

Senate Bill 619

Sponsored by Senator PROZANSKI, Representative HOLVEY (at the request of Attorney General Ellen Rosenblum)
(Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

1
2 Relating to protections for the personal data of consumers; creating new provisions; and amending
3 ORS 180.095.

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

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

6 (1) "Affiliate" means a person that, directly or indirectly through one or more interme-
7 diaries, controls, is controlled by or is under common control with another person such that:

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

10 (b) The person has the power to elect or influence the election of a majority of the di-
11 rectors, members or managers of the other person;

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

13 (d) The person is subject to another person's exercise of the powers described in para-
14 graph (a), (b) or (c) of this subsection.

15 (2) "Authenticate" means to determine, using a commercially reasonable method,
16 whether a consumer with the rights described in section 3 of this 2023 Act, or a person act-
17 ing on behalf of the consumer, has asked to exercise any of the consumer's rights.

18 (3)(a) "Biometric data" means data generated by automatic measurements of a
19 consumer's biological characteristics, such as the consumer's fingerprint, voiceprint, retinal
20 pattern, iris pattern or other unique biological characteristics.

21 (b) "Biometric data" does not include:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (A) A photograph recorded digitally or otherwise;

2 (B) An audio or video recording; or

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

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

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

8 (6) “Consent” means an affirmative act by means of which a consumer clearly and con-
9 spicuously communicates the consumer’s assent to another person’s act or practice under
10 the following conditions:

11 (a) The user interface by means of which the consumer performs the act does not have
12 any mechanism that has the purpose or substantial effect of obtaining consent by obscuring,
13 subverting or impairing the consumer’s autonomy, decision making or choice; and

14 (b) The consumer’s inaction does not constitute consent.

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

17 (8) “Controller” means a person that acts alone or in concert with another person to
18 determine purposes and means for processing personal data.

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

21 (10) “Deidentified data” means data that:

22 (a) Cannot reasonably be used to infer information about, or otherwise be linked to, an
23 identified or identifiable consumer, or to a device that identifies, is linked to or is reasonably
24 linkable to a consumer; or

25 (b) Is:

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

32 (B) Deidentified as provided in 45 C.F.R. 164.514, as in effect on the effective date of this
33 2023 Act.

34 (11) “Device” means electronic equipment designed for a consumer’s use that can trans-
35 mit or receive personal data.

36 (12)(a) “Personal data” means data, derived data or a unique identifier that is linked to
37 or is reasonably linkable to a consumer or to a device that identifies, is linked to or is rea-
38 sonably linkable to one or more consumers.

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

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

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

44 (13) “Process” or “processing” means an action, operation or set of actions or operations
45 that is performed, automatically or otherwise, on personal data or on sets of personal data,

1 such as collecting, using, storing, disclosing, analyzing, deleting or modifying the personal
2 data.

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

4 (15) “Profiling” means an automated processing of personal data for the purpose of
5 evaluating, analyzing or predicting an identified or identifiable consumer’s economic cir-
6 cumstances, health, personal preferences, interests, reliability, behavior, location or move-
7 ments.

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

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

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

13 (B) A disclosure of personal data to an affiliate of a controller or to a third party for the
14 purpose of enabling the controller to provide a product or service to a consumer that re-
15 quested the product or service;

16 (C) A disclosure or transfer of personal data from a controller to a third party as part
17 of a proposed or completed merger, acquisition, bankruptcy or other transaction in which
18 the third party assumes control of all or part of the controller’s assets, including the per-
19 sonal data; or

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

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

22 (ii) Intentionally discloses the personal data in the course of directing a controller to
23 interact with a third party; or

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

25 (17) “Sensitive data” means personal data that:

26 (a) Reveals a consumer’s racial or ethnic background, national origin, religious beliefs,
27 mental or physical condition or diagnosis, sexual orientation, gender identity, status as a
28 victim of crime or citizenship or immigration status;

29 (b) Is a child’s personal data;

30 (c) Accurately identifies within a radius of 1,750 feet a consumer’s present or past lo-
31 cation, or the present or past location of a device that links or is linkable to a consumer by
32 means of technology that includes, but is not limited to, a global positioning system that
33 provides latitude and longitude coordinates; or

34 (d) Is genetic or biometric data.

