



March 22, 2021

House Judiciary Subcommittee on Civil Law
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: House Bill 3284, Contact Tracing

Chair Power, Vice-Chair Wallan, and Members of the House Subcommittee on Civil Law,

Thank you for the opportunity to provide testimony on HB 3284 on behalf of the American Civil Liberties Union (ACLU) of Oregon. The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 28,000 members statewide.

Throughout 2020, the ACLU of Oregon participated in the Attorney General's Task Force on Consumer Privacy alongside a wide variety of organizations and stakeholders. We appreciate the work that was undertaken by the group and the leadership of the Attorney General and her staff. Though this larger privacy conversation was put on hold in favor of focusing on contact tracing, we look forward to revisiting the larger conversation around data privacy.

As we have seen over the course of the last year, contact tracing is an important public health tool in the fight against COVID-19. As technology assisted contact tracing is the focus of HB 3284, we believe it is important to acknowledge that contact tracing in and of itself is not the only tool that will end the pandemic. Smartphone ownership is not universal¹, which will lead to gaps and may further disparate impacts of the pandemic. Notification means little without access to testing, medical care, or the ability to quarantine.

Any use of contact tracing applications in response to the COVID-19 pandemic must have public trust and transparency front and center. Any contact tracing apps must be voluntary, time-limited, and transparent. We look forward to reviewing the final amendment but would like to highlight a few pieces of HB 3284 -2 that align with these principles:

- **Consent:** Clear affirmative expressed consent is needed to opt-in. A covered organization may not engage in dark patterns to obtain consent and inaction does not equal consent as outlined in Section 1 (2)(a)(A) and (B).
- **Revocation of consent:** In the same way that clearly opting-in is crucial, so is the ability to opt out. Section 1 (5)(d) requires an accessible and effective method for revoking consent.

¹ <https://www.pewresearch.org/internet/fact-sheet/mobile/>



- **Data minimization:** Section 1(5) states that a “covered organization shall collect, use, receive, process, examine, disclose, or collate only personal health data that is reasonably necessary.” Personal health data is limited to a COVID-19 health purpose.
- **Clear prohibitions:** We appreciate that Section 1(6) clarifies that a covered organization may not collect, use, or disclose any personal health data that is not expressly authorized by the bill language. Clearly prohibiting sale, commercial advertising, use for recommendations or reviews, or use for algorithms will help to build public trust.
- **Time-limited:** While HB 3284 outlines a deletion requirement 30 days after the end of the emergency period or 65 days after collection, our preference is for any data to be deleted as soon as it is not longer relevant for public health purposes.