

Senate Bill 71

Sponsored by Senators MONNES ANDERSON, KRUSE; Senator ROBLAN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that Oregon Health Authority establish by rule time frame within which pharmacies shall electronically report to authority information under prescription monitoring program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prescription drugs; creating new provisions; amending ORS 192.502 and 431.964; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 431.964 is amended to read:

6 431.964. (1) [*Not later than one week*] After dispensing a prescription drug that is subject to the
7 prescription monitoring program established under ORS 431.962, a pharmacy shall electronically
8 report to the Oregon Health Authority, **within a time frame adopted by the authority by rule:**

9 (a) The name, address, date of birth and sex of the patient for whom the prescription drug was
10 prescribed;

11 (b) The identity of the pharmacy that dispensed the prescription drug and the date on which the
12 prescription drug was dispensed;

13 (c) The identity of the practitioner who prescribed the prescription drug and the date on which
14 the prescription drug was prescribed;

15 (d) The national drug code number for the prescription drug;

16 (e) The prescription number assigned to the prescription drug;

17 (f) The quantity of the prescription drug dispensed;

18 (g) The number of days for which the prescription drug was dispensed; and

19 (h) The number of refills of the prescription authorized by the practitioner and the number of
20 the refill that the pharmacy dispensed.

21 (2)(a) Notwithstanding subsection (1) of this section, the authority may not:

22 [(a)] (A) Require the reporting of prescription drugs administered directly to a patient or dis-
23 pensed pursuant to ORS 127.800 to 127.897;

24 [(b)] (B) Collect or use Social Security numbers in the prescription monitoring program; or

25 [(c)] (C) Disclose under ORS 431.966 (2)(a) the sex of the patient for whom a drug was pre-
26 scribed.

27 (b) The sex of the patient **for whom a drug was prescribed** may be disclosed only for the
28 purpose of research or epidemiological study under ORS 431.966 (2)(b).

29 (3) Upon receipt of the data reported pursuant to subsection (1) of this section, the authority
30 shall record the data in the electronic system [*operated pursuant to the prescription monitoring pro-*
31 *gram*] **established, maintained and operated pursuant to ORS 431.962.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (4)(a) The authority may, **for good cause as determined by the authority**, grant a pharmacy
 2 a waiver of the [*electronic submission requirement of subsection (1) of this section for good cause as*
 3 *determined by the authority*] **requirement that the information to be reported under subsection**
 4 **(1) of this section be submitted electronically**. The waiver [*shall*] **must** state the format, method
 5 and frequency of the alternate nonelectronic submissions from the pharmacy and the duration of the
 6 waiver.

7 (b) As used in this subsection, “good cause” includes financial hardship.

8 (5) This section does not apply to pharmacies in institutions as defined in ORS 179.010.

9 **SECTION 2.** ORS 192.502 is amended to read:

10 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

11 (1) Communications within a public body or between public bodies of an advisory nature to the
 12 extent that they cover other than purely factual materials and are preliminary to any final agency
 13 determination of policy or action. This exemption shall not apply unless the public body shows that
 14 in the particular instance the public interest in encouraging frank communication between officials
 15 and employees of public bodies clearly outweighs the public interest in disclosure.

16 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
 17 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
 18 public interest by clear and convincing evidence requires disclosure in the particular instance. The
 19 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
 20 tute an unreasonable invasion of privacy.

21 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and
 22 telephone numbers contained in personnel records maintained by the public body that is the em-
 23 ployer or the recipient of volunteer services. This exemption:

24 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
 25 unteers who are elected officials, except that a judge or district attorney subject to election may
 26 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the
 27 terms of ORS 192.445;

28 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
 29 shows by clear and convincing evidence that the public interest requires disclosure in a particular
 30 instance;

31 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-
 32 fessional education association of which the substitute teacher may be a member; and

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

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

38 (5) Information or records of the Department of Corrections, including the State Board of Parole
 39 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
 40 a person in custody of the department or substantially prejudice or prevent the carrying out of the
 41 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
 42 terest in disclosure.