35 (18)(a) “Targeted advertising” means advertising that is selected for display to a con-
36 sumer on the basis of personal data obtained from the consumer’s activities over time and
37 across one or more unaffiliated websites or online applications and is used to predict the
38 consumer’s preferences or interests.

39 (b) “Targeted advertising” does not include:

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

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

44 (C) Advertisements that are directed to a consumer in response to the consumer’s re-
45 quest for information or feedback; or

1 (D) A processing of personal data solely for the purpose of measuring or reporting an
2 advertisement's frequency, performance or reach.

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

5 **SECTION 2.** (1) Sections 1 to 10 of this 2023 Act apply to any person that conducts busi-
6 ness in this state, or that provides products or services to residents of this state, and that
7 during a calendar year, controls or processes:

8 (a) The personal data of 100,000 or more consumers, personal data from 100,000 or more
9 devices that identify or that link to or are reasonably linkable to one or more consumers,
10 or personal data from a combination of 100,000 or more consumers and devices; or

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

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

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

15 (b) Protected health information that a covered entity or business associate processes in
16 accordance with the Health Insurance Portability and Accountability Act of 1996, P.L.
17 104-191, and regulations promulgated under the Act, as in effect on the effective date of this
18 2023 Act;

19 (c) Information used only for public health activities and purposes described in 45 C.F.R.
20 164.512, as in effect on the effective date of this 2023 Act;

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

22 (A) Activities that are subject to the Federal Policy for the Protection of Human Sub-
23 jects, codified as 45 C.F.R. part 46 and in various other federal regulations, as in effect on
24 the effective date of this 2023 Act;

25 (B) Research on human subjects undertaken in accordance with good clinical practice
26 guidelines issued by the International Council for Harmonisation of Technical Requirements
27 for Pharmaceuticals for Human Use;

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

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

32 (e) Information collected or maintained solely in connection with, and for the purpose
33 of, enabling:

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

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

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

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

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

40 (f) Any activity that involves collecting, maintaining, disclosing, selling, communicating
41 or using information for the purpose of evaluating a consumer's creditworthiness, credit
42 standing, credit capacity, character, general reputation, personal characteristics or mode of
43 living if done strictly in accordance with the provisions of the Fair Credit Reporting Act, 15
44 U.S.C. 1681 et seq., as in effect on the effective date of this 2023 Act, by:

45 (A) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f), as in effect on the

1 effective date of this 2023 Act;

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

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

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

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

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

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

12 (D) The Airline Deregulation Act, P.L. 95-504, only to the extent that an air carrier col-
13 lects information related to prices, routes or services and only to the extent that the pro-
14 visions of the Airline Deregulation Act preempt sections 1 to 10 of this 2023 Act; or

15 (h) A financial institution or an affiliate of a financial institution, as defined in the
16 Gramm-Leach-Bliley Act, P.L. 106-102, and in regulations adopted to implement that Act,
17 as in effect on the effective date of this 2023 Act.

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

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

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

22 (c) Cooperating with a law enforcement agency concerning conduct or activity that the
23 controller or processor reasonably and in good faith believes may violate federal, state or
24 local statutes, ordinances, rules or regulations;

25 (d) Investigating, initiating or defending legal claims;

26 (e) Preventing, detecting, protecting against or responding to, and investigating, report-
27 ing or prosecuting persons responsible for, security incidents, identity theft, fraud,
28 harassment or malicious, deceptive or illegal activity;

29 (f) Identifying and repairing technical errors in a controller's or processor's information
30 systems that impair existing or intended functionality;

31 (g) Providing a product or service that a consumer specifically requests from the con-
32 troller or processor or requests as the parent or guardian of a child on the child's behalf or
33 as the guardian or conservator of a person subject to a guardianship, conservatorship or
34 other protective arrangement on the person's behalf;

