

SENATE AMENDMENTS TO SENATE BILL 619

By COMMITTEE ON JUDICIARY

April 12

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

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

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

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

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

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

10 **“(d) The person is subject to another person’s exercise of the powers described in para-**
11 **graph (a), (b) or (c) of this subsection.**

12 **“(2) ‘Authenticate’ means to determine, using commercially reasonable methods, whether**
13 **a consumer with the rights described in section 3 of this 2023 Act, or a person acting on**
14 **behalf of the consumer, is the consumer who has asked to exercise, or is a person who has**
15 **authority to exercise, any of the consumer’s rights.**

16 **“(3)(a) ‘Biometric data’ means personal data generated by automatic measurements of a**
17 **consumer’s biological characteristics, such as the consumer’s fingerprint, voiceprint, retinal**
18 **pattern, iris pattern, gait or other unique biological characteristics that allow or confirm the**
19 **unique identification of the consumer.**

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

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

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

23 **“(C) Data from a photograph or from an audio or video recording, unless the data were**
24 **generated for the purpose of identifying a specific consumer or were used to identify a par-**
25 **ticular consumer; or**

26 **“(D) Facial mapping or facial geometry, unless the facial mapping or facial geometry was**
27 **generated for the purpose of identifying a specific consumer or was used to identify a specific**
28 **consumer.**

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

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

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

35 **“(a) The user interface by means of which the consumer performs the act does not have**

1 any mechanism that has the purpose or substantial effect of obtaining consent by obscuring,
2 subverting or impairing the consumer’s autonomy, decision-making or choice; and

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

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

6 “(8) ‘Controller’ means a person that, alone or jointly with another person, determines
7 the purposes and means for processing personal data.

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

10 “(10) ‘Decisions that produce legal effects or effects of similar significance’ means deci-
11 sions that result in providing or denying financial or lending services, housing, insurance,
12 enrollment in education or educational opportunity, criminal justice, employment opportu-
13 nities, health care services or access to essential goods and services.

14 “(11) ‘Deidentified data’ means data that:

15 “(a) Cannot reasonably be used to infer information about, or otherwise be linked to, an
16 identified or identifiable consumer, or to a device that identifies, is linked to or is reasonably
17 linkable to a consumer; or

18 “(b) Is:

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

25 “(B) Deidentified as provided in 45 C.F.R. 164.514, as in effect on the effective date of this
26 2023 Act.

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

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

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

33 “(A) Is lawfully available through federal, state or local government records or through
34 widely distributed media; or

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

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

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

42 “(16) ‘Profiling’ means an automated processing of personal data for the purpose of
43 evaluating, analyzing or predicting an identified or identifiable consumer’s economic cir-
44 cumstances, health, personal preferences, interests, reliability, behavior, location or move-
45 ments.

1 “(17)(a) ‘Sale’ or ‘sell’ means the exchange of personal data for monetary or other valu-
2 able consideration by the controller with a third party.

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

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

5 “(B) A disclosure of personal data to an affiliate of a controller or to a third party for
6 the purpose of enabling the controller to provide a product or service to a consumer that
7 requested the product or service;

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

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

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

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

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

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

19 “(A) Reveals a consumer’s racial or ethnic background, national origin, religious beliefs,
20 mental or physical condition or diagnosis, sexual orientation, gender identity, status as
21 transgender or nonbinary, status as a victim of crime or citizenship or immigration status;

22 “(B) Is a child’s personal data;

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

27 “(D) Is genetic or biometric data.

28 “(b) ‘Sensitive data’ as defined in paragraph (a)(C) of this subsection does not include the
29 content of communications or any data generated by or connected to advanced utility me-
30 tering infrastructure systems or equipment for use by a utility.

31 “(19)(a) ‘Targeted advertising’ means advertising that is selected for display to a con-
32 sumer on the basis of personal data obtained from the consumer’s activities over time and
33 across one or more unaffiliated websites or online applications and is used to predict the
34 consumer’s preferences or interests.

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

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

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

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

42 “(D) A processing of personal data solely for the purpose of measuring or reporting an
43 advertisement’s frequency, performance or reach.

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

1 or processor.

