

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 691**

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**Introduced by Assembly Member Calderon  
(Coauthors: Assembly Members Chávez, Chu, Dababneh, and  
Gonzalez)**

February 25, 2015

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An act to add Part 20 (commencing with Section 870) to Division 2 of the Probate Code, relating to estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Calderon. The Privacy Expectation Afterlife and Choices Act (PEAC).

Existing law provides for the disposition of a testator's property by will. Existing law also provides for the disposition of that portion of a decedent's estate not disposed of by will. Existing law provides that the decedent's property, including property devised by a will, is generally subject to probate administration, except as specified.

This bill would establish the Privacy Expectation Afterlife and Choices Act, which would require a probate court to order an electronic communication service or remote computing service provider, as defined, to disclose to the executor or administrator of the estate a record or other information pertaining to the deceased user, but not the contents of communications or stored contents. The bill would require the probate court to make specified findings in order to require this disclosure, including that the executor or administrator demonstrates a good faith belief that account records are relevant to resolve issues regarding fiscal assets of the estate. The bill would exempt the provider from disclosure if the deceased user expressed a different intent through either deletion

of the records or contents during the user’s lifetime, or affirmatively indicating, through a setting within the product or service, how the user’s records or the content of communications can be treated after a set period of inactivity or other event and would exempt the provider from civil liability for compliance in good faith with a court order issued pursuant to this act.

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. Part 20 (commencing with Section 870) is added  
2 to Division 2 of the Probate Code, to read:

3  
4 PART 20. PRIVACY EXPECTATION AFTERLIFE AND  
5 CHOICES  
6

7 870. This part may be known, and may be cited, as the Privacy  
8 Expectation Afterlife and Choices Act.

9 871. (a) A probate court that has jurisdiction of the estate of  
10 the deceased user shall order a provider to disclose to the executor  
11 or administrator of the estate a record or other information  
12 pertaining to the deceased user, but not the contents of  
13 communications or stored contents, if the court makes all of the  
14 following findings of facts:

- 15 (1) The user is deceased.
- 16 (2) The deceased user was the subscriber to or customer of the  
17 provider.
- 18 (3) The account belonging to the deceased user has been  
19 identified with specificity, including a unique identifier assigned  
20 by the provider.
- 21 (4) There are no other authorized users or owners of the  
22 deceased user’s account.
- 23 (5) Disclosure is not in violation of another applicable law.
- 24 (6) The request for disclosure is narrowly tailored to effect the  
25 purpose of the administration of the estate.
- 26 (7) The executor or administrator demonstrates a good faith  
27 belief that account records are relevant to resolve issues regarding  
28 fiscal assets of the estate.

1 (8) The request seeks information spanning no more than a year  
2 prior to the date of death.

3 (9) The request is not in conflict with the deceased user's will  
4 or other expression of the deceased user's intent.

5 (b) Except as provided in subdivision (c), a provider shall  
6 disclose to the executor or administrator of the estate the contents  
7 of the deceased user's account, to the extent reasonably available,  
8 only if the executor or administrator gives the provider all of the  
9 following:

10 (1) A written request for the contents of *the* deceased user's  
11 account.

12 (2) A copy of the death certificate of the deceased user.

13 (3) An order of the probate court with jurisdiction over the estate  
14 of the deceased that includes all of the findings required in  
15 subdivision (a).

16 (4) An order that the estate shall first indemnify the provider  
17 from all liability in complying with the order.

18 (c) If an order is served on a provider pursuant to this section,  
19 the provider may make a motion to quash or modify the order. The  
20 court shall grant the motion if compliance with the order would  
21 cause an undue burden on the provider or if any of the requirements  
22 of subdivision (b) are not met.

23 872. A provider shall not be compelled to disclose a record or  
24 the contents of communications if any of the following apply:

25 (a) The deceased user expressed a different intent through either  
26 deletion of the records or contents during the user's lifetime, or  
27 affirmatively indicating, through a setting within the product or  
28 service, how the user's records or the content of communications  
29 can be treated after a set period of inactivity or other event.

30 (b) The provider is aware of any indication of lawful access to  
31 the account after the date of the deceased user's death or that the  
32 account is not that of the deceased user.

33 (c) Disclosure violates the law, *including, but not limited to,*  
34 *copyright law.*

35 873. (a) ~~Nothing in this part shall be interpreted to confer upon~~  
36 ~~the executor or administrator of the decedent's estate greater rights~~  
37 ~~in the contents than those enjoyed by the deceased user.~~ *Disclosure*  
38 *of the contents of the deceased user's account to the executor or*  
39 *administrator of the estate shall be subject to the same license,*

1 *restrictions, terms of service, and legal obligations, including*  
2 *copyright law, that applied to the deceased user.*

3 (b) Nothing in this part shall require a requesting party to assume  
4 control of a deceased user’s account.

5 874. A provider shall not be held liable for compliance in good  
6 faith with a court order issued pursuant to this part.

7 875. As used in this part, the following definitions shall apply:

8 (a) “Contents” means information concerning the substance,  
9 purport, or meaning of communications and includes the subject  
10 line of the communication.

11 (b) “Electronic communication” means a transfer of signs,  
12 signals, writing, images, sounds, data, or intelligence of any nature  
13 that is transmitted, in whole or in part, by a wire, radio,  
14 electromagnetic, or photooptical system that affects interstate or  
15 foreign commerce. “Electronic communication” does not include  
16 any of the following:

- 17 (1) Wire or oral communication.
- 18 (2) Communication made through a tone-only paging device.
- 19 (3) Communication from a tracking device.
- 20 (4) Electronic funds transfer information stored by a financial  
21 institution in a communication system used for the electronic  
22 storage and transfer of funds.

23 (c) “Electronic communication service” means a service that  
24 provides to users the ability to send or receive wire or electronic  
25 communication.

26 (d) “Electronic communications system” means a wire, radio,  
27 electromagnetic, photooptical, or photoelectronic facility for the  
28 transmission of wire or electronic communications and any  
29 computer facilities or related electronic equipment for the electronic  
30 storage of those communications.

31 (e) “Provider” means an electronic communication service or  
32 remote computing service.

33 (f) “Remote computing service” means providing to the public  
34 of computer storage or processing services *to the public* by means  
35 of an electronic communications system.

36 (g) “User” means a person or entity who uses an electronic  
37 communication ~~services~~ *service* and is duly authorized by the  
38 provider to engage in that use.

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