35 (h) Negotiating, entering into or performing a contract with a consumer; or

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

37 (4) Sections 1 to 10 of this 2023 Act do not apply to the extent that a controller's or
38 processor's compliance with sections 1 to 10 of this 2023 Act would violate an evidentiary
39 privilege under the laws of this state. Notwithstanding the provisions of sections 1 to 10 of
40 this 2023 Act, a controller or processor may provide personal data about a consumer in a
41 privileged communication to a person that is covered by an evidentiary privilege under the
42 laws of this state.

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

45 (a) Obtain from a controller:

1 (A) Confirmation as to whether the controller is processing or has processed the
2 consumer's personal data and the categories of personal data the controller is processing or
3 has processed;

4 (B) A list of specific third parties to which the controller has disclosed the consumer's
5 personal data; and

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

8 (b) Require a controller to correct inaccuracies in personal data about the consumer,
9 taking into account the nature of the personal data and the controller's purpose for pro-
10 cessing the personal data;

11 (c) Require a controller to delete personal data about the consumer whether the con-
12 sumer provided the personal data or the controller obtained the personal data from another
13 source; or

14 (d) Opt out from a controller's processing of personal data of the consumer that the
15 controller processes for any of the following purposes:

16 (A) Targeted advertising;

17 (B) Selling the personal data; or

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

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

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

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

29 (2) A controller may not require a consumer to create an account for the purpose de-
30 scribed in subsection (1) of this section, but the controller may require the consumer to use
31 an account the consumer created previously.

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

37 (4) A consumer may designate another person to act on the consumer's behalf as the
38 consumer's authorized agent for the purpose of opting out of a controller's processing of the
39 consumer's personal data, as provided in section 3 (1)(d) of this 2023 Act. The consumer may
40 designate an authorized agent by means of an internet link, browser setting, browser ex-
41 tension, global device setting or other technology that enables the consumer to opt out of
42 the controller's processing of the consumer's personal data. A controller shall comply with
43 a request to opt out that the controller receives from a consumer's authorized agent.

44 (5) Except as otherwise provided in sections 1 to 10 of this 2023 Act, in responding to a
45 request under subsection (1) of this section, a controller shall:

1 (a) Respond to a request from a consumer or an authorized agent without undue delay
2 and not later than 45 days after receiving the request. The controller may extend the period
3 within which the controller responds by an additional 45 days if the extension is reasonably
4 necessary to comply with the consumer's or authorized agent's request, taking into consid-
5 eration the complexity of the request and the number of requests the consumer makes. A
6 controller that intends to extend the period for responding shall notify the consumer or au-
7 thorized agent within the initial 45-day response period and explain the reason for the ex-
8 tension.

9 (b) Notify the consumer or authorized agent without undue delay and not later than 45
10 days after receiving the consumer's or authorized agent's request if the controller declines
11 to take action on the request. The controller in the notice shall explain the justification for
12 not taking action and include instructions for appealing the controller's decision.

13 (c) Provide information the consumer or authorized agent requests once during any
14 12-month period without charge to the consumer or authorized agent. A controller may
15 charge a reasonable fee to cover the administrative costs of complying with a second or
16 subsequent request within the 12-month period.

17 (d) Notify the consumer or authorized agent if the controller cannot, using commercially
18 reasonable methods, authenticate the consumer's or authorized agent's request without ad-
19 ditional information from the consumer or authorized agent. A controller that sends a no-
20 tification under this paragraph does not have to comply with the request until the consumer
21 or authorized agent provides the information necessary to authenticate the request.

22 (e) Comply with a request under section 3 (1)(d) of this 2023 Act to opt out of the
23 controller's processing of the consumer's personal data without requiring authentication,
24 except that:

25 (A) A controller may ask for additional information necessary to comply with the re-
26 quest, such as information that is necessary to identify the consumer that requested to opt
27 out, but shall, if possible, comply with request without asking for additional information.