2 **“SECTION 2.** (1) Sections 1 to 9 of this 2023 Act apply to any person that conducts busi-
3 ness in this state, or that provides products or services to residents of this state, and that
4 during a calendar year, controls or processes:

5 **“(a)** The personal data of 100,000 or more consumers, other than personal data controlled
6 or processed solely for the purpose of completing a payment transaction; or

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

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

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

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

16 **“(c)** Information used only for public health activities and purposes described in 45 C.F.R.
17 164.512, as in effect on the effective date of this 2023 Act;

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

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

22 **“(B)** Research on human subjects undertaken in accordance with good clinical practice
23 guidelines issued by the International Council for Harmonisation of Technical Requirements
24 for Pharmaceuticals for Human Use;

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

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

29 **“(e)** Patient identifying information, as defined in 42 C.F.R. 2.11, as in effect on the ef-
30 fective date of this 2023 Act, that is collected and processed in accordance with 42 C.F.R. part
31 2;

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

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

38 **“(h)** Information that originates from, or that is intermingled so as to be indistinguish-
39 able from, information described in paragraphs (b) to (g) of this subsection that a covered
40 entity or business associate, or a program of a qualified service organization, as defined in
41 42 C.F.R. 2.11, as in effect on the effective date of this 2023 Act, creates, collects, processes,
42 uses or maintains in the same manner as is required under the laws, regulations and guide-
43 lines described in paragraphs (b) to (g) of this subsection;

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

- 1 **“(A) An individual’s employment or application for employment;**
2 **“(B) An individual’s ownership of, or function as a director or officer of, a business en-**
3 **tity;**
4 **“(C) An individual’s contractual relationship with a business entity;**
5 **“(D) An individual’s receipt of benefits from an employer, including benefits for the**
6 **individual’s dependents or beneficiaries; or**
7 **“(E) Notice of an emergency to persons that an individual specifies;**
8 **“(j) Any activity that involves collecting, maintaining, disclosing, selling, communicating**
9 **or using information for the purpose of evaluating a consumer’s creditworthiness, credit**
10 **standing, credit capacity, character, general reputation, personal characteristics or mode of**
11 **living if done strictly in accordance with the provisions of the Fair Credit Reporting Act, 15**
12 **U.S.C. 1681 et seq., as in effect on the effective date of this 2023 Act, by:**
13 **“(A) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f), as in effect on the**
14 **effective date of this 2023 Act;**
15 **“(B) A person who furnishes information to a consumer reporting agency under 15 U.S.C.**
16 **1681s-2, as in effect on the effective date of this 2023 Act; or**
17 **“(C) A person who uses a consumer report as provided in 15 U.S.C. 1681b(a)(3);**
18 **“(k) Information collected, processed, sold or disclosed under and in accordance with the**
19 **following federal laws, all as in effect on the effective date of this 2023 Act:**
20 **“(A) The Gramm-Leach-Bliley Act, P.L. 106-102, and regulations adopted to implement**
21 **that Act;**
22 **“(B) The Driver’s Privacy Protection Act of 1994, 18 U.S.C. 2721 et seq.;**
23 **“(C) The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and regulations**
24 **adopted to implement that Act; and**
25 **“(D) The Airline Deregulation Act, P.L. 95-504, only to the extent that an air carrier**
26 **collects information related to prices, routes or services and only to the extent that the**
27 **provisions of the Airline Deregulation Act preempt sections 1 to 9 of this 2023 Act;**
28 **“(L) A financial institution, as defined in ORS 706.008;**
29 **“(m) A licensee, as defined in ORS 725.010, that is engaged exclusively in the business of**
30 **making consumer finance loans, as defined in ORS 725.010;**
31 **“(n) An insurer, as defined in ORS 731.106, other than a person that, alone or in combi-**
32 **nation with another person, establishes and maintains a self-insurance program and that**
33 **does not otherwise engage in the business of entering into policies of insurance;**
34 **“(o) An insurance producer, as defined in ORS 731.104;**
35 **“(p) An insurance consultant, as defined in ORS 744.602;**
36 **“(q) A person that holds a third party administrator license issued under ORS 744.710;**
37 **“(r) A nonprofit organization that is established to detect and prevent fraudulent acts in**
38 **connection with insurance; and**
39 **“(s) Noncommercial activity of:**
40 **“(A) A publisher, editor, reporter or other person who is connected with or employed by**
41 **a newspaper, magazine, periodical, newsletter, pamphlet, report or other publication in gen-**
42 **eral circulation;**
43 **“(B) A radio or television station that holds a license issued by the Federal Communi-**
44 **ications Commission;**
45 **“(C) A nonprofit organization that provides programming to radio or television networks;**

1 or

2 “(D) An entity that provides an information service, including a press association or wire
3 service.

