Requested by Representative WALLAN

## PROPOSED AMENDMENTS TO
## HOUSE BILL 3899

1    On page 1 of the printed bill, delete line 3 and insert "646A.570, 646A.572

2    and 646A.578.".

3    After line 4, insert:

4    **"SECTION 1.** ORS 646A.570 is amended to read:

5    "646A.570. As used in ORS 646A.570 to 646A.589:

6    "(1) 'Affiliate' means a person that, directly or indirectly through one or

7    more intermediaries, controls, is controlled by or is under common control

8    with another person such that:

9    "(a) The person owns or has the power to vote more than 50 percent of

10   the outstanding shares of any voting class of the other person's securities;

11   "(b) The person has the power to elect or influence the election of a ma-

12   jority of the directors, members or managers of the other person;

13   "(c) The person has the power to direct the management of another per-

14   son; or

15   "(d) The person is subject to another person's exercise of the powers de-

16   scribed in paragraph (a), (b) or (c) of this subsection.

17   "(2) 'Authenticate' means to determine, using commercially reasonable

18   methods, whether a consumer with the rights described in ORS 646A.574, or

19   a person acting on behalf of the consumer, is the consumer who has asked

20   to exercise, or is a person who has authority to exercise, any of the

21   consumer's rights.

1  "(3)(a) 'Biometric data' means personal data generated by automatic

2  measurements of a consumer's biological characteristics, such as the

3  consumer's fingerprint, voiceprint, retinal pattern, iris pattern, gait or other

4  unique biological characteristics that allow or confirm the unique identifi-

5  cation of the consumer.

6  "(b) 'Biometric data' does not include:

7  "(A) A photograph recorded digitally or otherwise;

8  "(B) An audio or video recording;

9  "(C) Data from a photograph or from an audio or video recording, unless

10  the data were generated for the purpose of identifying a specific consumer

11  or were used to identify a particular consumer; or

12  "(D) Facial mapping or facial geometry, unless the facial mapping or

13  facial geometry was generated for the purpose of identifying a specific con-

14  sumer or was used to identify a specific consumer.

15  "(4) 'Business associate' has the meaning given that term in 45 C.F.R.

16  160.103, as in effect on January 1, 2024.

17  "(5) 'Child' means an individual under the age of 13.

18  "(6) 'Consent' means an affirmative act by means of which a consumer

19  clearly and conspicuously communicates the consumer's freely given, spe-

20  cific, informed and unambiguous assent to another person's act or practice

21  under the following conditions:

22  "(a) The user interface by means of which the consumer performs the act

23  does not have any mechanism that has the purpose or substantial effect of

24  obtaining consent by obscuring, subverting or impairing the consumer's au-

25  tonomy, decision-making or choice; and

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

27  "(7) 'Consumer' means a natural person who resides in this state and acts

28  in any capacity other than in a commercial or employment context.

29  "(8) 'Controller' means a person, **including the executive department**

30  **as defined in ORS 174.112,** that, alone or jointly with another person, de-

1 termines the purposes and means for processing personal data.

2 "(9) 'Covered entity' has the meaning given that term in 45 C.F.R. 160.103,
3 as in effect on January 1, 2024.

4 "(10) 'Decisions that produce legal effects or effects of similar
5 significance' means decisions that result in providing or denying financial
6 or lending services, housing, insurance, enrollment in education or educa-
7 tional opportunity, criminal justice, employment opportunities, health care
8 services or access to essential goods and services.

9 "(11) 'Deidentified data' means data that:

10 "(a) Cannot reasonably be used to infer information about, or otherwise
11 be linked to, an identified or identifiable consumer, or to a device that
12 identifies, is linked to or is reasonably linkable to a consumer; or

13 "(b) Is:

14 "(A) Derived from patient information that was originally created, col-
15 lected, transmitted or maintained by an entity subject to regulation under
16 the Health Insurance Portability and Accountability Act of 1996, P.L.
17 104-191, as in effect on January 1, 2024, or the Federal Policy for the Pro-
18 tection of Human Subjects, codified as 45 C.F.R. part 46 and in various other
19 deferral regulations, as codified in various sections of the Code of Federal
20 Regulations and as in effect on January 1, 2024; and

21 "(B) Deidentified as provided in 45 C.F.R. 164.514, as in effect on January
22 1, 2024.

