

SENATE AMENDMENTS TO SENATE BILL 626

By COMMITTEE ON HEALTH CARE

March 24

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “192.502, 431.964 and”.
- 2 After line 4, insert:
- 3 “**SECTION 1.** ORS 431.964 is amended to read:
- 4 “431.964. (1) Not later than [*one week*] **72 hours** after dispensing a prescription drug that is
- 5 subject to the prescription monitoring program established under ORS 431.962, a pharmacy shall
- 6 electronically report to the Oregon Health Authority:
- 7 “(a) The name, address, date of birth and sex of the patient for whom the prescription drug was
- 8 prescribed;
- 9 “(b) The identity of the pharmacy that dispensed the prescription drug and the date on which
- 10 the prescription drug was dispensed;
- 11 “(c) The identity of the practitioner who prescribed the prescription drug and the date on which
- 12 the prescription drug was prescribed;
- 13 “(d) The national drug code number for the prescription drug;
- 14 “(e) The prescription number assigned to the prescription drug;
- 15 “(f) The quantity of the prescription drug dispensed;
- 16 “(g) The number of days for which the prescription drug was dispensed; and
- 17 “(h) The number of refills of the prescription authorized by the practitioner and the number of
- 18 the refill that the pharmacy dispensed.
- 19 “(2)(a) Notwithstanding subsection (1) of this section, the authority may not:
- 20 “[*a*] (A) Require the reporting of prescription drugs administered directly to a patient or dis-
- 21 pensed pursuant to ORS 127.800 to 127.897;
- 22 “[*b*] (B) Collect or use Social Security numbers in the prescription monitoring program; or
- 23 “[*c*] (C) Disclose under ORS 431.966 (2)(a) the sex of the patient for whom a drug was pre-
- 24 scribed.
- 25 “(b) The sex of the patient **for whom a drug was prescribed** may be disclosed only for the
- 26 purpose of research or epidemiological study under ORS 431.966 (2)(b) **or (c)**.
- 27 “(3) Upon receipt of the data reported pursuant to subsection (1) of this section, the authority
- 28 shall record the data in the electronic system [*operated pursuant to the prescription monitoring pro-*
- 29 *gram*] **established, maintained and operated pursuant to ORS 431.962.**
- 30 “(4)(a) The authority may, **for good cause as determined by the authority**, grant a pharmacy
- 31 a waiver of the [*electronic submission requirement of subsection (1) of this section for good cause as*
- 32 *determined by the authority*] **requirement that the information to be reported under subsection**
- 33 **(1) of this section be submitted electronically.** The waiver [*shall*] **must** state the format, method
- 34 and frequency of the alternate nonelectronic submissions from the pharmacy and the duration of the
- 35 waiver.

1 “(b) As used in this subsection, ‘good cause’ includes financial hardship.
2 “(5) This section does not apply to pharmacies in institutions as defined in ORS 179.010.”.
3 In line 5, delete “1” and insert “2”.
4 On page 2, line 26, delete “(b)(A) or (c)” and insert “(c)(A) or (d)”.
5 After line 34, insert:
6 “(b) The authority may disclose identifiable prescription monitoring information for purposes
7 related to research and epidemiological study, subject to rules adopted by the authority. Rules
8 adopted by the authority under this paragraph must include:
9 “(A) A requirement that research be approved by an institutional review board appointed by the
10 authority under ORS 192.547;
11 “(B) The imposition of any requirement the authority considers necessary to ensure that the
12 disclosure of the information is for legitimate public health, scientific or educational purposes and
13 that the recipient of the information will maintain the confidentiality of the information; and
14 “(C) A prohibition on the further disclosure of information that identifies a patient, practitioner
15 or drug outlet.”.
16 In line 35, delete “(b)” and insert “(c)”.
17 In line 41, delete “(c)” and insert “(d)”.
18 In line 44, delete “(d)” and insert “(e)”.
19 On page 3, line 3, delete “(e)(A)” and insert “(f)(A)”.
20 In line 13, delete “(f)” and insert “(g)”.
21 In line 15, delete “(g)” and insert “(h)”.
22 On page 4, delete lines 3 through 42 and insert:
23 **“SECTION 3.** ORS 192.502 is amended to read:
24 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:
25 “(1) Communications within a public body or between public bodies of an advisory nature to the
26 extent that they cover other than purely factual materials and are preliminary to any final agency
27 determination of policy or action. This exemption shall not apply unless the public body shows that
28 in the particular instance the public interest in encouraging frank communication between officials
29 and employees of public bodies clearly outweighs the public interest in disclosure.
30 “(2) Information of a personal nature such as but not limited to that kept in a personal, medical
31 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
32 public interest by clear and convincing evidence requires disclosure in the particular instance. The
33 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
34 tute an unreasonable invasion of privacy.
35 “(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and
36 telephone numbers contained in personnel records maintained by the public body that is the em-
37 ployer or the recipient of volunteer services. This exemption:
38 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or
39 volunteers who are elected officials, except that a judge or district attorney subject to election may
40 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the
41 terms of ORS 192.445;
42 “(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
43 shows by clear and convincing evidence that the public interest requires disclosure in a particular
44 instance;
45 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a

