

Requested by Representative HOLVEY

**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 data;

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 that is collected  
29 for the purpose of tracking, monitoring or tracing exposures to or in-  
30 fections by SARS-CoV-2 or development of disease conditions caused

1 by or related to COVID-19 and that identifies or can reasonably be used  
2 to identify a resident individual and associate the resident individual's  
3 personal identity with:

4 “(i) Exposure to or infection by SARS-CoV-2 or development of  
5 symptoms of or a disease condition caused by or related to COVID-19;

6 “(ii) Tests or examinations or requests for tests and examinations  
7 for exposure to SARS-CoV-2, including tests or examinations of body  
8 parts or bodily substances;

9 “(iii) Receipt of medical care or medical services related to exposure  
10 to SARS-CoV-2 or symptoms or development of COVID-19;

11 “(iv) Predisposition toward developing a disease condition that re-  
12 sults from exposure to or infection by SARS-CoV-2;

13 “(v) Whether the resident individual has received a vaccination  
14 against COVID-19; or

15 “(vi) Other data, including geolocation data, that tracks, monitors  
16 or traces a resident individual's exposure to or infection by  
17 SARS-CoV-2 or development of a disease condition caused by or related  
18 to COVID-19.

19 “(B) ‘Personal health data’ does not include information about a  
20 resident individual that:

21 “(i) Is lawfully available to the public from federal, state or local  
22 government records or widely available to the public from sources  
23 such as telephone directories, the internet, news media or similar or  
24 related sources;

25 “(ii) Was collected before the emergency period for purposes other  
26 than tracking, monitoring or tracing a resident individual's exposure  
27 to or infection by SARS-CoV-2 or development of a disease condition  
28 caused by or related to COVID-19;

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

1       “(iv) Was collected in an employment context; or

2       “(v) Is collected after the expiration or termination of the emer-  
3 gency period.

4       “(g) ‘Resident individual’ means a natural person who resides in  
5 this state.

6       “(h) ‘Service provider’ means a person that collects, uses or dis-  
7 closes personal health data solely for the purpose of providing business  
8 services to, on behalf of, or for the benefit of a covered organization  
9 in accordance with instructions or direction from, or under the terms  
10 and conditions of a contract with, the covered organization.

11       “(2)(a) Except as provided in paragraph (b) of this subsection, a  
12 covered organization may not collect, use or disclose personal health  
13 data about a resident individual who has not given affirmative express  
14 consent to the covered organization’s collection, use or disclosure of  
15 the resident individual’s personal health data. In obtaining affirmative  
16 express consent from a resident individual, a covered organization may  
17 not:

18       “(A) Use a method that is designed with the purpose of, or that has  
19 the substantial effect of, subverting or impairing a resident  
20 individual’s decision-making or choice; and

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

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

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

1       **“(4)(a) Except as provided in paragraph (b) of this subsection, a**  
2 **covered organization may not retain, store or use and shall destroy,**  
3 **delete or, if appropriate, render inaccessible to any person in any**  
4 **manner personal health data that the covered organization collects,**  
5 **stores, uses, possesses or controls not later than 65 days after the**  
6 **covered organization collected, received or otherwise obtained the**  
7 **personal health data.**

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

10       **“(A) The personal health data consists of aggregations, statistical**  
11 **analyses, compilations or interpretations; and**

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

15       **“(5) A covered organization shall collect, use, receive, process, ex-**  
16 **amine, disclose or collate only personal health data that is reasonably**  
17 **necessary to provide services to the resident individual to whom the**  
18 **personal health data applies, and shall:**

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

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

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

1       “(d) Provide an easily accessible and effective method by which a  
2 resident individual may revoke any affirmative express consent the  
3 resident individual gave previously;

4       “(e) Adopt, implement and provide to each resident individual from  
5 whom the covered organization collects, or about whom the covered  
6 organization receives, personal health data a clear, understandable  
7 and conspicuous disclosure of policies and procedures in compliance  
8 with which the covered organization collects, receives or otherwise  
9 obtains personal health data that, at a minimum, must include:

