **tion necessary to authenticate the request.**

19       **(e) Comply with a request under section 3 (1)(d) of this 2023 Act to**  
20 **opt out of the controller’s processing of the consumer’s personal data**  
21 **without requiring authentication, except that:**

22       **(A) A controller may ask for additional information necessary to**  
23 **comply with the request, such as information that is necessary to**  
24 **identify the consumer that requested to opt out, but shall, if possible,**  
25 **comply with request without asking for additional information.**

26       **(B) A controller may deny a request to opt out if the controller has**  
27 **a good-faith, reasonable and documented belief that the request is**  
28 **fraudulent. If the controller denies a request under this subparagraph,**  
29 **the controller shall notify the consumer or the authorized agent that**  
30 **the controller believes the request is fraudulent, stating in the notice**  
31 **the reasons for the controller’s belief and that the controller will not**

1 **comply with the request.**

2 **(6) A controller shall establish a process by means of which a con-**  
3 **sumer or an authorized agent may appeal the controller's refusal to**  
4 **take action on a request under subsection (1) of this section. The**  
5 **controller's process must:**

6 **(a) Allow a reasonable period of time after the consumer or the**  
7 **authorized agent receives the controller's refusal within which to ap-**  
8 **peal;**

9 **(b) Be conspicuously available to the consumer or the authorized**  
10 **agent;**

11 **(c) Be similar to the manner in which a consumer or authorized**  
12 **agent must submit a request under subsection (1) of this section; and**

13 **(d) Require the controller to approve or deny the appeal within 45**  
14 **days after the date on which the controller received the appeal and to**  
15 **notify the consumer or authorized agent in writing of the controller's**  
16 **decision and the reasons for the decision. If the controller denies the**  
17 **appeal, the notice must provide or specify information that enables the**  
18 **consumer to contact the Attorney General to submit a complaint.**

19 **(7) A controller that obtains personal data about a consumer from**  
20 **a source other than the consumer complies with the consumer's or**  
21 **an authorized agent's request to delete the personal data if the con-**  
22 **troller:**

23 **(a) Deletes the data but retains a record of the deletion request and**  
24 **a minimal amount of data necessary to ensure that the personal data**  
25 **remains deleted and does not use the minimal data for any other**  
26 **purpose; or**

27 **(b) Allows the consumer or the authorized agent to opt out of the**  
28 **controller's processing of the consumer's personal data except to the**  
29 **extent that the processing is exempt from regulation under sections 1**  
30 **to 10 of this 2023 Act.**

31 **SECTION 5. (1) A controller shall:**

1 (a) Specify in the privacy notice described in subsection (4) of this  
2 section the express purposes for which the controller is collecting and  
3 processing personal data;

4 (b) Limit the controller's collection of personal data to only the  
5 personal data that is adequate, relevant and reasonably necessary to  
6 serve the purposes the controller specified in paragraph (a) of this  
7 subsection;

8 (c) Establish, implement and maintain for personal data the same  
9 safeguards described in ORS 646A.622 that are required for protecting  
10 personal information, as defined in ORS 646A.602, such that the  
11 controller's safeguards protect the confidentiality, integrity and ac-  
12 cessibility of the personal data to the extent appropriate for the vol-  
13 ume and nature of the personal data; and

14 (d) Provide an effective means by which a consumer or an author-  
15 ized agent may revoke the consumer's consent to the controller's  
16 processing of the consumer's personal data. The means must be at  
17 least as easy as the means by which the consumer or authorized agent  
18 provided consent. Once the consumer or authorized agent revokes  
19 consent, the controller shall cease processing the personal data as  
20 soon as is practicable, but not later than 15 days after receiving the  
21 revocation.