1 professional education association of which the substitute teacher may be a member; and

2 “(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

3 “(4) Information submitted to a public body in confidence and not otherwise required by law to
4 be submitted, where such information should reasonably be considered confidential, the public body
5 has obliged itself in good faith not to disclose the information, and when the public interest would
6 suffer by the disclosure.

7 “(5) Information or records of the Department of Corrections, including the State Board of
8 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-
9 tation of a person in custody of the department or substantially prejudice or prevent the carrying
10 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
11 public interest in disclosure.

12 “(6) Records, reports and other information received or compiled by the Director of the De-
13 partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
14 otherwise required by law to be made public, to the extent that the interests of lending institutions,
15 their officers, employees and customers in preserving the confidentiality of such information out-
16 weighs the public interest in disclosure.

17 “(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

18 “(8) Any public records or information the disclosure of which is prohibited by federal law or
19 regulations.

20 “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-
21 erwise made confidential or privileged under Oregon law.

22 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-
23 tion compiled in a public record when:

24 “(A) The basis for the claim of exemption is ORS 40.225;

25 “(B) The factual information is not prohibited from disclosure under any applicable state or
26 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS
27 192.410 to 192.505;

28 “(C) The factual information was compiled by or at the direction of an attorney as part of an
29 investigation on behalf of the public body in response to information of possible wrongdoing by the
30 public body;

31 “(D) The factual information was not compiled in preparation for litigation, arbitration or an
32 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
33 or against the public body; and

34 “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
35 characterizing or partially disclosing the factual information compiled by or at the attorney’s di-
36 rection.

37 “(10) Public records or information described in this section, furnished by the public body ori-
38 ginally compiling, preparing or receiving them to any other public officer or public body in con-
39 nection with performance of the duties of the recipient, if the considerations originally giving rise
40 to the confidential or exempt nature of the public records or information remain applicable.

41 “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-
42 rity programs pursuant to ORS 469.530.

43 “(12) Employee and retiree address, telephone number and other nonfinancial membership re-
44 cords and employee financial records maintained by the Public Employees Retirement System pur-
45 suant to ORS chapters 238 and 238A.

1 “(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
2 agents of the treasurer or the council relating to active or proposed publicly traded investments
3 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
4 liquidation of the investments. For the purposes of this subsection:

5 “(a) The exemption does not apply to:

6 “(A) Information in investment records solely related to the amount paid directly into an in-
7 vestment by, or returned from the investment directly to, the treasurer or council; or

8 “(B) The identity of the entity to which the amount was paid directly or from which the amount
9 was received directly.

10 “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-
11 change or liquidation of the investment has been concluded.

12 “(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
13 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed
14 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset
15 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or
16 liquidation of the investments including but not limited to:

17 “(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
18 or to their respective investment vehicles.

19 “(B) Financial statements of an investment fund, an asset ownership or their respective invest-
20 ment vehicles.

21 “(C) Meeting materials of an investment fund, an asset ownership or their respective investment
22 vehicles.

23 “(D) Records containing information regarding the portfolio positions in which an investment
24 fund, an asset ownership or their respective investment vehicles invest.

25 “(E) Capital call and distribution notices of an investment fund, an asset ownership or their
26 respective investment vehicles.

27 “(F) Investment agreements and related documents.

28 “(b) The exemption under this subsection does not apply to:

29 “(A) The name, address and vintage year of each privately placed investment fund.

30 “(B) The dollar amount of the commitment made to each privately placed investment fund since
31 inception of the fund.

32 “(C) The dollar amount of cash contributions made to each privately placed investment fund
33 since inception of the fund.

34 “(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
35 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,
36 council or board from each privately placed investment fund.

37 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
38 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
39 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

40 “(F) The net internal rate of return of each privately placed investment fund since inception of
41 the fund.

