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AMENDED IN SENATE SEPTEMBER 4, 2015  
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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 Travis Allen, Chang, Chávez, Chu,  
Dababneh, Cristina Garcia, Gatto, Gonzalez, Steinorth, and  
Waldron)**

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. Revised Uniform Fiduciary Access to Digital Assets Act.~~

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 defined electronic communication service or remote computing service (provider) to disclose specified information pertaining to the account of a deceased user to the personal representative of the decedent's estate or the trustee of the decedent's trust if provided with prescribed information. The bill would authorize a probate court with jurisdiction over the deceased user's estate or trust to order disclosure of certain information if the court makes specified findings, including that the request for disclosure is narrowly tailored to the purpose of administering the estate or trust. The bill would prescribe circumstances under which the provider would not be compelled to disclose a record or the contents of a communication and would exempt a provider from liability for disclosing records or contents as required or permitted by the act.~~

*This bill would enact the Revised Uniform Fiduciary Access to Digital Assets Act, which would authorize a decedent's personal representative or trustee to access and manage digital assets and electronic communications, as specified. The bill would authorize a person to use an online tool to give directions to the custodian of his or her digital assets regarding the disclosure of those assets. The bill would specify that, if a person has not used an online tool to give that direction, he or she may give direction regarding the disclosure of digital assets in a will, trust, power of attorney, or other record. The bill would require a custodian of the digital assets to comply with a fiduciary's request for disclosure of digital assets or to terminate an account, except under certain circumstances, including when the decedent has prohibited this disclosure using the online tool. The bill would make custodians immune from liability for an act or omission done in good faith in compliance with these provisions.*

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  
2 *PART 20. REVISED UNIFORM FIDUCIARY ACCESS TO*  
3 *DIGITAL ASSETS ACT*  
4

5 *870. This part shall be known, and may be cited, as the Revised*  
6 *Uniform Fiduciary Access to Digital Assets Act.*

7 *871. As used in this part, the following terms shall have the*  
8 *following meanings:*

9 *(a) "Account" means an arrangement under a terms-of-service*  
10 *agreement in which the custodian carries, maintains, processes,*  
11 *receives, or stores a digital asset of the user or provides goods or*  
12 *services to the user.*

13 *(b) "Carries" means engages in the transmission of electronic*  
14 *communications.*

15 *(c) "Catalogue of electronic communications" means*  
16 *information that identifies each person with which a user has had*  
17 *an electronic communication, the time and date of the*  
18 *communication, and the electronic address of the person.*

19 *(d) "Content of an electronic communication" means*  
20 *information concerning the substance or meaning of the*  
21 *communication, which meets all of the following requirements:*

22 *(1) Has been sent or received by a user.*

23 *(2) Is in electronic storage by a custodian providing an*  
24 *electronic communication service to the public or is carried or*  
25 *maintained by a custodian providing a remote-computing service*  
26 *to the public.*

27 *(3) Is not readily accessible to the public.*

28 *(e) "Court" means the superior court presiding over the judicial*  
29 *proceedings which have been initiated under this code to*  
30 *administer the estate of the deceased user; or, if none, the superior*  
31 *court sitting in the exercise of jurisdiction under this code in the*  
32 *county of the user's domicile, and the court, as defined in this*  
33 *section, shall have exclusive jurisdiction over proceedings brought*  
34 *under this part.*

35 *(f) "Custodian" means a person that carries, maintains,*  
36 *processes, receives, or stores a digital asset of a user.*

37 *(g) "Designated recipient" means a person chosen by a user*  
38 *using an online tool to administer digital assets of the user.*

39 *(h) "Digital asset" means an electronic record in which an*  
40 *individual has a right or interest. The term "digital asset" does*

1 *not include an underlying asset or liability, unless the asset or*  
2 *liability is itself an electronic record.*

3 (i) *“Electronic” means relating to technology having electrical,*  
4 *digital, magnetic, wireless, optical, electromagnetic, or similar*  
5 *capabilities.*

6 (j) *“Electronic communication” has the same meaning as the*  
7 *definition in Section 2510(12) of Title 18 of the United States Code.*

8 (k) *“Electronic communication service” means a custodian that*  
9 *provides to a user the ability to send or receive an electronic*  
10 *communication.*

11 (l) *“Fiduciary” means an original, additional, or successor*  
12 *personal representative or trustee.*