22 (2) A controller may not:

23 (a) Process personal data for purposes that are not reasonably  
24 necessary for or compatible with the purposes the controller specified  
25 in subsection (1)(a) of this section, unless the processing is otherwise  
26 permitted under sections 1 to 10 of this 2023 Act or unless the con-  
27 troller obtains the consumer's or an authorized agent's consent;

28 (b) Process sensitive data about a consumer without first obtaining  
29 the consumer's, or an authorized agent's, consent or, if the sensitive  
30 data concerns a consumer that the controller knows or constructively  
31 knows is a child, without processing the sensitive data in accordance

1 with the Children’s Online Privacy Protection Act of 1998, 15 U.S.C.  
2 6501 et seq. and the regulations, rules and guidance adopted under the  
3 Act, all as in effect on the effective date of this 2023 Act;

4 (c) Process a consumer’s personal data for the purposes of targeted  
5 advertising or sell the consumer’s personal data without the  
6 consumer’s consent if the controller has actual or constructive  
7 knowledge that the consumer is at least 13 years of age and not older  
8 than 15 years of age; or

9 (d) Discriminate against a consumer that exercises a right provided  
10 to the consumer under sections 1 to 10 of this 2023 Act by means such  
11 as denying goods or services, charging different prices or rates for  
12 goods or services or providing a different level of quality or selection  
13 of goods or services to the consumer.

14 (3) Subsections (1) and (2) of this section do not:

15 (a) Require a controller to provide a good or service that requires  
16 personal data from a consumer that the controller does not collect or  
17 maintain; or

18 (b) Prohibit a controller from offering a different price, rate, level  
19 of quality or selection of goods or services to a consumer, including  
20 an offer for no fee or charge, in return for a consumer’s voluntary  
21 participation in a bona fide reward, club card or loyalty program or  
22 for premium features or discounts.

23 (4) A controller shall provide to consumers a reasonably accessible,  
24 clear and meaningful privacy notice that:

25 (a) Lists the categories of personal data, including the categories  
26 of sensitive data, that the controller processes;

27 (b) Describes the controller’s purposes for processing the personal  
28 data;

29 (c) Describes how a consumer may exercise the consumer’s rights  
30 under sections 1 to 10 of this 2023 Act, including how a consumer may  
31 appeal a controller’s denial of a consumer’s request under section 4

1 of this 2023 Act;

2 (d) Lists all categories of personal data, including the categories of  
3 sensitive data, that the controller shares with third parties;

4 (e) List all categories of third parties with which the controller  
5 shares personal data;

6 (f) Specifies an electronic mail address or other online method by  
7 which a consumer can contact the controller that the controller ac-  
8 tively monitors;

9 (g) Identifies the controller, including any business name under  
10 which the controller registered with the Secretary of State and any  
11 assumed business name that the controller uses in this state;

12 (h) Provides a clear and conspicuous description of any processing  
13 of personal data in which the controller engages for the purpose of  
14 targeted advertising or for the purpose of profiling the consumer in  
15 furtherance of decisions with legal effects or with similarly serious  
16 effects, and a procedure by which the consumer may opt out of this  
17 type of processing; and

18 (i) Describes the method the controller has established for a con-  
19 sumer to submit a request under section 4 (1) of this 2023 Act.

20 (5) The method described in subsection (4)(i) of this section for  
21 submitting a consumer's request to a controller must:

22 (a) Take into account the ways in which consumers normally  
23 interact with the controller;

24 (b) Be secure and reliable;

25 (c) Permit the controller to authenticate the request;

26 (d) Provide a clear and conspicuous link to a webpage where the  
27 consumer or an authorized agent may opt out from a controller's  
28 processing of the consumer's personal data as described in section 3  
29 (1)(d) of this 2023 Act or, solely if the consumer does not have a ca-  
30 pacity needed for linking to a webpage, provide another method the  
31 consumer can use to opt out; and



1 (e) Allow a consumer or authorized agent to send a signal to the  
2 controller that indicates the consumer's preference to opt out under  
3 section 3 (1)(d) of this 2023 Act by means of a platform, technology or  
4 mechanism that:

5 (A) Does not unfairly disadvantage another controller;

6 (B) Does not use a default setting but instead requires the con-  
7 sumer or authorized agent to make an affirmative, voluntary and un-  
8 ambiguous choice to opt out;

9 (C) Is consumer friendly and easy for an average consumer to use;

10 (D) Is as consistent as possible with similar platforms, technologies  
11 or mechanisms required under federal or state laws or regulations; and

12 (E) Enables the controller to accurately determine whether the  
13 consumer is a resident of this state and has made a legitimate request  
14 under section 4 of this 2023 Act to opt out as described in section 3  
15 (1)(d) of this 2023 Act.

