

## HOUSE AMENDMENTS TO HOUSE BILL 2836

By COMMITTEE ON HEALTH CARE

April 20

1 In line 2 of the printed bill, after “health” insert “; amending ORS 161.336, 161.390, 179.505 and  
2 192.502; and declaring an emergency”.

3 Delete lines 4 through 16 and insert:

4 “**SECTION 1.** ORS 161.336 is amended to read:

5 “161.336. (1)(a) When a person is conditionally released under ORS 161.315 to 161.351, the person  
6 is subject to those supervisory orders of the Psychiatric Security Review Board as are in the best  
7 interests of justice, the protection of society and the welfare of the person.

8 “(b) An order of conditional release entered by the board or the Oregon Health Authority may  
9 designate any person or state, county or local agency capable of supervising the person upon re-  
10 lease, subject to the conditions described in the order of conditional release.

11 “(c) Prior to the designation, the agency conducting the hearing shall notify the person or state,  
12 county or local agency to whom conditional release is contemplated and provide the person or state,  
13 county or local agency an opportunity to be heard.

14 “(d) After receiving an order entered under this section, the person or state, county or local  
15 agency designated in the order shall assume supervision of the person in accordance with the con-  
16 ditions described in the order and any modifications of the conditions ordered by the board.

17 “(2) Conditions of release contained in orders entered under this section may be modified from  
18 time to time and conditional releases may be terminated as provided in ORS 161.351.

19 “(3)(a) As a condition of release, the person may be required to report to any state or local  
20 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is  
21 recommended, the order may require the person, as a condition of release, to cooperate with and  
22 accept the treatment from the facility.

23 “(b) The facility to which the person has been referred for evaluation shall perform the evalu-  
24 ation and submit a written report of its findings to the board. If the facility finds that treatment of  
25 the person is appropriate, it shall include its recommendations for treatment in the report to the  
26 board.

27 “(c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a  
28 regular basis concerning the progress of the person.

29 “(d) Copies of all reports submitted to the board pursuant to this section shall be furnished to  
30 the person and the person’s counsel. The confidentiality of **health information contained in these**  
31 **reports is subject to ORS 179.505 and 192.553 to 192.581, the federal Health Insurance Porta-**  
32 **bility and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under it, including**  
33 **45 C.F.R. parts 160 and 164, and federal alcohol and drug treatment confidentiality laws and**  
34 **regulations, including 42 C.F.R. part 2. The confidentiality of information, other than health**  
35 **information, contained in these reports is determined pursuant to ORS 192.501 to 192.505.**

1 “(e) The facility shall comply with the conditional release order and any modifications of the  
2 conditions ordered by the board.

3 “(4)(a) If at any time while the person is under the jurisdiction of the board it appears to the  
4 board or its chairperson that the person has violated the terms of the conditional release or that  
5 the mental health of the individual has changed, the board or its chairperson may order the person  
6 returned for evaluation or treatment to a state hospital or, if the person is under 18 years of age,  
7 to a secure intensive community inpatient facility. A written order of the board, or its chairperson  
8 on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody  
9 such person and transport the person accordingly. A sheriff, municipal police officer, constable,  
10 parole and probation officer, prison official or other peace officer shall execute the order, and the  
11 person shall be returned as soon as practicable to the state hospital or secure intensive community  
12 inpatient facility designated in the order.

13 “(b) The community mental health program director, the director of the facility providing  
14 treatment to a person on conditional release, any peace officer or any person responsible for the  
15 supervision of a person on conditional release may take a person on conditional release into custody  
16 or request that the person be taken into custody if there is reasonable cause to believe the person  
17 is a substantial danger to others because of mental disease or defect and that the person is in need  
18 of immediate care, custody or treatment. Any person taken into custody pursuant to this subsection  
19 shall be transported as soon as practicable to a state hospital or, if the person is under 18 years  
20 of age, to a secure intensive community inpatient facility.

21 “(c) Within 20 days following the return of the person to a state hospital or secure intensive  
22 community inpatient facility under this subsection, the agency having jurisdiction over the person  
23 shall conduct a hearing. The agency shall provide notice of the hearing to the person, the attorney  
24 representing the person and the Attorney General. The state must prove by a preponderance of the  
25 evidence the person’s unfitness for conditional release. The hearing shall be conducted in accord-  
26 ance with ORS 161.346.

