

House Bill 2647

Sponsored by Representative WILLIAMSON, Senator ROBLAN, Representative BARKER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Enacts Privacy Expectation Afterlife and Choices Act.

Authorizes electronic communication service and remote computing service to disclose to executor or administrator of estate of deceased user record or other information pertaining to electronic communications of deceased user, not including contents or stored contents, upon entry of court order containing findings of fact.

Sets forth circumstances under which disclosure may not be compelled. Requires notice to deceased user's account before disclosure. Provides current user with opportunity to object to disclosure.

A BILL FOR AN ACT

1
2 Relating to disclosure of electronic communications of deceased users.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 and 3 of this 2015 Act may be cited as the Privacy Expectation**
5 **Afterlife and Choices Act.**

6 **SECTION 2. As used in sections 2 and 3 of this 2015 Act:**

7 (1) "Contents", when used with respect to any wire, oral or electronic communication,
8 includes any information concerning the substance, purport or meaning of that communi-
9 cation, and includes the subject line of the communication.

10 (2) "Electronic communication" means any transfer of signs, signals, writing, images,
11 sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio,
12 electromagnetic, photoelectronic or photo-optical system that affects interstate or foreign
13 commerce but does not include:

14 (a) Any wire or oral communication;

15 (b) Any communication made through a tone-only paging device;

16 (c) Any communication from a tracking device; or

17 (d) Electronic funds transfer information stored by a financial institution in a commu-
18 nications system used for the electronic storage and transfer of funds.

19 (3) "Electronic communication service" means any service that provides to users of the
20 service the ability to send or receive wire or electronic communications.

21 (4) "Electronic communication system" means:

22 (a) Any wire, radio, electromagnetic, photoelectronic or photo-optical facilities for the
23 transmission of wire or electronic communications; and

24 (b) Any computer facilities or related electronic equipment for the electronic storage of
25 electronic communications.

26 (5) "Record" means information pertaining to electronic communications of a user but
27 does not include the contents or stored contents of electronic communications.

28 (6) "Remote computing service" means the provision to the public of computer storage

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 or processing services by means of an electronic communication system.

2 (7) "Stored contents" means records and other information regarding electronic com-
3 munications of a user that is stored on behalf of the user by an electronic communication
4 service or a remote computing service.

5 (8) "User" means any person or entity who:

6 (a) Subscribes to or is a customer of an electronic communication service or remote
7 computing service; and

8 (b) Is authorized by the provider of the electronic communication service or remote
9 computing service to engage in use of the service.

10 **SECTION 3.** (1) An electronic communication service or remote computing service may
11 disclose to the executor or administrator of the estate of a deceased user who was domiciled
12 in this state at the time of death a record or other information pertaining to the electronic
13 communications of the deceased user, not including the contents or stored contents of the
14 electronic communications, if a court enters an order that makes the following findings of
15 fact:

16 (a) The user is deceased;

17 (b) The deceased user was the subscriber to or customer of the electronic communication
18 service or remote computing service;

19 (c) The accounts belonging to the deceased user have been identified with specificity, in-
20 cluding a unique identifier assigned by the electronic communication service or remote
21 computing service;

22 (d) There are no other current users or owners of the deceased user's accounts;

23 (e) Disclosure is not in violation of 18 U.S.C. 2701 et seq.;

24 (f) The request for disclosure is narrowly tailored to give effect to the purpose of the
25 administration of the estate of the deceased user and seeks information spanning no more
26 than a year prior to the date of death of the deceased user; and

27 (g) The request is not in conflict with the deceased user's will and testament.

28 (2) A court issuing an order under subsection (1) of this section, upon motion made
29 promptly by the electronic communication service or remote computing service after issu-
30 ance of the order, shall terminate or modify the order if:

31 (a) Compliance with the order would cause an undue burden on the electronic communi-
32 cation service or remote computing service; or

33 (b) Any of the requirements in subsection (1) of this section are not satisfied.

34 (3) Notwithstanding subsection (1) of this section, an electronic communication service
35 or remote computing service cannot be compelled to disclose any record or information
36 about a deceased user's electronic communications if:

37 (a) The deceased user expressed a different intent by:

38 (A) Deletion of the record or of the electronic communication during the user's lifetime;

39 (B) Agreement to terms of service that are inconsistent with disclosure to the requesting
40 party; or

41 (C) Affirmatively indicating through a setting within the product or service how the
42 user's information may be treated after a set period of inactivity or other event; or

43 (b) The electronic communication service or remote computing service is aware of any
44 indication that the user's account has been active after the date of death.

45 (4) When a request for disclosure has been made under subsection (1) of this section, the

1 **electronic communication service or remote computing service may:**

2 **(a) Send a communication to the account of the deceased user indicating that a request**
3 **for a record or other information has been made; and**

4 **(b) Provide any current user of the account a reasonable period of time to object to dis-**
5 **closure of the record or information, during which time no disclosure of a record or infor-**
6 **mation may be made to the executor or administrator of the deceased user's estate.**

7 **(5) No disclosure of information under this section may be made to the executor or ad-**
8 **ministrator of the deceased user's estate if a current user of the deceased user's account**
9 **notifies the electronic communication service or remote computing service that the current**
10 **user objects to the request for disclosure.**

11 **(6) An electronic communication service or remote computing service is not required to**
12 **allow any person or entity that requests to assume control of a deceased user's account,**
13 **assumption of control of the deceased user's account.**

14 **(7) An electronic communication service or remote computing service shall not be liable**
15 **in any civil or criminal action for compliance in good faith with a court order issued under**
16 **this section.**

17 **SECTION 4. Sections 2 and 3 of this 2015 Act apply to electronic communications of a**
18 **deceased user who died on or after the effective date of this 2015 Act.**

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