28 (B) A controller may deny a request to opt out if the controller has a good-faith, rea-
29 sonable and documented belief that the request is fraudulent. If the controller denies a re-
30 quest under this subparagraph, the controller shall notify the consumer or the authorized
31 agent that the controller believes the request is fraudulent, stating in the notice the reasons
32 for the controller's belief and that the controller will not comply with the request.

33 (6) A controller shall establish a process by means of which a consumer or an authorized
34 agent may appeal the controller's refusal to take action on a request under subsection (1)
35 of this section. The controller's process must:

36 (a) Allow a reasonable period of time after the consumer or the authorized agent receives
37 the controller's refusal within which to appeal;

38 (b) Be conspicuously available to the consumer or the authorized agent;

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

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

1 **(7) A controller that obtains personal data about a consumer from a source other than**
2 **the consumer complies with the consumer’s or an authorized agent’s request to delete the**
3 **personal data if the controller:**

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

7 **(b) Allows the consumer or the authorized agent to opt out of the controller’s processing**
8 **of the consumer’s personal data except to the extent that the processing is exempt from**
9 **regulation under sections 1 to 10 of this 2023 Act.**

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

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

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

16 **(c) Establish, implement and maintain for personal data the same safeguards described**
17 **in ORS 646A.622 that are required for protecting personal information, as defined in ORS**
18 **646A.602, such that the controller’s safeguards protect the confidentiality, integrity and ac-**
19 **cessibility of the personal data to the extent appropriate for the volume and nature of the**
20 **personal data; and**

21 **(d) Provide an effective means by which a consumer or an authorized agent may revoke**
22 **the consumer’s consent to the controller’s processing of the consumer’s personal data. The**
23 **means must be at least as easy as the means by which the consumer or authorized agent**
24 **provided consent. Once the consumer or authorized agent revokes consent, the controller**
25 **shall cease processing the personal data as soon as is practicable, but not later than 15 days**
26 **after receiving the revocation.**

27 **(2) A controller may not:**

28 **(a) Process personal data for purposes that are not reasonably necessary for or compat-**
29 **ible with the purposes the controller specified in subsection (1)(a) of this section, unless the**
30 **processing is otherwise permitted under sections 1 to 10 of this 2023 Act or unless the con-**
31 **troller obtains the consumer’s or an authorized agent’s consent;**

32 **(b) Process sensitive data about a consumer without first obtaining the consumer’s, or**
33 **an authorized agent’s, consent or, if the sensitive data concerns a consumer that the con-**
34 **troller knows or constructively knows is a child, without processing the sensitive data in**
35 **accordance with the Children’s Online Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq.**
36 **and the regulations, rules and guidance adopted under the Act, all as in effect on the effec-**
37 **tive date of this 2023 Act;**

38 **(c) Process a consumer’s personal data for the purposes of targeted advertising or sell**
39 **the consumer’s personal data without the consumer’s consent if the controller has actual**
40 **or constructive knowledge that the consumer is at least 13 years of age and not older than**
41 **15 years of age; or**

42 **(d) Discriminate against a consumer that exercises a right provided to the consumer**
43 **under sections 1 to 10 of this 2023 Act by means such as denying goods or services, charging**
44 **different prices or rates for goods or services or providing a different level of quality or se-**
45 **lection of goods or services to the consumer.**

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

2 **(a) Require a controller to provide a good or service that requires personal data from a**
3 **consumer that the controller does not collect or maintain; or**

4 **(b) Prohibit a controller from offering a different price, rate, level of quality or selection**
5 **of goods or services to a consumer, including an offer for no fee or charge, in return for a**
6 **consumer's voluntary participation in a bona fide reward, club card or loyalty program or for**
7 **premium features or discounts.**

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

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

12 **(b) Describes the controller's purposes for processing the personal data;**

13 **(c) Describes how a consumer may exercise the consumer's rights under sections 1 to**
14 **10 of this 2023 Act, including how a consumer may appeal a controller's denial of a**
15 **consumer's request under section 4 of this 2023 Act;**

