

HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 4084

By JOINT COMMITTEE ON WAYS AND MEANS

February 27

1 On page 1 of the printed A-engrossed bill, line 3, after “192.586,” insert “192.600, 192.602,” and
2 after the semicolon insert “limiting expenditures;”.

3 On page 7, line 21, after “liable” insert “under state law”.

4 In line 36, after “liable” insert “under state law”.

5 Delete lines 42 through 45.

6 On page 8, delete lines 1 through 32 and insert:

7 **“SECTION 10. (1) Notwithstanding ORS 192.596, a financial institution shall disclose and**
8 **provide copies of the financial records of a person who is the alleged victim in an investi-**
9 **gation under ORS 124.070 or 441.650 in accordance with a subpoena issued by a court or on**
10 **behalf of a grand jury under ORS 136.563.**

11 **“(2) A subpoena issued under this section shall specify:**

12 **“(a) The name and Social Security number of the person about whom financial records**
13 **are sought; and**

14 **“(b) That the person about whom financial records are sought is the alleged victim in an**
15 **abuse investigation under ORS 124.070 or 441.650.**

16 **“(3) Disclosure and provision of copies under this section shall be made:**

17 **“(a) Without the consent of the person who is the alleged victim in the abuse investi-**
18 **gation, or of the person’s caretaker, fiduciary or other legal representative; and**

19 **“(b) When made under subsection (7)(b) of this section, without the consent of the person**
20 **who is not the alleged victim in the abuse investigation.**

21 **“(4) A copy of the subpoena issued under this section may be served upon the person or**
22 **the person’s caretaker, fiduciary or other legal representative, in the discretion of the court**
23 **or the district attorney that issued the subpoena.**

24 **“(5) Except when specifically directed by the court or district attorney issuing the**
25 **subpoena not to, a financial institution that discloses and provides copies of financial records**
26 **under this section may, but is not required to:**

27 **“(a) Inform the person about whom financial records have been sought about the disclo-**
28 **sure; or**

29 **“(b) Inform the person’s caretaker, fiduciary or other legal representative, about the**
30 **disclosure.**

31 **“(6) A financial institution that provides copies of financial records under this section**
32 **may be reimbursed for costs incurred as provided in ORS 192.602.**

33 **“(7)(a) Financial records may be subpoenaed under this section only with respect to a**
34 **person who is the alleged victim of abuse in an investigation under ORS 124.070 or 441.650.**

35 **“(b) Notwithstanding paragraph (a) of this subsection, financial records may be**

1 subpoenaed under this section when the financial records pertain to an account, loan or
2 other financial relationship owned, held or maintained by a person who is the alleged victim
3 in an abuse investigation under ORS 124.070 or 441.650 together with one or more other
4 persons who are not alleged victims in the abuse investigation.

5 “(8) A financial institution that discloses and provides copies of financial records under
6 this section is not liable to any person for any loss, damage or injury arising out of or in any
7 way pertaining to the disclosure and provision of the copies.”.

8 On page 9, after line 31, insert:

9 “**SECTION 10b.** ORS 192.600 is amended to read:

10 “192.600. (1) Nothing in ORS 192.583 to 192.607 shall require a financial institution to inquire
11 or determine that those seeking disclosure have duly complied with the requirements set forth in
12 ORS 192.583 to 192.607, provided only that the customer authorization, summons, subpoena or search
13 warrant served upon or delivered to a financial institution pursuant to ORS 192.593, 192.596 or
14 192.598 or **section 10 of this 2012 Act** shows compliance on its face.

15 “(2) A financial institution which in good faith reliance refuses to disclose financial records of
16 a customer upon the prohibitions of ORS 192.583 to 192.607, shall not be liable to its customer, to
17 a state or local agency, or to any person for any loss or damage caused in whole or in part by such
18 refusal.

19 “(3) Financial institutions shall not be required to notify their customers concerning the receipt
20 by them of requests from state or local agencies for disclosures of financial records of such cus-
21 tomers. However, except as otherwise provided in ORS 192.583 to 192.607, nothing in ORS 192.583
22 to 192.607 shall preclude financial institutions from giving such notice to customers. A court may
23 order a financial institution to withhold notification to a customer of the receipt of a summons,
24 subpoena or search warrant when the court finds that notice to the customer would impede the in-
25 vestigation being conducted by the state or local agency.

26 “(4) Financial institutions that participate in a trust account overdraft notification program es-
27 tablished under ORS 9.685 are not liable to a lawyer or law firm on the attorney trust account, to
28 a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole
29 or in part by that participation or arising in any way out of that participation.

30 “(5) A financial institution shall not be liable to any person for any loss, damage or injury
31 arising out of or in any way pertaining to the release of information pursuant to ORS 192.586 (2)(a).