13 (m) *“Information” means data, text, images, videos, sounds,*  
14 *codes, computer programs, software, databases, or other items*  
15 *with like characteristics.*

16 (n) *“Online tool” means an electronic service provided by a*  
17 *custodian that allows the user, in an agreement distinct from the*  
18 *terms-of-service agreement between the custodian and user, to*  
19 *provide directions for disclosure or nondisclosure of digital assets*  
20 *to a third person.*

21 (o) *“Person” means an individual, estate, business or nonprofit*  
22 *entity, public corporation, government or governmental*  
23 *subdivision, agency, or instrumentality, or other legal entity.*

24 (p) *“Personal representative” means an executor, administrator,*  
25 *special administrator, or person that performs substantially the*  
26 *same function under any other law.*

27 (q) *“Power of attorney” means a record that grants an agent*  
28 *authority to act in the place of the principal.*

29 (r) *“Record” means information that is inscribed on a tangible*  
30 *medium or that is stored in an electronic or other medium and is*  
31 *retrievable in a perceivable form.*

32 (s) *“Remote-computing service” means a custodian that*  
33 *provides to a user computer processing services or the storage of*  
34 *digital assets by means of an electronic communications system,*  
35 *as defined in Section 2510(4) of Title 18 of the United States Code.*

36 (t) *“Terms-of-service agreement” means an agreement that*  
37 *controls the relationship between a user and a custodian.*

38 (u) *“Trustee” means a fiduciary with legal title to property*  
39 *under an agreement or declaration that creates a beneficial interest*  
40 *in another. The term includes a successor trustee.*

1 (v) “User” means a person that has an account with a custodian.  
2 (w) “Will” includes a codicil, a testamentary instrument that  
3 only appoints an executor, or an instrument that revokes or revises  
4 a testamentary instrument.

5 872. (a) This part shall apply to any of the following:

6 (1) A fiduciary acting under a will executed before, on, or after  
7 January 1, 2017.

8 (2) A personal representative acting for a decedent who died  
9 before, on, or after January 1, 2017.

10 (3) A trustee acting under a trust created before, on, or after  
11 January 1, 2017.

12 (4) A custodian of digital assets for a user if the user resides in  
13 this state or resided in this state at the time of the user’s death.

14 (b) This part shall not apply to a digital asset of an employer  
15 used by an employee in the ordinary course of the employer’s  
16 business.

17 873. (a) A user may use an online tool to direct the custodian  
18 to disclose to a designated recipient or not disclose some or all of  
19 the user’s digital assets, including the content of electronic  
20 communications. If the online tool allows the user to modify or  
21 delete a direction at all times, a direction regarding disclosure  
22 using an online tool overrides a contrary direction by the user in  
23 a will, trust, power of attorney, or other record.

24 (b) If a user has not used an online tool to give direction under  
25 subdivision (a) or if a custodian has not provided an online tool,  
26 a user may allow or prohibit in a will, trust, power of attorney, or  
27 other record the disclosure to a fiduciary of some or all of the  
28 user’s digital assets, including the contents of electronic  
29 communications sent or received by the user.

30 (c) A user’s direction under subdivision (a) or (b) overrides a  
31 contrary provision in a terms-of-service agreement that does not  
32 require the user to act affirmatively and distinctly from the user’s  
33 assent to the terms-of-service agreement.

34 874. (a) This part does not change or impair a right of a  
35 custodian or a user under a terms-of-service agreement to access  
36 and use digital assets of a user.

37 (b) This part does not give a fiduciary or designated recipient  
38 any new or expanded rights other than those held by the user for  
39 whom, or for whose estate or trust, the fiduciary or designated  
40 recipient acts or represents.

1 (c) A fiduciary's or designated recipient's access to digital  
2 assets may be modified or eliminated by a user, by federal law, or  
3 by a terms-of-service agreement when the user has not provided  
4 any direction that is recognized in Section 873.

5 875. (a) When disclosing the digital assets of a user under this  
6 part, the custodian may, in its sole discretion, do any of the  
7 following:

8 (1) Grant the fiduciary or designated recipient full access to  
9 the user's account.

10 (2) Grant the fiduciary or designated recipient partial access  
11 to the user's account sufficient to perform the tasks with which the  
12 fiduciary or designated recipient is charged.