16 (6) If a consumer or authorized agent uses a method described in  
17 subsection (5) of this section to opt out of a controller's processing of  
18 the consumer's personal data under section 3 (1)(d) of this 2023 Act and  
19 the decision conflicts with a consumer's voluntary participation a  
20 bona fide reward, club card or loyalty program or a program that  
21 provides premium features or discounts in return for the consumer's  
22 consent to the controller's processing of the consumer's personal data,  
23 the controller shall notify the consumer of the conflict and ask the  
24 consumer to affirm that the consumer intends to withdraw from the  
25 bona fide reward, club card or loyalty program or the program that  
26 provides premium features or discounts. If the consumer affirms that  
27 the consumer intends to withdraw, the controller shall comply with  
28 the request to opt out.

29 SECTION 6. (1) A processor shall adhere to a controller's in-  
30 structions and shall assist the controller in meeting the controller's  
31 obligations under sections 1 to 10 of this 2023 Act. In assisting the

1 **controller, the processor must:**

2 **(a) Enable the controller to respond to requests from consumers**  
3 **under section 4 of this 2023 Act by means that take into account how**  
4 **the processor processes personal data and the information available**  
5 **to the processor and that use appropriate technical and organizational**  
6 **measures to the extent reasonably practicable;**

7 **(b) Secure the personal data, taking into account how the processor**  
8 **processes the personal data and the information available to the**  
9 **processor; and**

10 **(c) Provide information the controller needs to conduct and docu-**  
11 **ment data protection assessments.**

12 **(2) The processor shall enter into a contract with the controller**  
13 **that governs how the processor processes personal data on the**  
14 **controller's behalf. The contract must:**

15 **(a) Be valid and binding on both parties;**

16 **(b) Set forth clear instructions for processing data, the nature and**  
17 **purpose of the processing, the type of data that is subject to processing**  
18 **and the duration of the processing;**

19 **(c) Specify the rights and obligations of both parties with respect**  
20 **to the subject matter of the contract;**

21 **(d) Ensure that each person that processes personal data is subject**  
22 **to a duty of confidentiality with respect to the personal data;**

23 **(e) Require the processor to delete the personal data or return the**  
24 **personal data to the controller at the controller's direction or when**  
25 **the contract expires or terminates, unless a law requires the processor**  
26 **to retain the personal data;**

27 **(f) Require the processor to make available to the controller, at the**  
28 **controller's request, all information the controller needs to verify that**  
29 **the processor has complied with all obligations the processor has un-**  
30 **der sections 1 to 10 of this 2023 Act;**

31 **(g) Require the processor to enter into a subcontract with any per-**

1 son the processor engages to assist with processing personal data on  
2 the controller's behalf and in the subcontract require the subcontractor  
3 to meet the processor's obligations under the processor's contract  
4 with the controller; and

5 (h) Allow the controller, the controller's designee or a qualified and  
6 independent person the processor engages, in accordance with an ap-  
7 propriate and accepted control standard, framework or procedure, to  
8 assess the processor's policies and technical and organizational meas-  
9 ures for complying with the processor's obligations under the contract,  
10 and require the processor to cooperate with the assessment and, at the  
11 controller's request, report the results of the assessment to the con-  
12 troller.

13 (3) This section does not relieve a controller or processor from any  
14 liability that accrues under sections 1 to 10 of this 2023 Act as a result  
15 of the controller's or processor's actions in processing personal data.

16 (4)(a) For purposes of determining liabilities under sections 1 to 10  
17 of this 2023 Act, a person is a controller with respect to processing a  
18 set of personal data if the person:

19 (A) Does not need to adhere to another person's instructions to  
20 process the personal data;

21 (B) Does not adhere to another person's instructions with respect  
22 to processing the personal data when the person is obligated to do so;  
23 or

24 (C) Begins at any point to determine the purposes and means for  
25 processing the personal data, alone or in concert with another person.

26 (b) A determination under this subsection is a fact-based determi-  
27 nation that must take account of the context in which a set of per-  
28 sonal data is processed.

29 (c) A person who is determined to be a controller is subject to an  
30 action under section 9 of this 2023 Act to punish a violation of sections  
31 1 to 10 of this 2023 Act.

