

Requested by Representative HOLVEY (at the request of Department of Justice)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3284**

1 On page 1 of the printed bill, delete lines 5 through 24 and delete pages
2 2 through 7 and insert:

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

4 **“(a)(A) ‘Affirmative express consent’ means an affirmative act by**
5 **a resident individual that clearly and conspicuously communicates the**
6 **resident individual’s authorization for a covered organization to per-**
7 **form an act or practice.**

8 **“(B) ‘Affirmative express consent’ does not include a resident**
9 **individual’s acceptance of a general or broad terms of use document,**
10 **or similar document, that contains descriptions of personal health**
11 **data collection along with other unrelated information.**

12 **“(b)(A) ‘Covered organization’ means a person that collects, uses**
13 **or discloses personal health data or that develops or operates a**
14 **website, web application, mobile application, mobile operating system**
15 **feature or other electronic method by means of which the person may**
16 **collect, use or disclose personal health data.**

17 **“(B) ‘Covered organization’ does not include:**

18 **“(i) A member of the resident individual’s household;**

19 **“(ii) An agency, employee, agent, designee, affiliate, associate or**
20 **contractor of a federal, state, local or tribal governmental body that**
21 **under legal authorization and for public health purposes, including**

1 preventing disease, injury or disability, may collect, receive, observe,
2 discover or investigate personal health information;

3 “(iii) A health care provider, as defined in ORS 433.443; or

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

11 “(c) ‘Disclose’ means to release, transfer, sell, share, provide access
12 to, license or otherwise divulge to another person.

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

17 “(e)(A) ‘Geolocation data’ means information generated by or de-
18 rived from technology that directly identifies the location of a natural
19 person within a geographic area that is equal to or less than the area
20 of a circle with a radius of 1,850 feet, including but not limited to:

21 “(i) Level latitude and longitude coordinates from a global posi-
22 tioning system;

23 “(ii) Cell site-location information; and

24 “(iii) Triangulation data derived from nearby wireless or radio fre-
25 quency networks.

26 “(B) ‘Geolocation data’ does not include the content of communi-
27 cations.

28 “(f)(A) ‘Personal health data’ means information about a resident
29 individual that identifies or can reasonably be used to identify the
30 resident individual and that is collected for the purpose of tracking,

1 **monitoring or tracing a resident individual’s exposure to or infection**
2 **by SARS-CoV-2 or development of a disease condition caused by or**
3 **related to COVID-19.**

4 **“(B) ‘Personal health data’ does not include information about a**
5 **resident individual that:**

6 **“(i) Is lawfully available to the public from federal, state or local**
7 **government records or widely available to the public from sources**
8 **such as telephone directories, the internet, news media or similar or**
9 **related sources;**

10 **“(ii) Was collected before the emergency period for purposes other**
11 **than tracking, monitoring or tracing a resident individual’s exposure**
12 **to or infection by SARS-CoV-2 or development of a disease condition**
13 **caused by or related to COVID-19;**

14 **“(iii) Has been deidentified in accordance with 45 C.F.R. 164.514(b),**
15 **as in effect on the effective date of this 2021 Act; or**

16 **“(iv) Was collected in an employment context.**

17 **“(g) ‘Resident individual’ means a natural person who resides in**
18 **this state.**

19 **“(h) ‘Service provider’ means a person that collects, uses or dis-**
20 **closes personal health information solely for the purpose of providing**
21 **business services to, on behalf of, or for the benefit of a covered or-**
22 **ganization in accordance with instructions or direction from, or under**
23 **the terms and conditions of a contract with, the covered organization.**

24 **“(2)(a) Except as provided in paragraph (b) of this subsection, a**
25 **covered organization may not collect, use or disclose personal health**
26 **data about a resident individual who has not given affirmative express**
27 **consent to the covered organization’s collection, use or disclosure of**
28 **the resident individual’s personal health data. In obtaining affirmative**
29 **express consent from a resident individual, a covered organization may**
30 **not:**

1 “(A) Use a method that is designed with the purpose of, or that has
2 the substantial effect of, subverting or impairing a resident
3 individual’s decisionmaking or choice; and

4 “(B) Infer consent from a resident individual’s inaction.

5 “(b) A covered organization may collect, use or disclose personal
6 health data without a resident individual’s affirmative express consent
7 if the collection, use or disclosure is necessary solely to comply with
8 a legal obligation.

9 “(3) A resident individual may give affirmative express consent to
10 a collection, use or disclosure of personal health data on behalf of
11 another resident individual who is younger than 14 years of age if the
12 resident individual is a parent or legal guardian of the other resident
13 individual.