27 “(5)(a) Any person conditionally released under this section may apply to the board for dis-  
28 charge from or modification of an order of conditional release on the ground that the person is no  
29 longer affected by mental disease or defect or, if still so affected, no longer presents a substantial  
30 danger to others and no longer requires supervision, medication, care or treatment. Notice of the  
31 hearing on an application for discharge or modification of an order of conditional release shall be  
32 made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove  
33 by a preponderance of the evidence the applicant’s fitness for discharge or modification of the order  
34 of conditional release. Applications by the person for discharge or modification of conditional re-  
35 lease may not be filed more often than once every six months.

36 “(b) Upon application by any person or agency responsible for supervision or treatment pursuant  
37 to an order of conditional release, the board shall conduct a hearing to determine if the conditions  
38 of release shall be continued, modified or terminated. The application shall be accompanied by a  
39 report setting forth the facts supporting the application.

40 “(6) A person who has spent five years on conditional release shall be brought before the board  
41 for hearing within 30 days before the expiration of the five-year period. The board shall review the  
42 person’s status and determine whether the person should be discharged from the jurisdiction of the  
43 board.

44 “**SECTION 2.** ORS 161.390 is amended to read:

45 “161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to

1 state mental hospitals or secure intensive community inpatient facilities under ORS 161.315 to  
2 161.351, 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons  
3 committed to a state hospital or a secure intensive community inpatient facility or ordered to a  
4 community mental health program under ORS 161.315 to 161.351.

5 “(2) When the Psychiatric Security Review Board or the authority requires the preparation of  
6 a predischarge or preconditional release plan before a hearing or as a condition of granting dis-  
7 charge or conditional release for a person committed under ORS 161.315 to 161.351 to a state hos-  
8 pital or a secure intensive community inpatient facility for custody, care and treatment, the  
9 authority is responsible for and shall prepare the plan.

10 “(3) In carrying out a conditional release plan prepared under subsection (2) of this section, the  
11 authority may contract with a community mental health program, other public agency or private  
12 corporation or an individual to provide supervision and treatment for the conditionally released  
13 person.

14 “(4) Before the authority conducts a hearing under ORS 161.315 to 161.351, the authority shall  
15 notify the board. The board may provide the authority with conditions of release that the board  
16 determines are advisable. If the authority orders the person conditionally released, the authority  
17 shall include the conditions of release in the order.

18 “(5)(a) The board and the authority shall maintain and keep current the medical, social and  
19 criminal history of all persons committed to their respective jurisdiction. The confidentiality of  
20 **medical** records maintained by the board shall be determined pursuant to **ORS 179.505 and 192.553**  
21 **to 192.581, the federal Health Insurance Portability and Accountability Act of 1996 (P.L.**  
22 **104-191) and regulations adopted under it, including 45 C.F.R. parts 160 and 164, and federal**  
23 **alcohol and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2.**  
24 **The confidentiality of records, other than medical records, shall be determined pursuant to**  
25 **ORS 192.501 to 192.505.**

26 “(b) **The testimony of treatment providers at agency hearings does not waive the**  
27 **confidentiality of or protection from disclosure of records under law.**

28 “(6) The evidentiary phase of a hearing conducted by the board or the authority under ORS  
29 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690.

30 “**SECTION 3.** ORS 179.505 is amended to read:

31 “179.505. (1) As used in this section:

32 “(a) ‘Disclosure’ means the release of, transfer of, provision of access to or divulgence in any  
33 other manner of information outside the health care services provider holding the information.

34 “(b) ‘Health care services provider’ means:

35 “(A) Medical personnel or other staff employed by or under contract with a public provider to  
36 provide health care or maintain written accounts of health care provided to individuals; or

37 “(B) Units, programs or services designated, operated or maintained by a public provider to  
38 provide health care or maintain written accounts of health care provided to individuals.