1     **SECTION 7.** (1)(a) A controller that possesses deidentified data  
2 shall:

3     (A) Take reasonable measures to ensure that the deidentified data  
4 cannot be associated with an individual;

5     (B) Publicly commit to maintaining and using deidentified data  
6 without attempting to reidentify the deidentified data;

7     (C) Enter into a contract with a recipient of the deidentified data  
8 and provide in the contract that the recipient must comply with the  
9 controller's obligations under sections 1 to 10 of this 2023 Act; and

10     (D) Exercise reasonable oversight to monitor any contractual obli-  
11 gations to which a disclosure of deidentified data is subject and take  
12 appropriate steps to enforce breaches of the contractual obligations,  
13 if the controller discloses deidentified data.

14     (b) This section does not prohibit a controller from attempting to  
15 reidentify deidentified data solely for the purpose of testing the  
16 controller's methods for deidentifying data.

17     (2) Sections 1 to 10 of this 2023 Act do not:

18     (a) Require a controller or processor to:

19     (A) Reidentify deidentified data; or

20     (B) Associate a consumer with personal data in order to  
21 authenticate the consumer's request under section 4 of this 2023 Act  
22 by:

23     (i) Maintaining data in identifiable form; or

24     (ii) Collecting, retaining or accessing any particular data or tech-  
25 nology.

26     (b) Require a controller or processor to comply with a consumer's  
27 request under section 4 of this 2023 Act if the controller:

28     (A) Cannot reasonably associate the request with personal data or  
29 if the controller's attempt to associate the request with personal data  
30 would be unreasonably burdensome;

31     (B) Does not use personal data to recognize or respond to the spe-

1 **cific consumer who is the subject of the personal data or associate the**  
2 **personal data with any other personal data about the specific con-**  
3 **sumer; and**

4 **(C) Does not sell or otherwise voluntarily disclose personal data to**  
5 **a third party other than a processor, except as otherwise provided in**  
6 **this section.**

7 **SECTION 8. (1)(a) A controller shall conduct and document a data**  
8 **protection assessment for each of the controller's processing activities**  
9 **that presents a heightened risk of harm to a consumer.**

10 **(b) A processing activity presents a heightened risk of harm to a**  
11 **consumer if:**

12 **(A) The controller processes personal data for the purpose of tar-**  
13 **geted advertising;**

14 **(B) The controller processes sensitive data;**

15 **(C) The controller sells the personal data; or**

16 **(D) The controller uses the personal data for profiling a consumer,**  
17 **if the profiling presents a reasonably foreseeable risk of:**

18 **(i) Unfair or deceptive treatment of, or unlawful disparate impact**  
19 **on, consumers;**

20 **(ii) Financial, physical or reputational injury to consumers;**

21 **(iii) Physical or other types of intrusion upon a consumer's soli-**  
22 **tude, seclusion or private affairs or concerns, if the intrusion would**  
23 **be offensive to a reasonable person; or**

24 **(iv) Other substantial injury to consumers.**

25 **(c) A single data protection assessment may address a comparable**  
26 **set of processing operations that present a similar heightened risk of**  
27 **harm.**

28 **(2) A data protection assessment shall identify and weigh how pro-**  
29 **cessing personal data may directly or indirectly benefit the controller,**  
30 **the consumer, other stakeholders and the public against potential**  
31 **risks to the consumer, taking into account how safeguards the con-**

1 troller employs can mitigate the risks. In conducting the assessment,  
2 the controller shall consider how deidentified data might reduce risks,  
3 the reasonable expectations of consumers, the context in which the  
4 data is processed and the relationship between the controller and the  
5 consumers whose personal data the controller will process.

6 (3) The Attorney General may require a controller to provide to the  
7 Attorney General any data protection assessments the controller has  
8 conducted if the data protection assessment is relevant to an investi-  
9 gation the Attorney General conducts under section 9 of this 2023 Act.  
10 The Attorney General may evaluate a data protection assessment for  
11 the controller's compliance with the requirements of section 1 to 10  
12 of this 2023 Act. If a data protection assessment the Attorney General  
13 obtains under this subsection includes information that is subject to  
14 attorney-client privilege or is work product that is subject to a privi-  
15 lege, the controller's provision of the data protection assessment does  
16 not waive the privilege.