13 (3) Provide the fiduciary or designated recipient with a copy  
14 in a record of any digital asset that, on the date the custodian  
15 received the request for disclosure, the user could have accessed  
16 if the user were alive and had full capacity and access to the  
17 account.

18 (b) A custodian may assess a reasonable administrative charge  
19 for the cost of disclosing digital assets under this part.

20 (c) A custodian need not disclose under this part a digital asset  
21 deleted by a user.

22 (d) If a user directs or a fiduciary or designated recipient  
23 requests a custodian to disclose under this part some, but not all,  
24 of the user's digital assets, the custodian need not disclose the  
25 assets if segregation of the assets would impose an undue burden  
26 on the custodian. If the custodian believes the direction or request  
27 imposes an undue burden, the custodian, fiduciary, or designated  
28 recipient may petition the court for an order to do any of the  
29 following:

30 (1) Disclose a subset limited by date of the user's digital assets.

31 (2) Disclose all of the user's digital assets to the fiduciary or  
32 designated recipient.

33 (3) Disclose none of the user's digital assets.

34 (4) Disclose all of the user's digital assets to the court for review  
35 in camera.

36 876. If a deceased user consented to or a court directs  
37 disclosure of the content of electronic communications of the user,  
38 the custodian shall disclose to the personal representative of the  
39 estate of the user the content of an electronic communication sent

1 or received by the user if the personal representative gives to the  
2 custodian all of the following:

3 (a) A written request for disclosure in physical or electronic  
4 form.

5 (b) A certified copy of the death certificate of the user.

6 (c) A certified copy of the letter of appointment of the  
7 representative, a small-estate affidavit under Section 13101, or  
8 court order.

9 (d) Unless the user provided direction using an online tool, a  
10 copy of the user's will, trust, power of attorney, or other record  
11 evidencing the user's consent to disclosure of the content of  
12 electronic communications.

13 (e) If requested by the custodian, any of the following:

14 (1) A number, user name, address, or other unique subscriber  
15 or account identifier assigned by the custodian to identify the user's  
16 account.

17 (2) Evidence linking the account to the user.

18 (3) An order of the court finding any of the following:

19 (A) That the user had a specific account with the custodian,  
20 identifiable by the information specified in paragraph (1).

21 (B) That disclosure of the content of the user's electronic  
22 communications would not violate Section 2701 et seq. of Title 18  
23 of, and Section 222 of Title 47 of, the United State Code, or other  
24 applicable law.

25 (C) Unless the user provided direction using an online tool, that  
26 the user consented to disclosure of the content of electronic  
27 communications.

28 (D) That disclosure of the content of electronic communications  
29 of a user is reasonably necessary for estate administration.

30 877. Unless the user prohibited disclosure of digital assets or  
31 the court directs otherwise, a custodian shall disclose to the  
32 personal representative of the estate of a deceased user a catalogue  
33 of electronic communications sent or received by the user and  
34 digital assets, other than the content of electronic communications,  
35 of the user, if the personal representative gives to the custodian  
36 all of the following:

37 (a) A written request for disclosure in physical or electronic  
38 form.

39 (b) A certified copy of the death certificate of the user.

1 (c) A certified copy of the letter of appointment of the  
2 representative, a small-estate affidavit under Section 13101, or  
3 court order.

4 (d) If requested by the custodian, any of the following:

5 (1) A number, user name, address, or other unique subscriber  
6 or account identifier assigned by the custodian to identify the user's  
7 account.

8 (2) Evidence linking the account to the user.

9 (3) An affidavit stating that disclosure of the user's digital assets  
10 is reasonably necessary for estate administration.

11 (4) An order of the court finding either of the following:

12 (A) That the user had a specific account with the custodian,  
13 identifiable by the information specified in paragraph (1).

14 (B) That disclosure of the user's digital assets is reasonably  
15 necessary for estate administration.

16 878. Unless otherwise ordered by the court, directed by the  
17 user, or provided in a trust, a custodian shall disclose to a trustee  
18 that is not an original user of an account the content of an  
19 electronic communication sent or received by an original or  
20 successor user and carried, maintained, processed, received, or  
21 stored by the custodian in the account of the trust if the trustee  
22 gives to the custodian all of the following:

23 (a) A written request for disclosure in physical or electronic  
24 form.

25 (b) A certified copy of the death certificate of the settlor.