39 “(c) ‘Individually identifiable health information’ means any health information that is:

40 “(A) Created or received by a health care services provider; and

41 “(B) Identifiable to an individual, including demographic information that identifies the individ-  
42 ual, or for which there is a reasonable basis to believe the information can be used to identify an  
43 individual, and that relates to:

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

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

1           “(iii) The past, present or future payment for the provision of health care to an individual.  
2           “(d) ‘Personal representative’ includes but is not limited to:  
3           “(A) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with  
4 authority to make medical and health care decisions;  
5           “(B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a  
6 representative under ORS 127.700 to 127.737 to make health care decisions or mental health treat-  
7 ment decisions; and  
8           “(C) A person appointed as a personal representative under ORS chapter 113.  
9           “(e) ‘Psychotherapy notes’ means notes recorded in any medium:  
10          “(A) By a mental health professional, in the performance of the official duties of the mental  
11 health professional;  
12          “(B) Documenting or analyzing the contents of conversation during a counseling session; and  
13          “(C) That are maintained separately from the rest of the individual’s record.  
14          “(f) ‘Psychotherapy notes’ does not mean notes documenting:  
15          “(A) Medication prescription and monitoring;  
16          “(B) Counseling session start and stop times;  
17          “(C) Modalities and frequencies of treatment furnished;  
18          “(D) Results of clinical tests; or  
19          “(E) Any summary of the following items:  
20          “(i) Diagnosis;  
21          “(ii) Functional status;  
22          “(iii) Treatment plan;  
23          “(iv) Symptoms;  
24          “(v) Prognosis; or  
25          “(vi) Progress to date.  
26          “(g) ‘Public provider’ means:  
27          “(A) The Oregon State Hospital campuses;  
28          “(B) Department of Corrections institutions as defined in ORS 421.005;  
29          “(C) A contractor of the Department of Corrections or the Oregon Health Authority that pro-  
30 vides health care to individuals residing in a state institution operated by the agencies;  
31          “(D) A community mental health program or community developmental disabilities program as  
32 described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to  
33 provide mental health or developmental disabilities programs or services;  
34          “(E) A program or service provided under ORS 431.001 to 431.550 and 431.990;  
35          “(F) A program or service established or maintained under ORS 430.630 or 430.664;  
36          “(G) A program or facility providing an organized full-day or part-day program of treatment that  
37 is licensed, approved, established, maintained or operated by or contracted with the Oregon Health  
38 Authority for alcoholism, drug addiction or mental or emotional disturbance;  
39          “(H) A program or service providing treatment by appointment that is licensed, approved, es-  
40 tablished, maintained or operated by or contracted with the authority for alcoholism, drug addiction  
41 or mental or emotional disturbance; or  
42          “(I) The impaired health professional program established under ORS 676.190.  
43          “(h) ‘Written account’ means records containing only individually identifiable health information.  
44          “(2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16), (17) and  
45 (18) of this section or unless otherwise permitted or required by state or federal law or by order of

1 the court, written accounts of the individuals served by any health care services provider main-  
2 tained in or by the health care services provider by the officers or employees thereof who are au-  
3 thorized to maintain written accounts within the official scope of their duties are not subject to  
4 access and may not be disclosed. This subsection applies to written accounts maintained in or by  
5 facilities of the Department of Corrections only to the extent that the written accounts concern the  
6 medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Depart-  
7 ment of Corrections.

8 “(3) If the individual or a personal representative of the individual provides an authorization,  
9 the content of any written account referred to in subsection (2) of this section must be disclosed  
10 accordingly, if the authorization is in writing and is signed and dated by the individual or the per-  
11 sonal representative of the individual and sets forth with specificity the following:

12 “(a) Name of the health care services provider authorized to make the disclosure, except when  
13 the authorization is provided by recipients of or applicants for public assistance or medical assist-  
14 ance, as defined in ORS 414.025, to a governmental entity for purposes of determining eligibility for  
15 benefits or investigating for fraud;

16 “(b) Name or title of the persons or organizations to which the information is to be disclosed  
17 or that information may be disclosed to the public;

18 “(c) Name of the individual;

19 “(d) Extent or nature of the information to be disclosed; and

20 “(e) Statement that the authorization is subject to revocation at any time except to the extent  
21 that action has been taken in reliance thereon, and a specification of the date, event or condition  
22 upon which it expires without express revocation. However, a revocation of an authorization is not  
23 valid with respect to inspection or records necessary to validate expenditures by or on behalf of  
24 governmental entities.