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

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

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

21 **(g) Identifies the controller, including any business name under which the controller**
22 **registered with the Secretary of State and any assumed business name that the controller**
23 **uses in this state;**

24 **(h) Provides a clear and conspicuous description of any processing of personal data in**
25 **which the controller engages for the purpose of targeted advertising or for the purpose of**
26 **profiling the consumer in furtherance of decisions with legal effects or with similarly serious**
27 **effects, and a procedure by which the consumer may opt out of this type of processing; and**

28 **(i) Describes the method the controller has established for a consumer to submit a re-**
29 **quest under section 4 (1) of this 2023 Act.**

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

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

33 **(b) Be secure and reliable;**

34 **(c) Permit the controller to authenticate the request;**

35 **(d) Provide a clear and conspicuous link to a webpage where the consumer or an au-**
36 **thorized agent may opt out from a controller's processing of the consumer's personal data**
37 **as described in section 3 (1)(d) of this 2023 Act or, solely if the consumer does not have a**
38 **capacity needed for linking to a webpage, provide another method the consumer can use to**
39 **opt out; and**

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

43 **(A) Does not unfairly disadvantage another controller;**

44 **(B) Does not use a default setting but instead requires the consumer or authorized agent**
45 **to make an affirmative, voluntary and unambiguous choice to opt out;**

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

2 (D) Is as consistent as possible with similar platforms, technologies or mechanisms re-
3 quired under federal or state laws or regulations; and

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

7 (6) If a consumer or authorized agent uses a method described in subsection (5) of this
8 section to opt out of a controller's processing of the consumer's personal data under section
9 3 (1)(d) of this 2023 Act and the decision conflicts with a consumer's voluntary participation
10 a bona fide reward, club card or loyalty program or a program that provides premium fea-
11 tures or discounts in return for the consumer's consent to the controller's processing of the
12 consumer's personal data, the controller shall notify the consumer of the conflict and ask
13 the consumer to affirm that the consumer intends to withdraw from the bona fide reward,
14 club card or loyalty program or the program that provides premium features or discounts.
15 If the consumer affirms that the consumer intends to withdraw, the controller shall comply
16 with the request to opt out.

17 **SECTION 6.** (1) A processor shall adhere to a controller's instructions and shall assist
18 the controller in meeting the controller's obligations under sections 1 to 10 of this 2023 Act.
19 In assisting the controller, the processor must:

20 (a) Enable the controller to respond to requests from consumers under section 4 of this
21 2023 Act by means that take into account how the processor processes personal data and the
22 information available to the processor and that use appropriate technical and organizational
23 measures to the extent reasonably practicable;

24 (b) Secure the personal data, taking into account how the processor processes the per-
25 sonal data and the information available to the processor; and

26 (c) Provide information the controller needs to conduct and document data protection
27 assessments.

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

30 (a) Be valid and binding on both parties;

31 (b) Set forth clear instructions for processing data, the nature and purpose of the pro-
32 cessing, the type of data that is subject to processing and the duration of the processing;

33 (c) Specify the rights and obligations of both parties with respect to the subject matter
34 of the contract;

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

37 (e) Require the processor to delete the personal data or return the personal data to the
38 controller at the controller's direction or when the contract expires or terminates, unless a
39 law requires the processor to retain the personal data;

40 (f) Require the processor to make available to the controller, at the controller's request,
41 all information the controller needs to verify that the processor has complied with all obli-
42 gations the processor has under sections 1 to 10 of this 2023 Act;

43 (g) Require the processor to enter into a subcontract with any person the processor en-
44 gages to assist with processing personal data on the controller's behalf and in the subcon-
45 tract require the subcontractor to meet the processor's obligations under the processor's

1 contract with the controller; and

2 (h) Allow the controller, the controller's designee or a qualified and independent person
3 the processor engages, in accordance with an appropriate and accepted control standard,
4 framework or procedure, to assess the processor's policies and technical and organizational
5 measures for complying with the processor's obligations under the contract, and require the
6 processor to cooperate with the assessment and, at the controller's request, report the re-
7 sults of the assessment to the controller.

