

HB 3284 -2, -3 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Channa Newell, Counsel

Meeting Dates: 3/22, 3/24, 3/29, 4/6, 4/8

WHAT THE MEASURE DOES:

Prohibits covered entities from collecting, using, or disclosing the personal health data of an individuals without the individual's affirmative express consent. Requires a covered organization to destroy, delete, or render inaccessible any personal health data collected by the organization within thirty days of the expiration of the emergency period or sixty-five days after it is collected, received, or obtained. Allows use and retention of data that is aggregated, statistical analysis, compilations, or interpretations that do not allow personal identification of an individual. Requires public statement that covered organization will not attempt to personally identify individual except to attempt to verify that measures preventing verification of identity are effective. Limits the covered organizations to having only personal health data reasonably necessary to protect public health to provide health care or related services. Requires covered organization to provide process for individual to correct inaccuracies and to revoke consent. Requires entities to adopt, implement, and provide individuals with clear, understandable, and conspicuous disclosures; to establish and implement safeguards on data security; and to prevent the use of personal health data for discriminatory purposes. Specifies content of disclosures. Requires covered organizations to report to Oregon Health Authority 30 days after Act takes effect and every 60 days thereafter until end of emergency on number of individuals for whom the covered organization has personal health data, the type of health data, and the persons to whom the data was sold, disclosed, or transferred. Prohibits collection, use, or disclosure of data for commercial advertising, recommendations or reviews related to electronic commerce, training machine learning algorithms for use in advertising or commerce, making offers or selling credit, insurance, housing, or educational opportunities, or discriminating on goods, services, facilities, or accommodations. Allows higher education entities and nonprofits to conduct research or developing COVID-19 related treatments, medications, or vaccinations otherwise allowed by law. Makes violation of Act an unlawful trade practice. Repeals sections of measure on use of data 270 days after end of emergency period. Makes unlawful trade practices provisions operative 270 days after end of emergency period. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Downloading app is not affirmative express consent
- Examples of affirmative express consent
- Requirement to provide clear policies on collection and use
- Requirement to provide clear instructions on revocation of consent
- Limitations on data that can be collected and how it can be used

EFFECT OF AMENDMENT:

-2 Revises definitions. Removes language on interference or coercion from definition of "affirmative express consent" and places within prohibition of action by covered entity to obtain affirmative consent. Removes "service provider" from list excluding entities from being covered providers. Modifies definition of "geolocation data." Revises definition of "personal health data." Removes allowance of collection, use, or disclosure of information without affirmative express consent when it occurs in context of employment relationship. Reduces age of consent by minor from 18 years of age to 14 years of age. Specifies consent must be given by legal guardian or parent if person is under age 14. Requires de-identification of personal health data in order for a covered

HB 3284 -2, -3 STAFF MEASURE SUMMARY

organization to use and not destroy data. Removes prohibition on using data to make offers or sell credit, insurance, housing, or educational opportunities, or discriminating on goods, services, facilities, or accommodations.

-3 Incorporates -2. Makes technical revisions. Changes "personal health information" to "personal health data." Clarifies that data collected after the end of the emergency period is not personal health data. Clarifies all data must be deleted 65 days after it is collected. Clarifies timelines for data collection, deletion, and enforcement.

BACKGROUND:

Contact tracing during disease outbreaks is used as part of a case investigation to warn individuals of potential exposure and to prevent the spread of the disease by exposed individuals. Mobile contact tracing applications have been developed and used during the COVID-19 pandemic to trace the spread of the disease and to notify individuals when they may have been exposed to a person who tests positive for COVID.

House Bill 3284 is the product of a Department of Justice lead work group to provide parameters on use of the data gathered by these apps. The focus of the measure is on providing protection for consumer data while maintaining the effectiveness of these tools for public health purposes.