

**PROPOSED AMENDMENTS TO
SENATE BILL 167**

1 On page 1 of the printed bill, line 2, after “ORS” insert “433.441, 433.443
2 and”.

3 In line 6, after the comma insert “as defined in ORS 431.260,”.

4 In line 7, delete “10”.

5 In line 8, delete “years of age or younger” and insert “three years of age
6 or older”.

7 After line 9, insert:

8 **“SECTION 3.** ORS 433.441 is amended to read:

9 “433.441. (1) Upon the occurrence of a public health emergency, the Gov-
10 ernor may declare a state of public health emergency as authorized by ORS
11 433.441 to 433.452 to protect the public health.

12 “(2) A proclamation of a state of public health emergency must specify:

13 “(a) The nature of the public health emergency;

14 “(b) The political subdivision or geographic area subject to the procla-
15 mation;

16 “(c) The conditions that have brought about the public health emergency;
17 and

18 “(d) The duration of the state of public health emergency, if the duration
19 is less than 14 days.

20 “(3) During a public health emergency, the Governor may:

21 “(a) Close, order the evacuation of or the decontamination of any facility
22 the Governor has reasonable cause to believe may endanger the public

1 health.

2 “(b) Regulate or restrict by any means necessary the use, sale or distrib-
3 ution of food, fuel, medical supplies, medicines or other goods and services.

4 “(c) Prescribe modes of transportation, routes and destinations required
5 for the evacuation of individuals or the provision of emergency services.

6 “(d) Control or limit entry into, exit from, movement within and the oc-
7 cupancy of premises in any public area subject to or threatened by a public
8 health emergency if such actions are reasonable and necessary to respond to
9 the public health emergency.

10 “(e) **Authorize pharmacists licensed under ORS chapter 689 to ad-
11 minister vaccines to persons who are three years of age or older.**

12 “[e)] (f) Take any other action that may be necessary for the management
13 of resources, or to protect the public during a public health emergency, in-
14 cluding any actions authorized under ORS 401.168, 401.185, 401.188 and
15 401.192.

16 “(4) Nothing in ORS 433.441 to 433.452 limits the authority of the Gover-
17 nor to declare a state of emergency under ORS 401.165. If a state of emer-
18 gency is declared as authorized under ORS 401.165, the Governor may
19 implement any action authorized by ORS 433.441 to 433.452.

20 “(5) A proclamation of a state of public health emergency expires when
21 terminated by a declaration of the Governor or no more than 14 days after
22 the date the public health emergency is proclaimed unless the Governor ex-
23 pressly extends the proclamation for an additional 14-day period.

24 “(6) When real or personal property is taken under power granted by this
25 section, the owner of the property shall be entitled to reasonable compen-
26 sation from the state.

27 “**SECTION 4.** ORS 433.443 is amended to read:

28 “433.443. (1) As used in this section:

29 “(a) ‘Covered entity’ means:

30 “(A) The Children’s Health Insurance Program;

1 “(B) The Family Health Insurance Assistance Program established under
2 ORS 414.842;

3 “(C) A health insurer that is an insurer as defined in ORS 731.106 and
4 that issues health insurance as defined in ORS 731.162;

5 “(D) The state medical assistance program; and

6 “(E) A health care provider.

7 “(b) ‘Health care provider’ includes but is not limited to:

8 “(A) A psychologist, occupational therapist, regulated social worker, pro-
9 fessional counselor or marriage and family therapist licensed or otherwise
10 authorized to practice under ORS chapter 675 or an employee of the psy-
11 chologist, occupational therapist, regulated social worker, professional
12 counselor or marriage and family therapist;

13 “(B) A physician, podiatric physician and surgeon, physician assistant or
14 acupuncturist licensed under ORS chapter 677 or an employee of the physi-
15 cian, podiatric physician and surgeon, physician assistant or acupuncturist;

16 “(C) A nurse or nursing home administrator licensed under ORS chapter
17 678 or an employee of the nurse or nursing home administrator;

18 “(D) A dentist licensed under ORS chapter 679 or an employee of the
19 dentist;

20 “(E) A dental hygienist or denturist licensed under ORS chapter 680 or
21 an employee of the dental hygienist or denturist;