42 “(G) The investment multiple of each privately placed investment fund since inception of the
43 fund.

44 “(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
45 basis to each privately placed investment fund.

1 “(I) The dollar amount of cash profit received from each privately placed investment fund on a
2 fiscal year-end basis.

3 “(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning
4 the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated
5 as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

6 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted
7 by ORS 98.352.

8 “(17)(a) The following records, communications and information submitted to the Oregon Busi-
9 ness Development Commission, the Oregon Business Development Department, the State Department
10 of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS
11 777.005, or a county or city governing body and any board, department, commission, council or
12 agency thereof, by applicants for investment funds, grants, loans, services or economic development
13 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

14 “(A) Personal financial statements.

15 “(B) Financial statements of applicants.

16 “(C) Customer lists.

17 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
18 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
19 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
20 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
21 ery or deposition statutes to a party to litigation or potential litigation.

22 “(E) Production, sales and cost data.

23 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
24 and applicant’s strategy regarding specific competitors.

25 “(b) The following records, communications and information submitted to the State Department
26 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

27 “(A) Personal financial statements.

28 “(B) Financial statements of applicants.

29 “(C) Customer lists.

30 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
31 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
32 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
33 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
34 ery or deposition statutes to a party to litigation or potential litigation.

35 “(E) Production, sales and cost data.

36 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
37 and applicant’s strategy regarding specific competitors.

38 “(18) Records, reports or returns submitted by private concerns or enterprises required by law
39 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
40 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
41 information is in a form which would permit identification of the individual concern or enterprise.
42 Nothing in this subsection shall limit the use which can be made of such information for regulatory
43 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
44 payer of the delinquency immediately by certified mail. However, in the event that the payment or
45 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the

1 public body shall disclose, upon the request of any person, the following information:

2 “(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
3 payment or delivery of the taxes.

4 “(b) The period for which the taxes are delinquent.

5 “(c) The actual, or estimated, amount of the delinquency.

6 “(19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
7 pointed counsel, and all information supplied to the court from whatever source for the purpose of
8 verifying the financial eligibility of a person pursuant to ORS 151.485.

9 “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-
10 vices, except in accordance with rules adopted by the Director of the Department of Consumer and
11 Business Services, in any of the following circumstances:

12 “(a) When necessary for insurers, self-insured employers and third party claim administrators to
13 process workers’ compensation claims.

14 “(b) When necessary for the director, other governmental agencies of this state or the United
15 States to carry out their duties, functions or powers.

16 “(c) When the disclosure is made in such a manner that the disclosed information cannot be used
17 to identify any worker who is the subject of a claim.

18 “(d) When a worker or the worker’s representative requests review of the worker’s claim record.

19 “(21) Sensitive business records or financial or commercial information of the Oregon Health
20 and Science University that is not customarily provided to business competitors.

21 “(22) Records of Oregon Health and Science University regarding candidates for the position of
22 president of the university.

23 “(23) The records of a library, including:

24 “(a) Circulation records, showing use of specific library material by a named person;

25 “(b) The name of a library patron together with the address or telephone number of the patron;
26 and

27 “(c) The electronic mail address of a patron.

28 “(24) The following records, communications and information obtained by the Housing and
29 Community Services Department in connection with the department’s monitoring or administration
30 of financial assistance or of housing or other developments:

31 “(a) Personal and corporate financial statements and information, including tax returns.

32 “(b) Credit reports.

33 “(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an
34 interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed
35 of as part of the project, but only after the transactions have closed and are concluded.

36 “(d) Market studies and analyses.

37 “(e) Articles of incorporation, partnership agreements and operating agreements.

38 “(f) Commitment letters.

39 “(g) Project pro forma statements.

40 “(h) Project cost certifications and cost data.

41 “(i) Audits.

42 “(j) Project tenant correspondence.

43 “(k) Personal information about a tenant.

44 “(L) Housing assistance payments.

45 “(25) Raster geographic information system (GIS) digital databases, provided by private

1 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-
2 partment, that is not otherwise required by law to be submitted.

3 “(26) Sensitive business, commercial or financial information furnished to or developed by a
4 public body engaged in the business of providing electricity or electricity services, if the information
5 is directly related to a transaction described in ORS 261.348, or if the information is directly related
6 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
7 disclosure of the information would cause a competitive disadvantage for the public body or its re-
8 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
9 velopment or review of generally applicable rate schedules.

