

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 619**

1 On page 1 of the printed bill, delete lines 5 through 21 and delete pages
2 2 through 17 and insert:

3 **“SECTION 1. As used in sections 1 to 9 of this 2023 Act:**

4 **“(1) ‘Affiliate’ means a person that, directly or indirectly through**
5 **one or more intermediaries, controls, is controlled by or is under**
6 **common control with another person such that:**

7 **“(a) The person owns or has the power to vote more than 50 percent**
8 **of the outstanding shares of any voting class of the other person’s**
9 **securities;**

10 **“(b) The person has the power to elect or influence the election of**
11 **a majority of the directors, members or managers of the other person;**

12 **“(c) The person has the power to direct the management of another**
13 **person; or**

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

16 **“(2) ‘Authenticate’ means to determine, using commercially rea-**
17 **sonable methods, whether a consumer with the rights described in**
18 **section 3 of this 2023 Act, or a person acting on behalf of the con-**
19 **sumer, is the consumer who has asked to exercise, or is a person who**
20 **has authority to exercise, any of the consumer’s rights.**

21 **“(3)(a) ‘Biometric data’ means personal data generated by auto-**

1 **matic measurements of a consumer’s biological characteristics, such**
2 **as the consumer’s fingerprint, voiceprint, retinal pattern, iris pattern,**
3 **gait or other unique biological characteristics that allow or confirm**
4 **the unique identification of the consumer.**

5 **“(b) ‘Biometric data’ does not include:**

6 **“(A) A photograph recorded digitally or otherwise;**

7 **“(B) An audio or video recording;**

8 **“(C) Data from a photograph or from an audio or video recording,**
9 **unless the data were generated for the purpose of identifying a specific**
10 **consumer or were used to identify a particular consumer; or**

11 **“(D) Facial mapping or facial geometry, unless the facial mapping**
12 **or facial geometry was generated for the purpose of identifying a spe-**
13 **cific consumer or was used to identify a specific consumer.**

14 **“(4) ‘Business associate’ has the meaning given that term in 45**
15 **C.F.R. 160.103, as in effect on the effective date of this 2023 Act.**

16 **“(5) ‘Child’ means an individual under the age of 13.**

17 **“(6) ‘Consent’ means an affirmative act by means of which a con-**
18 **sumer clearly and conspicuously communicates the consumer’s freely**
19 **given, specific, informed and unambiguous assent to another person’s**
20 **act or practice under the following conditions:**

21 **“(a) The user interface by means of which the consumer performs**
22 **the act does not have any mechanism that has the purpose or sub-**
23 **stantial effect of obtaining consent by obscuring, subverting or im-**
24 **pairing the consumer’s autonomy, decision-making or choice; and**

25 **“(b) The consumer’s inaction does not constitute consent.**

26 **“(7) ‘Consumer’ means a natural person who resides in this state**
27 **and acts in any capacity other than in a commercial or employment**
28 **context.**

29 **“(8) ‘Controller’ means a person that, alone or jointly with another**
30 **person, determines the purposes and means for processing personal**

1 **data.**

2 **“(9) ‘Covered entity’ has the meaning given that term in 45 C.F.R.**
3 **160.103, as in effect on the effective date of this 2023 Act.**

4 **“(10) ‘Decisions that produce legal effects or effects of similar sig-**
5 **nificance’ means decisions that result in providing or denying financial**
6 **or lending services, housing, insurance, enrollment in education or**
7 **educational opportunity, criminal justice, employment opportunities,**
8 **health care services or access to essential goods and services.**

9 **“(11) ‘Deidentified data’ means data that:**

10 **“(a) Cannot reasonably be used to infer information about, or oth-**
11 **erwise be linked to, an identified or identifiable consumer, or to a de-**
12 **vice that identifies, is linked to or is reasonably linkable to a**
13 **consumer; or**

14 **“(b) Is:**

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

23 **“(B) Deidentified as provided in 45 C.F.R. 164.514, as in effect on the**
24 **effective date of this 2023 Act.**

25 **“(12) ‘Device’ means electronic equipment designed for a**
26 **consumer’s use that can transmit or receive personal data.**

27 **“(13)(a) ‘Personal data’ means data, derived data or any unique**
28 **identifier that is linked to or is reasonably linkable to a consumer or**
29 **to a device that identifies, is linked to or is reasonably linkable to one**
30 **or more consumers in a household.**

1 **“(b) ‘Personal data’ does not include deidentified data or data that:**

2 **“(A) Is lawfully available through federal, state or local government**
3 **records or through widely distributed media; or**

4 **“(B) A controller reasonably has understood to have been lawfully**
5 **made available to the public by a consumer.**

6 **“(14) ‘Process’ or ‘processing’ means an action, operation or set of**
7 **actions or operations that is performed, automatically or otherwise,**
8 **on personal data or on sets of personal data, such as collecting, using,**
9 **storing, disclosing, analyzing, deleting or modifying the personal data.**

10 **“(15) ‘Processor’ means a person that processes personal data on**
11 **behalf of a controller.**

12 **“(16) ‘Profiling’ means an automated processing of personal data for**
13 **the purpose of evaluating, analyzing or predicting an identified or**
14 **identifiable consumer’s economic circumstances, health, personal**
15 **preferences, interests, reliability, behavior, location or movements.**

16 **“(17)(a) ‘Sale’ or ‘sell’ means the exchange of personal data for**
17 **monetary or other valuable consideration by the controller with a**
18 **third party.**

19 **“(b) ‘Sale’ or ‘sell’ does not include:**

20 **“(A) A disclosure of personal data to a processor;**

21 **“(B) A disclosure of personal data to an affiliate of a controller or**
22 **to a third party for the purpose of enabling the controller to provide**
23 **a product or service to a consumer that requested the product or ser-**
24 **vice;**

25 **“(C) A disclosure or transfer of personal data from a controller to**
26 **a third party as part of a proposed or completed merger, acquisition,**
27 **bankruptcy or other transaction in which the third party assumes**
28 **control of all or part of the controller’s assets, including the personal**
29 **data; or**

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

1 “(i) Directs a controller to disclose the personal data;

2 “(ii) Intentionally discloses the personal data in the course of di-
3 recting a controller to interact with a third party; or

4 “(iii) Intentionally discloses the personal data to the public by
5 means of mass media, if the disclosure is not restricted to a specific
6 audience.

