

PRELIMINARY STAFF MEASURE SUMMARY**CARRIER:**

Senate Committee on Judiciary

REVENUE: No revenue impact**FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Channa Newell, Counsel**Meeting Dates:** 3/24

WHAT THE MEASURE DOES: Enacts Uniform Fiduciary Access to Digital Assets Act. Provides right to access contents of electronic communications, catalog of communications, and other digital assets, to personal representative of decedent. Requires court order for conservator access. Requires specific grant of authority within Power of Attorney for access to digital assets. Specifies procedure for trustee to access digital trust documents. Specifies disclosure is limited to that allowed under Electronic Communications Privacy Act of 1986, 18 USC 2702(b). Specifies fiduciary who has right to access account is authorized user of account for purposes of computer fraud. Requires custodian of asset to comply with request for access, control, or copies of digital asset. Specifies documents that must be provided to custodian. Requires fulfillment within 60 days of receipt of request. Limits liability of custodian acting in good faith. Applies to fiduciary acting under will, trust, or power of attorney executed before, on or after effective date.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT: Proposed (-4) amendment define “content of electronic communication” as communication that was sent or received by account holder, held in electronic storage by custodian, and is not readily available to the public. Retains limitation on disclosure to that which is permitted under Electronic Communications Privacy Act of 1986. Provides fiduciary with right to catalog of electronic communications sent or received by decedent, subject to limitations in will, terms of trust, power of attorney, or record of intention. Requires custodian to provide properly requested records within 60 days of request. Specifies documentation needed for request. Prohibits custodian from unduly restricting access to catalog and must provide print copy upon request. Allows fiduciary to apply for court order for access to catalog if custodian fails to comply. Requires custodian to provide account holder with conspicuous offer to create record of intention for electronic communications after period of inactivity or upon request of fiduciary. Requires offer be made within six months of effective date for existing account holders. Provides avenue for fiduciary to access digital asset or content of electronic communication, should no record of content be created, through notarized form. Specifies requirements for request. Allows fiduciary to petition court for access to catalog or content of communication should custodian fail to comply with request. Requires court to make written findings and enter order within 30 days of notice. Provides liability protection for custodian’s compliance with court order to disclose. Voids provisions in terms of service agreements that limit fiduciaries’ rights.

BACKGROUND: A September 2014 Pew Research poll found that 81% of adult Americans use the internet or email at least occasionally, and 52% of online adults use multiple social media sites. Oregon laws do not specifically address access to digital data after the death of a user, leaving providers of digital services and estates of deceased users grappling with access to digital communications or documents.

Senate Bill 369 is the Uniform Fiduciary Access to Digital Assets Act. It was developed by the Uniform Law Commission and has been introduced in 22 states, including Oregon. To date, Delaware is the only state that has

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This summary has not been adopted or officially endorsed by action of the committee.

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adopted the Act. The measure gives fiduciaries access and control over the digital assets of a deceased user or protected person.