

**TO: Chair Floyd Prozanski  
Members of Senate Judiciary Committee**

**FROM: Tech America**

**RE: Oppose SB 369 and -4 Amendments**

Chair Prozanski and Members of the Committee,

On behalf of TechAmerica I want to thank you for your leadership in crafting an Oregon solution to the national debate surrounding privacy concerns for today's technology consumers. However, the tech industry remains extremely concerned with the -4 Amendments to SB 369.

We have been active participants in the State-by-State discussion of crafting legislation that considers digital assets and the privacy of deceased users. 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. We raise the following two concerns with the -4 Amendments:

- 1. Subject Lines are Content. Requiring companies to disclose subject lines without express consent from the deceased puts them in a position to comply with state or federal law.**

As you are aware, the Stored Communications Act states that, subject to certain exceptions, email providers may not knowingly divulge to any third party the contents of an electronic communication. The question before you today is essentially what constitutes the contents of a protected communication. We believe that subject lines are content, and accordingly not permitted for disclosure. This question was recently addressed in *Optiver Australia Pty. Ltd. & Anor. v. Tibra Trading Pty. Ltd. & Ors.*, 2013 WL 256771 (N.D.Cal., January 23, 2013). The Plaintiff served Google with a subpoena seeking, among other things, the subject line of emails associated defendant's Gmail accounts. The court granted the motion to quash. *Id.* The court reasoned that the subject line serves to “convey a substantive message about the body of the email” and further stated that “[i]n fact, a message's subject line is nothing less than a pithy summary of the message's content” and accordingly runs afoul of the Stored Communications Act. *Id.* We urge you not to force businesses to choose whether to follow the provisions of SB 369 or the federal law.

**2. Mandating an Oregon-specific Inactive Account Manager tool is an expensive and unworkable endeavor on the varying types of communication services whom operate on a national and global field.**

There are significant engineering complexities and expense around Oregon requiring a user setting like Google's Inactive Account Manager on all providers. This type of setting is also not necessary for all types of online communication services to have this setting (e.g., text messages, etc.). Furthermore, Google's Inactive Account Manager doesn't allow the assigned person to control the account; only to download existing content.

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](mailto:kara.bush@techamerica.org) or (916) 443-9088 or you may contact our Oregon contract lobbyist Amanda Dalton [amanda@daltonadvocacy.com](mailto: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