25 “(4) The content of any written account referred to in subsection (2) of this section may be  
26 disclosed without an authorization:

27 “(a) To any person to the extent necessary to meet a medical emergency.

28 “(b) At the discretion of the responsible officer of the health care services provider, which in  
29 the case of any Oregon Health Authority facility or community mental health program is the Di-  
30 rector of the Oregon Health Authority, to persons engaged in scientific research, program evalu-  
31 ation, peer review and fiscal audits. However, individual identities may not be disclosed to such  
32 persons, except when the disclosure is essential to the research, evaluation, review or audit and is  
33 consistent with state and federal law.

34 “(c) To governmental agencies when necessary to secure compensation for services rendered in  
35 the treatment of the individual.

36 “(5) When an individual’s identity is disclosed under subsection (4) of this section, a health care  
37 services provider shall prepare, and include in the permanent records of the health care services  
38 provider, a written statement indicating the reasons for the disclosure, the written accounts dis-  
39 closed and the recipients of the disclosure.

40 “(6) The content of any written account referred to in subsection (2) of this section and held by  
41 a health care services provider currently engaged in the treatment of an individual may be disclosed  
42 to officers or employees of that provider, its agents or cooperating health care services providers  
43 who are currently acting within the official scope of their duties to evaluate treatment programs,  
44 to diagnose or treat or to assist in diagnosing or treating an individual when the written account  
45 is to be used in the course of diagnosing or treating the individual. Nothing in this subsection

1 prevents the transfer of written accounts referred to in subsection (2) of this section among health  
2 care services providers, the Department of Corrections, the Oregon Health Authority or a local  
3 correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

4 “(7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240  
5 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or  
6 treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or  
7 an institution operated by the department, nothing in this section prohibits the disclosure of any  
8 written account referred to in subsection (2) of this section to the Department of Justice, Oregon  
9 Department of Administrative Services, or their agents, upon request, or the subsequent disclosure  
10 to a court, administrative hearings officer, arbitrator or other administrative decision maker.

11 “(8)(a) When an action, suit, claim, arbitration or proceeding involves the Oregon Health Au-  
12 thority or an institution operated by the authority, nothing in this section prohibits the disclosure  
13 of any written account referred to in subsection (2) of this section to the Department of Justice,  
14 Oregon Department of Administrative Services, or their agents.

15 “(b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is  
16 limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750  
17 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed  
18 under this paragraph.

19 “(c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel  
20 action taken against staff is limited to written accounts directly relating to alleged action or in-  
21 action by staff for which the personnel action was imposed.

22 “(9)(a) The copy of any written account referred to in subsection (2) of this section, upon written  
23 request of the individual or a personal representative of the individual, shall be disclosed to the  
24 individual or the personal representative of the individual within a reasonable time not to exceed  
25 five working days. The individual or the personal representative of the individual shall have the  
26 right to timely access to any written accounts.

27 “(b) If the disclosure of psychiatric or psychological information contained in the written ac-  
28 count would constitute an immediate and grave detriment to the treatment of the individual, dis-  
29 closure may be denied, if medically contraindicated by the treating physician or a licensed health  
30 care professional in the written account of the individual.

31 “(c) The Department of Corrections may withhold psychiatric or psychological information if:

32 “(A) The information relates to an individual other than the individual seeking it.

33 “(B) Disclosure of the information would constitute a danger to another individual.

34 “(C) Disclosure of the information would compromise the privacy of a confidential source.

35 “(d) However, a written statement of the denial under paragraph (c) of this subsection and the  
36 reasons therefor must be entered in the written account.

37 “(10) A health care services provider may require a person requesting disclosure of the contents  
38 of a written account under this section to reimburse the provider for the reasonable costs incurred  
39 in searching files, abstracting if requested and copying if requested. However, an individual or a  
40 personal representative of the individual may not be denied access to written accounts concerning  
41 the individual because of inability to pay.