26 (c) A certified copy of the trust instrument, or a certification of  
27 trust under Section 18100.5, evidencing the settlor's consent to  
28 disclosure of the content of electronic communications to the  
29 trustee.

30 (d) A certification by the trustee, under penalty of perjury, that  
31 the trust exists and that the trustee is a currently acting trustee of  
32 the trust.

33 (e) If requested by the custodian, any of the following:

34 (1) A number, username, address, or other unique subscriber  
35 or account identifier assigned by the custodian to identify the  
36 trust's account.

37 (2) Evidence linking the account to the trust.

38 879. Unless otherwise ordered by the court, directed by the  
39 user, or provided in a trust, a custodian shall disclose, to a trustee  
40 that is not an original user of an account, the catalogue of

1 *electronic communications sent or received by an original or*  
2 *successor user and stored, carried, or maintained by the custodian*  
3 *in an account of the trust and any digital assets, other than the*  
4 *content of electronic communications, in which the trust has a*  
5 *right or interest if the settlor of the trust is deceased and the trustee*  
6 *gives the custodian all of the following:*

7 (a) *A written request for disclosure in physical or electronic*  
8 *form.*

9 (b) *A certified copy of the death certificate of the settlor.*

10 (c) *A certified copy of the trust instrument or a certification of*  
11 *trust under Section 18100.5.*

12 (d) *A certification by the trustee, under penalty of perjury, that*  
13 *the trust exists and that the trustee is a currently acting trustee of*  
14 *the trust.*

15 (e) *If requested by the custodian, any of the following:*

16 (1) *A number, username, address, or other unique subscriber*  
17 *or account identifier assigned by the custodian to identify the*  
18 *trust's account.*

19 (2) *Evidence linking the account to the trust.*

20 880. (a) *The legal duties imposed on a fiduciary charged with*  
21 *managing tangible property apply to the management of digital*  
22 *assets, including all of the following:*

23 (1) *The duty of care.*

24 (2) *The duty of loyalty.*

25 (3) *The duty of confidentiality.*

26 (b) *All of the following shall apply to a fiduciary's or designated*  
27 *recipient's authority with respect to a digital asset of a user:*

28 (1) *Except as otherwise provided in Section 873, a fiduciary's*  
29 *or designated recipient's authority is subject to the applicable*  
30 *terms-of-service agreement.*

31 (2) *A fiduciary's or designated recipient's authority is subject*  
32 *to other applicable law, including copyright law.*

33 (3) *In the case of a fiduciary, a fiduciary's authority is limited*  
34 *by the scope of the fiduciary's duties.*

35 (4) *A fiduciary's or designated recipient's authority may not*  
36 *be used to impersonate the user.*

37 (c) *A fiduciary with authority over the property of a decedent*  
38 *or settlor has the right of access to any digital asset in which the*  
39 *decedent or settlor had a right or interest and that is not held by*  
40 *a custodian or subject to a terms-of-service agreement.*

1 (d) A fiduciary acting within the scope of the fiduciary's duties  
2 is an authorized user of the property of the decedent or settlor for  
3 the purpose of applicable computer-fraud and  
4 unauthorized-computer-access laws.

5 (e) The following shall apply to a fiduciary with authority over  
6 the tangible, personal property of a decedent or settlor:

7 (1) The fiduciary has the right to access the property and any  
8 digital asset stored in it.

9 (2) The fiduciary is an authorized user for purposes of any  
10 applicable computer-fraud and unauthorized-computer-access  
11 laws.

12 (f) A custodian may disclose information in an account to a  
13 fiduciary of the decedent or settlor when the information is required  
14 to terminate an account used to access digital assets licensed to  
15 the user.

16 (g) A fiduciary of a decedent or settlor may request a custodian  
17 to terminate the user's account. A request for termination shall be  
18 in writing, in either physical or electronic form, and accompanied  
19 by all of the following:

20 (1) If the user is deceased, a certified copy of the death  
21 certificate of the user.

22 (2) A certified copy of the letter of appointment of the  
23 representative, a small-estate affidavit under Section 13101, a  
24 court order, a certified copy of the trust instrument or a  
25 certification of the trust under Section 18100.5 giving the fiduciary  
26 authority over the account.

27 (3) If requested by the custodian, any of the following:

28 (A) A number, user name, address, or other unique subscriber  
29 or account identifier assigned by the custodian to identify the user's  
30 account.

