

House Bill 3284

Sponsored by Representative HOLVEY (at the request of Attorney General Ellen Rosenblum)

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**.

Prohibits covered organization from collecting, using or disclosing personal data about resident individual who has not given affirmative express consent for collection, use or disclosure unless in context of employment relationship or to comply with legal obligation. Prohibits covered organization from retaining, storing or using personal health data and requires covered organization to destroy, delete or render inaccessible personal health data not later than specified dates unless personal health data consists of aggregations, statistical analyses, compilations or interpretations and covered organization takes reasonable measures to ensure that personal health data does not and cannot personally identify resident individual.

Requires covered organization to collect, receive or use personal health data only for specified purposes and to provide resident individual with certain disclosures and ability to revoke affirmative express consent for collection, receipt or use of personal health data except in specified circumstances.

Punishes violation of Act as unlawful trade practice.

Sunsets Act 270 days after COVID-19 emergency period, as defined in Act, ends.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to protecting the privacy of the personal health data of residents of this state; creating new
3 provisions; amending ORS 646.607; and declaring an emergency.

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

5 **SECTION 1. (1) As used in this section:**

6 **(a)(A) "Affirmative express consent" means an affirmative act by a resident individual**
7 **that:**

8 **(i) Clearly and conspicuously communicates the resident individual's authorization for a**
9 **covered organization to perform an act or practice; and**

10 **(ii) Occurs without interference or coercion from a covered organization and without**
11 **deception, obscurity, ambiguity or impairment created or imposed, intentionally or other-**
12 **wise, by means of a method the covered organization uses to obtain the resident individual's**
13 **consent.**

14 **(B) "Affirmative express consent" does not include a resident individual's failure to re-**
15 **spond to, or inaction in response to, an attempt to obtain the resident individual's consent.**

16 **(b)(A) "Covered organization" means a person that collects, uses or discloses personal**
17 **health data or that develops or operates a website, web application, mobile application, mo-**
18 **bile operating system feature or other electronic method by means of which the person may**
19 **collect, use or disclose personal health data.**

20 **(B) "Covered organization" does not include:**

21 **(i) A member of the resident individual's household;**

22 **(ii) An agency, employee, agent, designee, affiliate, associate or contractor of a federal,**
23 **state, local or tribal governmental body that under legal authorization and for the purposes**
24 **of preventing disease, injury or disability, may collect, receive, observe, discover or investi-**

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 **gate personal health information;**

2 **(iii) A health care provider, as defined in ORS 433.443;**

3 **(iv) A service provider; or**

4 **(v) A covered entity or business associate, both as defined in 45 C.F.R. 160.103, as in ef-**
 5 **fect on the effective date of this 2021 Act, to the extent that the covered entity or business**
 6 **associate is engaged in activities that are subject to regulation under the Health Insurance**
 7 **Portability and Accountability Act of 1996, P.L. 104-191, or regulations adopted under the Act**
 8 **and codified as 45 C.F.R. parts 160 and 164, as in effect on the effective date of this 2021 Act.**

9 **(c) “Disclose” means to release, transfer, sell, share, provide access to, license or oth-**
 10 **erwise divulge to another person.**

11 **(d) “Emergency period” means a period that begins on the date on which the Governor**
 12 **has declared an emergency related to the COVID-19 pandemic and ends on a date 180 days**
 13 **after the Governor terminates the declaration or the declaration expires.**

14 **(e) “Geolocation data” means information about a resident individual’s location that is:**

15 **(A) Derived from a global positioning system or similar or related technology;**

16 **(B) Expressed in a coordinate system, such as latitude and longitude;**

17 **(C) Accurate enough to specify a location within 1,850 feet of the resident individual’s**
 18 **actual location; and**

19 **(D) Capable of specifying a location in real time or otherwise.**

20 **(f)(A) “Personal health data” means information about a resident individual that identi-**
 21 **fies or can reasonably be used to identify a resident individual by name, address, contact**
 22 **information or other markers of personal identity and associate the resident individual’s**
 23 **personal identity with:**

24 **(i) Exposure to or infection with SARS-CoV-2 or development of symptoms of or a disease**
 25 **condition caused by or related to COVID-19;**