42 “(11) A written account referred to in subsection (2) of this section may not be used to initiate  
43 or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by  
44 federal, state or local authorities against the individual or to conduct any investigations of the in-  
45 dividual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily

1 produces evidence regarding an issue to which a written account referred to in subsection (2) of this  
2 section would be relevant, the contents of that written account may be disclosed for use in the  
3 proceeding.

4 “(12) Information obtained in the course of diagnosis, evaluation or treatment of an individual  
5 that, in the professional judgment of the health care services provider, indicates a clear and imme-  
6 diate danger to others or to society may be reported to the appropriate authority. A decision not  
7 to disclose information under this subsection does not subject the provider to any civil liability.  
8 Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760,  
9 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

10 “(13) The prohibitions of this section apply to written accounts concerning any individual who  
11 has been treated by any health care services provider irrespective of whether or when the individual  
12 ceases to receive treatment.

13 “(14) Persons other than the individual or the personal representative of the individual who are  
14 granted access under this section **or any other law** to the contents of a written account referred  
15 to in subsection (2) of this section may not disclose the contents of the written account to any other  
16 person except in accordance with the provisions of this section.

17 “(15) Nothing in this section prevents the Department of Human Services or the Oregon Health  
18 Authority from disclosing the contents of written accounts in its possession to individuals or agen-  
19 cies with whom children in its custody are placed.

20 “(16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS  
21 192.515, as provided in ORS 192.517.

22 “(17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider  
23 must obtain an authorization from an individual or a personal representative of the individual to  
24 disclose psychotherapy notes.

25 “(b) A health care services provider may use or disclose psychotherapy notes without obtaining  
26 an authorization from the individual or a personal representative of the individual to carry out the  
27 following treatment, payment and health care operations:

28 “(A) Use by the originator of the psychotherapy notes for treatment;

29 “(B) Disclosure by the health care services provider for its own training program in which stu-  
30 dents, trainees or practitioners in mental health learn under supervision to practice or improve their  
31 skills in group, joint, family or individual counseling; or

32 “(C) Disclosure by the health care services provider to defend itself in a legal action or other  
33 proceeding brought by the individual or a personal representative of the individual.

34 “(c) An authorization for the disclosure of psychotherapy notes may not be combined with an  
35 authorization for a disclosure of any other individually identifiable health information, but may be  
36 combined with another authorization for a disclosure of psychotherapy notes.

37 “(18) A health care services provider may disclose information contained in a written account  
38 if the conditions of ORS 192.567 (1) to (5) are met.

39 “**SECTION 4.** ORS 192.502 is amended to read:

40 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

6 “(3) Upon compliance with ORS 192.437, public body employee or volunteer residential ad-  
7 dresses, residential telephone numbers, personal cellular telephone numbers, personal electronic  
8 mail addresses, driver license numbers, employer-issued identification card numbers, emergency  
9 contact information, Social Security numbers, dates of birth and other telephone numbers contained  
10 in personnel records maintained by the public body that is the employer or the recipient of volunteer  
11 services. This exemption:

12 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or  
13 volunteers who are elected officials, except that a judge or district attorney subject to election may  
14 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the  
15 terms of ORS 192.445;

16 “(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure  
17 shows by clear and convincing evidence that the public interest requires disclosure in a particular  
18 instance pursuant to ORS 192.437;

19 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a  
20 professional education association of which the substitute teacher may be a member; and

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

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

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

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

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

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

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

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

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

44 “(B) The factual information is not prohibited from disclosure under any applicable state or  
45 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS



1 192.410 to 192.505;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

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

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

27 “(17)(a) The following records, communications and information submitted to the Oregon Busi-  
28 ness Development Commission, the Oregon Business Development Department, the State Department  
29 of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS  
30 777.005, or a county or city governing body and any board, department, commission, council or  
31 agency thereof, by applicants for investment funds, grants, loans, services or economic development  
32 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

33 “(A) Personal financial statements.

34 “(B) Financial statements of applicants.

35 “(C) Customer lists.

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

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

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

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

1       “(A) Personal financial statements.

2       “(B) Financial statements of applicants.

3       “(C) Customer lists.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45       and

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

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

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

6           “(b) Credit reports.

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

10          “(d) Market studies and analyses.

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

12          “(f) Commitment letters.