22 “(F) A speech-language pathologist or audiologist licensed under ORS
23 chapter 681 or an employee of the speech-language pathologist or audiologist;

24 “(G) An emergency medical services provider licensed under ORS chapter
25 682;

26 “(H) An optometrist licensed under ORS chapter 683 or an employee of
27 the optometrist;

28 “(I) A chiropractic physician licensed under ORS chapter 684 or an em-
29 ployee of the chiropractic physician;

30 “(J) A naturopathic physician licensed under ORS chapter 685 or an em-

1 ployee of the naturopathic physician;

2 “(K) A massage therapist licensed under ORS 687.011 to 687.250 or an
3 employee of the massage therapist;

4 “(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an
5 employee of the direct entry midwife;

6 “(M) A physical therapist licensed under ORS 688.010 to 688.201 or an
7 employee of the physical therapist;

8 “(N) A medical imaging licensee under ORS 688.405 to 688.605 or an em-
9 ployee of the medical imaging licensee;

10 “(O) A respiratory care practitioner licensed under ORS 688.815 or an
11 employee of the respiratory care practitioner;

12 “(P) A polysomnographic technologist licensed under ORS 688.819 or an
13 employee of the polysomnographic technologist;

14 “(Q) A pharmacist licensed under ORS chapter 689 or an employee of the
15 pharmacist;

16 “(R) A dietitian licensed under ORS 691.405 to 691.485 or an employee of
17 the dietitian;

18 “(S) A funeral service practitioner licensed under ORS chapter 692 or an
19 employee of the funeral service practitioner;

20 “(T) A health care facility as defined in ORS 442.015;

21 “(U) A home health agency as defined in ORS 443.005;

22 “(V) A hospice program as defined in ORS 443.850;

23 “(W) A clinical laboratory as defined in ORS 438.010;

24 “(X) A pharmacy as defined in ORS 689.005;

25 “(Y) A diabetes self-management program as defined in ORS 743A.184; and

26 “(Z) Any other person or entity that furnishes, bills for or is paid for
27 health care in the normal course of business.

28 “(c) ‘Individual’ means a natural person.

29 “(d) ‘Individually identifiable health information’ means any oral or
30 written health information in any form or medium that is:

1 “(A) Created or received by a covered entity, an employer or a health care
2 provider that is not a covered entity; and

3 “(B) Identifiable to an individual, including demographic information that
4 identifies the individual, or for which there is a reasonable basis to believe
5 the information can be used to identify an individual, and that relates to:

6 “(i) The past, present or future physical or mental health or condition of
7 an individual;

8 “(ii) The provision of health care to an individual; or

9 “(iii) The past, present or future payment for the provision of health care
10 to an individual.

11 “(e) ‘Legal representative’ means attorney at law, person holding a gen-
12 eral power of attorney, guardian, conservator or any person appointed by a
13 court to manage the personal or financial affairs of a person, or agency le-
14 gally responsible for the welfare or support of a person.

15 “(2)(a) During a public health emergency declared under ORS 433.441, the
16 Public Health Director may, as necessary to appropriately respond to the
17 public health emergency:

18 “(A) Adopt reporting requirements for and provide notice of those re-
19 quirements to health care providers, institutions and facilities for the pur-
20 pose of obtaining information directly related to the public health
21 emergency;

22 “(B) After consultation with appropriate medical experts, create and re-
23 quire the use of diagnostic and treatment protocols to respond to the public
24 health emergency and provide notice of those protocols to health care pro-
25 viders, institutions and facilities;

26 “(C) Order, or authorize local public health administrators to order, pub-
27 lic health measures appropriate to the public health threat presented;

28 “(D) **Authorize pharmacists licensed under ORS chapter 689 to ad-
29 minister vaccines to persons who are three years of age or older;**

30 “[D)] (E) Upon approval of the Governor, take other actions necessary

1 to address the public health emergency and provide notice of those actions
2 to health care providers, institutions and facilities, including public health
3 actions authorized by ORS 431.264;

4 “[*E*] **(F)** Take any enforcement action authorized by ORS 431.262, in-
5 cluding the imposition of civil penalties of up to \$500 per day against indi-
6 viduals, institutions or facilities that knowingly fail to comply with
7 requirements resulting from actions taken in accordance with the powers
8 granted to the Public Health Director under subparagraphs (A), (B) and
9 [*D*] **(E)** of this paragraph; and

10 “[*F*] **(G)** The authority granted to the Public Health Director under this
11 section:

12 “(i) Supersedes any authority granted to a local public health authority
13 if the local public health authority acts in a manner inconsistent with
14 guidelines established or rules adopted by the director under this section;
15 and

16 “(ii) Does not supersede the general authority granted to a local public
17 health authority or a local public health administrator except as authorized
18 by law or necessary to respond to a public health emergency.

