

AMENDED IN ASSEMBLY APRIL 30, 2015

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 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 allow a provider to require the requester to pay the direct costs of producing a copy of the record or other information pertaining to the account of the deceased, when those records are not already available for production during the ordinary course of business.* 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 that is in electronic
 13 storage with the provider, but not the contents of communications
 14 or stored contents, if the court makes all of the following findings
 15 of facts based upon a sworn declaration of the personal
 16 representative or other admissible evidence:

1 (1) The user is deceased.

2 (2) The deceased user was the subscriber to or customer of the
3 provider.

4 (3) The account belonging to the deceased user has been
5 identified with specificity, including a unique identifier assigned
6 by the provider.

7 (4) There are no other owners of, or persons or entities who
8 have registered with the ~~electronic communication service~~ *provider*
9 with respect to, the deceased user's account.

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

12 (6) The request for disclosure is narrowly tailored to the purpose
13 of administering the estate.

14 (7) The executor or administrator demonstrates a good faith
15 belief that the information requested is relevant to resolve issues
16 regarding assets or liabilities of the estate.

17 (8) The request seeks information spanning no more than 18
18 months prior to the date of death, or the requester has ~~provided~~
19 ~~evidence of a need to obtain~~ *made a request for* information ~~more~~
20 ~~than~~ *that specifically requests data older than* 18 months prior to
21 the date of death.

22 (9) The request is not in conflict with the deceased user's will
23 or other written, electronic, or oral expression of the deceased
24 user's intent regarding access to or disposition of information
25 contained in or regarding the user's account.

26 (b) A probate court that has jurisdiction of the estate of the
27 deceased user may order a provider to disclose to the executor or
28 administrator of the estate the contents of communications or stored
29 contents, if the court makes all of the following findings of facts
30 based upon a sworn declaration of the personal representative or
31 other admissible evidence:

32 (1) The will of the decedent, or a choice made by the deceased
33 user within the product or service or otherwise regarding how the
34 user's contents can be treated after a set period of inactivity after
35 the user's death, or other event evidences the decedent's express
36 consent to the disclosure of the requested contents.

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

39 (c) Except as provided in subdivision (d), a provider shall
40 disclose to the executor or administrator of the estate the contents

1 of the deceased user's account, to the extent reasonably available,
2 only if the executor or administrator gives the provider all of the
3 following:

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

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

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

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

12 (d) A provider served with an order compelling disclosure of
13 ~~subscriber~~ *deceased user* records or contents pursuant to this
14 section may make a motion to quash or modify the order within a
15 reasonable time after receiving the order. The court shall do any
16 of the following:

17 (1) Modify the order to the extent that the court finds that
18 compliance with the order would cause an undue burden on the
19 provider, or quash the order if the court finds that the order cannot
20 be modified so as to avoid the undue burden. *However, a cost that*
21 *the requester offers to pay pursuant to subdivision (e) shall not be*
22 *considered when a court is making a determination whether the*
23 *request constitutes an undue burden.*

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

26 (3) Quash the order if the court finds, based upon the
27 preponderance of the evidence submitted by the provider or any
28 other person, that any of the circumstances set forth in Section 872
29 apply.

30 (e) *A provider may require the requester to pay the direct costs*
31 *of producing a copy of the record or other information pertaining*
32 *to the account of the deceased, when those records are not already*
33 *available for production during the ordinary course of business.*

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

36 (a) The deceased user expressed an intent to disallow disclosure
37 through either deletion of the records or contents during the user's
38 lifetime, or an affirmative indication, through a setting within the
39 product or service, of how the user's records or the content of

1 communications can be treated after a set period of inactivity or
2 other event.

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

6 (c) Disclosure would violate other applicable law, including,
7 but not limited to, electronic communications privacy provisions
8 or copyright law.

9 873. (a) Disclosure of the contents of the deceased user's
10 account to the executor or administrator of the estate shall be
11 subject to the same license, restrictions, terms of service, and legal
12 obligations, including copyright law, that applied to the deceased
13 user.

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

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

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

19 (a) "Asset" means anything of financial value that is part of the
20 estate of the decedent.

21 (b) "Authorized user" or "user" means a person or entity who
22 has lawfully obtained credentials to access an account with an
23 electronic communication service in a manner consistent with the
24 terms of service that apply to that account.

25 (c) "Contents" means information concerning the substance,
26 purport, or meaning of communications and includes the subject
27 line of the communication.

28 (d) "Electronic communication" means a transfer of signs,
29 signals, writing, images, sounds, data, or intelligence of any nature
30 that is transmitted, in whole or in part, by a wire, radio,
31 electromagnetic, or photooptical system that affects interstate or
32 foreign commerce. "Electronic communication" does not include
33 any of the following:

- 34 (1) Wire or oral communication.
- 35 (2) Communication made through a tone-only paging device.
- 36 (3) Communication from a tracking device.
- 37 (4) Electronic funds transfer information stored by a financial
38 institution in a communication system used for the electronic
39 storage and transfer of funds.

- 1 (e) “Electronic communication service” means a service that
2 provides to users the ability to send or receive wire or electronic
3 communication.
- 4 (f) “Electronic communications system” means a wire, radio,
5 electromagnetic, photooptical, or photoelectronic facility for the
6 transmission of wire or electronic communications and any
7 computer facilities or related electronic equipment for the electronic
8 storage of those communications.
- 9 (g) “Provider” means an electronic communication service or
10 remote computing service.
- 11 (h) “Record” means a record regarding a communication sent
12 or received by a subscriber or user of an electronic communication
13 service or remote computing service, including, but not limited to,
14 account logs that record account usage, cell-site data for mobile
15 telecommunications calls, and online addresses of other individuals
16 with whom the account holder has communicated.
- 17 (i) “Remote computing service” means providing computer
18 storage or processing services to the public by means of an
19 electronic communications system.
- 20 (j) “Undue burden” shall be interpreted consistently with the
21 interpretation of that term as used in Section 2031.310 of the Code
22 of Civil Procedure.

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