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

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

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

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

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

12 “(e) Preventing, detecting, protecting against or responding to, and investigating, re-
13 porting or prosecuting persons responsible for, security incidents, identity theft, fraud,
14 harassment or malicious, deceptive or illegal activity or preserving the integrity or security
15 of systems;

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

18 “(g) Providing a product or service that a consumer specifically requests from the con-
19 troller or processor or requests as the parent or guardian of a child on the child’s behalf or
20 as the guardian or conservator of a person subject to a guardianship, conservatorship or
21 other protective arrangement on the person’s behalf;

22 “(h) Negotiating, entering into or performing a contract with a consumer, including ful-
23 filling the terms of a written warranty;

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

25 “(j) Effectuating a product recall;

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

28 “(L) Performing internal operations that are reasonably aligned with a consumer’s ex-
29 pectations, that the consumer may reasonably anticipate based on the consumer’s existing
30 relationship with the controller or that are otherwise compatible with processing data for
31 the purpose of providing a product or service the consumer specifically requested or for the
32 purpose of performing a contract to which the consumer is a party; or

33 “(m) Assisting another controller or processor with any of the activities set forth in this
34 subsection.

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

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

44 “(6) Collection, use and retention of personal data under subsection (3)(e) and (f) of this
45 section must, where applicable, take into account the nature and purpose of the collection,

1 use or retention. The personal data must be subject to reasonable administrative, technical
2 and physical measures to protect the confidentiality, integrity and security of the personal
3 data and reduce reasonably foreseeable risks of harm to consumers from the collection, use
4 or retention.

5 “(7) A controller that claims that the controller’s processing of personal data is exempt
6 under subsection (3) of this section has the burden of demonstrating that the controller’s
7 processing qualifies for 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 may:

10 “(a) Obtain from a controller:

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

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

16 “(i) The consumer’s personal data; or

17 “(ii) Any personal data; and

18 “(C) A copy of all of the consumer’s personal data that the controller has processed or
19 is processing;

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

23 “(c) Require a controller to delete personal data about the consumer, including personal
24 data the consumer provided to the controller, personal data the controller obtained from
25 another source and derived data; or

26 “(d) Opt out from a controller’s processing of personal data of the consumer that the
27 controller processes for any of the following purposes:

28 “(A) Targeted advertising;

29 “(B) Selling the personal data; or

30 “(C) Profiling the consumer in furtherance of decisions that produce legal effects or ef-
31 fects of similar significance.

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

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

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

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

44 “(3) A parent or legal guardian may exercise the rights described in section 3 of this 2023
45 Act on behalf of the parent’s child or on behalf of a child for whom the guardian has legal

1 responsibility. A guardian or conservator may exercise the rights described in subsection (1)
2 of this section on behalf of a consumer that is subject to a guardianship, conservatorship or
3 other protective arrangement.

4 “(4) A consumer may designate another person to act on the consumer’s behalf as the
5 consumer’s authorized agent for the purpose of opting out of a controller’s processing of the
6 consumer’s personal data, as provided in section 3 (1)(d) of this 2023 Act. The consumer may
7 designate an authorized agent by means of an internet link, browser setting, browser ex-
8 tension, global device setting or other technology that enables the consumer to opt out of
9 the controller’s processing of the consumer’s personal data. A controller shall comply with
10 an opt-out request the controller receives from an authorized agent if the controller can
11 verify, with commercially reasonable effort, the identity of the consumer and the authorized
12 agent’s authority to act on the consumer’s behalf.

13 “(5) Except as otherwise provided in sections 1 to 9 of this 2023 Act, in responding to a
14 request under subsection (1) of this section, a controller shall:

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

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

26 “(c) Provide information the consumer requests once during any 12-month period without
27 charge to the consumer. A controller may charge a reasonable fee to cover the administra-
28 tive costs of complying with a second or subsequent request within the 12-month period,
29 unless the purpose of the second or subsequent request is to verify that the controller cor-
30 rected inaccuracies in, or deleted, the consumer’s personal data in compliance with the
31 consumer’s request.