23 "(12) 'Device' means electronic equipment designed for a consumer's use
24 that can transmit or receive personal data.

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

29 "(b) 'Personal data' does not include deidentified data or data that:

30 "(A) Is lawfully available through federal, state or local government re-

1 cords or through widely distributed media; or

2 "(B) A controller reasonably has understood to have been lawfully made

3 available to the public by a consumer.

4 "(14) 'Process' or 'processing' means an action, operation or set of actions

5 or operations that is performed, automatically or otherwise, on personal data

6 or on sets of personal data, such as collecting, using, storing, disclosing,

7 analyzing, deleting or modifying the personal data.

8 "(15) 'Processor' means a person that processes personal data on behalf

9 of a controller.

10 "(16) 'Profiling' means an automated processing of personal data for the

11 purpose of evaluating, analyzing or predicting an identified or identifiable

12 consumer's economic circumstances, health, personal preferences, interests,

13 reliability, behavior, location or movements.

14 "(17)(a) 'Sale' or 'sell' means the exchange of personal data for monetary

15 or other valuable consideration by the controller with a third party.

16 "(b) 'Sale' or 'sell' does not include:

17 "(A) A disclosure of personal data to a processor;

18 "(B) A disclosure of personal data to an affiliate of a controller or to a

19 third party for the purpose of enabling the controller to provide a product

20 or service to a consumer that requested the product or service;

21 "(C) A disclosure or transfer of personal data from a controller to a third

22 party as part of a proposed or completed merger, acquisition, bankruptcy or

23 other transaction in which the third party assumes control of all or part of

24 the controller's assets, including the personal data; or

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

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

27 "(ii) Intentionally discloses the personal data in the course of directing

28 a controller to interact with a third party; or

29 "(iii) Intentionally discloses the personal data to the public by means of

30 mass media, if the disclosure is not restricted to a specific audience.

1     "(18)(a) 'Sensitive data' means personal data that:

2     "(A) Reveals a consumer's racial or ethnic background, national origin,

3     religious beliefs, mental or physical condition or diagnosis, sexual orien-

4     tation, status as transgender or nonbinary, status as a victim of crime or

5     citizenship or immigration status;

6     "(B) Is a child's personal data;

7     "(C) Accurately identifies within a radius of 1,750 feet a consumer's

8     present or past location, or the present or past location of a device that links

9     or is linkable to a consumer by means of technology that includes, but is not

10    limited to, a global positioning system that provides latitude and longitude

11    coordinates; or

12    "(D) Is genetic or biometric data.

13    "(b) 'Sensitive data' as defined in paragraph (a)(C) of this subsection does

14    not include the content of communications or any data generated by or

15    connected to advanced utility metering infrastructure systems or equipment

16    for use by a utility.

17    "(19)(a) 'Targeted advertising' means advertising that is selected for dis-

18    play to a consumer on the basis of personal data obtained from the

19    consumer's activities over time and across one or more unaffiliated websites

20    or online applications and is used to predict the consumer's preferences or

21    interests.

22    "(b) 'Targeted advertising' does not include:

23    "(A) Advertisements that are based on activities within a controller's own

24    websites or online applications;

25    "(B) Advertisements based on the context of a consumer's current search

26    query, visit to a specific website or use of an online application;

27    "(C) Advertisements that are directed to a consumer in response to the

28    consumer's request for information or feedback; or

29    "(D) A processing of personal data solely for the purpose of measuring

30    or reporting an advertisement's frequency, performance or reach.

1    "[*(20) 'Third party' means a person, a public corporation, including the*
2    *Oregon Health and Science University and the Oregon State Bar, or a public*
3    *body, as defined in ORS 174.109, other than a consumer, a controller, a*
4    *processor or an affiliate of a controller or processor.*]"

5    "**(20) 'Third party' means a person other than a consumer, a con-**
6    **troller, a processor or an affiliate of a controller or processor, includ-**
7    **ing:**

8    "**(a) The Oregon Health and Science University, Oregon State Bar**
9    **or another public corporation; and**

10    "**(b) A public body, as defined in ORS 174.109, other than the exec-**
11    **utive department, as defined in ORS 174.112.**".

12    In line 5, delete "1" and insert "2".

13    In line 15, after "174.109" insert ", other than the executive department,
14    as defined in ORS 174.112".

15    On page 4, line 22, delete "2" and insert "3".

16    _____