

AMENDED IN ASSEMBLY APRIL 20, 2015

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 691

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

February 25, 2015

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 authorize 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 account of the deceased ~~user~~ *user that is in electronic storage with the provider*. 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 the information requested is relevant to resolve issues regarding assets *or liabilities* of the estate. The bill would additionally require the court to find that the decedent expressed consent to the disclosure of the contents of communications or stored contents, as specified, in order to require the disclosure of those documents. The bill would exempt the provider from disclosure if the deceased user expressed an intent to disallow disclosure by either deleting the records or contents during the user’s lifetime, or affirmatively indicating, through a setting within the product or service, *of* how the user’s records or the content of communications can be treated after a set period of inactivity or other event. The bill would also 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 may order a provider to disclose to the executor
 11 or administrator of the estate a record or other information
 12 pertaining to the account of the deceased ~~user~~, *user that is in*
 13 *electronic storage with the provider*; but not the contents of
 14 communications or stored contents, if the court makes all of the
 15 following findings of facts based upon a sworn declaration of the
 16 personal representative or other admissible evidence:

- 17 (1) The user is deceased.
- 18 (2) The deceased user was the subscriber to or customer of the
 19 provider.
- 20 (3) The account belonging to the deceased user has been
 21 identified with specificity, including a unique identifier assigned
 22 by the provider.

1 (4) There are no other ~~authorized users or owners of~~ *owners of,*
2 *or persons or entities who have registered with the electronic*
3 *communication service with respect to,* the deceased user's account.

4 (5) Disclosure is not in violation of another applicable *federal*
5 *or state* law.

6 (6) The request for disclosure is narrowly tailored to ~~effectuate~~
7 the purpose of administering the estate.

8 (7) The executor or administrator demonstrates a good faith
9 belief that the information requested is relevant to resolve issues
10 regarding assets *or liabilities* of the estate.

11 (8) The request seeks information spanning no more than 18
12 months prior to the date of *death, or the requester has provided*
13 *evidence of a need to obtain information more than 18 months*
14 *prior to the date of death.*

15 (9) The request is not in conflict with the deceased user's will
16 or other *written, electronic, or oral* expression of the deceased
17 user's intent regarding access to or disposition of information
18 contained in or regarding the user's account.

19 (b) A probate court that has jurisdiction of the estate of the
20 deceased user may order a provider to disclose to the executor or
21 administrator of the estate the contents of communications or stored
22 contents, if the court makes all of the following findings of facts
23 based upon a sworn declaration of the personal representative or
24 other admissible evidence:

25 (1) The will of the decedent, ~~a setting~~ *or a choice made by the*
26 *deceased user* within the product or service *or otherwise* regarding
27 how the user's contents can be treated after a set period of
28 ~~inactivity, or other provision or event~~ *signifies inactivity after the*
29 *user's death, or other event evidences* the decedent's express
30 consent to the disclosure of the requested contents.

31 (2) The findings required by paragraphs (1) to (8), inclusive, of
32 subdivision (a).

33 (c) Except as provided in subdivision (d), a provider shall
34 disclose to the executor or administrator of the estate the contents
35 of the deceased user's account, to the extent reasonably available,
36 only if the executor or administrator gives the provider all of the
37 following:

38 (1) A written request for the contents of the deceased user's
39 account.

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

1 (3) An order of the probate court with jurisdiction over the estate
2 of the deceased that includes all of the findings required in
3 subdivision (b).

4 (4) An order that the estate shall first indemnify the provider
5 from any and all liability in complying with the order.

6 (d) A provider served with an order compelling disclosure of
7 subscriber records or contents pursuant to this section may make
8 a motion to quash or modify the order within a reasonable time
9 after receiving the order. The court shall do any of the following:

10 (1) Modify the order to the extent that the court finds that
11 compliance with the order would cause an undue burden on the
12 provider, or quash the order if the court finds that the order cannot
13 be modified so as to avoid the undue burden.

14 (2) Quash the order if any of the applicable requirements of
15 subdivision (a) or (b) are not met.

16 (3) Quash the order if the court finds, based upon *the*
17 *preponderance of the* evidence submitted by the provider or any
18 other person, that any of the circumstances set forth in Section 872
19 apply.

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

22 (a) The deceased user expressed an intent to disallow disclosure
23 through either deletion of the records or contents during the user's
24 lifetime, or an affirmative indication, through a setting within the
25 product or service, of how the user's records or the content of
26 communications can be treated after a set period of inactivity or
27 other event.

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

31 (c) Disclosure would violate other applicable law, including,
32 but not limited to, electronic communications privacy provisions
33 or copyright law.

34 873. (a) Disclosure of the contents of the deceased user's
35 account to the executor or administrator of the estate shall be
36 subject to the same license, restrictions, terms of service, and legal
37 obligations, including copyright law, that applied to the deceased
38 user.

39 (b) Nothing in this part shall be construed to require a requesting
40 party to assume control of a deceased user's account.

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

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

4 (a) *“Asset” means anything of financial value that is part of*
5 *the estate of the decedent.*

6 (b) *“Authorized user” means a person or entity who has lawfully*
7 *obtained credentials to access an account with an electronic*
8 *communication service in a manner consistent with the terms of*
9 *service that apply to that account.*

10 ~~(a)~~

11 (c) *“Contents” means information concerning the substance,*
12 *purport, or meaning of communications and includes the subject*
13 *line of the communication.*

14 ~~(b)~~

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

21 (1) Wire or oral communication.

22 (2) Communication made through a tone-only paging device.

23 (3) Communication from a tracking device.

24 (4) Electronic funds transfer information stored by a financial
25 institution in a communication system used for the electronic
26 storage and transfer of funds.

27 ~~(e)~~

28 (e) *“Electronic communication service” means a service that*
29 *provides to users the ability to send or receive wire or electronic*
30 *communication.*

31 ~~(d)~~

32 (f) *“Electronic communications system” means a wire, radio,*
33 *electromagnetic, photooptical, or photoelectronic facility for the*
34 *transmission of wire or electronic communications and any*
35 *computer facilities or related electronic equipment for the electronic*
36 *storage of those communications.*

37 ~~(e)~~

38 (g) *“Provider” means an electronic communication service or*
39 *remote computing service.*

40 ~~(f)~~

1 (h) “Record” means a record regarding a communication sent
2 or received by a subscriber or user of an electronic ~~communications~~
3 *communication* service or remote computing service, including,
4 but not limited to, account logs that record account usage, cell-site
5 data for mobile telecommunications calls, and online addresses of
6 other individuals with whom the account holder has communicated.

7 ~~(g)~~

8 (i) “Remote computing service” means providing computer
9 storage or processing services to the public by means of an
10 electronic communications system.

11 ~~(h) “User” means a person or entity who uses an electronic~~
12 ~~communication service and is duly authorized by the provider to~~
13 ~~engage in that use.~~

14 (j) “Undue burden” shall be interpreted consistently with the
15 interpretation of that term as used in Section 2031.310 of the Code
16 of Civil Procedure.

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