

March 23, 2015

The Honorable Floyd Prozanski
Chair, Senate Committee on Judiciary
Oregon State Capitol
900 Court St NE
Salem, OR 97301

SUBJECT: SB 369 - Uniform Fiduciary Access to Digital Assets Act – OPPOSE

Dear Senator Prozanski:

On behalf of the Technology Association of America (TechAmerica)—the nation’s leading advocacy voice for the tech industry—I am writing in opposition to SB 369 as currently drafted. While we appreciate the intent of this legislation to consider digital assets and privacy of deceased users, we believe it imperative to also ensure the privacy of people with whom the deceased corresponded, that fiduciaries are able to appropriately manage a person’s estate, and that industry is able to effectively comply with existing federal laws.

As you know, most people expect private online communications (like instant messaging) to remain private even when they die. In addition, people expect the privacy of any third parties with whom they communicated to remain private, especially privileged communications between lawyers and clients or doctors and patients, much of which would have been protected by privilege. However, SB 369 as currently drafted, disregards the privacy interests of third parties and decedents by essentially creating a “show me everything” rule for whoever becomes the fiduciary. In addition, it allows fiduciaries to obtain unfettered access to communications that the decedent understood would be kept private, and it leaves many open questions that can only be resolved through litigation. SB 369 also requires users to twice opt-in to protecting their privacy by consenting to a fiduciary’s access in both their online account and will. Unless users make these affirmative choices, everything in their online accounts is disclosed.

Furthermore, SB 369 puts businesses at odds in complying with the federal Electronic Communications Privacy Act (ECPA), which established standards for access to private information transmitted and stored on the Internet, such as emails, photos, or direct messages. States cannot override federal laws, nor can a state indemnify a business from legal liability under federal law, unless the state is willing to accept the liability. As a result, if passed, businesses would have to choose whether to follow the provisions of SB 369 or the federal ECPA.

Despite these concerns, we believe this issue can be addressed to balance the interests of all parties—the privacy of the deceased user, the privacy of people with whom the deceased corresponded, the needs of the fiduciary, and existing federal law.

TechAmerica is supportive of HB 2647 and would respectfully ask you to consider the Privacy Expectation Afterlife and Choices Act (PEAC).

This language honors citizens' explicit and implied privacy choices regarding their privacy afterlife. Specifically, the privacy expectations, express statements of wills, and settings of users remain after the user dies and unauthorized fiduciaries are prevented from accessing private and privileged communications. In addition, this model respects the implied privacy choices of people who corresponded with the deceased and avoids improper disclosure of accounts by requiring a court to order copies of records for the fiduciary.

Finally, HB 2647 as currently drafted complies with and operates within the limitations of existing federal law to create a state law that works and provides a clearer path for fiduciaries to handle a deceased's estate. Perhaps more importantly, the language creates superior privacy protections for Oregon citizens.

Thank you for your commitment to providing tools that empower users to decide what happens to their privacy when they pass away and for your consideration of our request. We look forward to working with you on this important issue. If you have any questions, please contact me at kara.bush@techamerica.org or (916) 443-9088 or you may contact our Oregon contract lobbyist Amanda Dalton amanda@daltonadvocacy.com with Dalton Advocacy at (503) 884-0415.

Sincerely,



Kara Bush
Director, Government Affairs – Western Region
TechAmerica is the public sector and public policy division of CompTIA

Cc: Members, Senate Judiciary Committee