7 “(18)(a) ‘Sensitive data’ means personal data that:

8 “(A) Reveals a consumer’s racial or ethnic background, national
9 origin, religious beliefs, mental or physical condition or diagnosis,
10 sexual orientation, gender identity, status as transgender or nonbi-
11 nary, status as a victim of crime or citizenship or immigration status;

12 “(B) Is a child’s personal data;

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

18 “(D) Is genetic or biometric data.

19 “(b) ‘Sensitive data’ as defined in paragraph (a)(C) of this sub-
20 section does not include the content of communications or any data
21 generated by or connected to advanced utility metering infrastructure
22 systems or equipment for use by a utility.

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

28 “(b) ‘Targeted advertising’ does not include:

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

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

3 **“(C) Advertisements that are directed to a consumer in response to**
4 **the consumer’s request for information or feedback; or**

5 **“(D) A processing of personal data solely for the purpose of meas-**
6 **uring or reporting an advertisement’s frequency, performance or**
7 **reach.**

8 **“(20) ‘Third party’ means a person, a public corporation or a public**
9 **body, as defined in ORS 174.109, other than a consumer, a controller,**
10 **a processor or an affiliate of a controller or processor.**

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

15 **“(a) The personal data of 100,000 or more consumers, other than**
16 **personal data controlled or processed solely for the purpose of com-**
17 **pleting a payment transaction; or**

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

21 **“(2) Sections 1 to 9 of this 2023 Act do not apply to:**

22 **“(a) A public corporation or a public body, as defined in ORS**
23 **174.109;**

24 **“(b) Protected health information that a covered entity or business**
25 **associate processes in accordance with, or documents that a covered**
26 **entity or business associate creates for the purpose of complying with,**
27 **the Health Insurance Portability and Accountability Act of 1996,**
28 **P.L. 104-191, and regulations promulgated under the Act, as in effect**
29 **on the effective date of this 2023 Act;**

30 **“(c) Information used only for public health activities and purposes**

1 described in 45 C.F.R. 164.512, as in effect on the effective date of this
2 2023 Act;

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

4 “(A) Activities that are subject to the Federal Policy for the Pro-
5 tection of Human Subjects, codified as 45 C.F.R. part 46 and in various
6 other federal regulations, as in effect on the effective date of this 2023
7 Act;

8 “(B) Research on human subjects undertaken in accordance with
9 good clinical practice guidelines issued by the International Council
10 for Harmonisation of Technical Requirements for Pharmaceuticals for
11 Human Use;

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

15 “(D) Research conducted in accordance with the requirements set
16 forth in subparagraphs (A) to (C) of this paragraph or otherwise in
17 accordance with applicable law;

18 “(e) Patient identifying information, as defined in 42 C.F.R. 2.11, as
19 in effect on the effective date of this 2023 Act, that is collected and
20 processed in accordance with 42 C.F.R. part 2;

21 “(f) Patient safety work product, as defined in 42 C.F.R. 3.20, as in
22 effect on the effective date of this 2023 Act, that is created for purposes
23 of improving patient safety under 42 C.F.R. part 3;

24 “(g) Information and documents created for the purposes of the
25 Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq.,
26 and implementing regulations, both as in effect on the effective date
27 of this 2023 Act;

28 “(h) Information that originates from, or that is intermingled so
29 as to be indistinguishable from, information described in paragraphs
30 (b) to (g) of this subsection that a covered entity or business associate,

1 or a program of a qualified service organization, as defined in 42 C.F.R.
2 2.11, as in effect on the effective date of this 2023 Act, creates, collects,
3 processes, uses or maintains in the same manner as is required under
4 the laws, regulations and guidelines described in paragraphs (b) to (g)
5 of this subsection;

6 “(i) Information processed or maintained solely in connection with,
7 and for the purpose of, enabling:

8 “(A) An individual’s employment or application for employment;

9 “(B) An individual’s ownership of, or function as a director or offi-
10 cer of, a business entity;

11 “(C) An individual’s contractual relationship with a business entity;

12 “(D) An individual’s receipt of benefits from an employer, including
13 benefits for the individual’s dependents or beneficiaries; or

14 “(E) Notice of an emergency to persons that an individual specifies;

15 “(j) Any activity that involves collecting, maintaining, disclosing,
16 selling, communicating or using information for the purpose of eval-
17 uating a consumer’s creditworthiness, credit standing, credit capacity,
18 character, general reputation, personal characteristics or mode of liv-
19 ing if done strictly in accordance with the provisions of the Fair Credit
20 Reporting Act, 15 U.S.C. 1681 et seq., as in effect on the effective date
21 of this 2023 Act, by:

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

24 “(B) A person who furnishes information to a consumer reporting
25 agency under 15 U.S.C. 1681s-2, as in effect on the effective date of this
26 2023 Act; or

27 “(C) A person who uses a consumer report as provided in 15 U.S.C.
28 1681b(a)(3);

29 “(k) Information collected, processed, sold or disclosed under and
30 in accordance with the following federal laws, all as in effect on the

1 **effective date of this 2023 Act:**

2 **“(A) The Gramm-Leach-Bliley Act, P.L. 106-102, and regulations**
3 **adopted to implement that Act;**

4 **“(B) The Driver’s Privacy Protection Act of 1994, 18 U.S.C. 2721 et**
5 **seq.;**

6 **“(C) The Family Educational Rights and Privacy Act, 20**
7 **U.S.C. 1232g and regulations adopted to implement that Act; and**

8 **“(D) The Airline Deregulation Act, P.L. 95-504, only to the extent**
9 **that an air carrier collects information related to prices, routes or**
10 **services and only to the extent that the provisions of the Airline De-**
11 **regulation Act preempt sections 1 to 9 of this 2023 Act;**

12 **“(L) A financial institution, as defined in ORS 706.008;**

13 **“(m) A licensee, as defined in ORS 725.010, that is engaged exclu-**
14 **sively in the business of making consumer finance loans, as defined**
15 **in ORS 725.010;**

16 **“(n) An insurer, as defined in ORS 731.106, other than a person that,**
17 **alone or in combination with another person, establishes and main-**
18 **tains a self-insurance program and that does not otherwise engage in**
19 **the business of entering into policies of insurance;**

20 **“(o) An insurance producer, as defined in ORS 731.104;**

21 **“(p) An insurance consultant, as defined in ORS 744.602;**

22 **“(q) A person that holds a third party administrator license issued**
23 **under ORS 744.710;**

24 **“(r) A nonprofit organization that is established to detect and pre-**
25 **vent fraudulent acts in connection with insurance; and**

26 **“(s) Noncommercial activity of:**

27 **“(A) A publisher, editor, reporter or other person who is connected**
28 **with or employed by a newspaper, magazine, periodical, newsletter,**
29 **pamphlet, report or other publication in general circulation;**