43 (6) Records, reports and other information received or compiled by the Director of the Depart-
 44 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
 45 otherwise required by law to be made public, to the extent that the interests of lending institutions,

1 their officers, employees and customers in preserving the confidentiality of such information out-
 2 weighs the public interest in disclosure.

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

4 (8) Any public records or information the disclosure of which is prohibited by federal law or
 5 regulations.

6 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
 7 wise made confidential or privileged under Oregon law.

8 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information
 9 compiled in a public record when:

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

11 (B) The factual information is not prohibited from disclosure under any applicable state or fed-
 12 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410
 13 to 192.505;

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

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

20 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
 21 characterizing or partially disclosing the factual information compiled by or at the attorney's di-
 22 rection.

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

27 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
 28 programs pursuant to ORS 469.530.

29 (12) Employee and retiree address, telephone number and other nonfinancial membership records
 30 and employee financial records maintained by the Public Employees Retirement System pursuant to
 31 ORS chapters 238 and 238A.

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

36 (a) The exemption does not apply to:

37 (A) Information in investment records solely related to the amount paid directly into an invest-
 38 ment by, or returned from the investment directly to, the treasurer or council; or

39 (B) The identity of the entity to which the amount was paid directly or from which the amount
 40 was received directly.

41 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange
 42 or liquidation of the investment has been concluded.

43 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
 44 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed
 45 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset

1 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or
 2 liquidation of the investments including but not limited to:

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

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

7 (C) Meeting materials of an investment fund, an asset ownership or their respective investment
 8 vehicles.

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

11 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
 12 spective investment vehicles.

13 (F) Investment agreements and related documents.

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

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

16 (B) The dollar amount of the commitment made to each privately placed investment fund since
 17 inception of the fund.

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

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

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

26 (F) The net internal rate of return of each privately placed investment fund since inception of
 27 the fund.

28 (G) The investment multiple of each privately placed investment fund since inception of the fund.

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

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

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

36 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted
 37 by ORS 98.352.

38 (17)(a) The following records, communications and information submitted to the Oregon Business
 39 Development Commission, the Oregon Business Development Department, the State Department of
 40 Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS
 41 777.005, or a county or city governing body and any board, department, commission, council or
 42 agency thereof, by applicants for investment funds, grants, loans, services or economic development
 43 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

44 (A) Personal financial statements.

45 (B) Financial statements of applicants.

1 (C) Customer lists.

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

7 (E) Production, sales and cost data.

8 (F) Marketing strategy information that relates to applicant's plan to address specific markets
9 and applicant's strategy regarding specific competitors.

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

12 (A) Personal financial statements.

13 (B) Financial statements of applicants.

14 (C) Customer lists.

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

20 (E) Production, sales and cost data.

21 (F) Marketing strategy information that relates to applicant's plan to address specific markets
22 and applicant's strategy regarding specific competitors.

23 (18) Records, reports or returns submitted by private concerns or enterprises required by law
24 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
25 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
26 information is in a form which would permit identification of the individual concern or enterprise.
27 Nothing in this subsection shall limit the use which can be made of such information for regulatory
28 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
29 payer of the delinquency immediately by certified mail. However, in the event that the payment or
30 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
31 public body shall disclose, upon the request of any person, the following information:

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

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

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

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

39 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
40 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
41 ness Services, in any of the following circumstances:

42 (a) When necessary for insurers, self-insured employers and third party claim administrators to
43 process workers' compensation claims.

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

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

3 (d) When a worker or the worker's representative requests review of the worker's claim record.

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

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

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

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

10 (b) The name of a library patron together with the address or telephone number of the patron;
 11 and

12 (c) The electronic mail address of a patron.

13 (24) The following records, communications and information obtained by the Housing and Com-
 14 munity Services Department in connection with the department's monitoring or administration of
 15 financial assistance or of housing or other developments:

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

17 (b) Credit reports.

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

21 (d) Market studies and analyses.

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

23 (f) Commitment letters.

24 (g) Project pro forma statements.

25 (h) Project cost certifications and cost data.

26 (i) Audits.

27 (j) Project tenant correspondence.

28 (k) Personal information about a tenant.

29 (L) Housing assistance payments.

30 (25) Raster geographic information system (GIS) digital databases, provided by private forestland
 31 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
 32 that is not otherwise required by law to be submitted.