17 (4) A data protection assessment that a controller conducts to  
18 comply with another applicable law or regulation satisfies the re-  
19 quirements of this section if the data protection assessment is rea-  
20 sonably similar in scope and effect to a data protection assessment  
21 conducted under this section.

22 (5) Requirements that apply to a data protection assessment under  
23 this section apply only to processing activities that occur on and after  
24 July 1, 2024, and are not retroactive.

25 (6) A controller shall retain for at least five years all data pro-  
26 tection assessments the controller conducts under this section.

27 **SECTION 9.** (1)(a) The Attorney General may serve an investigative  
28 demand upon any person that possesses, controls or has custody of any  
29 information, document or other material that the Attorney General  
30 determines is relevant to an investigation of a violation of sections 1  
31 to 10 of this 2023 Act or that could lead to a discovery of relevant in-

1 **formation. An investigative demand may require the person to:**

2 **(A) Appear and testify under oath at the time and place specified**  
3 **in the investigative demand;**

4 **(B) Answer written interrogatories; or**

5 **(C) Produce relevant documents or physical evidence for examina-**  
6 **tion at the time and place specified in the investigative demand.**

7 **(b) The Attorney General shall serve an investigative demand under**  
8 **this section in the manner provided in ORS 646.622. The Attorney**  
9 **General may enforce the investigative demand as provided in ORS**  
10 **646.626.**

11 **(2)(a) An attorney may accompany, represent and advise in confi-**  
12 **dence a person that appears in response to a demand under subsection**  
13 **(1)(a)(A) of this section. The person may refuse to answer any question**  
14 **on constitutional grounds or on the basis of any other legal right or**  
15 **privilege, including protection against self-incrimination, but must**  
16 **answer any other question that is not subject to the right or privilege.**  
17 **If the person refuses to answer a question on grounds that the answer**  
18 **would be self-incriminating, the Attorney General may compel the**  
19 **person to testify as provided in ORS 136.617.**

20 **(b) The Attorney General shall exclude from the place in which the**  
21 **Attorney General conducts an examination under this subsection all**  
22 **persons other than the person the Attorney General is examining, the**  
23 **person's attorney, the officer before which the person gives the testi-**  
24 **mony and any stenographer recording the testimony.**

25 **(3)(a) The Attorney General shall hold in confidence and not dis-**  
26 **close to any person any documents, including data protection assess-**  
27 **ments, answers to interrogatories and transcripts of oral testimony,**  
28 **except that the Attorney General may disclose the documents to:**

29 **(A) The person that provided the documents or the oral testimony;**

30 **(B) The attorney or representative of the person that provided the**  
31 **documents or oral testimony;**

1 (C) Employees of the Attorney General; or

2 (D) An official of the United States or of any state who is author-  
3 ized to enforce federal or state consumer protection laws if the At-  
4 torney General first obtains a written agreement from the official in  
5 which the official agrees to abide by the confidentiality requirements  
6 of this subsection.

7 (b)(A) The Attorney General may use any of the materials described  
8 in paragraph (a) of this subsection in any investigation the Attorney  
9 General conducts under this section or in any action or proceeding the  
10 Attorney General brings or initiates in a court or before an adminis-  
11 trative agency in connection with the investigation.

12 (B) Notwithstanding the prohibition against disclosure in paragraph  
13 (a) of this subsection, the Attorney General may disclose a document  
14 to a committee of the Legislative Assembly in any manner and for any  
15 purpose the Attorney General deems appropriate.

16 (4)(a) The Attorney General may bring an action to seek a civil  
17 penalty of not more than \$7,500 for each violation of sections 1 to 10  
18 of this 2023 Act or to enjoin a violation or obtain other equitable relief.  
19 The Attorney General shall bring the action in the circuit court for  
20 Multnomah County or the circuit court of a county where any part  
21 of the violation occurred.

22 (b) If a court finds that a director, member, officer, employee or  
23 agent of a controller violated sections 1 to 10 of this 2023 Act through  
24 an act or omission, the court may find that the controller committed  
25 the violation or the court may find that both the controller and the  
26 director, member, officer, employee or agent committed the violation  
27 and may impose separate civil penalties on each.