32 “(d) Notify the consumer if the controller cannot, using commercially reasonable meth-
33 ods, authenticate the consumer’s request without additional information from the consumer.
34 A controller that sends a notification under this paragraph does not have to comply with the
35 request until the consumer provides the information necessary to authenticate the request.

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

39 “(A) A controller may ask for additional information necessary to comply with the re-
40 quest, such as information that is necessary to identify the consumer that requested to opt
41 out.

42 “(B) A controller may deny a request to opt out if the controller has a good-faith, rea-
43 sonable and documented belief that the request is fraudulent. If the controller denies a re-
44 quest under this subparagraph, the controller shall notify the consumer that the controller
45 believes the request is fraudulent, stating in the notice that the controller will not comply

1 with the request.

2 “(6) A controller shall establish a process by means of which a consumer may appeal the
3 controller’s refusal to take action on a request under subsection (1) of this section. The
4 controller’s process must:

5 “(a) Allow a reasonable period of time after the consumer receives the controller’s re-
6 fusals within which to appeal;

7 “(b) Be conspicuously available to the consumer;

8 “(c) Be similar to the manner in which a consumer must submit a request under sub-
9 section (1) of this section; and

10 “(d) Require the controller to approve or deny the appeal within 45 days after the date
11 on which the controller received the appeal and to notify the consumer in writing of the
12 controller’s decision and the reasons for the decision. If the controller denies the appeal, the
13 notice must provide or specify information that enables the consumer to contact the Attor-
14 ney General to submit a complaint.

15 “(7) A controller that obtains personal data about a consumer from a source other than
16 the consumer complies with the consumer’s request to delete the personal data if the con-
17 troller:

18 “(a) Deletes the data but retains a record of the deletion request and a minimal amount
19 of data necessary to ensure that the personal data remains deleted and does not use the
20 minimal data for any other purpose; and

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

23 SECTION 5. (1) A controller shall:

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

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

29 “(c) Establish, implement and maintain for personal data the same safeguards described
30 in ORS 646A.622 that are required for protecting personal information, as defined in ORS
31 646A.602, such that the controller’s safeguards protect the confidentiality, integrity and ac-
32 cessibility of the personal data to the extent appropriate for the volume and nature of the
33 personal data; and

34 “(d) Provide an effective means by which a consumer may revoke consent a consumer
35 gave under sections 1 to 9 of this 2023 Act to the controller’s processing of the consumer’s
36 personal data. The means must be at least as easy as the means by which the consumer
37 provided consent. Once the consumer revokes consent, the controller shall cease processing
38 the personal data as soon as is practicable, but not later than 15 days after receiving the
39 revocation.

40 “(2) A controller may not:

41 “(a) Process personal data for purposes that are not reasonably necessary for and com-
42 patible with the purposes the controller specified in subsection (1)(a) of this section, unless
43 the controller obtains the consumer’s consent;

44 “(b) Process sensitive data about a consumer without first obtaining the consumer’s
45 consent or, if the controller knows the consumer is a child, without processing the sensitive

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

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

9 “(d) Discriminate against a consumer that exercises a right provided to the consumer
10 under sections 1 to 9 of this 2023 Act by means such as denying goods or services, charging
11 different prices or rates for goods or services or providing a different level of quality or se-
12 lection of goods or services to the 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 personal data from
15 a consumer that the controller does not collect or maintain; or

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

20 “(4) A controller shall provide to consumers a reasonably accessible, clear and meaning-
21 ful privacy notice that:

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

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

25 “(c) Describes how a consumer may exercise the consumer’s rights under sections 1 to
26 9 of this 2023 Act, including how a consumer may appeal a controller’s denial of a consumer’s
27 request under section 4 of this 2023 Act;

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

30 “(e) Describes all categories of third parties with which the controller shares personal
31 data at a level of detail that enables the consumer to understand what type of entity each
32 third party is and, to the extent possible, how each third party may process personal data;

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

35 “(g) Identifies the controller, including any business name under which the controller
36 registered with the Secretary of State and any assumed business name that the controller
37 uses in this state;

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

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

45 “(5) The method or methods described in subsection (4)(i) of this section for submitting

1 a consumer's request to a controller must:

2 "(a) Take into account:

3 "(A) Ways in which consumers normally interact with the controller;

4 "(B) A need for security and reliability in communications related to the request; and

5 "(C) The controller's ability to authenticate the identity of the consumer that makes the
6 request; and

7 "(b) Provide a clear and conspicuous link to a webpage where the consumer or an au-
8 thorized agent may opt out from a controller's processing of the consumer's personal data
9 as described in section 3 (1)(d) of this 2023 Act or, solely if the controller does not have a
10 capacity needed for linking to a webpage, provide another method the consumer can use to
11 opt out.

