

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
SENATE BILL 619**

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

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

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

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

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

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

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

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

21 **“(3)(a) ‘Biometric data’ means data generated by automatic meas-**

1 **urements of a consumer’s biological characteristics, such as the**  
2 **consumer’s fingerprint, voiceprint, retinal pattern, iris pattern, gait**  
3 **or other unique biological characteristics.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13       “(b) Is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11      “(b) Is a child’s personal data;

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

17      “(d) Is genetic or biometric data.

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

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

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

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

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

30      “(D) A processing of personal data solely for the purpose of meas-

1 **uring or reporting an advertisement’s frequency, performance or**  
2 **reach.**

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

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

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

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

19 **“(2) Sections 1 to 10 of this 2023 Act do not apply to:**

20 **“(a) A public body, as defined in ORS 174.109;**

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

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

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

30 **“(A) Activities that are subject to the Federal Policy for the Pro-**

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

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

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

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

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

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

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

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

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

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

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

30 **“(A) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f),**

1 as in effect on the effective date of this 2023 Act;

2 “(B) A person who furnishes information to a consumer reporting  
3 agency under 15 U.S.C. 1681s-2, as in effect on the effective date of this  
4 2023 Act; or

5 “(C) A person who uses a consumer report as provided in 15 U.S.C.  
6 1681b(a)(3);

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

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

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

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

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

20 “(h) A financial institution, as defined in ORS 706.008; or

21 “(i) An insurance producer, as defined in ORS 731.104.

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

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

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

29 “(c) Cooperating with a law enforcement agency concerning con-  
30 duct or activity that the controller or processor reasonably and in



1 good faith believes may violate federal, state or local statutes, ordi-  
2 nances, rules or regulations;

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

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

8 “(f) Preserving the integrity or security of systems;

9 “(g) Identifying and repairing technical errors in a controller’s or  
10 processor’s information systems that impair existing or intended  
11 functionality;

12 “(h) Providing a product or service that a consumer specifically  
13 requests from the controller or processor or requests as the parent or  
14 guardian of a child on the child’s behalf or as the guardian or  
15 conservator of a person subject to a guardianship, conservatorship or  
16 other protective arrangement on the person’s behalf;

17 “(i) Negotiating, entering into or performing a contract with a  
18 consumer, including fulfilling the terms of a written warranty;

19 “(j) Protecting any person’s health and safety;

20 “(k) Effectuating a product recall;

21 “(L) Conducting internal research to develop, improve or repair  
22 products, services or technology;

23 “(m) Performing internal operations that are reasonably aligned  
24 with a consumer’s expectations, that the consumer may reasonably  
25 anticipate based on the consumer’s existing relationship with the  
26 controller or that are otherwise compatible with processing data for  
27 the purpose of providing a product or service the consumer specifically  
28 requested or for the purpose of performing a contract to which the  
29 consumer is a party; or

30 “(n) Assisting another controller or processor with any of the ac-

1 **tivities set forth in this subsection.**

2 **“(4) Sections 1 to 10 of this 2023 Act do not apply to the extent that**  
3 **a controller’s or processor’s compliance with sections 1 to 10 of this**  
4 **2023 Act would violate an evidentiary privilege under the laws of this**  
5 **state. Notwithstanding the provisions of sections 1 to 10 of this 2023**  
6 **Act, a controller or processor may provide personal data about a con-**  
7 **sumer in a privileged communication to a person that is covered by**  
8 **an evidentiary privilege under the laws of this state.**

9 **“(5) A controller may process personal data in accordance with this**  
10 **section only to the extent that the processing is adequate and rea-**  
11 **sonably necessary for, relevant to, proportionate in relation to and**  
12 **limited to the purposes set forth in this section.**

13 **“(6) Collection, use and retention of personal data under subsection**  
14 **(3)(e) and (f) of this section must, where applicable, take into account**  
15 **the nature and purpose of the collection, use or retention. The per-**  
16 **sonal data must be subject to reasonable administrative, technical and**  
17 **physical measures to protect the confidentiality, integrity and security**  
18 **of the personal data and reduce reasonably foreseeable risks of harm**  
19 **to consumers from the collection, use or retention.**