28 (c) A court may award reasonable attorney fees, expert witness fees  
29 and costs of investigation to the Attorney General if the Attorney  
30 General prevails in an action under this subsection. The court may  
31 award reasonable attorney fees to a defendant that prevails in an



1 **action under this subsection if the court finds that the Attorney Gen-**  
2 **eral had no objectively reasonable basis for asserting the claim or for**  
3 **appealing an adverse decision of the trial court.**

4 **(d) The Attorney General shall deposit the proceeds of any recovery**  
5 **under this subsection into the Department of Justice Protection and**  
6 **Education Revolving Account, as provided in ORS 180.095.**

7 **(5) Before bringing an action under subsection (4) of this section,**  
8 **the Attorney General shall notify a controller of a violation of sections**  
9 **1 to 10 of this 2023 Act if the Attorney General determines that the**  
10 **controller can cure the violation. If the controller fails to cure the**  
11 **violation within 30 days after receiving the notice of the violation, the**  
12 **Attorney General may bring the action without further notice.**

13 **(6) The Attorney General shall bring an action under subsection (4)**  
14 **of this section within five years after the date of the last act of a**  
15 **controller that constituted the violation for which the Attorney Gen-**  
16 **eral seeks relief.**

17 **(7) The remedies available to the Attorney General under subsection**  
18 **(4) of this section are in addition to and not in lieu of any other relief**  
19 **available to the Attorney General or another person under other ap-**  
20 **plicable provisions of law. A claim available under another provision**  
21 **of law may be joined to the Attorney General's claim under subsection**  
22 **(4) of this section.**

23 **SECTION 10. (1)(a) A consumer or a class of consumers that suffers**  
24 **an ascertainable loss of money or property as a result of a controller's**  
25 **violation of sections 1 to 10 of this 2023 Act may bring an action in a**  
26 **circuit court of this state.**

27 **(b) A court may award a prevailing plaintiff in an action under**  
28 **paragraph (a) of this subsection:**

- 29 **(A) Compensatory damages;**  
30 **(B) Injunctive or declaratory relief; and**  
31 **(C) Reasonable attorney fees and costs.**

1       **(2) A consumer or class of consumers that brings an action under**  
2 **subsection (1) of this section shall mail a copy of the complaint or**  
3 **initial pleading to the Attorney General upon bringing the action and**  
4 **shall mail to the Attorney General a copy of any judgment the con-**  
5 **sumer or class of consumers obtains. A consumer’s failure to mail a**  
6 **copy of the complaint is not a jurisdictional defect, but the court may**  
7 **not enter judgment for the plaintiff until the plaintiff files proof of**  
8 **mailing with the court. An affidavit or return receipt is adequate proof**  
9 **of mailing.**

10       **(3) A plaintiff shall commence an action under subsection (1) of this**  
11 **section within two years after the plaintiff discovers or, with an ex-**  
12 **ercise of reasonable care, should have discovered an ascertainable loss**  
13 **of money or property.**

14       **(4) A plaintiff may bring an action under this section only for a**  
15 **controller’s violation of section 3, 4 or 5 of this 2023 Act.**

16       **SECTION 11.** ORS 180.095 is amended to read:

17       180.095. (1) The Department of Justice Protection and Education Revolv-  
18 ing Account is created in the General Fund. All moneys in the account are  
19 continuously appropriated to the Department of Justice and may be used to  
20 pay for only the following activities:

21       (a) Restitution and refunds in proceedings described in paragraph (c) of  
22 this subsection;

23       (b) Consumer and business education relating to the laws governing  
24 antitrust and unlawful trade practices; and

25       (c) Personal services, travel, meals, lodging and all other costs and ex-  
26 penses incurred by the department in investigating, preparing, commencing  
27 and prosecuting the following actions and suits, and enforcing judgments,  
28 settlements, compromises and assurances of voluntary compliance arising out  
29 of the following actions and suits:

30       (A) Actions and suits under the state and federal antitrust laws;

31       (B) Actions and suits under ORS 336.184 and 646.605 to 646.656;

1 (C) Actions commenced under ORS 59.331; *[and]*

2 (D) Actions and suits under ORS 180.750 to 180.785[.]; **and**

3 **(E) Actions commenced under section 9 of this 2023 Act.**

4 (2) Moneys in the Department of Justice Protection and Education Re-  
5 volving Account are not subject to allotment. Upon request of the Attorney  
6 General, the State Treasurer shall create subaccounts within the account for  
7 the purposes of managing moneys in the account and allocating those moneys  
8 to the activities described in subsection (1) of this section.