26 **(ii) Tests or examinations or requests for tests and examinations for exposure to**
 27 **SARS-CoV-2, including tests or examinations of body parts or bodily substances;**

28 **(iii) Receipt of medical care or medical services related to exposure to SARS-CoV-2 or**
 29 **symptoms or development of COVID-19;**

30 **(iv) Predisposition toward developing a disease condition that results from exposure to**
 31 **or infection by SARS-CoV-2;**

32 **(v) Whether the resident individual has received a vaccination against COVID-19; or**

33 **(vi) Other data, including geolocation data, that tracks, monitors or traces a resident**
 34 **individual’s exposure to or infection by SARS-CoV-2 or development of a disease condition**
 35 **caused by or related to COVID-19.**

36 **(B) “Personal health data” does not include information about a resident individual that:**

37 **(i) A covered organization uses solely to determine whether the resident individual may**
 38 **enter premises that the covered organization owns, operates or controls without unneces-**
 39 **sarily risking transmission of SARS-CoV-2;**

40 **(ii) Is lawfully available to the public from federal, state or local government records or**
 41 **widely available to the public from sources such as telephone directories, the internet, news**
 42 **media or similar or related sources;**

43 **(iii) Was collected, used or disclosed before the emergency period for purposes other than**
 44 **tracking, monitoring or tracing a resident individual’s exposure to or infection by**
 45 **SARS-CoV-2 or development of a disease condition caused by or related to COVID-19; or**

1 (iv) Cannot personally identify or be reasonably used to personally identify the resident
2 individual.

3 (g) "Resident individual" means a natural person who resides in this state.

4 (h) "Service provider" means a person that collects, uses or discloses personal health
5 information solely for the purpose of providing business services to, on behalf of, or for the
6 benefit of a covered organization in accordance with instructions or direction from, or under
7 the terms and conditions of a contract with, the covered organization.

8 (2)(a) Except as provided in paragraph (b) of this subsection, a covered organization may
9 not collect, use or disclose personal health data about a resident individual who has not given
10 affirmative express consent to the covered organization's collection, use or disclosure of the
11 resident individual's personal health data.

12 (b) A covered organization may collect, use or disclose personal health data without a
13 resident individual's affirmative express consent if the collection, use or disclosure:

14 (A) Occurs in the context of an employment relationship with the resident individual; or

15 (B) Is necessary solely to comply with a legal obligation.

16 (3) A resident individual may give affirmative express consent to a collection, use or
17 disclosure of personal health data on behalf of a member of the resident individual's house-
18 hold who is younger than 18 years of age.

19 (4)(a) Except as provided in paragraph (b) of this subsection, a covered organization may
20 not retain, store or use and shall destroy, delete or, if appropriate, render inaccessible to any
21 person in any manner personal health data that the covered organization collects, stores,
22 uses, possesses or controls not later than the earlier of:

23 (A) Thirty days after the emergency period expires or is terminated; or

24 (B) Sixty-five days after the covered organization collected, received or otherwise ob-
25 tained the personal health data.

26 (b) A covered organization may use and need not destroy, delete or render inaccessible
27 personal health data if:

28 (A) The personal health data consists of aggregations, statistical analyses, compilations
29 or interpretations; and

30 (B) The covered organization takes reasonable measures to ensure that the personal
31 health data does not and cannot personally identify a resident individual, states publicly that
32 the covered organization will not attempt to personally identify the resident individual except
33 to determine the effectiveness of the covered organization's measures to ensure that the
34 information does not and cannot personally identify the resident individual and contractually
35 obligates any other person that receives the information also to ensure that the information
36 does not and cannot personally identify the resident individual.