30 **“(B) A radio or television station that holds a license issued by the**

1 **Federal Communications Commission;**

2 **“(C) A nonprofit organization that provides programming to radio**
3 **or television networks; or**

4 **“(D) An entity that provides an information service, including a**
5 **press association or wire service.**

6 **“(3) Sections 1 to 9 of this 2023 Act do not prohibit a controller or**
7 **processor from:**

8 **“(a) Complying with federal, state or local statutes, ordinances,**
9 **rules or regulations;**

10 **“(b) Complying with a federal, state or local governmental inquiry,**
11 **investigation, subpoena or summons related to a civil, criminal or**
12 **administrative proceeding;**

13 **“(c) Cooperating with a law enforcement agency concerning con-**
14 **duct or activity that the controller or processor reasonably and in**
15 **good faith believes may violate federal, state or local statutes, ordi-**
16 **nances, rules or regulations;**

17 **“(d) Investigating, establishing, initiating or defending legal claims;**

18 **“(e) Preventing, detecting, protecting against or responding to, and**
19 **investigating, reporting or prosecuting persons responsible for, secu-**
20 **rity incidents, identity theft, fraud, harassment or malicious, decep-**
21 **tive or illegal activity or preserving the integrity or security of**
22 **systems;**

23 **“(f) Identifying and repairing technical errors in a controller’s or**
24 **processor’s information systems that impair existing or intended**
25 **functionality;**

26 **“(g) Providing a product or service that a consumer specifically re-**
27 **quests from the controller or processor or requests as the parent or**
28 **guardian of a child on the child’s behalf or as the guardian or**
29 **conservator of a person subject to a guardianship, conservatorship or**
30 **other protective arrangement on the person’s behalf;**

1 “(h) Negotiating, entering into or performing a contract with a
2 consumer, including fulfilling the terms of a written warranty;

3 “(i) Protecting any person’s health and safety;

4 “(j) Effectuating a product recall;

5 “(k) Conducting internal research to develop, improve or repair
6 products, services or technology;

7 “(L) Performing internal operations that are reasonably aligned
8 with a consumer’s expectations, that the consumer may reasonably
9 anticipate based on the consumer’s existing relationship with the
10 controller or that are otherwise compatible with processing data for
11 the purpose of providing a product or service the consumer specifically
12 requested or for the purpose of performing a contract to which the
13 consumer is a party; or

14 “(m) Assisting another controller or processor with any of the ac-
15 tivities set forth in this subsection.

16 “(4) Sections 1 to 9 of this 2023 Act do not apply to the extent that
17 a controller’s or processor’s compliance with sections 1 to 9 of this 2023
18 Act would violate an evidentiary privilege under the laws of this state.
19 Notwithstanding the provisions of sections 1 to 9 of this 2023 Act, a
20 controller or processor may provide personal data about a consumer
21 in a privileged communication to a person that is covered by an
22 evidentiary privilege under the laws of this state.

23 “(5) A controller may process personal data in accordance with
24 subsection (3) of this section only to the extent that the processing is
25 adequate and reasonably necessary for, relevant to, proportionate in
26 relation to and limited to the purposes set forth in this section.

27 “(6) Collection, use and retention of personal data under subsection
28 (3)(e) and (f) of this section must, where applicable, take into account
29 the nature and purpose of the collection, use or retention. The per-
30 sonal data must be subject to reasonable administrative, technical and

1 **physical measures to protect the confidentiality, integrity and security**
2 **of the personal data and reduce reasonably foreseeable risks of harm**
3 **to consumers from the collection, use or retention.**

4 **“(7) A controller that claims that the controller’s processing of**
5 **personal data is exempt under subsection (3) of this section has the**
6 **burden of demonstrating that the controller’s processing qualifies for**
7 **the exemption and complies with the requirements of subsections (5)**
8 **and (6) of this section.**

9 **“SECTION 3. (1) Subject to section 4 of this 2023 Act, a consumer**
10 **may:**

11 **“(a) Obtain from a controller:**

12 **“(A) Confirmation as to whether the controller is processing or has**
13 **processed the consumer’s personal data and the categories of personal**
14 **data the controller is processing or has processed;**

15 **“(B) At the controller’s option, a list of specific third parties, other**
16 **than natural persons, to which the controller has disclosed:**

17 **(i) The consumer’s personal data; or**

18 **(ii) Any personal data; and**

19 **“(C) A copy of all of the consumer’s personal data that the con-**
20 **troller has processed or is processing;**

21 **“(b) Require a controller to correct inaccuracies in personal data**
22 **about the consumer, taking into account the nature of the personal**
23 **data and the controller’s purpose for processing the personal data;**

24 **“(c) Require a controller to delete personal data about the con-**
25 **sumer, including personal data the consumer provided to the control-**
26 **ler, personal data the controller obtained from another source and**
27 **derived data; or**

28 **“(d) Opt out from a controller’s processing of personal data of the**
29 **consumer that the controller processes for any of the following pur-**
30 **poses:**

1 “(A) Targeted advertising;
2 “(B) Selling the personal data; or
3 “(C) Profiling the consumer in furtherance of decisions that
4 produce legal effects or effects of similar significance.

5 “(2) A controller that provides a copy of personal data to a con-
6 sumer under subsection (1)(a)(C) of this section shall provide the per-
7 sonal data in a portable and, to the extent technically feasible, readily
8 usable format that allows the consumer to transmit the personal data
9 to another person without hindrance.

10 “(3) This section does not require a controller to disclose the
11 controller’s trade secrets, as defined in ORS 646.461.

12 “SECTION 4. (1) A consumer may exercise the rights described in
13 section 3 of this 2023 Act by submitting a request to a controller using
14 the method that the controller specifies in the privacy notice described
15 in section 5 of this 2023 Act.

16 “(2) A controller may not require a consumer to create an account
17 for the purpose described in subsection (1) of this section, but the
18 controller may require the consumer to use an account the consumer
19 created previously.

20 “(3) A parent or legal guardian may exercise the rights described
21 in section 3 of this 2023 Act on behalf of the parent’s child or on behalf
22 of a child for whom the guardian has legal responsibility. A guardian
23 or conservator may exercise the rights described in subsection (1) of
24 this section on behalf of a consumer that is subject to a guardianship,
25 conservatorship or other protective arrangement.