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

19 “(A) Thirty days after the emergency period expires or is termi-
20 nated; or

21 “(B) Sixty-five days after the covered organization collected, re-
22 ceived or otherwise obtained the personal health data.

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

25 “(A) The personal health data consists of aggregations, statistical
26 analyses, compilations or interpretations; and

27 “(B) The covered organization deidentifies the personal health data
28 in accordance with 45 C.F.R. 164.514(b), as in effect on the effective
29 date of this 2021 Act.

30 “(5) A covered organization shall collect, use, receive, process, ex-

1 **amine, disclose or collate only personal health data that is reasonably**
2 **necessary to provide services to the resident individual to whom the**
3 **personal health data applies, and shall:**

4 **“(a) Take reasonable measures to ensure the accuracy of the per-**
5 **sonal health data and provide an accessible and effective method for**
6 **a resident individual to correct any inaccuracies, as appropriate for**
7 **the nature of the personal health data and the context in which the**
8 **covered organization collected or received the personal health data;**

9 **“(b) Establish and implement safeguards for personal health data**
10 **that comply, at a minimum, with the requirements of ORS 646A.622**
11 **and require service providers by contract to comply with this section**
12 **and the requirements of ORS 646A.622;**

13 **“(c) Establish and implement policies and procedures that prevent**
14 **the covered organization from using personal health data for any**
15 **discriminatory purpose;**

16 **“(d) Provide an easily accessible and effective method by which a**
17 **resident individual may revoke any affirmative express consent the**
18 **resident individual gave previously;**

19 **“(e) Adopt, implement and provide to each resident individual from**
20 **whom the covered organization collects, or about whom the covered**
21 **organization receives, personal health data a clear, understandable**
22 **and conspicuous disclosure of policies and procedures in compliance**
23 **with which the covered organization collects, receives or otherwise**
24 **obtains personal health data that, at a minimum, must include:**

25 **“(A) The manner in which and the purposes for which the covered**
26 **organization collects, receives, processes, examines, analyzes, collates,**
27 **discloses, transfers, stores, retains or makes use of personal health**
28 **data;**

29 **“(B) Categories of persons to which the covered organization does**
30 **or may disclose personal health data or from which the covered or-**

1 **ganization does or may receive or obtain personal health data; and**

2 **“(C) A statement that informs the resident individual that and how**
3 **the resident individual may provide, refuse to provide or revoke affir-**
4 **mative express consent;**

5 **“(f) Cease the covered organization’s collection, receipt or use of a**
6 **resident individual’s personal health data not later than 21 days after**
7 **receiving from the resident individual a revocation of affirmative ex-**
8 **press consent; and**

9 **“(g) Compile, not later than 30 days after the effective date of this**
10 **2021 Act and during each period of 60 days thereafter, and retain for**
11 **a period of not less than five years after the expiration or termination**
12 **of the emergency period, subject to an audit by the Oregon Health**
13 **Authority, a series of reports that:**

14 **“(A) States the number of resident individuals from or about whom**
15 **the covered organization collected, received or otherwise obtained**
16 **personal health data;**

17 **“(B) Describes the categories of personal health data the covered**
18 **organization collected, received or otherwise obtained and the specific**
19 **purpose for which the covered organization collected, received or ob-**
20 **tained the personal health data; and**

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

23 **“(6) A covered organization may not collect, use or disclose personal**
24 **health data for a purpose that this section does not expressly author-**
25 **ize, including for:**

26 **“(a) Commercial advertising;**

27 **“(b) Recommendations or reviews related to electronic commerce;**
28 **or**

29 **“(c) Training machine learning algorithms related to or for subse-**
30 **quent use in commercial advertising or electronic commerce.**

1 **“(7) This section does not limit or prohibit:**

2 **“(a) A university or other institution of higher education or a**
3 **nonprofit corporation, as defined in ORS 65.001, from conducting sci-**
4 **entific research or a public health program or from developing**
5 **vaccinations, medications or treatments related to COVID-19 that are**
6 **otherwise authorized by law;**

7 **“(b) A covered organization from complying with a federal or state**
8 **law, a court order, subpoena or other legal process that requires the**
9 **covered organization or a service provider to disclose personal health**
10 **data; or**

11 **“(c) A covered organization from maintaining, retaining or storing**
12 **other information in compliance with federal or state law.**

13 **“(8) This section does not modify or affect a covered organization’s**
14 **obligation to comply with the Health Insurance Portability and Ac-**
15 **countability Act of 1996, P.L. 104-191, as in effect on the effective date**
16 **of this 2021 Act, with regulations adopted under the Act or with ORS**
17 **192.553 to 192.581, if applicable.**