20 **“(7) A controller that claims that the controller’s processing of**  
21 **personal data is exempt under this section from the application of**  
22 **sections 1 to 10 of this 2023 Act has the burden of demonstrating that**  
23 **the controller’s processing qualifies for the exemption and complies**  
24 **with the requirements of subsections (5) and (6) of this section.**

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

27 **“(a) Obtain from a controller:**

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

1       **“(B) A list of specific third parties, other than natural persons, to**  
2 **which the controller has disclosed the consumer’s personal data; and**

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

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

8       **“(c) Require a controller to delete personal data about the con-**  
9 **sumer, including personal data the consumer provided to the control-**  
10 **ler, personal data the controller obtained from another source and**  
11 **derived data; or**

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

15       **“(A) Targeted advertising;**

16       **“(B) Selling the personal data; or**

17       **“(C) Profiling the consumer in furtherance of decisions that**  
18 **produce legal effects or effects of similar significance.**

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

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

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

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

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

11       “(4) A consumer may designate another person to act on the  
12 consumer’s behalf as the consumer’s authorized agent for the purpose  
13 of opting out of a controller’s processing of the consumer’s personal  
14 data, as provided in section 3 (1)(d) of this 2023 Act. The consumer  
15 may designate an authorized agent by means of an internet link,  
16 browser setting, browser extension, global device setting or other  
17 technology that enables the consumer to opt out of the controller’s  
18 processing of the consumer’s personal data. A controller shall comply  
19 with an opt-out request the controller receives from an authorized  
20 agent if the controller can verify, with commercially reasonable effort,  
21 the identity of the consumer and the authorized agent’s authority to  
22 act on the consumer’s behalf.

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

26       “(a) Respond to a request from a consumer without undue delay and  
27 not later than 45 days after receiving the request. The controller may  
28 extend the period within which the controller responds by an addi-  
29 tional 45 days if the extension is reasonably necessary to comply with  
30 the consumer’s request, taking into consideration the complexity of

1 the request and the number of requests the consumer makes. A con-  
2 troller that intends to extend the period for responding shall notify the  
3 consumer within the initial 45-day response period and explain the  
4 reason for the extension.

5 “(b) Notify the consumer without undue delay and not later than  
6 45 days after receiving the consumer’s request if the controller de-  
7 clines to take action on the request. The controller in the notice shall  
8 explain the justification for not taking action and include instructions  
9 for appealing the controller’s decision.

10 “(c) Provide information the consumer requests once during any  
11 12-month period without charge to the consumer. A controller may  
12 charge a reasonable fee to cover the administrative costs of complying  
13 with a second or subsequent request within the 12-month period, un-  
14 less the purpose of the second or subsequent request is to verify that  
15 the controller corrected inaccuracies in, or deleted, the consumer’s  
16 personal data in compliance with the consumer’s request.

17 “(d) Notify the consumer if the controller cannot, using commer-  
18 cially reasonable methods, authenticate the consumer’s request with-  
19 out additional information from the consumer. A controller that sends  
20 a notification under this paragraph does not have to comply with the  
21 request until the consumer provides the information necessary to  
22 authenticate the request.

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

26 “(A) A controller may ask for additional information necessary to  
27 comply with the request, such as information that is necessary to  
28 identify the consumer that requested to opt out.

29 “(B) A controller may deny a request to opt out if the controller  
30 has a good-faith, reasonable and documented belief that the request

1 is fraudulent. If the controller denies a request under this subpara-  
2 graph, the controller shall notify the consumer that the controller  
3 believes the request is fraudulent, stating in the notice that the con-  
4 troller will not comply with the request.

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

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

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

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

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

20 “(7) A controller that obtains personal data about a consumer from  
21 a source other than the consumer complies with the consumer’s or  
22 an authorized agent’s request to delete the personal data if the con-  
23 troller deletes the data but retains a record of the deletion request and  
24 a minimal amount of data necessary to ensure that the personal data  
25 remains deleted and does not use the minimal data for any other  
26 purpose.