26 “(4) A consumer may designate another person to act on the
27 consumer’s behalf as the consumer’s authorized agent for the purpose
28 of opting out of a controller’s processing of the consumer’s personal
29 data, as provided in section 3 (1)(d) of this 2023 Act. The consumer
30 may designate an authorized agent by means of an internet link,

1 browser setting, browser extension, global device setting or other
2 technology that enables the consumer to opt out of the controller’s
3 processing of the consumer’s personal data. A controller shall comply
4 with an opt-out request the controller receives from an authorized
5 agent if the controller can verify, with commercially reasonable effort,
6 the identity of the consumer and the authorized agent’s authority to
7 act on the consumer’s behalf.

8 “(5) Except as otherwise provided in sections 1 to 9 of this 2023 Act,
9 in responding to a request under subsection (1) of this section, a con-
10 troller shall:

11 “(a) Respond to a request from a consumer without undue delay and
12 not later than 45 days after receiving the request. The controller may
13 extend the period within which the controller responds by an addi-
14 tional 45 days if the extension is reasonably necessary to comply with
15 the consumer’s request, taking into consideration the complexity of
16 the request and the number of requests the consumer makes. A con-
17 troller that intends to extend the period for responding shall notify the
18 consumer within the initial 45-day response period and explain the
19 reason for the extension.

20 “(b) Notify the consumer without undue delay and not later than
21 45 days after receiving the consumer’s request if the controller de-
22 clines to take action on the request. The controller in the notice shall
23 explain the justification for not taking action and include instructions
24 for appealing the controller’s decision.

25 “(c) Provide information the consumer requests once during any
26 12-month period without charge to the consumer. A controller may
27 charge a reasonable fee to cover the administrative costs of complying
28 with a second or subsequent request within the 12-month period, un-
29 less the purpose of the second or subsequent request is to verify that
30 the controller corrected inaccuracies in, or deleted, the consumer’s

1 **personal data in compliance with the consumer’s request.**

2 **“(d) Notify the consumer if the controller cannot, using commer-**
3 **cially reasonable methods, authenticate the consumer’s request with-**
4 **out additional information from the consumer. A controller that sends**
5 **a notification under this paragraph does not have to comply with the**
6 **request until the consumer provides the information necessary to**
7 **authenticate the request.**

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

11 **“(A) A controller may ask for additional information necessary to**
12 **comply with the request, such as information that is necessary to**
13 **identify the consumer that requested to opt out.**

14 **“(B) A controller may deny a request to opt out if the controller**
15 **has a good-faith, reasonable and documented belief that the request**
16 **is fraudulent. If the controller denies a request under this subpara-**
17 **graph, the controller shall notify the consumer that the controller**
18 **believes the request is fraudulent, stating in the notice that the con-**
19 **troller will not comply with the request.**

20 **“(6) A controller shall establish a process by means of which a**
21 **consumer may appeal the controller’s refusal to take action on a re-**
22 **quest under subsection (1) of this section. The controller’s process**
23 **must:**

24 **“(a) Allow a reasonable period of time after the consumer receives**
25 **the controller’s refusal within which to appeal;**

26 **“(b) Be conspicuously available to the consumer;**

27 **“(c) Be similar to the manner in which a consumer must submit a**
28 **request under subsection (1) of this section; and**

29 **“(d) Require the controller to approve or deny the appeal within 45**
30 **days after the date on which the controller received the appeal and to**

1 **notify the consumer in writing of the controller’s decision and the**
2 **reasons for the decision. If the controller denies the appeal, the notice**
3 **must provide or specify information that enables the consumer to**
4 **contact the Attorney General to submit a complaint.**

5 **“(7) A controller that obtains personal data about a consumer from**
6 **a source other than the consumer complies with the consumer’s re-**
7 **quest to delete the personal data if the controller:**

8 **“(a) Deletes the data but retains a record of the deletion request**
9 **and a minimal amount of data necessary to ensure that the personal**
10 **data remains deleted and does not use the minimal data for any other**
11 **purpose; and**

12 **“(b) Opts the consumer out of the controller’s processing of the**
13 **consumer’s personal data for any purpose other than a purpose that**
14 **is exempt under section 2 of this 2023 Act.**

15 **“SECTION 5. (1) A controller shall:**

16 **“(a) Specify in the privacy notice described in subsection (4) of this**
17 **section the express purposes for which the controller is collecting and**
18 **processing personal data;**

19 **“(b) Limit the controller’s collection of personal data to only the**
20 **personal data that is adequate, relevant and reasonably necessary to**
21 **serve the purposes the controller specified in paragraph (a) of this**
22 **subsection;**

23 **“(c) Establish, implement and maintain for personal data the same**
24 **safeguards described in ORS 646A.622 that are required for protecting**
25 **personal information, as defined in ORS 646A.602, such that the**
26 **controller’s safeguards protect the confidentiality, integrity and ac-**
27 **cessibility of the personal data to the extent appropriate for the vol-**
28 **ume and nature of the personal data; and**

29 **“(d) Provide an effective means by which a consumer may revoke**
30 **consent a consumer gave under sections 1 to 9 of this 2023 Act to the**

1 controller’s processing of the consumer’s personal data. The means
2 must be at least as easy as the means by which the consumer provided
3 consent. Once the consumer revokes consent, the controller shall
4 cease processing the personal data as soon as is practicable, but not
5 later than 15 days after receiving the revocation.

6 “(2) A controller may not:

7 “(a) Process personal data for purposes that are not reasonably
8 necessary for and compatible with the purposes the controller specified
9 in subsection (1)(a) of this section, unless the controller obtains the
10 consumer’s consent;

11 “(b) Process sensitive data about a consumer without first obtaining
12 the consumer’s consent or, if the controller knows the consumer is a
13 child, without processing the sensitive data in accordance with the
14 Children’s Online Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq.
15 and the regulations, rules and guidance adopted under the Act, all as
16 in effect on the effective date of this 2023 Act;

17 “(c) Process a consumer’s personal data for the purposes of targeted
18 advertising, of profiling the consumer in furtherance of decisions that
19 produce legal effects or effects of similar significance or of selling the
20 consumer’s personal data without the consumer’s consent if the con-
21 troller has actual knowledge that, or willfully disregards whether, the
22 consumer is at least 13 years of age and not older than 15 years of age;
23 or

24 “(d) Discriminate against a consumer that exercises a right pro-
25 vided to the consumer under sections 1 to 9 of this 2023 Act by means
26 such as denying goods or services, charging different prices or rates
27 for goods or services or providing a different level of quality or se-
28 lection of goods or services to the consumer.