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

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

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

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

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

19 (b) A determination under this subsection is a fact-based determination that must take
20 account of the context in which a set of personal data is processed.

21 (c) A person who is determined to be a controller is subject to an action under section
22 9 of this 2023 Act to punish a violation of sections 1 to 10 of this 2023 Act.

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

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

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

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

31 (D) Exercise reasonable oversight to monitor any contractual obligations to which a dis-
32 closure of deidentified data is subject and take appropriate steps to enforce breaches of the
33 contractual obligations, if the controller discloses deidentified data.

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

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

37 (a) Require a controller or processor to:

38 (A) Reidentify deidentified data; or

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

41 (i) Maintaining data in identifiable form; or

42 (ii) Collecting, retaining or accessing any particular data or technology.

43 (b) Require a controller or processor to comply with a consumer's request under section
44 4 of this 2023 Act if the controller:

45 (A) Cannot reasonably associate the request with personal data or if the controller's at-

1 tempt to associate the request with personal data would be unreasonably burdensome;

2 (B) Does not use personal data to recognize or respond to the specific consumer who is
3 the subject of the personal data or associate the personal data with any other personal data
4 about the specific consumer; and

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

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

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

11 (A) The controller processes personal data for the purpose of targeted advertising;

12 (B) The controller processes sensitive data;

13 (C) The controller sells the personal data; or

14 (D) The controller uses the personal data for profiling a consumer, if the profiling pre-
15 sents a reasonably foreseeable risk of:

16 (i) Unfair or deceptive treatment of, or unlawful disparate impact on, consumers;

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

18 (iii) Physical or other types of intrusion upon a consumer's solitude, seclusion or private
19 affairs or concerns, if the intrusion would be offensive to a reasonable person; or

20 (iv) Other substantial injury to consumers.

21 (c) A single data protection assessment may address a comparable set of processing op-
22 erations that present a similar heightened risk of harm.

23 (2) A data protection assessment shall identify and weigh how processing personal data
24 may directly or indirectly benefit the controller, the consumer, other stakeholders and the
25 public against potential risks to the consumer, taking into account how safeguards the con-
26 troller employs can mitigate the risks. In conducting the assessment, the controller shall
27 consider how deidentified data might reduce risks, the reasonable expectations of consumers,
28 the context in which the data is processed and the relationship between the controller and
29 the consumers whose personal data the controller will process.

30 (3) The Attorney General may require a controller to provide to the Attorney General
31 any data protection assessments the controller has conducted if the data protection assess-
32 ment is relevant to an investigation the Attorney General conducts under section 9 of this
33 2023 Act. The Attorney General may evaluate a data protection assessment for the
34 controller's compliance with the requirements of section 1 to 10 of this 2023 Act. If a data
35 protection assessment the Attorney General obtains under this subsection includes infor-
36 mation that is subject to attorney-client privilege or is work product that is subject to a
37 privilege, the controller's provision of the data protection assessment does not waive the
38 privilege.

39 (4) A data protection assessment that a controller conducts to comply with another ap-
40 plicable law or regulation satisfies the requirements of this section if the data protection
41 assessment is reasonably similar in scope and effect to a data protection assessment con-
42 ducted under this section.

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

45 (6) A controller shall retain for at least five years all data protection assessments the

1 controller conducts under this section.

2 **SECTION 9.** (1)(a) The Attorney General may serve an investigative demand upon any
3 person that possesses, controls or has custody of any information, document or other ma-
4 terial that the Attorney General determines is relevant to an investigation of a violation of
5 sections 1 to 10 of this 2023 Act or that could lead to a discovery of relevant information.
6 An investigative demand may require the person to:

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

9 (B) Answer written interrogatories; or

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

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

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

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

26 (3)(a) The Attorney General shall hold in confidence and not disclose to any person any
27 documents, including data protection assessments, answers to interrogatories and tran-
28 scripts of oral testimony, 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 documents or oral
31 testimony;

32 (C) Employees of the Attorney General; or

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

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

41 (B) Notwithstanding the prohibition against disclosure in paragraph (a) of this sub-
42 section, the Attorney General may disclose a document to a committee of the Legislative
43 Assembly in any manner and for any purpose the Attorney General deems appropriate.