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

22 "**SECTION 6.** (1) A processor shall adhere to a controller's instructions and shall assist
23 the controller in meeting the controller's obligations under sections 1 to 9 of this 2023 Act.
24 In assisting the controller, the processor must:

25 "(a) Enable the controller to respond to requests from consumers under section 4 of this
26 2023 Act by means that take into account how the processor processes personal data and the
27 information available to the processor and that use appropriate technical and organizational
28 measures to the extent reasonably practicable;

29 "(b) Adopt administrative, technical and physical safeguards that are reasonably designed
30 to protect the security and confidentiality of the personal data the controller processes,
31 taking into account how the processor processes the personal data and the information
32 available to the processor; and

33 "(c) Provide information reasonably necessary for the controller to conduct and docu-
34 ment data protection assessments.

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

37 "(a) Be valid and binding on both parties;

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

40 "(c) Specify the rights and obligations of both parties with respect to the subject matter
41 of the contract;

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

44 "(e) Require the processor to delete the personal data or return the personal data to the
45 controller at the controller's direction or at the end of the provision of services, unless a law

1 requires the processor to retain the personal data;

2 “(f) Require the processor to make available to the controller, at the controller’s request,
3 all information the controller needs to verify that the processor has complied with all obli-
4 gations the processor has under sections 1 to 9 of this 2023 Act;

5 “(g) Require the processor to enter into a subcontract with a person the processor en-
6 gages to assist with processing personal data on the controller’s behalf and in the subcon-
7 tract require the subcontractor to meet the processor’s obligations under the processor’s
8 contract with the controller; and

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

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

18 “(4)(a) For purposes of determining obligations under sections 1 to 9 of this 2023 Act, a
19 person is a controller with respect to processing a set of personal data, and is subject to an
20 action under section 9 of this 2023 Act to punish a violation of sections 1 to 9 of this 2023
21 Act, if the person:

22 “(A) Does not need to adhere to another person’s instructions to process the personal
23 data;

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

26 “(C) Begins at any point to determine the purposes and means for processing the per-
27 sonal data, alone or in concert with another person.

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

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

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

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

35 “(B) Publicly commit to maintaining and using deidentified data without attempting to
36 reidentify the deidentified data; and

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

40 “(b) A controller that discloses deidentified data shall exercise reasonable oversight to
41 monitor compliance with any contractual commitments to which the deidentified data is
42 subject and shall take appropriate steps to address any breaches of the contractual com-
43 mitments.