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

30 “(a) Require a controller to provide a good or service that requires

1 **personal data from a consumer that the controller does not collect or**
2 **maintain; or**

3 **“(b) Prohibit a controller from offering a different price, rate, level**
4 **of quality or selection of goods or services to a consumer, including**
5 **an offer for no fee or charge, in connection with a consumer’s volun-**
6 **tary participation in a bona fide loyalty, rewards, premium features,**
7 **discount or club card program.**

8 **“(4) A controller shall provide to consumers a reasonably accessible,**
9 **clear and meaningful privacy notice that:**

10 **“(a) Lists the categories of personal data, including the categories**
11 **of sensitive data, that the controller processes;**

12 **“(b) Describes the controller’s purposes for processing the personal**
13 **data;**

14 **“(c) Describes how a consumer may exercise the consumer’s rights**
15 **under sections 1 to 9 of this 2023 Act, including how a consumer may**
16 **appeal a controller’s denial of a consumer’s request under section 4**
17 **of this 2023 Act;**

18 **“(d) Lists all categories of personal data, including the categories**
19 **of sensitive data, that the controller shares with third parties;**

20 **“(e) Describes all categories of third parties with which the con-**
21 **troller shares personal data at a level of detail that enables the con-**
22 **sumer to understand what type of entity each third party is and, to**
23 **the extent possible, how each third party may process personal data;**

24 **“(f) Specifies an electronic mail address or other online method by**
25 **which a consumer can contact the controller that the controller ac-**
26 **tively monitors;**

27 **“(g) Identifies the controller, including any business name under**
28 **which the controller registered with the Secretary of State and any**
29 **assumed business name that the controller uses in this state;**

30 **“(h) Provides a clear and conspicuous description of any processing**

1 of personal data in which the controller engages for the purpose of
2 targeted advertising or for the purpose of profiling the consumer in
3 furtherance of decisions that produce legal effects or effects of similar
4 significance, and a procedure by which the consumer may opt out of
5 this type of processing; and

6 “(i) Describes the method or methods the controller has established
7 for a consumer to submit a request under section 4 (1) of this 2023 Act.

8 “(5) The method or methods described in subsection (4)(i) of this
9 section for submitting a consumer’s request to a controller must:

10 “(a) Take into account:

11 “(A) Ways in which consumers normally interact with the control-
12 ler;

13 “(B) A need for security and reliability in communications related
14 to the request; and

15 “(C) The controller’s ability to authenticate the identity of the
16 consumer that makes the request; and

17 “(b) Provide a clear and conspicuous link to a webpage where the
18 consumer or an authorized agent may opt out from a controller’s
19 processing of the consumer’s personal data as described in section 3
20 (1)(d) of this 2023 Act or, solely if the controller does not have a ca-
21 pacity needed for linking to a webpage, provide another method the
22 consumer can use to opt out.

23 “(6) If a consumer or authorized agent uses a method described in
24 subsection (5) of this section to opt out of a controller’s processing of
25 the consumer’s personal data under section 3 (1)(d) of this 2023 Act and
26 the decision conflicts with a consumer’s voluntary participation in a
27 bona fide reward, club card or loyalty program or a program that
28 provides premium features or discounts in return for the consumer’s
29 consent to the controller’s processing of the consumer’s personal data,
30 the controller may either comply with the request to opt out or notify

1 the consumer of the conflict and ask the consumer to affirm that the
2 consumer intends to withdraw from the bona fide reward, club card
3 or loyalty program or the program that provides premium features or
4 discounts. If the consumer affirms that the consumer intends to
5 withdraw, the controller shall comply with the request to opt out.

6 **SECTION 6.** (1) A processor shall adhere to a controller’s in-
7 structions and shall assist the controller in meeting the controller’s
8 obligations under sections 1 to 9 of this 2023 Act. In assisting the
9 controller, the processor must:

10 “(a) Enable the controller to respond to requests from consumers
11 under section 4 of this 2023 Act by means that take into account how
12 the processor processes personal data and the information available
13 to the processor and that use appropriate technical and organizational
14 measures to the extent reasonably practicable;

15 “(b) Adopt administrative, technical and physical safeguards that
16 are reasonably designed to protect the security and confidentiality of
17 the personal data the controller processes, taking into account how
18 the processor processes the personal data and the information avail-
19 able to the processor; and

20 “(c) Provide information reasonably necessary for the controller to
21 conduct and document data protection assessments.

22 “(2) The processor shall enter into a contract with the controller
23 that governs how the processor processes personal data on the
24 controller’s behalf. The contract must:

25 “(a) Be valid and binding on both parties;

26 “(b) Set forth clear instructions for processing data, the nature and
27 purpose of the processing, the type of data that is subject to processing
28 and the duration of the processing;

29 “(c) Specify the rights and obligations of both parties with respect
30 to the subject matter of the contract;

1 “(d) Ensure that each person that processes personal data is subject
2 to a duty of confidentiality with respect to the personal data;

3 “(e) Require the processor to delete the personal data or return the
4 personal data to the controller at the controller’s direction or at the
5 end of the provision of services, unless a law requires the processor
6 to retain the personal data;

7 “(f) Require the processor to make available to the controller, at
8 the controller’s request, all information the controller needs to verify
9 that the processor has complied with all obligations the processor has
10 under sections 1 to 9 of this 2023 Act;

11 “(g) Require the processor to enter into a subcontract with a person
12 the processor engages to assist with processing personal data on the
13 controller’s behalf and in the subcontract require the subcontractor
14 to meet the processor’s obligations under the processor’s contract with
15 the controller; and

16 “(h) Allow the controller, the controller’s designee or a qualified
17 and independent person the processor engages, in accordance with an
18 appropriate and accepted control standard, framework or procedure,
19 to assess the processor’s policies and technical and organizational
20 measures for complying with the processor’s obligations under
21 sections 1 to 9 of this 2023 Act, and require the processor to cooperate
22 with the assessment and, at the controller’s request, report the results
23 of the assessment to the controller.

24 “(3) This section does not relieve a controller or processor from any
25 liability that accrues under sections 1 to 9 of this 2023 Act as a result
26 of the controller’s or processor’s actions in processing personal data.