44 (4)(a) The Attorney General may bring an action to seek a civil penalty of not more than
45 \$7,500 for each violation of sections 1 to 10 of this 2023 Act or to enjoin a violation or obtain

1 other equitable relief. The Attorney General shall bring the action in the circuit court for
2 Multnomah County or the circuit court of a county where any part of the violation occurred.

3 (b) If a court finds that a director, member, officer, employee or agent of a controller
4 violated sections 1 to 10 of this 2023 Act through an act or omission, the court may find that
5 the controller committed the violation or the court may find that both the controller and the
6 director, member, officer, employee or agent committed the violation and may impose sepa-
7 rate civil penalties on each.

8 (c) A court may award reasonable attorney fees, expert witness fees and costs of inves-
9 tigation to the Attorney General if the Attorney General prevails in an action under this
10 subsection. The court may award reasonable attorney fees to a defendant that prevails in
11 an action under this subsection if the court finds that the Attorney General had no objec-
12 tively reasonable basis for asserting the claim or for appealing an adverse decision of the
13 trial court.

14 (d) The Attorney General shall deposit the proceeds of any recovery under this sub-
15 section into the Department of Justice Protection and Education Revolving Account, as
16 provided in ORS 180.095.

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

22 (6) The Attorney General shall bring an action under subsection (4) of this section within
23 five years after the date of the last act of a controller that constituted the violation for
24 which the Attorney General seeks relief.

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

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

33 (b) A court may award a prevailing plaintiff in an action under paragraph (a) of this
34 subsection:

- 35 (A) Compensatory damages;
- 36 (B) Injunctive or declaratory relief; and
- 37 (C) Reasonable attorney fees and costs.

38 (2) A consumer or class of consumers that brings an action under subsection (1) of this
39 section shall mail a copy of the complaint or initial pleading to the Attorney General upon
40 bringing the action and shall mail to the Attorney General a copy of any judgment the con-
41 sumer or class of consumers obtains. A consumer's failure to mail a copy of the complaint
42 is not a jurisdictional defect, but the court may not enter judgment for the plaintiff until the
43 plaintiff files proof of mailing with the court. An affidavit or return receipt is adequate proof
44 of mailing.

45 (3) A plaintiff shall commence an action under subsection (1) of this section within two

1 years after the plaintiff discovers or, with an exercise of reasonable care, should have dis-
 2 covered an ascertainable loss of money or property.

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

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

6 180.095. (1) The Department of Justice Protection and Education Revolving Account is created
 7 in the General Fund. All moneys in the account are continuously appropriated to the Department
 8 of Justice and may be used to pay for only the following activities:

- 9 (a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;
- 10 (b) Consumer and business education relating to the laws governing antitrust and unlawful trade
 11 practices; and

12 (c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the
 13 department in investigating, preparing, commencing and prosecuting the following actions and suits,
 14 and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising
 15 out of the following actions and suits:

- 16 (A) Actions and suits under the state and federal antitrust laws;
- 17 (B) Actions and suits under ORS 336.184 and 646.605 to 646.656;
- 18 (C) Actions commenced under ORS 59.331; [and]
- 19 (D) Actions and suits under ORS 180.750 to 180.785[.]; **and**
- 20 **(E) Actions commenced under section 9 of this 2023 Act.**

21 (2) Moneys in the Department of Justice Protection and Education Revolving Account are not
 22 subject to allotment. Upon request of the Attorney General, the State Treasurer shall create sub-
 23 accounts within the account for the purposes of managing moneys in the account and allocating
 24 those moneys to the activities described in subsection (1) of this section.