44 “(c) This section does not prohibit a controller from attempting to reidentify deidentified
45 data solely for the purpose of testing the 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 authenticate the consumer’s
5 request under section 4 of this 2023 Act by:
6 “(i) Maintaining data in identifiable form; or
7 “(ii) Collecting, retaining or accessing any particular data or technology.
8 “(b) Require a controller or processor to comply with a consumer’s request under section
9 4 of this 2023 Act if the controller:
10 “(A) Cannot reasonably associate the request with personal data or if the controller’s
11 attempt to associate the request with personal data would be unreasonably burdensome;
12 “(B) Does not use personal data to recognize or respond to the specific consumer who is
13 the subject of the personal data or associate the personal data with any other personal data
14 about the specific consumer; and
15 “(C) Does not sell or otherwise voluntarily disclose personal data to a third party, except
16 as otherwise provided in this section.
17 “SECTION 8. (1)(a) A controller shall conduct and document a data protection assess-
18 ment for each of the controller’s processing activities that presents a heightened risk of
19 harm to a consumer.
20 “(b) Processing activities that present a heightened risk of harm to a consumer include:
21 “(A) Processing personal data for the purpose of targeted advertising;
22 “(B) Processing sensitive data;
23 “(C) Selling personal data; and
24 “(D) Using the personal data for purposes of profiling, if the profiling presents a reason-
25 ably foreseeable risk of:
26 “(i) Unfair or deceptive treatment of, or unlawful disparate impact on, consumers;
27 “(ii) Financial, physical or reputational injury to consumers;
28 “(iii) Physical or other types of intrusion upon a consumer’s solitude, seclusion or private
29 affairs or concerns, if the intrusion would be offensive to a reasonable person; or
30 “(iv) Other substantial injury to consumers.
31 “(c) A single data protection assessment may address a comparable set of processing
32 operations that present a similar heightened risk of harm.
33 “(2) A data protection assessment shall identify and weigh how processing personal data
34 may directly or indirectly benefit the controller, the consumer, other stakeholders and the
35 public against potential risks to the consumer, taking into account how safeguards the con-
36 troller employs can mitigate the risks. In conducting the assessment, the controller shall
37 consider how deidentified data might reduce risks, the reasonable expectations of consumers,
38 the context in which the data is processed and the relationship between the controller and
39 the consumers whose personal data the controller will process.
40 “(3) The Attorney General may require a controller to provide to the Attorney General
41 any data protection assessments the controller has conducted if the data protection assess-
42 ment is relevant to an investigation the Attorney General conducts under section 9 of this
43 2023 Act. The Attorney General may evaluate a data protection assessment for the
44 controller’s compliance with the requirements of section 1 to 9 of this 2023 Act. If a data
45 protection assessment the Attorney General obtains under this subsection includes infor-

1 mation that is subject to attorney-client privilege or is work product that is subject to a
2 privilege, the controller’s provision of the data protection assessment does not waive the
3 privilege.

4 “(4) A data protection assessment that a controller conducts to comply with another
5 applicable law or regulation satisfies the requirements of this section if the data protection
6 assessment is reasonably similar in scope and effect to a data protection assessment con-
7 ducted under this section.

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

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

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

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

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

21 “(B) Answer written interrogatories; or

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

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

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

34 “(b) The Attorney General shall exclude from the place in which the Attorney General
35 conducts an examination under this subsection all persons other than the person the Attor-
36 ney General is examining, the person’s attorney, the officer before which the person gives
37 the testimony and any stenographer recording the testimony.

38 “(3)(a) The Attorney General shall hold in confidence and may not disclose to any person
39 any documents, including data protection assessments, answers to interrogatories and tran-
40 scripts of oral testimony, except that the Attorney General may disclose the documents to:

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

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

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

45 “(D) An official of the United States or of any state who is authorized to enforce federal

1 or state consumer protection laws if the Attorney General first obtains a written agreement
2 from the official in which the official agrees to abide by the confidentiality requirements of
3 this subsection.

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

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

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

18 “(c) The Attorney General shall deposit the proceeds of any recovery under this sub-
19 section into the Department of Justice Protection and Education Revolving Account, as
20 provided in ORS 180.095.

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

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

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

34 “(8) The Attorney General has exclusive authority to enforce the provisions of sections
35 1 to 9 of this 2023 Act. Sections 1 to 9 of this 2023 Act, or any other laws of this state, do
36 not create a private right of action to enforce a violation of sections 1 to 9 of this 2023 Act.

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

38 “180.095. (1) The Department of Justice Protection and Education Revolving Account is created
39 in the General Fund. All moneys in the account are continuously appropriated to the Department
40 of Justice and may be used to pay for only the following activities:

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

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

44 “(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the
45 department in investigating, preparing, commencing and prosecuting the following actions and suits,

1 and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising
2 out of the following actions and suits:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 or

39 “(B) For payment of legal costs related to the judgment, settlement, compromise or other re-
40 covery.

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

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

45 “**Sec. 9.** (1)(a) The Attorney General may serve an investigative demand upon any person that

1 possesses, controls or has custody of any information, document or other material that the Attorney
2 General determines is relevant to an investigation of a violation of sections 1 to 9 of this 2023 Act
3 or that could lead to a discovery of relevant information. An investigative demand may require the
4 person to:

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

6 “(B) Answer written interrogatories; or

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

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

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

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

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

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

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

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

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

32 “(b) The Attorney General may use any of the materials described in paragraph (a) of this sub-
33 section in any investigation the Attorney General conducts under this section or in any action or
34 proceeding the Attorney General brings or initiates in a court or before an administrative agency
35 in connection with the investigation.

