

STAFF MEASURE SUMMARY**Senate Committee On Judiciary****Fiscal:** Has minimal fiscal impact**Revenue:** No Revenue Impact**Action Date:** 04/21/15**Action:** Do Pass With Amendments And Requesting Referral To Rules. (Printed A-Engrossed.)**Meeting Dates:** 03/24, 04/21**Vote:**

Yeas: 4 - Burdick, Gelser, Kruse, Prozanski

Nays: 1 - Thatcher

Prepared By: Channa Newell, Counsel**WHAT THE MEASURE DOES:**

Directs process for disposal or sharing of user's digital assets upon death or incapacity of user. Defines "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. Limits disclosure of content 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. Includes subject line within catalog of communications. 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.

ISSUES DISCUSSED:

- Respect for user's privacy, even after death
- Need for effective administration of estate
- Development of amendments
- Provisions of measure

EFFECT OF COMMITTEE AMENDMENT:

Replaces measure.

BACKGROUND:

A September 2014 Pew Research poll found that 81 percent of adult Americans use the internet or email at least occasionally, and 52 percent 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 A provides a process whereby a user's digital assets, including communications and content, may be shared with a fiduciary upon the death or incapacity of the user. The measure requires custodians to offer a choice to users to determine what the user would like have happen to the content upon a period of incapacity. The recorded choice of the user

will control the disposition of the digital asset. If the user does not make a choice, the fiduciary is entitled to ask the custodian for a catalog of communications, including to/from, date/time, and subject line. The fiduciary is also entitled to request content of digital assets through a notarized form containing specific information. The custodian may refuse, and must put its reason for refusal in writing. The fiduciary may then petition the court for an order to access the digital asset.