25 (3) Except as otherwise provided by law, all sums of money received by the Department of Jus-
 26 tice under a judgment, settlement, compromise or assurance of voluntary compliance, including
 27 damages, restitution, refunds, attorney fees, costs, disbursements and other recoveries, but excluding
 28 civil penalties under ORS 646.642, in proceedings described in subsection (1)(c) of this section shall,
 29 upon receipt, be deposited with the State Treasurer to the credit of the Department of Justice Pro-
 30 tection and Education Revolving Account. However, if the action or suit was based on an expendi-
 31 ture or loss from a public body or a dedicated fund, the amount of such expenditure or loss, after
 32 deduction of attorney fees and expenses awarded to the department by the court or agreed to by the
 33 parties, if any, shall be credited to the public body or dedicated fund and the remainder thereof
 34 credited to the Department of Justice Protection and Education Revolving Account.

35 (4) If the Department of Justice recovers restitution or refunds in a proceeding described in
 36 subsection (1)(c) of this section, and the department cannot determine the persons to whom the
 37 restitution or refunds should be paid or the amount of the restitution or refund payable to individual
 38 claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice
 39 Protection and Education Revolving Account and shall be deposited in the General Fund.

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

- 42 (a) The department’s projection of the balance in the Department of Justice Protection and Ed-
 43 ucation Revolving Account at the end of the biennium in which the report is made and at the end
 44 of the following biennium;
- 45 (b) The amount of the balance held for restitution and refunds;

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

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

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

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

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

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

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

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

18 (B) Answer written interrogatories; or

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

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

24 (2)(a) An attorney may accompany, represent and advise in confidence a person that appears in
25 response to a demand under subsection (1)(a)(A) of this section. The person may refuse to answer
26 any question on constitutional grounds or on the basis of any other legal right or privilege, includ-
27 ing protection against self-incrimination, but must answer any other question that is not subject to
28 the right or privilege. If the person refuses to answer a question on grounds that the answer would
29 be self-incriminating, the Attorney General may compel the person to testify as provided in ORS
30 136.617.

31 (b) The Attorney General shall exclude from the place in which the Attorney General conducts
32 an examination under this subsection all persons other than the person the Attorney General is
33 examining, the person's attorney, the officer before which the person gives the testimony and any
34 stenographer recording the testimony.

35 (3)(a) The Attorney General shall hold in confidence and not disclose to any person any docu-
36 ments, including data protection assessments, answers to interrogatories and transcripts of oral
37 testimony, except that the Attorney General may disclose the documents to:

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

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

40 (C) Employees of the Attorney General; or

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

44 (b)(A) The Attorney General may use any of the materials described in paragraph (a) of this
45 subsection in any investigation the Attorney General conducts under this section or in any action

1 or proceeding the Attorney General brings or initiates in a court or before an administrative agency
 2 in connection with the investigation.

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

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

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

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

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

21 *[(5) Before bringing an action under subsection (4) of this section, the Attorney General shall notify*
 22 *a controller of a violation of sections 1 to 10 of this 2023 Act if the Attorney General determines that*
 23 *the controller can cure the violation. If the controller fails to cure the violation within 30 days after*
 24 *receiving the notice of the violation, the Attorney General may bring the action without further*
 25 *notice.]*

26 *[(6)]* (5) The Attorney General shall bring an action under subsection (4) of this section within
 27 five years after the date of the last act of a controller that constituted the violation for which the
 28 Attorney General seeks relief.

29 *[(7)]* (6) The remedies available to the Attorney General under subsection (4) of this section are
 30 in addition to and not in lieu of any other relief available to the Attorney General or another person
 31 under other applicable provisions of law. A claim available under another provision of law may be
 32 joined to the Attorney General’s claim under subsection (4) of this section.

33 **SECTION 13. (1) Sections 1 to 9 of this 2023 Act and the amendments to ORS 180.095 by**
 34 **section 11 of this 2023 Act become operative on July 1, 2024.**

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

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