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

40 “(b) A court may award reasonable attorney fees, expert witness fees and costs of investigation
41 to the Attorney General if the Attorney General prevails in an action under this subsection. The
42 court may award reasonable attorney fees to a defendant that prevails in an action under this sub-
43 section if the court finds that the Attorney General had no objectively reasonable basis for asserting
44 the claim or for appealing an adverse decision of the trial court.

45 “(c) The Attorney General shall deposit the proceeds of any recovery under this subsection into

1 the Department of Justice Protection and Education Revolving Account, as provided in ORS 180.095.

2 “[5] *Before bringing an action under subsection (4) of this section, the Attorney General shall*
3 *notify a controller of a violation of sections 1 to 9 of this 2023 Act if the Attorney General determines*
4 *that the controller can cure the violation. If the controller fails to cure the violation within 30 days after*
5 *receiving the notice of the violation, the Attorney General may bring the action without further*
6 *notice.*]

7 “[6] (5) The Attorney General shall bring an action under subsection (4) of this section within
8 five years after the date of the last act of a controller that constituted the violation for which the
9 Attorney General seeks relief.

10 “[7] (6) The remedies available to the Attorney General under subsection (4) of this section
11 are in addition to and not in lieu of any other relief available to the Attorney General or another
12 person under other applicable provisions of law. A claim available under another provision of law
13 may be joined to the Attorney General’s claim under subsection (4) of this section.

14 “[8] (7) The Attorney General has exclusive authority to enforce the provisions of sections 1
15 to 9 of this 2023 Act. Sections 1 to 9 of this 2023 Act, or any other laws of this state, do not create
16 a private right of action to enforce a violation of sections 1 to 9 of this 2023 Act.

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

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

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

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

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

28 “(d) Provide an effective means by which a consumer may revoke consent a consumer gave un-
29 der sections 1 to 9 of this 2023 Act to the controller’s processing of the consumer’s personal data.
30 The means must be at least as easy as the means by which the consumer provided consent. Once
31 the consumer revokes consent, the controller shall cease processing the personal data as soon as is
32 practicable, but not later than 15 days after receiving the revocation.

33 “(2) A controller may not:

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

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

41 “(c) Process a consumer’s personal data for the purposes of targeted advertising, of profiling the
42 consumer in furtherance of decisions that produce legal effects or effects of similar significance or
43 of selling the consumer’s personal data without the consumer’s consent if the controller has actual
44 knowledge that, or willfully disregards whether, the consumer is at least 13 years of age and not
45 older than 15 years of age; or

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

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

6 “(a) Require a controller to provide a good or service that requires personal data from a con-
7 sumer that the controller does not collect or maintain; or

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

12 “(4) A controller shall provide to consumers a reasonably accessible, clear and meaningful pri-
13 vacy notice that:

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

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

17 “(c) Describes how a consumer may exercise the consumer’s rights under sections 1 to 9 of this
18 2023 Act, including how a consumer may appeal a controller’s denial of a consumer’s request under
19 section 4 of this 2023 Act;

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

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

25 “(f) Specifies an electronic mail address or other online method by which a consumer can con-
26 tact the controller that the controller actively monitors;

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

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

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

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

37 “(a) Take into account:

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

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

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

41 [*and*]

42 “(b) Provide a clear and conspicuous link to a webpage where the consumer or an authorized
43 agent may opt out from a controller’s processing of the consumer’s personal data as described in
44 section 3 (1)(d) of this 2023 Act or, solely if the controller does not have a capacity needed for
45 linking to a 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 controller that indi-
2 cates the consumer’s preference to opt out of the sale of personal data or targeted adver-
3 tising under section 3 (1)(d) of this 2023 Act by means of a platform, technology or
4 mechanism that:

5 “(A) Does not unfairly disadvantage another controller;

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

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

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

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

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

24 “SECTION 13. Sections 1 to 9 of this 2023 Act do not apply before July 1, 2025, to the
25 activities of an organization described in section 501(c)(3) of the Internal Revenue Code that
26 is exempt from income tax under section 501(a) of the Internal Revenue Code.

27 “SECTION 14. (1) Sections 1 to 9 of this 2023 Act and the amendments to ORS 180.095
28 by section 10 of this 2023 Act become operative on July 1, 2024.

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

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

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