9 (3) Except as otherwise provided by law, all sums of money received by  
10 the Department of Justice under a judgment, settlement, compromise or as-  
11 surance of voluntary compliance, including damages, restitution, refunds,  
12 attorney fees, costs, disbursements and other recoveries, but excluding civil  
13 penalties under ORS 646.642, in proceedings described in subsection (1)(c) of  
14 this section shall, upon receipt, be deposited with the State Treasurer to the  
15 credit of the Department of Justice Protection and Education Revolving Ac-  
16 count. However, if the action or suit was based on an expenditure or loss  
17 from a public body or a dedicated fund, the amount of such expenditure or  
18 loss, after deduction of attorney fees and expenses awarded to the department  
19 by the court or agreed to by the parties, if any, shall be credited to the  
20 public body or dedicated fund and the remainder thereof credited to the De-  
21 partment of Justice Protection and Education Revolving Account.

22 (4) If the Department of Justice recovers restitution or refunds in a pro-  
23 ceeding described in subsection (1)(c) of this section, and the department  
24 cannot determine the persons to whom the restitution or refunds should be  
25 paid or the amount of the restitution or refund payable to individual claim-  
26 ants is de minimis, the restitution or refunds may not be deposited in the  
27 Department of Justice Protection and Education Revolving Account and  
28 shall be deposited in the General Fund.

29 (5) Before April 1 of each odd-numbered year, the Department of Justice  
30 shall report to the Joint Committee on Ways and Means:

31 (a) The department's projection of the balance in the Department of Jus-

1 tice Protection and Education Revolving Account at the end of the biennium  
2 in which the report is made and at the end of the following biennium;

3 (b) The amount of the balance held for restitution and refunds;

4 (c) An estimate of the department's anticipated costs and expenses under  
5 subsection (1)(b) and (c) of this section for the biennium in which the report  
6 is made and for the following biennium; and

7 (d) Any judgment, settlement, compromise or other recovery, the proceeds  
8 of which are used for purposes other than:

9 (A) For deposit into the Department of Justice Protection and Education  
10 Revolving Account; or

11 (B) For payment of legal costs related to the judgment, settlement, com-  
12 promise or other recovery.

13 (6) The Joint Committee on Ways and Means, after consideration of rec-  
14 ommendations made by the Department of Justice, shall use the information  
15 reported under subsection (5) of this section to determine an appropriate  
16 balance for the revolving account.

17 **SECTION 12.** Section 9 of this 2023 Act is amended to read:

18 **Sec. 9** (1)(a) The Attorney General may serve an investigative demand  
19 upon any person that possesses, controls or has custody of any information,  
20 document or other material that the Attorney General determines is relevant  
21 to an investigation of a violation of sections 1 to 10 of this 2023 Act or that  
22 could lead to a discovery of relevant information. An investigative demand  
23 may require the person to:

24 (A) Appear and testify under oath at the time and place specified in the  
25 investigative demand;

26 (B) Answer written interrogatories; or

27 (C) Produce relevant documents or physical evidence for examination at  
28 the time and place specified in the investigative demand.

29 (b) The Attorney General shall serve an investigative demand under this  
30 section in the manner provided in ORS 646.622. The Attorney General may  
31 enforce the investigative demand as provided in ORS 646.626.

1 (2)(a) An attorney may accompany, represent and advise in confidence a  
2 person that appears in response to a demand under subsection (1)(a)(A) of  
3 this section. The person may refuse to answer any question on constitutional  
4 grounds or on the basis of any other legal right or privilege, including pro-  
5 tection against self-incrimination, but must answer any other question that  
6 is not subject to the right or privilege. If the person refuses to answer a  
7 question on grounds that the answer would be self-incriminating, the Attor-  
8 ney General may compel the person to testify as provided in ORS 136.617.

