

Enrolled
House Bill 4052

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Rules)

CHAPTER

AN ACT

Relating to electronic records used in connection with insurance other than health or life insurance; creating new provisions; amending ORS 84.070; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 84.070 is amended to read:

84.070. (1) As used in this section:

(a) "Consumer" means:

(A) An individual who obtains, through a transaction, products or services that are used primarily for personal, family or household purposes; and

(B) The legal representative of the individual.

(b) "Electronic record," "information" and "transaction" have the meanings given those terms in ORS 84.004.

(2) Notwithstanding ORS 84.001 to 84.061, if a statute, rule or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing, the use of an electronic record to provide or make available, whichever is required, the information satisfies the requirement that the information be in writing if:

(a) The consumer has affirmatively consented to the use of the electronic record and has not withdrawn the consent;

(b) The consumer, before consenting, is provided with a clear and conspicuous statement:

(A) Informing the consumer of:

(i) Any right or option of the consumer to have the record provided or made available on paper or in other nonelectronic form; and

(ii) The right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences, which may include termination of the parties' relationship, or fees in the event of the withdrawal of the consent;

(B) Informing the consumer of whether the consent applies:

(i) Only to the particular transaction that gave rise to the obligation to provide or make available the record; or

(ii) To identified categories of records that may be provided or made available during the course of the parties' relationship;

(C) Describing the procedures the consumer must use to withdraw consent as provided in subparagraph (A) of this paragraph and to update information needed to contact the consumer electronically; and

(D) Informing the consumer:

(i) How, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record; and

(ii) Whether any fee will be charged for the paper copy of an electronic record;

(c) The consumer:

(A) Before consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(B) Consents electronically, or confirms the consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(d) After the consent of a consumer in accordance with paragraph (a) of this subsection, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the record:

(A) Provides the consumer with a statement of:

(i) The revised hardware and software requirements for access to and retention of the electronic records; and

(ii) The consumer's right to withdraw consent without imposition of any fees for the withdrawal and without the imposition of any condition or consequence that was not disclosed under paragraph (b)(A) of this subsection; and

(B) Again complies with paragraph (c) of this subsection.

(3)(a) Nothing in ORS 84.001 to 84.061 affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, rule or other rule of law.

(b) If a law enacted before October 1, 2000, expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt, whichever is required.

(4) The legal effectiveness, validity or enforceability of any contract executed by a consumer may not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with subsection (2)(c)(B) of this section.

(5) Withdrawal of consent by a consumer may not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to that consumer in accordance with subsection (2) of this section before implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent [*shall be*] **is** effective within a reasonable period of time after [*receipt of the withdrawal by*] the provider of the record **receives the withdrawal**. Failure to comply with subsection (2)(d) of this section may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

[(6) If a statute, rule or other rule of law requires that information relating to a transaction be provided or made available to a consumer in writing, an oral communication or a recording of an oral communication may not qualify as an electronic record for purposes of this section except as otherwise provided under applicable law.]

(6) Except as otherwise provided by law, if an insurer can reliably store and reproduce an oral communication or a recording of an oral communication, the oral communication or the recording qualifies as a notice or document delivered by electronic means for the purposes of this section.

(7) Subsections (2) to (6) of this section do not apply to any records that are provided or made available to a consumer who has consented before June 22, 2001, to receive such records in electronic form as permitted by any statute, rule or other rule of law.

(8) Notwithstanding ORS 84.001 to 84.061, if a statute, rule or other rule of law requires that a contract or other record relating to a transaction be provided or made available to a consumer in writing, the legal effectiveness, validity or enforceability of an electronic record of the contract or other record may be denied if the electronic record is not in a form that is capable of being retained

and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(9) *[In addition]* **Subject** to the requirements of *[subsection (2) of this section and subject to subsection] subsections (2) and (10)(c)* of this section, an electronic record *[providing or delivering notice of the cancellation or termination of insurance]* **that provides or delivers a notice, offer, disclosure, document, form, correspondence, information or other communication required or permitted under the insurance laws of this state, including but not limited to a notice of a cancellation, termination or nonrenewal of insurance,** satisfies the requirement that the *[information]* **notice, offer, disclosure, document, form, correspondence, information or other communication** be provided or made available to a consumer in writing *[if the insurance company sends notice to the consumer with a request for a return receipt and the insurance company receives a return receipt. If the insurance company does not receive a return receipt, the insurance may be canceled or terminated only after providing or delivering the notice in writing to the consumer].* **If proof of mailing is sufficient proof of notice, confirmation of electronic delivery of a notice in any form is sufficient proof of notice.**

(10) Nothing in ORS 84.001 to 84.061 authorizes using an electronic record to provide or deliver any notice of:

- (a) The cancellation or termination of utility services, including water, heat and power;
 - (b) Default, acceleration, repossession, foreclosure or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;
 - (c) The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities; or
 - (d) Recall of a product, or material failure of a product, that risks endangering health or safety.
- (11) ORS 84.001 to 84.061 do not apply to any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

SECTION 2. (1) Except as provided in subsections (2) and (3) of this section, the amendments to ORS 84.070 by section 1 of this 2014 Act apply to electronic records that provide or deliver a notice, offer, disclosure, document, form, correspondence, information or other communication on or after the effective date of this 2014 Act.

(2) To the extent that a term or condition within a contract or policy of insurance that was in effect before the effective date of this 2014 Act limits or prohibits a provision set forth in the amendments to ORS 84.070 by section 1 of this 2014 Act, the term or condition set forth in the contract or policy of insurance controls over the provision set forth in the amendments to ORS 84.070 by section 1 of this 2014 Act.

(3) The amendments to ORS 84.070 by section 1 of this 2014 Act apply as described in subsection (1) of this section to a renewal of a contract or policy of insurance described in subsection (2) of this section that occurs on or after the effective date of this 2014 Act, notwithstanding any term or condition that remains within the contract or policy of insurance and that purports to limit or prohibit a provision set forth in the amendments to ORS 84.070 by section 1 of this 2014 Act.

SECTION 3. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Passed by House February 13, 2014

.....
Ramona J. Line, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate February 24, 2014

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2014

Approved:

.....M,....., 2014

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2014

.....
Kate Brown, Secretary of State