27 “(4)(a) For purposes of determining obligations under sections 1 to
28 9 of this 2023 Act, a person is a controller with respect to processing
29 a set of personal data, and is subject to an action under section 9 of
30 this 2023 Act to punish a violation of sections 1 to 9 of this 2023 Act,

1 **if the person:**

2 **“(A) Does not need to adhere to another person’s instructions to**
3 **process the personal data;**

4 **“(B) Does not adhere to another person’s instructions with respect**
5 **to processing the personal data when the person is obligated to do so;**
6 **or**

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

9 **“(b) A determination under this subsection is a fact-based determi-**
10 **nation that must take account of the context in which a set of per-**
11 **sonal data is processed.**

12 **“(c) A processor that adheres to a controller’s instructions with**
13 **respect to a specific processing of personal data remains a processor.**

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

16 **“(A) Take reasonable measures to ensure that the deidentified data**
17 **cannot be associated with an individual;**

18 **“(B) Publicly commit to maintaining and using deidentified data**
19 **without attempting to reidentify the deidentified data; and**

20 **“(C) Enter into a contract with a recipient of the deidentified data**
21 **and provide in the contract that the recipient must comply with the**
22 **controller’s obligations under sections 1 to 9 of this 2023 Act.**

23 **“(b) A controller that discloses deidentified data shall exercise rea-**
24 **sonable oversight to monitor compliance with any contractual com-**
25 **mitments to which the deidentified data is subject and shall take**
26 **appropriate steps to address any breaches of the contractual commit-**
27 **ments.**

28 **“(c) This section does not prohibit a controller from attempting to**
29 **reidentify deidentified data solely for the purpose of testing the**
30 **controller’s methods for deidentifying data.**

1 **“(2) Sections 1 to 9 of this 2023 Act do not:**
2 **“(a) Require a controller or processor to:**
3 **“(A) Reidentify deidentified data; or**
4 **“(B) Associate a consumer with personal data in order to**
5 **authenticate the consumer’s request under section 4 of this 2023 Act**
6 **by:**
7 **“(i) Maintaining data in identifiable form; or**
8 **“(ii) Collecting, retaining or accessing any particular data or tech-**
9 **nology.**
10 **“(b) Require a controller or processor to comply with a consumer’s**
11 **request under section 4 of this 2023 Act if the controller:**
12 **“(A) Cannot reasonably associate the request with personal data or**
13 **if the controller’s attempt to associate the request with personal data**
14 **would be unreasonably burdensome;**
15 **“(B) Does not use personal data to recognize or respond to the**
16 **specific consumer who is the subject of the personal data or associate**
17 **the personal data with any other personal data about the specific**
18 **consumer; and**
19 **“(C) Does not sell or otherwise voluntarily disclose personal data**
20 **to a third party, except as otherwise provided in this section.**
21 **“SECTION 8. (1)(a) A controller shall conduct and document a data**
22 **protection assessment for each of the controller’s processing activities**
23 **that presents a heightened risk of harm to a consumer.**
24 **“(b) Processing activities that present a heightened risk of harm to**
25 **a consumer include:**
26 **“(A) Processing personal data for the purpose of targeted advertis-**
27 **ing;**
28 **“(B) Processing sensitive data;**
29 **“(C) Selling personal data; and**
30 **“(D) Using the personal data for purposes of profiling, if the pro-**

1 **filing presents a reasonably foreseeable risk of:**

2 **“(i) Unfair or deceptive treatment of, or unlawful disparate impact**
3 **on, consumers;**

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

5 **“(iii) Physical or other types of intrusion upon a consumer’s soli-**
6 **tude, seclusion or private affairs or concerns, if the intrusion would**
7 **be offensive to a reasonable person; or**

8 **“(iv) Other substantial injury to consumers.**

9 **“(c) A single data protection assessment may address a comparable**
10 **set of processing operations that present a similar heightened risk of**
11 **harm.**

12 **“(2) A data protection assessment shall identify and weigh how**
13 **processing personal data may directly or indirectly benefit the con-**
14 **troller, the consumer, other stakeholders and the public against po-**
15 **tential risks to the consumer, taking into account how safeguards the**
16 **controller employs can mitigate the risks. In conducting the assess-**
17 **ment, the controller shall consider how deidentified data might reduce**
18 **risks, the reasonable expectations of consumers, the context in which**
19 **the data is processed and the relationship between the controller and**
20 **the consumers whose personal data the controller will process.**

21 **“(3) The Attorney General may require a controller to provide to**
22 **the Attorney General any data protection assessments the controller**
23 **has conducted if the data protection assessment is relevant to an in-**
24 **vestigation the Attorney General conducts under section 9 of this 2023**
25 **Act. The Attorney General may evaluate a data protection assessment**
26 **for the controller’s compliance with the requirements of section 1 to**
27 **9 of this 2023 Act. If a data protection assessment the Attorney Gen-**
28 **eral obtains under this subsection includes information that is subject**
29 **to attorney-client privilege or is work product that is subject to a**
30 **privilege, the controller’s provision of the data protection assessment**

1 does not waive the privilege.

2 “(4) A data protection assessment that a controller conducts to
3 comply with another applicable law or regulation satisfies the re-
4 quirements of this section if the data protection assessment is rea-
5 sonably similar in scope and effect to a data protection assessment
6 conducted under this section.

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

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

12 “(7) A data protection assessment is confidential and is not subject
13 to disclosure under ORS 192.311 to 192.478.

14 **“SECTION 9. (1)(a) The Attorney General may serve an investi-
15 gative demand upon any person that possesses, controls or has custody
16 of any information, document or other material that the Attorney
17 General determines is relevant to an investigation of a violation of
18 sections 1 to 9 of this 2023 Act or that could lead to a discovery of
19 relevant information. An investigative demand may require the person
20 to:**

21 **“(A) Appear and testify under oath at the time and place specified
22 in the investigative demand;**

23 **“(B) Answer written interrogatories; or**

24 **“(C) Produce relevant documents or physical evidence for exam-
25 ination at the time and place specified in the investigative demand.**

26 **“(b) The Attorney General shall serve an investigative demand un-
27 der this section in the manner provided in ORS 646.622. The Attorney
28 General may enforce the investigative demand as provided in ORS
29 646.626.**

30 **“(2)(a) An attorney may accompany, represent and advise in confi-**

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

9 **“(b) The Attorney General shall exclude from the place in which the**
10 **Attorney General conducts an examination under this subsection all**
11 **persons other than the person the Attorney General is examining, the**
12 **person’s attorney, the officer before which the person gives the testi-**
13 **mony and any stenographer recording the testimony.**

14 **“(3)(a) The Attorney General shall hold in confidence and may not**
15 **disclose to any person any documents, including data protection as-**
16 **essments, answers to interrogatories and transcripts of oral testi-**
17 **mony, except that the Attorney General may disclose the documents**
18 **to:**

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

20 **“(B) The attorney or representative of the person that provided the**
21 **documents or oral testimony;**

22 **“(C) Employees of the Attorney General; or**

23 **“(D) An official of the United States or of any state who is au-**
24 **thorized to enforce federal or state consumer protection laws if the**
25 **Attorney General first obtains a written agreement from the official**
26 **in which the official agrees to abide by the confidentiality require-**
27 **ments of this subsection.**

28 **“(b) The Attorney General may use any of the materials described**
29 **in paragraph (a) of this subsection in any investigation the Attorney**
30 **General conducts under this section or in any action or proceeding the**

1 Attorney General brings or initiates in a court or before an adminis-
2 trative agency in connection with the investigation.