18 **“(9) A covered organization’s violation of a provision of this section**
19 **is an unlawful practice under ORS 646.607.**

20 **“SECTION 2. ORS 646.607 is amended to read:**

21 **“646.607. A person engages in an unlawful trade practice if in the course**
22 **of the person’s business, vocation or occupation the person:**

23 **“(1) Employs any unconscionable tactic in connection with selling, rent-**
24 **ing or disposing of real estate, goods or services, or collecting or enforcing**
25 **an obligation.**

26 **“(2) Fails to deliver all or any portion of real estate, goods or services**
27 **as promised, and at a customer’s request, fails to refund money that the**
28 **customer gave to the person to purchase the undelivered real estate, goods**
29 **or services and that the person does not retain pursuant to any right, claim**
30 **or defense the person may assert in good faith. This subsection does not**

1 create a warranty obligation and does not apply to a dispute over the quality
2 of real estate, goods or services delivered to a customer.

3 “(3) Violates ORS 401.965 (2).

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

5 “(5) Violates ORS 646A.530.

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

7 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
8 86.732 (1) or (2).

9 “(8) Violates ORS 646A.093.

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

11 “(10) Violates ORS 646A.808 (2).

12 “(11) Violates ORS 336.184.

13 “(12) Publishes on a website related to the person’s business, or in a
14 consumer agreement related to a consumer transaction, a statement or rep-
15 resentation of fact in which the person asserts that the person, in a partic-
16 ular manner or for particular purposes, will use, disclose, collect, maintain,
17 delete or dispose of information that the person requests, requires or receives
18 from a consumer and the person uses, discloses, collects, maintains, deletes
19 or disposes of the information in a manner that is materially inconsistent
20 with the person’s statement or representation.

21 “(13) Violates ORS 646A.813 (2).

22 “(14) Violates section 1 of this 2021 Act.

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

25 “646.607. A person engages in an unlawful trade practice if in the course
26 of the person’s business, vocation or occupation the person:

27 “(1) Employs any unconscionable tactic in connection with selling, rent-
28 ing or disposing of real estate, goods or services, or collecting or enforcing
29 an obligation.

30 “(2) Fails to deliver all or any portion of real estate, goods or services

1 as promised, and at a customer’s request, fails to refund money that the
2 customer gave to the person to purchase the undelivered real estate, goods
3 or services and that the person does not retain pursuant to any right, claim
4 or defense the person may assert in good faith. This subsection does not
5 create a warranty obligation and does not apply to a dispute over the quality
6 of real estate, goods or services delivered to a customer.

7 “(3) Violates ORS 401.965 (2).

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

9 “(5) Violates ORS 646A.530.

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

11 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
12 86.732 (1) or (2).

13 “(8) Violates ORS 646A.093.

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

15 “(10) Violates ORS 646A.808 (2).

16 “(11) Violates ORS 336.184.

17 “(12) Publishes on a website related to the person’s business, or in a
18 consumer agreement related to a consumer transaction, a statement or rep-
19 resentation of fact in which the person asserts that the person, in a partic-
20 ular manner or for particular purposes, will use, disclose, collect, maintain,
21 delete or dispose of information that the person requests, requires or receives
22 from a consumer and the person uses, discloses, collects, maintains, deletes
23 or disposes of the information in a manner that is materially inconsistent
24 with the person’s statement or representation.

25 “(13) Violates ORS 646A.813 (2).

26 “[14] *Violates section 1 of this 2021 Act.*]

27 **“SECTION 4. (1) Section 1 of this 2021 Act and the amendments to**
28 **ORS 646.607 by section 2 of this 2021 Act apply to acts to collect, re-**
29 **ceive, process, examine, analyze, collate, disclose, store or retain per-**
30 **sonal health data, as defined in section 1 of this 2021 Act, that occur**

1 on or after the effective date of this 2021 Act.

2 “(2) A covered organization that collected, used or disclosed per-
3 sonal health data before the effective date of this 2021 Act may not
4 store, retain or make use of personal health data later than, and shall
5 destroy or render the personal health data inaccessible not later than,
6 65 days after the effective date of this 2021 Act.

7 “SECTION 5. Section 1 of this 2021 Act is repealed 270 days after the
8 end of the emergency period, as defined in section 1 of this 2021 Act.

9 “SECTION 6. The amendments to ORS 646.607 by section 3 of this
10 2021 Act become operative 270 days after the end of the emergency
11 period, as defined in section 1 of this 2021 Act.

12 “SECTION 7. This 2021 Act being necessary for the immediate
13 preservation of the public peace, health and safety, an emergency is
14 declared to exist, and this 2021 Act takes effect on its passage.”.

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