31 (B) Evidence linking the account to the user.

32 (C) A finding by the court that the user had a specific account  
33 with the custodian, identifiable by the information specified in  
34 subparagraph (A).

35 881. (a) Not later than 60 days after receipt of the information  
36 required under Sections 876 to Section 879, inclusive, a custodian  
37 shall comply with a request under this part from a fiduciary or  
38 designated recipient to disclose digital assets or terminate an  
39 account. If the custodian fails to comply with a request, the

1 *fiduciary or designated recipient may apply to the court for an*  
2 *order directing compliance.*

3 *(b) An order under subdivision (a) directing compliance shall*  
4 *contain a finding that compliance is not in violation of Section*  
5 *2702 of Title 18 of the United States Code.*

6 *(c) A custodian may notify a user that a request for disclosure*  
7 *of digital assets or to terminate an account was made pursuant to*  
8 *this part.*

9 *(d) A custodian may deny a request under this part from a*  
10 *fiduciary or designated recipient for disclosure of digital assets*  
11 *or to terminate an account if the custodian is aware of any lawful*  
12 *access to the account following the date of death of the user.*

13 *(e) This part does not limit a custodian's ability to obtain or to*  
14 *require a fiduciary or designated recipient requesting disclosure*  
15 *or account termination under this part to obtain a court order that*  
16 *makes all of the following findings:*

17 *(1) The account belongs to the decedent, principal, or settlor.*

18 *(2) There is sufficient consent from the decedent, principal, or*  
19 *settlor to support the requested disclosure.*

20 *(3) Any specific factual finding required by any other applicable*  
21 *law in effect at that time, including, but not limited to, a finding*  
22 *that disclosure is not in violation of Section 2702 of Title 18 of the*  
23 *United States Code.*

24 *(f) A custodian and its officers, employees, and agents are*  
25 *immune from liability for an act or omission done in good faith in*  
26 *compliance with this part.*

27 *882. In applying and construing this part, which is based upon*  
28 *a uniform act, consideration shall be given to the need to promote*  
29 *uniformity of the law with respect to its subject matter among*  
30 *states that enact similar acts.*

31 *883. This part modifies, limits, or supersedes the federal*  
32 *Electronic Signatures in Global and National Commerce Act (15*  
33 *U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede*  
34 *Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize*  
35 *electronic delivery of any of the notices described in Section 103(b)*  
36 *of that act (15 U.S.C. Sec. 7003(b)).*

37 *884. Disclosure of the contents of the deceased user's or*  
38 *settlor's account to a fiduciary of the deceased user or settlor is*  
39 *subject to the same license, restrictions, terms of service, and legal*

1 obligations, including copyright law, that applied to the deceased  
2 user or settlor.

3 885. If any provision of this part or its application to any  
4 person or circumstance is held invalid, the invalidity does not  
5 affect other provisions or applications of this part that can be  
6 given effect without the invalid provision or application, and, to  
7 this end, the provisions of this part are severable.

8 SECTION 1. Part 20 (commencing with Section 870) is added  
9 to Division 2 of the Probate Code, to read:

10

11 PART 20. PRIVACY EXPECTATION AFTERLIFE AND  
12 CHOICES

13

14 870. This part shall be known, and may be cited, as the Privacy  
15 Expectation Afterlife and Choices Act.

16 871. (a) A provider may disclose to the personal representative  
17 of the estate of the deceased user or the trustee of the deceased  
18 user's trust, a record or other information pertaining to the account  
19 of the deceased user that is in electronic storage with the provider,  
20 but not the contents of electronic communications or stored  
21 contents, if the personal representative or trustee gives the provider  
22 all of the following:

23 (1) A written request for the record or information that is  
24 narrowly tailored to the purpose of administering the estate or  
25 trust.

26 (2) A copy of the death certificate of the deceased user or a copy  
27 of a written certification authorized pursuant to Section 7603.

28 (3) Identification of the account belonging to the deceased user  
29 made with sufficient specificity that the information given allows  
30 the provider to identify the account of the deceased user.

31 (b) A provider may disclose to the personal representative of  
32 an estate or the trustee of a trust the contents of communications  
33 or stored contents if the personal representative or trustee gives  
34 the provider both of the following:

35 (1) All of the items required pursuant to subdivision (a).