3 “(4)(a) The Attorney General may bring an action to seek a civil
4 penalty of not more than \$7,500 for each violation of sections 1 to 9
5 of this 2023 Act or to enjoin a violation or obtain other equitable relief.
6 The Attorney General shall bring the action in the circuit court for
7 Multnomah County or the circuit court of a county where any part
8 of the violation occurred.

9 “(b) A court may award reasonable attorney fees, expert witness
10 fees and costs of investigation to the Attorney General if the Attorney
11 General prevails in an action under this subsection. The court may
12 award reasonable attorney fees to a defendant that prevails in an
13 action under this subsection if the court finds that the Attorney Gen-
14 eral had no objectively reasonable basis for asserting the claim or for
15 appealing an adverse decision of the trial court.

16 “(c) The Attorney General shall deposit the proceeds of any recov-
17 ery under this subsection into the Department of Justice Protection
18 and Education Revolving Account, as provided in ORS 180.095.

19 “(5) Before bringing an action under subsection (4) of this section,
20 the Attorney General shall notify a controller of a violation of sections
21 1 to 9 of this 2023 Act if the Attorney General determines that the
22 controller can cure the violation. If the controller fails to cure the
23 violation within 30 days after receiving the notice of the violation, the
24 Attorney General may bring the action without further notice.

25 “(6) The Attorney General shall bring an action under subsection
26 (4) of this section within five years after the date of the last act of a
27 controller that constituted the violation for which the Attorney Gen-
28 eral seeks relief.

29 “(7) The remedies available to the Attorney General under sub-
30 section (4) of this section are in addition to and not in lieu of any

1 **other relief available to the Attorney General or another person under**
2 **other applicable provisions of law. A claim available under another**
3 **provision of law may be joined to the Attorney General’s claim under**
4 **subsection (4) of this section.**

5 **“(8) The Attorney General has exclusive authority to enforce the**
6 **provisions of sections 1 to 9 of this 2023 Act. Sections 1 to 9 of this 2023**
7 **Act, or any other laws of this state, do not create a private right of**
8 **action to enforce a violation of sections 1 to 9 of this 2023 Act.**

9 **“SECTION 10.** ORS 180.095 is amended to read:

10 “180.095. (1) The Department of Justice Protection and Education Re-
11 volving Account is created in the General Fund. All moneys in the account
12 are continuously appropriated to the Department of Justice and may be used
13 to pay for only the following activities:

14 “(a) Restitution and refunds in proceedings described in paragraph (c) of
15 this subsection;

16 “(b) Consumer and business education relating to the laws governing
17 antitrust and unlawful trade practices; and

18 “(c) Personal services, travel, meals, lodging and all other costs and ex-
19 penses incurred by the department in investigating, preparing, commencing
20 and prosecuting the following actions and suits, and enforcing judgments,
21 settlements, compromises and assurances of voluntary compliance arising out
22 of the following actions and suits:

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

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

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

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

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

28 “(2) Moneys in the Department of Justice Protection and Education Re-
29 volving Account are not subject to allotment. Upon request of the Attorney
30 General, the State Treasurer shall create subaccounts within the account for

1 the purposes of managing moneys in the account and allocating those moneys
2 to the activities described in subsection (1) of this section.

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

16 “(4) If the Department of Justice recovers restitution or refunds in a
17 proceeding described in subsection (1)(c) of this section, and the department
18 cannot determine the persons to whom the restitution or refunds should be
19 paid or the amount of the restitution or refund payable to individual claim-
20 ants is de minimis, the restitution or refunds may not be deposited in the
21 Department of Justice Protection and Education Revolving Account and
22 shall be deposited in the General Fund.

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

25 “(a) The department’s projection of the balance in the Department of
26 Justice Protection and Education Revolving Account at the end of the
27 biennium in which the report is made and at the end of the following
28 biennium;

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

30 “(c) An estimate of the department’s anticipated costs and expenses under

1 subsection (1)(b) and (c) of this section for the biennium in which the report
2 is made and for the following biennium; and

3 “(d) Any judgment, settlement, compromise or other recovery, the pro-
4 ceeds of which are used for purposes other than:

5 “(A) For deposit into the Department of Justice Protection and Education
6 Revolving Account; or

7 “(B) For payment of legal costs related to the judgment, settlement,
8 compromise or other recovery.

9 “(6) The Joint Committee on Ways and Means, after consideration of
10 recommendations made by the Department of Justice, shall use the informa-
11 tion reported under subsection (5) of this section to determine an appropriate
12 balance for the revolving account.

13 **“SECTION 11.** Section 9 of this 2023 Act is amended to read:

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

20 “(A) Appear and testify under oath at the time and place specified in the
21 investigative demand;

22 “(B) Answer written interrogatories; or

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

25 “(b) The Attorney General shall serve an investigative demand under this
26 section in the manner provided in ORS 646.622. The Attorney General may
27 enforce the investigative demand as provided in ORS 646.626.

28 “(2)(a) An attorney may accompany, represent and advise in confidence a
29 person that appears in response to a demand under subsection (1)(a)(A) of
30 this section. The person may refuse to answer any question on constitutional

1 grounds or on the basis of any other legal right or privilege, including pro-
2 tection against self-incrimination, but must answer any other question that
3 is not subject to the right or privilege. If the person refuses to answer a
4 question on grounds that the answer would be self-incriminating, the Attor-
5 ney General may compel the person to testify as provided in ORS 136.617.

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

11 “(3)(a) The Attorney General shall hold in confidence and may not dis-
12 close to any person any documents, including data protection assessments,
13 answers to interrogatories and transcripts of oral testimony, except that the
14 Attorney General may disclose the documents to:

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

16 “(B) The attorney or representative of the person that provided the doc-
17 uments or oral testimony;

18 “(C) Employees of the Attorney General; or

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

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

28 “(4)(a) The Attorney General may bring an action to seek a civil penalty
29 of not more than \$7,500 for each violation of sections 1 to 9 of this 2023 Act
30 or to enjoin a violation or obtain other equitable relief. The Attorney Gen-

1 eral shall bring the action in the circuit court for Multnomah County or the
2 circuit court of a county where any part of the violation occurred.

