

STAFF MEASURE SUMMARY

CARRIER: Sen. Prozanski

Senate Committee On Judiciary

Fiscal: Has minimal fiscal impact**Revenue:** No Revenue Impact**Action Date:** 02/04/16**Action:** Do Pass With Amendments. (Printed A-Eng.)**Meeting Dates:** 02/03, 02/04**Vote:**

Yeas: 4 - Kruse, Prozanski, Rosenbaum, Thatcher

Exc: 1 - Gelser

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

Provides parameters for disclosure of user content to fiduciary if user is deceased, or under protective order or power of attorney. Allows custodians to offer online tool, separate and distinct from terms of service agreement, to users for specification on disclosure of digital assets. Elevates user choice over contrary direction in will, power of attorney, trust, or other record. Allows custodians to grant full or partial access to fiduciary at custodian's discretion and may charge a reasonable administrative fee for such disclosure. Specifies documentation necessary for fiduciary to access user digital content should user indicate consent to access. Provides court process for fiduciary access to content of user digital data should user not provide consent for disclosure. Allows fiduciary to obtain catalogue of user communications, including identification of person communicated with, time and date of communication, and electronic address of the person. Specifies procedure for disclosure when fiduciary is acting under power of attorney authority, acting as a trustee, or acting as conservator for user. Requires disclosure within 60 days of request. Allows fiduciary to apply to court for order of compliance. Specifies legal duties of fiduciary when managing digital assets. Allows fiduciary to request that custodian terminate user's account. Applies to fiduciaries acting under a will or power of attorney, personal representatives, trustees, and custodians of user content. Specifies measure does not apply to digital assets of an employer used by employee.

ISSUES DISCUSSED:

- Efforts to address growing concern with access to digital content after death
- Need to balance privacy concerns with administration of estate
- Consensus product of stakeholders
- Provisions of measure

EFFECT OF COMMITTEE AMENDMENT:

Clarifies that user's designated recipient of content through online tool could be person other than fiduciary. Provides measure does not supply new rights or expand rights to designated recipient.

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 1554 A is the Revised Uniform Fiduciary Access to Digital Assets Act. It allows a fiduciary, such as a personal representative, trustee, or conservator, to access to certain digital content of a user while limiting undue access. The measure allows companies that hold electronic user data to offer users a choice on what they would like done with the data should the user become inactive or a request for the communications is received. This user choice trumps all other indicators or documents, such as instructions in a will. The measure lays out what a fiduciary must provide to a custodian in cases in which a user consents to disclosure or if a court orders disclosure. It also specifies the procedure for a fiduciary to request content of

communications in cases in which a user has not made a choice or has chosen not to disclose. The measure allows the fiduciary to receive a catalogue of communications that the user had made, including to/from, email addresses, and date and time.