

**Testimony before the Senate Judiciary Committee
In support of SB 1554**

February 3, 2016

Chair Prozanski, members of the committee

My name is Jeff Cheyne. I am a partner at Samuel Yoelin Kantor in Portland. I am here today on behalf of the Oregon State Bar's Estate Planning and Administration Section. There are over 1000 attorneys from all parts of Oregon who are members of the Estate Planning Section. These attorneys help clients make plans for their estates, as well as clients, family members and fiduciaries who must work through administrative and court procedures when a family member becomes disabled or has passed away.

I am here today to express the bar's support for the Revised Uniform Financial Access to Digital Assets Act, or RUFADAA, which will be enacted by SB 1554.

The Problem: I need to talk about the importance of allowing decedents and their families to make decisions about their digital legacy, rather than leaving the decision to an electronic service provider whose policy is to restrict or deny access, close an account, and delete the contents.

A larger and larger component of our lives consists of electronic information. When friends and family members die, more and more of them leave behind not only the physical assets that we are used to, but leave behind a digital legacy as well. These may include personal items such as photographs and correspondence, but may also include important business records or other documents that have significant financial value. Some digital communication providers significantly restrict access after the death of the account holder.

RUFADAA outlines the responsibilities of account users and digital communication providers – including email, social media, and cloud storage – to provide access to the content of the digital communications of a decedent. This could include providing access to the online system that stores the digital assets, or providing copies of documents or other communications. The purpose of the act is to provide a process for fiduciaries to obtain access to digital communications so that they may ensure that property is disposed of according to a decedent's wishes.

A personal representative to an estate, a conservator for a protected person, or a trustee for a trust – has a legal duty to marshal and protect assets of the decedent or protected person; however they can face significant roadblocks. In many cases, the law has not kept up with the technology. SB 1554 proposes to clarify that account users have the right to consent, and authorize their fiduciaries to fulfill their responsibilities in connection with online assets. This is not a cutting-edge new legal concept, but rather a natural extension of the responsibilities a fiduciary has always had in connection with online assets.

The bill before you today is a product of the national Uniform Laws Commission, which has been the source of numerous uniform acts the State of Oregon has already adopted. The revised act is the result of negotiation and compromise between stakeholders, including major technology and social media companies. This act lays out clear guidelines and responsibilities for account users to designate their wishes, for fiduciaries who are trying to effectuate the wishes of the person they represent, and for online providers who are often the custodians of important digital assets.

SB 1554 is a common sense approach that respects the wishes of protected persons, decedents and their families and acknowledges the important historic and legal role that fiduciaries play in this process. Thank you for your time and your consideration, and I'd be happy to answer any questions that you have.