13          “(g) Project pro forma statements.

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

15          “(i) Audits.

16          “(j) Project tenant correspondence.

17          “(k) Personal information about a tenant.

18          “(L) Housing assistance payments.

19          “(25) Raster geographic information system (GIS) digital databases, provided by private  
20 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-  
21 partment, that is not otherwise required by law to be submitted.

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

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

35          “(28) Personally identifiable information about customers of a municipal electric utility or a  
36 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,  
37 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
38 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
39 lease personally identifiable information about a customer, and a public body providing water, sewer  
40 or storm drain services may release the name, date of birth, driver license number, telephone num-  
41 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
42 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
43 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
44 disclosure is otherwise required by federal or state law. The utility, district or other public body  
45 may charge as appropriate for the costs of providing such information. The utility, district or other

1 public body may make customer records available to third party credit agencies on a regular basis  
2 in connection with the establishment and management of customer accounts or in the event such  
3 accounts are delinquent.

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

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

8 “(31) Documents, materials or other information submitted to the Director of the Department  
9 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-  
10 latory or law enforcement agency or by the National Association of Insurance Commissioners, its  
11 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842,  
12 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the  
13 Insurance Code when:

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

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

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

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

21 “(a) Generation, storage or conveyance of:

22 “(A) Electricity;

23 “(B) Gas in liquefied or gaseous form;

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

25 “(D) Petroleum products;

26 “(E) Sewage; or

27 “(F) Water.

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

29 “(c) Data transmissions by whatever means provided.

30 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court  
31 designates the information as confidential by rule under ORS 1.002.

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

33 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any  
34 form that are specifically related to the account of any employer insured, previously insured or un-  
35 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-  
36 mation obtained or developed by the corporation in connection with providing, offering to provide  
37 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but  
38 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,  
39 employee names and identification information, experience modification factors, loss experience and  
40 dividend payment history.

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

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

44 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held  
45 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all

1 records pertaining to such a claim.

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

4 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-  
5 charge or other separation from military service.

6 “(38) Records of or submitted to a domestic violence service or resource center that relate to  
7 the name or personal information of an individual who visits a center for service, including the date  
8 of service, the type of service received, referrals or contact information or personal information of  
9 a family member of the individual. As used in this subsection, ‘domestic violence service or resource  
10 center’ means an entity, the primary purpose of which is to assist persons affected by domestic or  
11 sexual violence by providing referrals, resource information or other assistance specifically of ben-  
12 efit to domestic or sexual violence victims.

13 “(39) Information reported to the Oregon Health Authority under ORS 431A.860, except as pro-  
14 vided in ORS 431A.860 (2)(b) information disclosed by the authority under ORS 431A.865 and any  
15 information related to disclosures made by the authority under ORS 431A.865, including information  
16 identifying the recipient of the information.

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

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

22 “(41) Residential addresses, residential telephone numbers, personal cellular telephone numbers,  
23 personal electronic mail addresses, driver license numbers, emergency contact information, Social  
24 Security numbers, dates of birth and other telephone numbers of individuals currently or previously  
25 certified or licensed by the Department of Public Safety Standards and Training contained in the  
26 records maintained by the department.

27 “(42) Personally identifiable information and contact information of veterans as defined in ORS  
28 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the  
29 United States, National Guard or other reserve component that was obtained by the Department of  
30 Veterans’ Affairs in the course of performing its duties and functions, including but not limited to  
31 names, residential and employment addresses, dates of birth, driver license numbers, telephone  
32 numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the char-  
33 acter of discharge from military service, military rating or rank, that the person is a veteran or has  
34 provided military service, information relating to an application for or receipt of federal or state  
35 benefits, information relating to the basis for receipt or denial of federal or state benefits and in-  
36 formation relating to a home loan or grant application, including but not limited to financial infor-  
37 mation provided in connection with the application.

38 “(43) **Health information protected from disclosure under ORS 179.505 and 192.553 to**  
39 **192.581, the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191)**  
40 **and regulations adopted under it, including 45 C.F.R. parts 160 and 164, and federal alcohol**  
41 **and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2.**

42 “**SECTION 5. This 2017 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
44 **on its passage.”**