36 (2) The will, trust, or evidence of a choice made by the deceased  
37 user within the product or service evidencing the deceased user's  
38 express consent for disclosure of the contents to the personal  
39 representative or trustee.

1 ~~(e) A provider may decline to respond to a request pursuant to~~  
2 ~~subdivision (a) because of a concern that complying with the~~  
3 ~~request may violate any other legal authority, be contrary to the~~  
4 ~~wishes of the user, or be otherwise inappropriate. Under any of~~  
5 ~~those circumstances, a probate court that has jurisdiction over the~~  
6 ~~estate or trust of the deceased user may order a provider to disclose~~  
7 ~~to the personal representative of the estate or the trustee of the~~  
8 ~~trust, a record or other information pertaining to the account of the~~  
9 ~~deceased user that is in electronic storage with the provider, but~~  
10 ~~not the contents of communications or stored contents, if the court~~  
11 ~~makes all of the following findings of fact based upon a sworn~~  
12 ~~declaration, indicating the good faith belief and efforts of the~~  
13 ~~personal representative or trustee, or any 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 sufficient specificity that the information given~~  
19 ~~allows the provider to identify the account of the deceased user.~~  
20 ~~(4) There are no other owners of, or persons or entities who~~  
21 ~~have registered with the provider with respect to, the account of~~  
22 ~~the deceased user.~~  
23 ~~(5) Disclosure is not in violation of another applicable federal~~  
24 ~~or state law.~~  
25 ~~(6) The request for disclosure is narrowly tailored to the purpose~~  
26 ~~of administering the estate or trust.~~  
27 ~~(7) The personal representative or trustee demonstrates a good~~  
28 ~~faith belief that the information requested is relevant to resolve~~  
29 ~~matters regarding assets or liabilities of the estate or trust.~~  
30 ~~(8) The request seeks information spanning no more than 18~~  
31 ~~months immediately prior to the date of death, or the requester has~~  
32 ~~made a request for information that specifically requests data older~~  
33 ~~than 18 months immediately prior to the date of death.~~  
34 ~~(9) The request is not in conflict with the will, trust, or other~~  
35 ~~written, electronic, or oral expression of the deceased user's intent~~  
36 ~~regarding access to, or disposition of, information contained in or~~  
37 ~~regarding the account of the deceased user.~~  
38 ~~(d) A provider may decline to respond to a request pursuant to~~  
39 ~~subdivision (b) because of a concern that complying with the~~  
40 ~~request may violate any other legal authority, be contrary to the~~

1 wishes of the deceased user, or be otherwise inappropriate. Under  
2 those circumstances, a probate court that has jurisdiction of the  
3 estate or trust of the deceased user may order a provider to disclose  
4 to the personal representative or the trustee the contents of  
5 communications or stored contents, if the court makes all of the  
6 following findings of fact based upon a sworn declaration,  
7 indicating the good faith belief and efforts of the personal  
8 representative or trustee, or any other admissible evidence:

9 (1) The will or trust of the deceased user, or a choice made by  
10 the deceased user as part of the product or service, regarding the  
11 manner in which the contents may be used after a set period of  
12 inactivity after the death of the user, or other event evidences the  
13 express consent of the user to the disclosure of the requested  
14 contents.

15 (2) The findings required by paragraphs (1) to (8), inclusive, of  
16 subdivision (e).

17 (e) If a probate proceeding has not been opened, following a  
18 denial from a provider pursuant to subdivision (c) or (d), a personal  
19 representative or trustee may file a verified petition seeking an  
20 order compelling the provider to provide the requested records or  
21 information. This petition shall be filed in the superior court of the  
22 county agreed to by the user in the terms of service agreement or,  
23 in the absence of that agreement, the county in which the deceased  
24 user resided at death. The petitioner shall be the personal  
25 representative of the deceased user or, if none, the successor trustee  
26 of a revocable trust created by the deceased user or the deceased  
27 user's successor in interest, as defined in Section 377.11 of the  
28 Code of Civil Procedure. A probate proceeding does not need to  
29 be opened in order for this petition to be filed and resolved. The  
30 petition shall be titled in the name of the deceased user and shall  
31 set forth all of the facts required under subdivision (b) or (c).