33 (26) Sensitive business, commercial or financial information furnished to or developed by a
 34 public body engaged in the business of providing electricity or electricity services, if the information
 35 is directly related to a transaction described in ORS 261.348, or if the information is directly related
 36 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
 37 disclosure of the information would cause a competitive disadvantage for the public body or its re-
 38 tail electricity customers. This subsection does not apply to cost-of-service studies used in the
 39 development or review of generally applicable rate schedules.

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

1 (28) Personally identifiable information about customers of a municipal electric utility or a
 2 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
 3 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
 4 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
 5 lease personally identifiable information about a customer, and a public body providing water, sewer
 6 or storm drain services may release the name, date of birth, driver license number, telephone num-
 7 ber, electronic mail address or Social Security number of a customer, if the customer consents in
 8 writing or electronically, if the disclosure is necessary for the utility, district or other public body
 9 to render services to the customer, if the disclosure is required pursuant to a court order or if the
 10 disclosure is otherwise required by federal or state law. The utility, district or other public body
 11 may charge as appropriate for the costs of providing such information. The utility, district or other
 12 public body may make customer records available to third party credit agencies on a regular basis
 13 in connection with the establishment and management of customer accounts or in the event such
 14 accounts are delinquent.

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

17 (30) Sensitive business records, capital development plans or financial or commercial information
 18 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

19 (31) Documents, materials or other information submitted to the Director of the Department of
 20 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 21 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
 22 or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200
 23 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code
 24 when:

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

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

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

31 (33) Information about review or approval of programs relating to the security of:

32 (a) Generation, storage or conveyance of:

33 (A) Electricity;

34 (B) Gas in liquefied or gaseous form;

35 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

36 (D) Petroleum products;

37 (E) Sewage; or

38 (F) Water.

39 (b) Telecommunication systems, including cellular, wireless or radio systems.

40 (c) Data transmissions by whatever means provided.

41 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-
 42 ignates the information as confidential by rule under ORS 1.002.

43 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

44 (b) As used in this subsection, “employer account records” means all records maintained in any
 45 form that are specifically related to the account of any employer insured, previously insured or un-

1 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
 2 mation obtained or developed by the corporation in connection with providing, offering to provide
 3 or declining to provide insurance to a specific employer. “Employer account records” includes, but
 4 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
 5 employee names and identification information, experience modification factors, loss experience and
 6 dividend payment history.

7 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
 8 discovery documents in litigation pursuant to applicable rules of civil procedure.

9 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

10 (b) As used in this subsection, “claimant files” includes, but is not limited to, all records held
 11 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
 12 records pertaining to such a claim.

13 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
 14 discovery documents in litigation pursuant to applicable rules of civil procedure.

15 (37) Except as authorized by ORS 408.425, records that certify or verify an individual’s discharge
 16 or other separation from military service.

17 (38) Records of or submitted to a domestic violence service or resource center that relate to the
 18 name or personal information of an individual who visits a center for service, including the date of
 19 service, the type of service received, referrals or contact information or personal information of a
 20 family member of the individual. As used in this subsection, “domestic violence service or resource
 21 center” means an entity, the primary purpose of which is to assist persons affected by domestic or
 22 sexual violence by providing referrals, resource information or other assistance specifically of ben-
 23 efit to domestic or sexual violence victims.

24 (39) Information reported to the Oregon Health Authority under ORS 431.964, except as provided
 25 in ORS 431.964 [(2)(c)] **(2)(b)** information disclosed by the authority under ORS 431.966 and any in-
 26 formation related to disclosures made by the authority under ORS 431.966, including information
 27 identifying the recipient of the information.

28 (40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of the
 29 executive department, as defined in ORS 174.112, a local government or local service district, as
 30 defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

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

33 **SECTION 3. The amendments to ORS 431.964 by section 1 of this 2015 Act apply to pre-**
 34 **scription drugs dispensed by pharmacies on and after the date on which the Oregon Health**
 35 **Authority adopts rules establishing the time frame within which pharmacies must electron-**
 36 **ically report to the authority the information described in ORS 431.964 (1).**

37 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 39 **on its passage.**