9 (b) The Attorney General shall exclude from the place in which the At-  
10 torney General conducts an examination under this subsection all persons  
11 other than the person the Attorney General is examining, the person's at-  
12 torney, the officer before which the person gives the testimony and any ste-  
13 nographer recording the testimony.

14 (3)(a) The Attorney General shall hold in confidence and not disclose to  
15 any person any documents, including data protection assessments, answers  
16 to interrogatories and transcripts of oral testimony, except that the Attorney  
17 General may disclose the documents to:

18 (A) The person that provided the documents or the oral testimony;

19 (B) The attorney or representative of the person that provided the docu-  
20 ments or oral testimony;

21 (C) Employees of the Attorney General; or

22 (D) An official of the United States or of any state who is authorized to  
23 enforce federal or state consumer protection laws if the Attorney General  
24 first obtains a written agreement from the official in which the official  
25 agrees to abide by the confidentiality requirements of this subsection.

26 (b)(A) The Attorney General may use any of the materials described in  
27 paragraph (a) of this subsection in any investigation the Attorney General  
28 conducts under this section or in any action or proceeding the Attorney  
29 General brings or initiates in a court or before an administrative agency in  
30 connection with the investigation.

31 (B) Notwithstanding the prohibition against disclosure in paragraph (a)

1 of this subsection, the Attorney General may disclose a document to a com-  
2 mittee of the Legislative Assembly in any manner and for any purpose the  
3 Attorney General deems appropriate.

4 (4)(a) The Attorney General may bring an action to seek a civil penalty  
5 of not more than \$7,500 for each violation of sections 1 to 10 of this 2023  
6 Act or to enjoin a violation or obtain other equitable relief. The Attorney  
7 General shall bring the action in the circuit court for Multnomah County  
8 or the circuit court of a county where any part of the violation occurred.

9 (b) If a court finds that a director, member, officer, employee or agent of  
10 a controller violated sections 1 to 10 of this 2023 Act through an act or  
11 omission, the court may find that the controller committed the violation or  
12 the court may find that both the controller and the director, member, officer,  
13 employee or agent committed the violation and may impose separate civil  
14 penalties on each.

15 (c) A court may award reasonable attorney fees, expert witness fees and  
16 costs of investigation to the Attorney General if the Attorney General pre-  
17 vails in an action under this subsection. The court may award reasonable  
18 attorney fees to a defendant that prevails in an action under this subsection  
19 if the court finds that the Attorney General had no objectively reasonable  
20 basis for asserting the claim or for appealing an adverse decision of the trial  
21 court.

22 (d) The Attorney General shall deposit the proceeds of any recovery under  
23 this subsection into the Department of Justice Protection and Education  
24 Revolving Account, as provided in ORS 180.095.

25 *[(5) Before bringing an action under subsection (4) of this section, the At-*  
26 *torney General shall notify a controller of a violation of sections 1 to 10 of this*  
27 *2023 Act if the Attorney General determines that the controller can cure the*  
28 *violation. If the controller fails to cure the violation within 30 days after re-*  
29 *ceiving the notice of the violation, the Attorney General may bring the action*  
30 *without further notice.]*

31 *[(6)]* **(5)** The Attorney General shall bring an action under subsection (4)

1 of this section within five years after the date of the last act of a controller  
2 that constituted the violation for which the Attorney General seeks relief.

3 [(7)] (6) The remedies available to the Attorney General under subsection  
4 (4) of this section are in addition to and not in lieu of any other relief  
5 available to the Attorney General or another person under other applicable  
6 provisions of law. A claim available under another provision of law may be  
7 joined to the Attorney General's claim under subsection (4) of this section.

8 **SECTION 13. (1) Sections 1 to 9 of this 2023 Act and the amend-**  
9 **ments to ORS 180.095 by section 11 of this 2023 Act become operative**  
10 **on July 1, 2024.**

11 **(2) Section 10 of this 2023 Act becomes operative on January 1, 2026.**

12 **(3) The amendments to section 9 of this 2023 Act by section 12 of**  
13 **this 2023 Act become operative on January 1, 2025.**

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