37 (5) A covered organization shall collect, use, receive, process, examine, disclose or collate
38 only the personal health data that is reasonably necessary to protect public health, or to
39 provide health care or other services to the resident individual to whom the personal health
40 data applies, and shall:

41 (a) Take reasonable measures to ensure the accuracy of the personal health data and
42 provide an accessible and effective method for a resident individual to correct any inaccura-
43 cies, as appropriate for the nature of the personal health data and the context in which the
44 covered organization collected or received the personal health data;

45 (b) Establish and implement safeguards for personal health data that comply, at a mini-

1 **num, with the requirements of ORS 646A.622 and require service providers with which the**
2 **covered organization has a contract or other agreement to establish and implement safe-**
3 **guards that comply, at a minimum, with the requirements of ORS 646A.622;**

4 **(c) Establish and implement policies and procedures that prevent the covered organiza-**
5 **tion from using personal health data for any discriminatory purpose;**

6 **(d) Provide an easily accessible and effective method by which a resident individual may**
7 **revoke any affirmative express consent the resident individual gave previously, except that**
8 **the covered organization need not provide a method for revocation if the covered**
9 **organization's access to or use of the personal health data is necessary to protect public**
10 **health or to comply with a legal obligation;**

11 **(e) Adopt, implement and provide to each resident individual from whom the covered**
12 **organization collects, or about whom the covered organization receives, personal health data**
13 **a clear, understandable and conspicuous disclosure of policies and procedures in compliance**
14 **with which the covered organization collects, receives or otherwise obtains personal health**
15 **data that, at a minimum, must include:**

16 **(A) The manner in which and the purposes for which the covered organization collects,**
17 **receives, processes, examines, analyzes, collates, discloses, sells, transfers, stores, retains**
18 **or makes use of personal health data;**

19 **(B) Categories of persons to which the covered organization does or may disclose per-**
20 **sonal health data or from which the covered organization does or may receive or obtain**
21 **personal health data; and**

22 **(C) A statement that informs the resident individual that and how the resident individual**
23 **may provide, refuse to provide or revoke affirmative express consent, with an explanation**
24 **of the circumstances in which the resident individual may not revoke affirmative and express**
25 **consent;**

26 **(f) Cease the covered organization's collection, receipt or use of a resident individual's**
27 **personal health data not later than 21 days after receiving from the resident individual a**
28 **revocation of affirmative express consent; and**

29 **(g) Compile, not later than 30 days after the effective date of this 2021 Act and during**
30 **each period of 60 days thereafter, and retain for a period of not less than five years after the**
31 **expiration or termination of the emergency period, subject to an audit by the Oregon Health**
32 **Authority, a series of reports that:**

33 **(A) States the number of resident individuals from or about whom the covered organ-**
34 **ization collected, received or otherwise obtained personal health data;**

35 **(B) Describes the categories of personal health data the covered organization collected,**
36 **received or otherwise obtained and the specific purpose for which the covered organization**
37 **collected, received or obtained the personal health data; and**

38 **(C) Lists the persons to which the covered organization disclosed, sold or otherwise**
39 **transferred personal health data.**

40 **(6) A covered organization may not collect, use or disclose personal health data for a**
41 **purpose that this section does not authorize, including for:**

42 **(a) Commercial advertising;**

43 **(b) Recommendations or reviews related to electronic commerce;**

44 **(c) Training machine learning algorithms related to or for subsequent use in commercial**
45 **advertising or electronic commerce;**

1 (d) Soliciting, offering, selling, leasing, licensing, renting, advertising, marketing or con-
2 tracting for employment, financing or extensions of credit, insurance, housing or educational
3 opportunities in a manner that discriminates or makes the opportunities unavailable on the
4 basis of personal health data; or

5 (e) Segregating, discriminating as to a provision of or otherwise making unavailable
6 goods, services, facilities, privileges, advantages or accommodations in any place of public
7 accommodation, as defined in the Americans with Disabilities Act of 1990, 42 U.S.C. 12181,
8 as in effect on the effective date of this 2021 Act, unless a government entity for a public
9 health purpose authorizes otherwise.

10 (7) This section does not limit or prohibit:

11 (a) A university or other institution of higher education or a nonprofit corporation, as
12 defined in ORS 65.001, from conducting scientific research or a public health program or
13 from developing vaccinations, medications or treatments related to COVID-19 that are oth-
14 erwise authorized by law;

15 (b) A covered organization or service provider from complying with a federal or state law,
16 a court order, subpoena or other legal process that requires the covered organization or
17 service provider to disclose personal health data; or

18 (c) A covered organization from maintaining, retaining or storing other information in
19 compliance with federal or state law.