32 “**SECTION 10c.** ORS 192.602 is amended to read:

33 “192.602. (1)(a) A financial institution shall have a reasonable period of time in which to comply
34 with any proper customer authorization, summons, subpoena or search warrant permitting or seek-
35 ing disclosure of financial records. [*For the purposes of this section,*] **Except as provided in para-**
36 **graphs (b) and (c) of this subsection,** a ‘reasonable period of time’ shall in no case be less than
37 10 days from the date upon which the financial institution receives or is served with a customer
38 authorization, summons, subpoena or search warrant.

39 “(b) [*However, in all cases in which*] **When** disclosure is sought [*pursuant to*] **under** ORS 192.596,
40 the reasonable period of time shall be not less than 20 days.

41 “(c) **When disclosure is sought under section 10 of this 2012 Act, the reasonable period**
42 **of time shall be that period of time required by the circumstances but in no case more than**
43 **five days from the date upon which the financial institution receives or is served with a**
44 **subpoena under section 10 of this 2012 Act.**

45 “(2) Before making disclosures, a financial institution may require that the requesting state or

1 local agency reimburse the financial institution for the reasonable costs incurred by the financial
2 institution in the course of compliance. These costs include, but are not limited to, personnel costs,
3 reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

4 “(a) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour
5 or fraction thereof, for time expended by personnel of the financial institution in searching, locating,
6 retrieving, copying and transporting or conveying the requested material to the place of examina-
7 tion.

8 “(b) Reproduction costs, \$1 per page, including copies produced by reader and printer repro-
9 duction processes. Photographs, films and other materials shall be reimbursed at actual costs.

10 “(c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel
11 to locate and retrieve the information required or requested and to convey the required or requested
12 material to the place of examination.

13 “(3) The provisions of subsection (2) of this section do not apply in the case of records
14 subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under
15 ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check
16 under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS
17 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700.”

18 On page 11, delete lines 36 through 40.

19 On page 21, after line 8, insert:

20 “**SECTION 25. Sections 6, 8 and 10 of this 2012 Act are repealed.**

21 “**SECTION 26.** ORS 192.586, as amended by section 10a of this 2012 Act, is amended to read:

22 “192.586. (1) Except as provided in ORS 192.588, 192.591, 192.593, 192.596, 192.598 and 192.603
23 [and section 10 of this 2012 Act] or as required by ORS 25.643 and 25.646 and the Uniform Disposition
24 of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:

25 “(a) A financial institution may not provide financial records of a customer to a state or local
26 agency.

27 “(b) A state or local agency may not request or receive from a financial institution financial
28 records of customers.

29 “(2) Subsection (1) of this section does not preclude a financial institution, in the discretion of
30 the financial institution, from initiating contact with, and thereafter communicating with and dis-
31 closing customer financial records to:

32 “(a) Appropriate state or local agencies concerning a suspected violation of the law.

33 “(b) The office of the State Treasurer if the records relate to state investments in commercial
34 mortgages involving the customer. The records and the information contained therein are public
35 records but are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in
36 disclosure clearly outweighs the public interest in confidentiality. However, the following records
37 in the office must remain open to public inspection:

38 “(A) The contract or promissory note establishing a directly held residential or commercial
39 mortgage and information identifying collateral;

40 “(B) Any copy the office retains of the underlying mortgage note in which the office purchases
41 a participation interest; and

42 “(C) Information showing that a directly held loan is in default.

43 “(c) An appropriate state or local agency in connection with any business relationship or
44 transaction between the financial institution and the customer, if the disclosure is made in the or-
45 dinary course of business of the financial institution and will further the legitimate business inter-

1 ests of the customer or the financial institution.

2 “(3) ORS 192.583 to 192.607 do not prohibit any of the following:

3 “(a) The dissemination of any financial information that is not identified with, or identifiable as
4 being derived from, the financial records of a particular customer.

5 “(b) The examination by, or disclosure to, the Department of Consumer and Business Services
6 of financial records that relate solely to the exercise of the department’s supervisory function. The
7 scope of the department’s supervisory function shall be determined by reference to statutes that
8 grant authority to examine, audit, or require reports of financial records or financial institutions.

9 “(c) The furnishing to the Department of Revenue of information by the financial institution,
10 whether acting as principal or agent, as required by ORS 314.360.

11 “(d) Compliance with the provisions of ORS 708A.655 or 723.844.

12 “(4) Notwithstanding subsection (1) of this section, a financial institution may:

13 “(a) Enter into an agreement with the Oregon State Bar that requires the financial institution
14 to make reports to the Oregon State Bar whenever a properly payable instrument is presented for
15 payment out of an attorney trust account that contains insufficient funds, whether or not the in-
16 strument is honored by the financial institution; and

17 “(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out
18 of an attorney trust account under a trust account overdraft notification program established under
19 ORS 9.685.