10 “(27) Sensitive business, commercial or financial information furnished to or developed by the
11 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
12 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
13 and disclosure of the information would cause a competitive disadvantage for the Klamath
14 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
15 ment or review of generally applicable rate schedules.

16 “(28) Personally identifiable information about customers of a municipal electric utility or a
17 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
18 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
19 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
20 lease personally identifiable information about a customer, and a public body providing water, sewer
21 or storm drain services may release the name, date of birth, driver license number, telephone num-
22 ber, electronic mail address or Social Security number of a customer, if the customer consents in
23 writing or electronically, if the disclosure is necessary for the utility, district or other public body
24 to render services to the customer, if the disclosure is required pursuant to a court order or if the
25 disclosure is otherwise required by federal or state law. The utility, district or other public body
26 may charge as appropriate for the costs of providing such information. The utility, district or other
27 public body may make customer records available to third party credit agencies on a regular basis
28 in connection with the establishment and management of customer accounts or in the event such
29 accounts are delinquent.

30 “(29) A record of the street and number of an employee’s address submitted to a special district
31 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

32 “(30) Sensitive business records, capital development plans or financial or commercial informa-
33 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.

34 “(31) Documents, materials or other information submitted to the Director of the Department
35 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-
36 latory or law enforcement agency or by the National Association of Insurance Commissioners, its
37 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842,
38 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the
39 Insurance Code when:

40 “(a) The document, material or other information is received upon notice or with an under-
41 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
42 the document, material or other information; and

43 “(b) The director has obligated the Department of Consumer and Business Services not to dis-
44 close the document, material or other information.

45 “(32) A county elections security plan developed and filed under ORS 254.074.

1 “(33) Information about review or approval of programs relating to the security of:
2 “(a) Generation, storage or conveyance of:
3 “(A) Electricity;
4 “(B) Gas in liquefied or gaseous form;
5 “(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
6 “(D) Petroleum products;
7 “(E) Sewage; or
8 “(F) Water.
9 “(b) Telecommunication systems, including cellular, wireless or radio systems.
10 “(c) Data transmissions by whatever means provided.
11 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court
12 designates the information as confidential by rule under ORS 1.002.
13 “(35)(a) Employer account records of the State Accident Insurance Fund Corporation.
14 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any
15 form that are specifically related to the account of any employer insured, previously insured or un-
16 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
17 mation obtained or developed by the corporation in connection with providing, offering to provide
18 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but
19 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
20 employee names and identification information, experience modification factors, loss experience and
21 dividend payment history.
22 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
23 discovery documents in litigation pursuant to applicable rules of civil procedure.
24 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.
25 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held
26 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
27 records pertaining to such a claim.
28 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
29 discovery documents in litigation pursuant to applicable rules of civil procedure.
30 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-
31 charge or other separation from military service.
32 “(38) Records of or submitted to a domestic violence service or resource center that relate to
33 the name or personal information of an individual who visits a center for service, including the date
34 of service, the type of service received, referrals or contact information or personal information of
35 a family member of the individual. As used in this subsection, ‘domestic violence service or resource
36 center’ means an entity, the primary purpose of which is to assist persons affected by domestic or
37 sexual violence by providing referrals, resource information or other assistance specifically of ben-
38 efit to domestic or sexual violence victims.
39 “(39) Information reported to the Oregon Health Authority under ORS 431.964, except as pro-
40 vided in ORS 431.964 [(2)(c)] **(2)(b)** information disclosed by the authority under ORS 431.966 and
41 any information related to disclosures made by the authority under ORS 431.966, including infor-
42 mation identifying the recipient of the information.
43 “(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of
44 the executive department, as defined in ORS 174.112, a local government or local service district,
45 as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

1 “(b) This subsection does not apply to electronic mail addresses assigned by a public body to
2 public employees for use by the employees in the ordinary course of their employment.

3 “**SECTION 4. The amendments to ORS 431.964 by section 1 of this 2015 Act apply to pre-**
4 **scription drugs dispensed by pharmacies on and after the operative date specified in section**
5 **6 of this 2015 Act.”.**

6 In line 43, delete “1” and insert “2”.

7 On page 5, line 1, after “(1)” delete the rest of the line.

8 In line 2, delete “section 1” and insert “The amendments to ORS 192.502, 431.964 and 431.966
9 by sections 1, 2 and 3”.

10 In line 6, after “by” delete the rest of the line.

11 In line 7, delete “to ORS 431.966 by section 1” and insert “the amendments to ORS 192.502,
12 431.964 and 431.966 by sections 1, 2 and 3”.

13
