

March 23, 2015

Jeffrey M. Cheyne
JCheyne@SamuelsLaw.com

Senator Prozanski and members of the Senate Judiciary Committee
Senate Judiciary Committee
900 Court St., NE
Salem, OR 97301

Re: H2647 and S369

My name is Jeffrey Cheyne. I am an estate planning attorney. I help Oregon residents with their estate planning needs and also help executors complete their duties in the administration of estates. I practice in Portland and live in Sherwood, OR.

I am writing you to share my concerns about HB 2647 and request your support for SB 369. I am the immediate past chair of the Oregon State Bar Estate Planning Section. SB 369 is sponsored by the Estate Planning Section.

On March 6, 2012, Time Magazine issued an article stating that “A couple of Carnegie Mellon researchers recently published a paper suggesting that reading all of the privacy policies an average Internet user encounters in a year would take 76 work days.” Link: <http://techland.time.com/2012/03/06/you-d-need-76-work-days-to-read-all-your-privacy-policies-each-year/>

With all the overwhelming array of privacy policies, we need a common set of operating procedures to help those who need assistance with managing their digital assets. The purpose of SB 369 is to provide tools to help those who need assistance with their digital assets.

Oregon residents live in a world where their communications and transactions are transitioning from a paper environment to an electronic environment without paper. When I work with executors as they administer estates, I have advised them to just collect the mail and after two or three months they would have most of the information they need concerning

the assets and liabilities of the estate. As we move into a paperless environment relying on the mail will be less and less helpful. Social media and other electronic providers continue to refuse to disclose the content of information about deceased and disabled persons citing privacy concerns.

Since the inception of this country, executors and personal representatives have collected, distributed or sold the assets in an estate. In some cases however, there is property which by its nature must be kept private and confidential or perhaps even destroyed, especially, if the decedent left specific instructions.

SB 369 provides fiduciaries with the same level of access to digital communications as they have with physical documents of a decedent or a protected person. This level of access allows fiduciaries (executors, personal representatives, conservators, guardians, trustees, and agents under powers of attorney) to obtain the digital information necessary to identify the assets, liabilities and electronic communications of decedents or protected persons. Under current law these digital assets can be lost if providers refuse to allow a fiduciary access to a decedent's accounts. Under HB 2647 these digital assets will be lost if providers can refuse to allow a fiduciary access to a decedent's accounts, especially if a decedent has no Will or has a Will but the Will has no provision authorizing the disclosure of digital materials.

The tech industry representatives oppose SB 369 largely on the basis that it is too invasive of individual privacy rights. Some tech companies have opposed this sensible and necessary legislation by manufacturing dire consequences of fiduciary access to "sensitive" email. These companies ignore the fact that UFADA allows one to block fiduciary access in several ways, if one doesn't want anyone else to see those emails.

Opponents claim that the law will somehow benefit trusts and estates lawyers by allowing fiduciaries to spend endless hours reading emails and other private information. That is simply not true. Fiduciaries are held to high standards of conduct and can be sued for breaching them.

HB 2647 is the tech industry's response to SB 369. It creates an additional Probate Court process for personal representatives and estate administrators to possibly recover electronic

Senator Prozanski

- 3 -

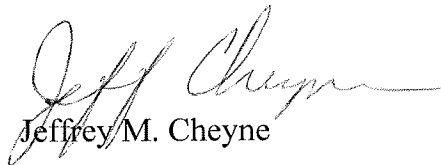
March 23, 2015

communications of a deceased person. The problem with HB 2647 is that the proposed remedy is largely illusory, because the cost and burdens of an Oregon probate court process are simply too burdensome. Also, it is ironic that HB 2647 proposes the use of court process which is open to the public to address their privacy concerns

I recommend that you oppose HB 2647 and support SB 369.

If you have any questions, please let me know.

Very truly yours,



Jeffrey M. Cheyne

JMC:amk

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