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

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

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

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

11       **“(d) Provide an effective means by which a consumer may revoke**  
12 **the consumer’s consent to the controller’s processing of the**  
13 **consumer’s personal data. The means must be at least as easy as the**  
14 **means by which the consumer provided consent. Once the consumer**  
15 **revokes consent, the controller shall cease processing the personal**  
16 **data as soon as is practicable, but not later than 15 days after receiv-**  
17 **ing the revocation.**

18       **“(2) A controller may not:**

19       **“(a) Process personal data for purposes that are not reasonably**  
20 **necessary for and compatible with the purposes the controller specified**  
21 **in subsection (1)(a) of this section, unless the processing is otherwise**  
22 **permitted under sections 1 to 10 of this 2023 Act or unless the con-**  
23 **troller obtains the consumer’s consent;**

24       **“(b) Process sensitive data about a consumer without first obtaining**  
25 **the consumer’s consent or, if the controller knows the consumer is a**  
26 **child or willfully disregards whether the consumer is a child, without**  
27 **processing the sensitive data in accordance with the Children’s Online**  
28 **Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq. and the regu-**  
29 **lations, rules and guidance adopted under the Act, all as in effect on**  
30 **the effective date of this 2023 Act;**

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

8       “(d) Discriminate against a consumer that exercises a right pro-  
9 vided to the consumer under sections 1 to 10 of this 2023 Act by means  
10 such as denying goods or services, charging different prices or rates  
11 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  
15 personal data from a consumer that the controller does not collect or  
16 maintain; or

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

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

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

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

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



1 of this 2023 Act;

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

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

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

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

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

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

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

24 “(a) Take into account:

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

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

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

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

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

20       **“SECTION 6. (1) A processor shall adhere to a controller’s in-**  
21 **structions and shall assist the controller in meeting the controller’s**  
22 **obligations under sections 1 to 10 of this 2023 Act. In assisting the**  
23 **controller, the processor must:**

24       **“(a) Enable the controller to respond to requests from consumers**  
25 **under section 4 of this 2023 Act by means that take into account how**  
26 **the processor processes personal data and the information available**  
27 **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**  
30 **are reasonably designed to protect the security and confidentiality of**

1 the personal data the controller processes, taking into account how  
2 the processor processes the personal data and the information avail-  
3 able to the processor; and

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

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

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

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

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

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

17 “(e) Require the processor to delete the personal data or return the  
18 personal data to the controller at the controller’s direction or when  
19 the contract expires or terminates, unless a law requires the processor  
20 to retain the personal data;

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

25 “(g) Require the processor to enter into a subcontract with a person  
26 the processor engages to assist with processing personal data on the  
27 controller’s behalf and in the subcontract require the subcontractor  
28 to meet the processor’s obligations under the processor’s contract with  
29 the controller; and

30 “(h) Allow the controller, the controller’s designee or a qualified

1 and independent person the processor engages, in accordance with an  
2 appropriate and accepted control standard, framework or procedure,  
3 to assess the processor’s policies and technical and organizational  
4 measures for complying with the processor’s obligations under  
5 sections 1 to 10 of this 2023 Act, and require the processor to cooperate  
6 with the assessment and, at the controller’s request, report the results  
7 of the assessment to the controller.

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

11 “(4)(a) For purposes of determining obligations under sections 1 to  
12 10 of this 2023 Act, a person is a controller with respect to processing  
13 a set of personal data, and is subject to an action under section 9 of  
14 this 2023 Act to punish a violation of sections 1 to 10 of this 2023 Act,  
15 if the person:

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

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

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

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

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

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

30 “(A) Take reasonable measures to ensure that the deidentified data

1 cannot be associated with an individual;

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

4 “(C) Enter into a contract with a recipient of the deidentified data  
5 and provide in the contract that the recipient must comply with the  
6 controller’s obligations under sections 1 to 10 of this 2023 Act.

7 “(b) A controller that discloses deidentified data shall exercise rea-  
8 sonable oversight to monitor compliance with any contractual com-  
9 mitments to which the deidentified data is subject and shall take  
10 appropriate steps to address any breaches of the contractual commit-  
11 ments.

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

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

16 “(a) Require a controller or processor to:

17 “(A) Reidentify deidentified data; or

18 “(B) Associate a consumer with personal data in order to  
19 authenticate the consumer’s request under section 4 of this 2023 Act  
20 by:

21 “(i) Maintaining data in identifiable form; or

22 “(ii) Collecting, retaining or accessing any particular data or tech-  
23 nology.

