

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 849

Introduced by Senator Anderson

January 9, 2014

An act to amend Section ~~22575 of the Business and Professions Code, relating to consumers.~~ 9650 of the Probate Code, relating to decedents' estates.

LEGISLATIVE COUNSEL'S DIGEST

SB 849, as amended, Anderson. ~~Consumers: Internet privacy. Decedents' estates: electronic mail.~~

Existing law prescribes a process for the appointment of a personal representative for the purpose of administering the estate of a decedent. Existing law grants to the personal representative certain powers, including the right to possess and control the property of the decedent to be administered in the estate, and limits the liability of a personal representative for actions taken in good faith in connection with real or personal property.

This bill would authorize the personal representative to request, and would authorize an electronic communication service or remote computer service to provide, access to the electronic mail account of a decedent or to copies of the content of the account, subject to any applicable service agreement. To exercise this right, the bill would require the personal representative to provide the account's service provider with a certified copy of the court order appointing the personal representative, a copy of the decedent's death certificate, a written request for access or copies, and an order of the probate court designating the executor or administrator as an agent for the subscriber and requiring the estate to indemnify the electronic communication

service or remote computing service from all liability in complying with the order.

~~Existing law requires an operator of a commercial Internet Web site or online service that collects personally identifiable information through the Internet about consumers residing in California who use or visit its commercial Internet Web site or online service to conspicuously post its privacy policy on its Internet Web site or online service and to comply with that policy. Existing law requires that the privacy policy specify how personally identifiable information is managed by the operator.~~

~~This bill would make nonsubstantive changes to this law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9650 of the Probate Code is amended to
2 read:

3 9650. (a) Except as provided by statute and subject to
4 subdivision (c):

5 (1) The personal representative has the right to, and shall take
6 possession or control of, all the property of the decedent to be
7 administered in the decedent's estate and shall collect all debts
8 due to the decedent or the estate. The personal representative is
9 not accountable for any debts that remain uncollected without his
10 or her fault.

11 (2) The personal representative is entitled to receive the rents,
12 issues, and profits from the real and personal property in the estate
13 until the estate is distributed.

14 (3) *The personal representative may request, and an electronic*
15 *communication service or remote computer service, as defined in*
16 *the Electronic Communications Privacy Act (18 U.S.C. Secs. 2510*
17 *and 2711), may provide to the personal representative or*
18 *administrator of the estate of a deceased person who was domiciled*
19 *in this state at the time of his or her death, access to the electronic*
20 *mail account of a decedent, or copies of the content of the account,*
21 *by providing the service provider of the account with all of the*
22 *following:*

23 (A) *A certified copy of the court order appointing the personal*
24 *representative.*

1 (B) A copy of the death certificate of the decedent.

2 (C) A written request for access to, or copies of the content of,
3 the electronic mail account.

4 (D) An order of the probate court which, by law, has jurisdiction
5 over the estate of a deceased person, designating the executor or
6 administrator as an agent for the subscriber, as defined in the
7 Electronic Communications Privacy Act (18 U.S.C. Sec. 2701),
8 on behalf of his or her estate, and ordering that the estate shall
9 first indemnify the electronic communication service or remote
10 computing service, as defined in the Electronic Communications
11 Privacy Act (18 U.S.C. Secs. 2510 and 2711), from all liability in
12 complying with the order.

13 (4) Any provision of access or copies of electronic
14 communications is subject to copyright law as well as any
15 applicable and enforceable terms of a service agreement.

16 (b) The personal representative shall pay taxes on, and take all
17 steps reasonably necessary for the management, protection, and
18 preservation of, the estate in his or her possession.

19 (c) Real property or tangible personal property may be left with
20 or surrendered to the person presumptively entitled to it unless or
21 until, in the judgment of the personal representative, possession
22 of the property by the personal representative will be necessary
23 for purposes of administration. The person holding the property
24 shall surrender it to the personal representative on request by the
25 personal representative.

26 ~~SECTION 1. Section 22575 of the Business and Professions~~
27 ~~Code is amended to read:~~

28 ~~22575. (a) An operator of a commercial Web site or online~~
29 ~~service that collects personally identifiable information through~~
30 ~~the Internet about individual consumers residing in California who~~
31 ~~use or visit its commercial Web site or online service shall~~
32 ~~conspicuously post its privacy policy on its Web site, or in the case~~
33 ~~of an operator of an online service, make that policy available in~~
34 ~~accordance with paragraph (5) of subdivision (b) of Section 22577.~~
35 ~~An operator shall be in violation of this subdivision only if the~~
36 ~~operator fails to post its policy within 30 days after being notified~~
37 ~~of noncompliance.~~

38 ~~(b) The privacy policy required by subdivision (a) shall do all~~
39 ~~of the following:~~

- 1 ~~(1) Identify the categories of personally identifiable information~~
2 ~~that the operator collects through the Web site or online service~~
3 ~~about individual consumers who use or visit its commercial Web~~
4 ~~site or online service and the categories of third-party persons or~~
5 ~~entities with whom the operator may share that personally~~
6 ~~identifiable information.~~
- 7 ~~(2) If the operator maintains a procedure for an individual~~
8 ~~consumer who uses or visits its commercial Web site or online~~
9 ~~service to review and request changes to any of his or her~~
10 ~~personally identifiable information that is collected through the~~
11 ~~Web site or online service, provide a description of that procedure.~~
- 12 ~~(3) Describe the procedure by which the operator notifies~~
13 ~~consumers who use or visit its commercial Web site or online~~
14 ~~service of material changes to the operator’s privacy policy for~~
15 ~~that Web site or online service.~~
- 16 ~~(4) Identify its effective date.~~
- 17 ~~(5) Disclose how the operator responds to Web browser “do not~~
18 ~~track” signals or other mechanisms that provide consumers the~~
19 ~~ability to exercise choice regarding the collection of personally~~
20 ~~identifiable information about an individual consumer’s online~~
21 ~~activities over time and across third-party Web sites or online~~
22 ~~services, if the operator engages in that collection.~~
- 23 ~~(6) Disclose whether other parties may collect personally~~
24 ~~identifiable information about an individual consumer’s online~~
25 ~~activities over time and across different Web sites when a consumer~~
26 ~~uses the operator’s Web site or service.~~
- 27 ~~(7) An operator may satisfy the requirement of paragraph (5)~~
28 ~~by providing a clear and conspicuous hyperlink in the operator’s~~
29 ~~privacy policy to an online location containing a description,~~
30 ~~including the effects, of any program or protocol the operator~~
31 ~~follows that offers the consumer that choice.~~