20 “**SECTION 27.** ORS 192.600, as amended by section 10b of this 2012 Act, is amended to read:

21 “192.600. (1) Nothing in ORS 192.583 to 192.607 shall require a financial institution to inquire
22 or determine that those seeking disclosure have duly complied with the requirements set forth in
23 ORS 192.583 to 192.607, provided only that the customer authorization, summons, subpoena or search
24 warrant served upon or delivered to a financial institution pursuant to ORS 192.593, 192.596 or
25 192.598 [or section 10 of this 2012 Act] shows compliance on its face.

26 “(2) A financial institution which in good faith reliance refuses to disclose financial records of
27 a customer upon the prohibitions of ORS 192.583 to 192.607, shall not be liable to its customer, to
28 a state or local agency, or to any person for any loss or damage caused in whole or in part by such
29 refusal.

30 “(3) Financial institutions shall not be required to notify their customers concerning the receipt
31 by them of requests from state or local agencies for disclosures of financial records of such cus-
32 tomers. However, except as otherwise provided in ORS 192.583 to 192.607, nothing in ORS 192.583
33 to 192.607 shall preclude financial institutions from giving such notice to customers. A court may
34 order a financial institution to withhold notification to a customer of the receipt of a summons,
35 subpoena or search warrant when the court finds that notice to the customer would impede the in-
36 vestigation being conducted by the state or local agency.

37 “(4) Financial institutions that participate in a trust account overdraft notification program es-
38 tablished under ORS 9.685 are not liable to a lawyer or law firm on the attorney trust account, to
39 a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole
40 or in part by that participation or arising in any way out of that participation.

41 “(5) A financial institution shall not be liable to any person for any loss, damage or injury
42 arising out of or in any way pertaining to the release of information pursuant to ORS 192.586 (2)(a).

43 “**SECTION 28.** ORS 192.602, as amended by section 10c of this 2012 Act, is amended to read:

44 “192.602. (1)[(a)] A financial institution shall have a reasonable period of time in which to com-
45 ply with any proper customer authorization, summons, subpoena or search warrant permitting or

1 seeking disclosure of financial records. [*Except as provided in paragraphs (b) and (c) of this sub-*
2 *section,*] **For the purposes of this section,** a ‘reasonable period of time’ shall in no case be less
3 than 10 days from the date upon which the financial institution receives or is served with a cus-
4 tomer authorization, summons, subpoena or search warrant.

5 “*(b)* **However, in all cases in which** [*When*] disclosure is sought under ORS 192.596, the rea-
6 sonable period of time shall be not less than 20 days.

7 “*(c)* *When disclosure is sought under section 10 of this 2012 Act, the reasonable period of time*
8 *shall be that period of time required by the circumstances but in no case more than five days from the*
9 *date upon which the financial institution receives or is served with a subpoena under section 10 of this*
10 *2012 Act.*]

11 “(2) Before making disclosures, a financial institution may require that the requesting state or
12 local agency reimburse the financial institution for the reasonable costs incurred by the financial
13 institution in the course of compliance. These costs include, but are not limited to, personnel costs,
14 reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

15 “(a) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour
16 or fraction thereof, for time expended by personnel of the financial institution in searching, locating,
17 retrieving, copying and transporting or conveying the requested material to the place of examina-
18 tion.

19 “(b) Reproduction costs, \$1 per page, including copies produced by reader and printer repro-
20 duction processes. Photographs, films and other materials shall be reimbursed at actual costs.

21 “(c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel
22 to locate and retrieve the information required or requested and to convey the required or requested
23 material to the place of examination.

24 “(3) The provisions of subsection (2) of this section do not apply in the case of records
25 subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under
26 ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check
27 under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS
28 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700.

29 “**SECTION 29. The repeal of sections 6, 8 and 10 of this 2012 Act by section 25 of this 2012**
30 **Act and the amendments to ORS 192.586, 192.600 and 192.602 by sections 26, 27 and 28 of this**
31 **2012 Act become operative on June 30, 2015.**

32 “**SECTION 30. Notwithstanding any other law limiting expenditures, the amount of**
33 **\$300,000 is established for the biennium beginning July 1, 2011, as the maximum limit for**
34 **payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts,**
35 **but excluding lottery funds and federal funds, collected or received by the Department of**
36 **Human Services for deposit into the Quality Care Fund established under ORS 443.001, for**
37 **the purpose of providing technical support for data acquisition and analysis and staff support**
38 **and for other costs of the Resident Safety Review Council created under section 14 of this**
39 **2012 Act in the performance of the council’s duties under section 14 of this 2012 Act.”.**

40 In line 9, delete “25” and insert “31”.

41 In line 13, delete “26” and insert “32”.

42 In line 17, delete “27” and insert “33”.