24 “(b) Require a controller or processor to comply with a consumer’s  
25 request under section 4 of this 2023 Act if the controller:

26 “(A) Cannot reasonably associate the request with personal data or  
27 if the controller’s attempt to associate the request with personal data  
28 would be unreasonably burdensome;

29 “(B) Does not use personal data to recognize or respond to the  
30 specific consumer who is the subject of the personal data or associate

1 the personal data with any other personal data about the specific  
2 consumer; and

3 “(C) Does not sell or otherwise voluntarily disclose personal data  
4 to a third party, except as otherwise provided in this section.

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

8 **“(b) Processing activities that present a heightened risk of harm to  
9 a consumer include:**

10 **“(A) Processing personal data for the purpose of targeted advertis-  
11 ing;**

12 **“(B) Processing sensitive data;**

13 **“(C) Selling personal data; and**

14 **“(D) Using the personal data for purposes of profiling, if the pro-  
15 filing presents a reasonably foreseeable risk of:**

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

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

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

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

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

26 **“(2) A data protection assessment shall identify and weigh how  
27 processing personal data may directly or indirectly benefit the con-  
28 troller, the consumer, other stakeholders and the public against po-  
29 tential risks to the consumer, taking into account how safeguards the  
30 controller employs can mitigate the risks. In conducting the assess-**

1 ment, the controller shall consider how deidentified data might reduce  
2 risks, the reasonable expectations of consumers, the context in which  
3 the data is processed and the relationship between the controller and  
4 the consumers whose personal data the controller will process.

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

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

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

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

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

28 **“SECTION 9. (1)(a) The Attorney General may serve an investi-**  
29 **gative demand upon any person that possesses, controls or has custody**  
30 **of any information, document or other material that the Attorney**

1 **General determines is relevant to an investigation of a violation of**  
2 **sections 1 to 10 of this 2023 Act or that could lead to a discovery of**  
3 **relevant information. An investigative demand may require the person**  
4 **to:**

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

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

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

10 **“(b) The Attorney General shall serve an investigative demand un-**  
11 **der this section in the manner provided in ORS 646.622. The Attorney**  
12 **General may enforce the investigative demand as provided in ORS**  
13 **646.626.**

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

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

28 **“(3)(a) The Attorney General shall hold in confidence and may not**  
29 **disclose to any person any documents, including data protection as-**  
30 **sessments, answers to interrogatories and transcripts of oral testi-**



1 mony, except that the Attorney General may disclose the documents  
2 to:

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

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

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

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

12 “(b) The Attorney General may use any of the materials described  
13 in paragraph (a) of this subsection in any investigation the Attorney  
14 General conducts under this section or in any action or proceeding the  
15 Attorney General brings or initiates in a court or before an adminis-  
16 trative agency in connection with the investigation.

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

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

29 “(c) A court may award reasonable attorney fees, expert witness  
30 fees and costs of investigation to the Attorney General if the Attorney

1 **General prevails in an action under this subsection. The court may**  
2 **award reasonable attorney fees to a defendant that prevails in an**  
3 **action under this subsection if the court finds that the Attorney Gen-**  
4 **eral had no objectively reasonable basis for asserting the claim or for**  
5 **appealing an adverse decision of the trial court.**

6 **“(d) The Attorney General shall deposit the proceeds of any recov-**  
7 **ery under this subsection into the Department of Justice Protection**  
8 **and Education Revolving Account, as provided in ORS 180.095.**

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

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

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

25 **“SECTION 10. (1)(a) A consumer or a class of consumers that suf-**  
26 **fers an injury as a result of a controller’s violation of sections 1 to 10**  
27 **of this 2023 Act may bring an action in a circuit court of this state.**

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

30 **“(A) Compensatory damages;**

1       **“(B) Injunctive or declaratory relief; and**

2       **“(C) Reasonable attorney fees and costs.**

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

12       **“(3) A plaintiff shall commence an action under subsection (1) of**  
13 **this section within two years after the plaintiff discovers or, with an**  
14 **exercise of reasonable care, should have discovered an injury.**

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

17       **“SECTION 11. ORS 180.095 is amended to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(B) Answer written interrogatories; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 “[5] *Before bringing an action under subsection (4) of this section, the*  
28 *Attorney General shall notify a controller of a violation of sections 1 to 10 of*  
29 *this 2023 Act if the Attorney General determines that the controller can cure*  
30 *the violation. If the controller fails to cure the violation within 30 days after*

1 *receiving the notice of the violation, the Attorney General may bring the action*  
2 *without further notice.]*

3 “[~~(6)~~] **(5)** The Attorney General shall bring an action under subsection (4)  
4 of this section within five years after the date of the last act of a controller  
5 that constituted the violation for which the Attorney General seeks relief.