10       “(A) The manner in which and the purposes for which the covered  
11 organization collects, receives, processes, examines, analyzes, collates,  
12 discloses, transfers, stores, retains or makes use of personal health  
13 data;

14       “(B) Categories of persons to which the covered organization does  
15 or may disclose personal health data or from which the covered or-  
16 ganization does or may receive or obtain personal health data; and

17       “(C) A statement that informs the resident individual that and how  
18 the resident individual may provide, refuse to provide or revoke affir-  
19 mative express consent;

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

24       “(g) Compile, not later than 30 days after the effective date of this  
25 2021 Act and during each period of 60 days thereafter, and retain for  
26 a period of not less than five years after the expiration or termination  
27 of the emergency period, subject to an audit by the Oregon Health  
28 Authority, a series of reports that:

29       “(A) States the number of resident individuals from or about whom  
30 the covered organization collected, received or otherwise obtained

1 **personal health data;**

2 **“(B) Describes the categories of personal health data the covered**  
3 **organization collected, received or otherwise obtained and the specific**  
4 **purpose for which the covered organization collected, received or ob-**  
5 **tained the personal health data; and**

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

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

11 **“(a) Commercial advertising;**

12 **“(b) Recommendations or reviews related to electronic commerce;**  
13 **or**

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

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

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

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

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

28 **“(8) This section does not modify or affect a covered organization’s**  
29 **obligation to comply with the Health Insurance Portability and Ac-**  
30 **countability Act of 1996, P.L. 104-191, as in effect on the effective date**

1 of this 2021 Act, with regulations adopted under the Act or with ORS  
2 192.553 to 192.581, if applicable.

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

5 “SECTION 2. ORS 646.607 is amended to read:

6 “646.607. A person engages in an unlawful trade practice if in the course  
7 of the person’s business, vocation or occupation the person:

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

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

18 “(3) Violates ORS 401.965 (2).

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

20 “(5) Violates ORS 646A.530.

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

22 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or  
23 86.732 (1) or (2).

24 “(8) Violates ORS 646A.093.

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

26 “(10) Violates ORS 646A.808 (2).

27 “(11) Violates ORS 336.184.

28 “(12) Publishes on a website related to the person’s business, or in a  
29 consumer agreement related to a consumer transaction, a statement or rep-  
30 resentation of fact in which the person asserts that the person, in a partic-



1 ular manner or for particular purposes, will use, disclose, collect, maintain,  
2 delete or dispose of information that the person requests, requires or receives  
3 from a consumer and the person uses, discloses, collects, maintains, deletes  
4 or disposes of the information in a manner that is materially inconsistent  
5 with the person’s statement or representation.

6 “(13) Violates ORS 646A.813 (2).

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

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

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

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

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

22 “(3) Violates ORS 401.965 (2).

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

24 “(5) Violates ORS 646A.530.

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

26 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or  
27 86.732 (1) or (2).

28 “(8) Violates ORS 646A.093.

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

30 “(10) Violates ORS 646A.808 (2).

1 “(11) Violates ORS 336.184.

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

10 “(13) Violates ORS 646A.813 (2).

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

12 **“SECTION 4. (1) Section 1 of this 2021 Act and the amendments to**  
13 **ORS 646.607 by section 2 of this 2021 Act apply to acts to collect, re-**  
14 **ceive, process, examine, analyze, collate, disclose, store or retain per-**  
15 **sonal health data, as defined in section 1 of this 2021 Act, that occur**  
16 **on or after the effective date of this 2021 Act.**

17 **“(2) A covered organization that collected, used or disclosed per-**  
18 **sonal health data before the effective date of this 2021 Act may not**  
19 **store, retain or make use of personal health data later than, and shall**  
20 **destroy or render the personal health data inaccessible not later than,**  
21 **65 days after the effective date of this 2021 Act.**

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

24 **“SECTION 6. The amendments to ORS 646.607 by section 3 of this**  
25 **2021 Act become operative 270 days after the end of the emergency**  
26 **period, as defined in section 1 of this 2021 Act.**

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

30