20 (8) This section does not modify or affect a covered organization's obligation to comply
21 with the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as in ef-
22 fect on the effective date of this 2021 Act, with regulations adopted under the Act or with
23 ORS 192.553 to 192.581, if applicable.

24 (9) A covered organization's violation of a provision of this section is an unlawful practice
25 under ORS 646.607.

26 **SECTION 2.** ORS 646.607 is amended to read:

27 646.607. A person engages in an unlawful trade practice if in the course of the person's business,
28 vocation or occupation the person:

29 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real
30 estate, goods or services, or collecting or enforcing an obligation.

31 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a
32 customer's request, fails to refund money that the customer gave to the person to purchase the
33 undelivered real estate, goods or services and that the person does not retain pursuant to any right,
34 claim or defense the person may assert in good faith. This subsection does not create a warranty
35 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered
36 to a customer.

37 (3) Violates ORS 401.965 (2).

38 (4) Violates a provision of ORS 646A.725 to 646A.750.

39 (5) Violates ORS 646A.530.

40 (6) Employs a collection practice that is unlawful under ORS 646.639.

41 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

42 (8) Violates ORS 646A.093.

43 (9) Violates a provision of ORS 646A.600 to 646A.628.

44 (10) Violates ORS 646A.808 (2).

45 (11) Violates ORS 336.184.

1 (12) Publishes on a website related to the person’s business, or in a consumer agreement related
 2 to a consumer transaction, a statement or representation of fact in which the person asserts that
 3 the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain,
 4 delete or dispose of information that the person requests, requires or receives from a consumer and
 5 the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner
 6 that is materially inconsistent with the person’s statement or representation.

7 (13) Violates ORS 646A.813 (2).

8 **(14) Violates section 1 of this 2021 Act.**

9 **SECTION 3.** ORS 646.607, as amended by section 2 of this 2021 Act, is amended to read:

10 646.607. A person engages in an unlawful trade practice if in the course of the person’s business,
 11 vocation or occupation the person:

12 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real
 13 estate, goods or services, or collecting or enforcing an obligation.

14 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a
 15 customer’s request, fails to refund money that the customer gave to the person to purchase the
 16 undelivered real estate, goods or services and that the person does not retain pursuant to any right,
 17 claim or defense the person may assert in good faith. This subsection does not create a warranty
 18 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered
 19 to a customer.

20 (3) Violates ORS 401.965 (2).

21 (4) Violates a provision of ORS 646A.725 to 646A.750.

22 (5) Violates ORS 646A.530.

23 (6) Employs a collection practice that is unlawful under ORS 646.639.

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26 (9) Violates a provision of ORS 646A.600 to 646A.628.

27 (10) Violates ORS 646A.808 (2).

28 (11) Violates ORS 336.184.

29 (12) Publishes on a website related to the person’s business, or in a consumer agreement related
 30 to a consumer transaction, a statement or representation of fact in which the person asserts that
 31 the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain,
 32 delete or dispose of information that the person requests, requires or receives from a consumer and
 33 the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner
 34 that is materially inconsistent with the person’s statement or representation.

35 (13) Violates ORS 646A.813 (2).

36 *[(14) Violates section 1 of this 2021 Act.]*

37 **SECTION 4.** (1) **Section 1 of this 2021 Act and the amendments to ORS 646.607 by section**
 38 **2 of this 2021 Act apply to acts to collect, receive, process, examine, analyze, collate, disclose,**
 39 **store or retain personal health data, as defined in section 1 of this 2021 Act, that occur on**
 40 **or after the effective date of this 2021 Act.**

41 **(2) A covered organization that collected, used or disclosed personal health data before**
 42 **the effective date of this 2021 Act may not store, retain or make use of personal health data**
 43 **later than, and shall destroy or render the personal health data inaccessible not later than,**
 44 **65 days after the effective date of this 2021 Act.**

45 **SECTION 5.** **Section 1 of this 2021 Act is repealed 270 days after the end of the emergency**

1 **period, as defined in section 1 of this 2021 Act.**

2 **SECTION 6. The amendments to ORS 646.607 by section 3 of this 2021 Act become oper-**
3 **ative 270 days after the end of the emergency period, as defined in section 1 of this 2021 Act.**

4 **SECTION 7. This 2021 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
6 **on its passage.**

7