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

11 **“SECTION 13.** Section 5 of this 2023 Act is amended to read:

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

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

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

19 “(c) Establish, implement and maintain for personal data the same safe-  
20 guards described in ORS 646A.622 that are required for protecting personal  
21 information, as defined in ORS 646A.602, such that the controller’s safe-  
22 guards protect the confidentiality, integrity and accessibility of the personal  
23 data to the extent appropriate for the volume and nature of the personal  
24 data; and

25 “(d) Provide an effective means by which a consumer may revoke the  
26 consumer’s consent to the controller’s processing of the consumer’s personal  
27 data. The means must be at least as easy as the means by which the con-  
28 sumer provided consent. Once the consumer revokes consent, the controller  
29 shall cease processing the personal data as soon as is practicable, but not  
30 later than 15 days after receiving the revocation.



1 “(2) A controller may not:

2 “(a) Process personal data for purposes that are not reasonably necessary  
3 for and compatible with the purposes the controller specified in subsection  
4 (1)(a) of this section, unless the processing is otherwise permitted under  
5 sections 1 to 10 of this 2023 Act or unless the controller obtains the  
6 consumer’s consent;

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

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

19 “(d) Discriminate against a consumer that exercises a right provided to  
20 the consumer under sections 1 to 10 of this 2023 Act by means such as de-  
21 nying goods or services, charging different prices or rates for goods or ser-  
22 vices or providing a different level of quality or selection of goods or services  
23 to the consumer.

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

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

28 “(b) Prohibit a controller from offering a different price, rate, level of  
29 quality or selection of goods or services to a consumer, including an offer  
30 for no fee or charge, in connection with a consumer’s voluntary participation

1 in a bona fide loyalty, rewards, premium features, discount or club card  
2 program.

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

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

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

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

11 “(d) Lists all categories of personal data, including the categories of sen-  
12 sitive data, that the controller shares with third parties;

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

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

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

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

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

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

1       “(a) Take into account:

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

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

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

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

12       **“(c) Allow a consumer or authorized agent to send a signal to the  
13 controller that indicates the consumer’s preference to opt out under  
14 section 3 (1)(d) of this 2023 Act by means of a platform, technology or  
15 mechanism that:**

16       **“(A) Does not unfairly disadvantage another controller;**

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

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

21       **“(D) Is as consistent as possible with similar platforms, technolo-  
22 gies or mechanisms required under federal or state laws or regu-  
23 lations; and**

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

28       “(6) If a consumer or authorized agent uses a method described in sub-  
29 section (5) of this section to opt out of a controller’s processing of the  
30 consumer’s personal data under section 3 (1)(d) of this 2023 Act and the de-

1 cision conflicts with a consumer’s voluntary participation in a bona fide re-  
2 ward, club card or loyalty program or a program that provides premium  
3 features or discounts in return for the consumer’s consent to the controller’s  
4 processing of the consumer’s personal data, the controller may either comply  
5 with the request to opt out or notify the consumer of the conflict and ask  
6 the consumer to affirm that the consumer intends to withdraw from the bona  
7 fide reward, club card or loyalty program or the program that provides pre-  
8 mium features or discounts. If the consumer affirms that the consumer in-  
9 tends to withdraw, the controller shall comply with the request to opt out.

10 **“SECTION 14. (1) Sections 1 to 9 of this 2023 Act and the amend-  
11 ments to ORS 180.095 by section 11 of this 2023 Act become operative  
12 on July 1, 2024.**

13 **“(2) The amendments to section 5 of this 2023 Act by section 13 of  
14 this 2023 Act become operative on July 1, 2025.**

15 **“(3) Section 10 of this 2023 Act becomes operative on January 1,  
16 2026.**

17 **“(4) The amendments to section 9 of this 2023 Act by section 12 of  
18 this 2023 Act become operative on January 1, 2025.”.**

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