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AMENDED IN ASSEMBLY MARCH 23, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 691

Introduced by Assembly Member Calderon
(Coauthors: Assembly Members *Travis Allen, Chang, Chávez, Chu,*
Dababneh, ~~and Gonzalez~~ Cristina Garcia, Gatto, Gonzalez,
***Steinorth, and Waldron*)**

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 *or the trustee of the trust* 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~~ *executor, administrator, or trustee* 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 permit a provider to disclose a decedent's account information if the executor, administrator, or trustee gives the provider documents and information, as specified. The bill would additionally permit a provider to disclose contents of communications or stored contents if an executor, administrator, or trustee gives the provider documents and information, as specified, including a will or trust showing the decedent's express consent for disclosure of the contents.* 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~~ *disclosing records or contents as required or permitted under* 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:

1 PART 20. PRIVACY EXPECTATION AFTERLIFE AND
2 CHOICES
3

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

6 871. (a) A probate court that has jurisdiction of the estate of
7 the deceased user may order a provider to disclose to the executor
8 or administrator of the estate *or the trustee of the trust* a record or
9 other information pertaining to the account of the deceased user
10 that is in electronic storage with the provider, but not the contents
11 of communications or stored contents, if the court makes all of the
12 following findings of facts based upon a sworn declaration of the
13 personal representative or other admissible evidence:

14 (1) The user is deceased.

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

17 (3) The account belonging to the deceased user has been
18 identified with ~~specificity, including a unique identifier assigned~~
19 ~~by the provider.~~ *specificity such that the information given allows*
20 *the provider to identify the decedent's account.*

21 (4) There are no other owners of, or persons or entities who
22 have registered with the provider with respect to, the deceased
23 user's account.

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

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

28 (7) ~~The executor or administrator~~ *executor, administrator, or*
29 *trustee* demonstrates a good faith belief that the information
30 requested is relevant to resolve issues regarding assets or liabilities
31 of the estate.

32 (8) The request seeks information spanning no more than 18
33 months prior to the date of death, or the requester has made a
34 request for information that specifically requests data older than
35 18 months prior to the date of death.

36 (9) The request is not in conflict with the deceased user's ~~will~~
37 *will, trust,* or other written, electronic, or oral expression of the
38 deceased user's intent regarding access to or disposition of
39 information contained in or regarding the user's account.

1 (b) A probate court that has jurisdiction of the estate of the
 2 deceased user may order a provider to disclose to the executor or
 3 administrator of the estate *or the trustee of the trust* the contents
 4 of communications or stored contents, if the court makes all of the
 5 following findings of facts based upon a sworn declaration of the
 6 personal representative or other admissible evidence:

7 (1) The will *or trust* of the decedent, or a choice made by the
 8 deceased user within the product or service or otherwise regarding
 9 how the user’s contents can be treated after a set period of inactivity
 10 after the user’s death, or other event evidences the decedent’s
 11 express consent to the disclosure of the requested contents.

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

14 (c) Except as provided in subdivision ~~(d)~~, (g), a provider shall
 15 disclose to the executor or administrator of the estate *or the trustee*
 16 *of the trust* the contents of the deceased user’s account, to the
 17 extent reasonably available, ~~only if the executor or administrator~~
 18 *if the executor, administrator, or trustee* gives the provider all of
 19 the following:

20 (1) A written request for the contents of the deceased user’s
 21 account.

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

23 (3) An order of the probate court with jurisdiction over the estate
 24 *or trust* of the deceased that includes all of the findings required
 25 in subdivision (b).

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

28 (d) A provider may disclose to the executor, administrator, or
 29 trustee a record or other information pertaining to the account of
 30 the deceased user that is in electronic storage with the provider,
 31 but not the contents of communications or stored contents, if the
 32 executor, administrator, or trustee gives the provider all of the
 33 following:

34 (1) A written request for the record or information that is
 35 narrowly tailored to the purpose of administering the estate or
 36 trust.

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

38 (3) Identification of the account belonging to the deceased user
 39 made with specificity such that the information given allows the
 40 provider to identify the decedent’s account.

1 (e) An electronic service provider may disclose to the executor
2 or administrator of an estate or the trustee of a trust the contents
3 of communications or stored contents if the executor, administrator,
4 or trustee gives the provider both of the following:

5 (1) All of the items required under subdivision (d).

6 (2) The will or trust of the deceased user showing the deceased
7 user's express consent for disclosure of the contents to the
8 executor, administrator, or trustee.

9 (f) A provider shall not be held liable for disclosing records or
10 contents as required or permitted under this act.

11 ~~(d)~~

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

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

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

37 (a) The deceased user expressed an intent to disallow disclosure
38 through either deletion of the records or contents during the user's
39 lifetime, or an affirmative indication, through a setting within the
40 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 *or the trustee*
11 *of the trust* shall be subject to the same license, restrictions, terms
12 of service, and legal obligations, including copyright law, that
13 applied to the deceased user.

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

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

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

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

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

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

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

35 (1) Wire or oral communication.

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

37 (3) Communication from a tracking device.

38 (4) Electronic funds transfer information stored by a financial
39 institution in a communication system used for the electronic
40 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.