19 “(b) The authority of the Public Health Director to take administrative
20 action, and the effectiveness of any action taken, under paragraph (a)(A),
21 (B)[, (*D*), (*E*) and (*F*)] **and (D) to (G)** of this subsection terminates upon the
22 expiration of the proclaimed state of public health emergency, unless the
23 actions are continued under other applicable law.

24 “(3) Civil penalties under subsection (2) of this section shall be imposed
25 in the manner provided in ORS 183.745. The Public Health Director must
26 establish that the individual, institution or facility subject to the civil pen-
27 alty had actual notice of the action taken that is the basis for the penalty.
28 The maximum aggregate total for penalties that may be imposed against an
29 individual, institution or facility under subsection (2) of this section is \$500
30 for each day of violation, regardless of the number of violations of subsection

1 (2) of this section that occurred on each day of violation.

2 “(4)(a) During a proclaimed state of public health emergency, the Public
3 Health Director and local public health administrators shall be given imme-
4 diate access to individually identifiable health information necessary to:

5 “(A) Determine the causes of an illness related to the public health
6 emergency;

7 “(B) Identify persons at risk;

8 “(C) Identify patterns of transmission;

9 “(D) Provide treatment; and

10 “(E) Take steps to control the disease.

11 “(b) Individually identifiable health information accessed as provided by
12 paragraph (a) of this subsection may not be used for conducting non-
13 emergency epidemiologic research or to identify persons at risk for post-
14 traumatic mental health problems, or for any other purpose except the
15 purposes listed in paragraph (a) of this subsection.

16 “(c) Individually identifiable health information obtained by the Public
17 Health Director or local public health administrators under this subsection
18 may not be disclosed without written authorization of the identified indi-
19 vidual except:

20 “(A) Directly to the individual who is the subject of the information or
21 to the legal representative of that individual;

22 “(B) To state, local or federal agencies authorized to receive such infor-
23 mation by state or federal law;

24 “(C) To identify or to determine the cause or manner of death of a de-
25 ceased individual; or

26 “(D) Directly to a health care provider for the evaluation or treatment
27 of a condition that is the subject of a proclamation of a state of public health
28 emergency issued under ORS 433.441.

29 “(d) Upon expiration of the state of public health emergency, the Public
30 Health Director or local public health administrators may not use or disclose

1 any individually identifiable health information that has been obtained under
2 this section. If a state of emergency that is related to the state of public
3 health emergency has been declared under ORS 401.165, the Public Health
4 Director and local public health administrators may continue to use any in-
5 dividually identifiable information obtained as provided under this section
6 until termination of the state of emergency.

7 “(5) All civil penalties recovered under this section shall be paid into the
8 State Treasury and credited to the General Fund and are available for gen-
9 eral governmental expenses.

10 “(6) The Public Health Director may request assistance in enforcing or-
11 ders issued pursuant to this section from state or local law enforcement au-
12 thorities. If so requested by the Public Health Director, state and local law
13 enforcement authorities, to the extent resources are available, shall assist in
14 enforcing orders issued pursuant to this section.

15 “(7) If the Oregon Health Authority adopts temporary rules to implement
16 the provisions of this section, the rules adopted are not subject to the pro-
17 visions of ORS 183.335 (6)(a). The authority may amend temporary rules
18 adopted pursuant to this subsection as often as necessary to respond to the
19 public health emergency.”.

20 In line 10, delete “3” and insert “5”.

21 Delete lines 14 and 15 and insert:

22 “(b) If authorized by the Governor under ORS 433.441 or the Public
23 Health Director under ORS 433.443 or section 2 of this 2013 Act, to a person
24 three years of age or older.”.

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