3 “(b) A court may award reasonable attorney fees, expert witness fees and
4 costs of investigation to the Attorney General if the Attorney General pre-
5 vails in an action under this subsection. The court may award reasonable
6 attorney fees to a defendant that prevails in an action under this subsection
7 if the court finds that the Attorney General had no objectively reasonable
8 basis for asserting the claim or for appealing an adverse decision of the trial
9 court.

10 “(c) The Attorney General shall deposit the proceeds of any recovery un-
11 der this subsection into the Department of Justice Protection and Education
12 Revolving Account, as provided in ORS 180.095.

13 “[5] *Before bringing an action under subsection (4) of this section, the*
14 *Attorney General shall notify a controller of a violation of sections 1 to 9 of*
15 *this 2023 Act if the Attorney General determines that the controller can cure*
16 *the violation. If the controller fails to cure the violation within 30 days after*
17 *receiving the notice of the violation, the Attorney General may bring the action*
18 *without further notice.]*

19 “[6] **(5)** The Attorney General shall bring an action under subsection (4)
20 of this section within five years after the date of the last act of a controller
21 that constituted the violation for which the Attorney General seeks relief.

22 “[7] **(6)** The remedies available to the Attorney General under subsection
23 (4) of this section are in addition to and not in lieu of any other relief
24 available to the Attorney General or another person under other applicable
25 provisions of law. A claim available under another provision of law may be
26 joined to the Attorney General’s claim under subsection (4) of this section.

27 “[8] **(7)** The Attorney General has exclusive authority to enforce the
28 provisions of sections 1 to 9 of this 2023 Act. Sections 1 to 9 of this 2023
29 Act, or any other laws of this state, do not create a private right of action
30 to enforce a violation of sections 1 to 9 of this 2023 Act.

1 **“SECTION 12.** Section 5 of this 2023 Act is amended to read:

2 **“Sec. 5.** (1) A controller shall:

3 “(a) Specify in the privacy notice described in subsection (4) of this sec-
4 tion the express purposes for which the controller is collecting and process-
5 ing personal data;

6 “(b) Limit the controller’s collection of personal data to only the personal
7 data that is adequate, relevant and reasonably necessary to serve the pur-
8 poses the controller specified in paragraph (a) of this subsection;

9 “(c) Establish, implement and maintain for personal data the same safe-
10 guards described in ORS 646A.622 that are required for protecting personal
11 information, as defined in ORS 646A.602, such that the controller’s safe-
12 guards protect the confidentiality, integrity and accessibility of the personal
13 data to the extent appropriate for the volume and nature of the personal
14 data; and

15 “(d) Provide an effective means by which a consumer may revoke consent
16 a consumer gave under sections 1 to 9 of this 2023 Act to the controller’s
17 processing of the consumer’s personal data. The means must be at least as
18 easy as the means by which the consumer provided consent. Once the con-
19 sumer revokes consent, the controller shall cease processing the personal
20 data as 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 necessary
24 for and compatible with the purposes the controller specified in subsection
25 (1)(a) of this section, unless the controller obtains the consumer’s consent;

26 “(b) Process sensitive data about a consumer without first obtaining the
27 consumer’s consent or, if the controller knows the consumer is a child,
28 without processing the sensitive data in accordance with the Children’s On-
29 line Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq. and the regu-
30 lations, rules and guidance adopted under the Act, all as in effect on the

1 effective date of this 2023 Act;

2 “(c) Process a consumer’s personal data for the purposes of targeted ad-
3 vertising, of profiling the consumer in furtherance of decisions that produce
4 legal effects or effects of similar significance or of selling the consumer’s
5 personal data without the consumer’s consent if the controller has actual
6 knowledge that, or willfully disregards whether, the consumer is at least 13
7 years of age and not older than 15 years of age; or

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

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

14 “(a) Require a controller to provide a good or service that requires per-
15 sonal data from a consumer that the controller does not collect or maintain;
16 or

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

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

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

26 “(b) Describes the controller’s purposes for processing the personal data;

27 “(c) Describes how a consumer may exercise the consumer’s rights under
28 sections 1 to 9 of this 2023 Act, including how a consumer may appeal a
29 controller’s denial of a consumer’s request under section 4 of this 2023 Act;

30 “(d) Lists all categories of personal data, including the categories of sen-

1 sitive data, that the controller shares with third parties;

2 “(e) Describes all categories of third parties with which the controller
3 shares personal data at a level of detail that enables the consumer to un-
4 derstand what type of entity each third party is and, to the extent possible,
5 how each third party may process personal data;

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

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

11 “(h) Provides a clear and conspicuous description of any processing of
12 personal data in which the controller engages for the purpose of targeted
13 advertising or for the purpose of profiling the consumer in furtherance of
14 decisions that produce legal effects or effects of similar significance, and a
15 procedure by which the consumer may opt out of this type of processing; and

16 “(i) Describes the method or methods the controller has established for a
17 consumer to submit a request under section 4 (1) of this 2023 Act.

18 “(5) The method or methods described in subsection (4)(i) of this section
19 for submitting a consumer’s request to a controller must:

20 “(a) Take into account:

21 “(A) Ways in which consumers normally interact with the controller;

22 “(B) A need for security and reliability in communications related to the
23 request; and

24 “(C) The controller’s ability to authenticate the identity of the consumer
25 that makes the request; *[and]*

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

1 “(c) Allow a consumer or authorized agent to send a signal to the
2 controller that indicates the consumer’s preference to opt out of the
3 sale of personal data or targeted advertising under section 3 (1)(d) of
4 this 2023 Act by means of a platform, technology or 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, technolo-
11 gies or mechanisms required under federal or state laws or regu-
12 lations; and

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

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

29 “**SECTION 13. Sections 1 to 9 of this 2023 Act do not apply before**
30 **July 1, 2025, to the activities of an organization described in section**

1 **501(c)(3) of the Internal Revenue Code that is exempt from income tax**
2 **under section 501(a) of the Internal Revenue Code.**

3 **“SECTION 14. (1) Sections 1 to 9 of this 2023 Act and the amend-**
4 **ments to ORS 180.095 by section 10 of this 2023 Act become operative**
5 **on July 1, 2024.**

6 **“(2) The amendments to section 5 of this 2023 Act by section 12 of**
7 **this 2023 Act become operative on January 1, 2026.**

8 **“(3) The amendments to section 9 of this 2023 Act by section 11 of**
9 **this 2023 Act become operative on January 1, 2026.”.**

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