32 (f) Except as provided in subdivision (g), a provider shall  
33 disclose to the personal representative of the estate or the trustee  
34 of the trust the contents of communications or stored contents of  
35 the deceased user's account, to the extent reasonably available,  
36 only if the personal representative or trustee gives the provider all  
37 of the following:

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

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 ~~or trust of the deceased user that includes both of the facts required~~  
3 ~~in subdivision (b):~~

4 ~~(g) A provider served with an order compelling disclosure of~~  
5 ~~deceased user records or contents pursuant to this section may~~  
6 ~~make a motion to vacate or modify the order within 90 days after~~  
7 ~~receiving the order. Upon a motion and a showing of good cause,~~  
8 ~~the court may limit this time frame to 60 days. The court may do~~  
9 ~~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. However, a cost that~~  
14 ~~the requester offers to pay pursuant to subdivision (h) shall not be~~  
15 ~~considered by a court in making a determination whether the~~  
16 ~~request constitutes an undue burden.~~

17 ~~(2) Vacate the order if any of the applicable requirements of~~  
18 ~~subdivision (a) or (b) are not met.~~

19 ~~(3) Vacate the order if the court finds, based upon the~~  
20 ~~preponderance of the evidence submitted by the provider or any~~  
21 ~~other person, that any of the circumstances set forth in Section 872~~  
22 ~~apply.~~

23 ~~(h) A provider may require the requester to pay the direct costs~~  
24 ~~of producing a copy of the record or other information pertaining~~  
25 ~~to the account of the deceased user when those records are not~~  
26 ~~already available for production during the ordinary course of~~  
27 ~~business.~~

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

30 ~~(a) The deceased user expressed an intent to disallow disclosure~~  
31 ~~through either deletion of the records or contents during the user's~~  
32 ~~lifetime, or an affirmative indication, through a setting within the~~  
33 ~~product or service, of the manner in which the user's records or~~  
34 ~~the contents of communications are to be used after a set period~~  
35 ~~of inactivity or other event.~~

36 ~~(b) The provider is aware of any indication of lawful access to~~  
37 ~~the account after the date of the deceased user's death or that the~~  
38 ~~account is not that of the deceased user.~~

1 ~~(e) Disclosure would violate other applicable law, including,~~  
2 ~~but not limited to, electronic communications privacy provisions~~  
3 ~~or copyright law.~~

4 ~~873. (a) Disclosure of the contents of the deceased user's~~  
5 ~~account to the personal representative of the estate or the trustee~~  
6 ~~of the trust is subject to the same license, restrictions, terms of~~  
7 ~~service, and legal obligations, including copyright law, that applied~~  
8 ~~to the deceased user.~~

9 ~~(b) This part does not require a provider to permit a requesting~~  
10 ~~party to assume control of a deceased user's account.~~

11 ~~874. A provider is not liable for disclosing records or contents~~  
12 ~~as required or permitted pursuant to this part.~~

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

14 ~~(a) "Asset" means anything of financial value that is part of the~~  
15 ~~estate of the decedent.~~

16 ~~(b) "Contents" means information concerning the substance,~~  
17 ~~purport, or meaning of communications, including the subject line~~  
18 ~~of the communication and data stored by a remote computer service~~  
19 ~~on behalf of the user.~~

20 ~~(c) "Electronic communication" shall have the same meaning~~  
21 ~~as in Section 2510 of Title 18 of the United States Code.~~

22 ~~(d) "Electronic communication service" means a service that~~  
23 ~~provides to users the ability to send or receive wire or electronic~~  
24 ~~communications.~~

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

30 ~~(f) "Provider" means an electronic communication service or~~  
31 ~~remote computing service.~~

32 ~~(g) "Record" means a record regarding a communication sent~~  
33 ~~or received by a subscriber or user of an electronic communication~~  
34 ~~service or remote computing service, including, but not limited to,~~  
35 ~~account logs that record account usage and online addresses of~~  
36 ~~other individuals with whom the account holder has communicated.~~

37 ~~(h) "Remote computing service" means a service that provides~~  
38 ~~computer storage or processing services to the public by means of~~  
39 ~~an electronic communications system.~~

- 1 (i) ~~“Undue burden” shall be interpreted consistently with the~~  
2 ~~interpretation of that term as used in Section 2031.310 of the Code~~  
3 ~~of Civil Procedure.~~
- 4 (j) ~~“User” means a person or entity who has lawfully obtained~~  
5 ~~credentials to access an account with a provider in a manner~~  
6 ~~consistent with the terms of service that apply to that account.~~

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