**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 62‑1‑115 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE THAT THE PROBATE COURT SHALL ORDER A PROVIDER OF ELECTRONIC COMMUNICATION SERVICES TO DISCLOSE TO A PERSONAL REPRESENTATIVE OF AN ESTATE CERTAIN INFORMATION REGARDING ELECTRONIC COMMUNICATIONS, TO PROVIDE A PROCEDURE FOR THE PROVISION OF THIS INFORMATION, AND TO PROVIDE EXCEPTIONS TO DISCLOSURE AND NOTICE TO CURRENT ACCOUNT USERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Part 1, Article 1, Chapter 1, Title 62 of the 1976 Code is amended by adding:

“Section 62‑1‑115. (A) As used in this section, the term:

(1) ‘Contents’, when used with respect to any wire, oral, or electronic communication, means information concerning the substance, purport, or meaning of that communication, as defined in 18 U.S.C. Section 2510(8) and includes the subject line of a communication.

(2) ‘Electronic communication’ means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo‑optical system that affects interstate or foreign commerce, but does not include:

(a) wire or oral communication;

(b) communication made through a tone‑only paging device;

(c) communication from a tracking device; or

(d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds, as defined in 18 U.S.C. Section 2510(12).

(3) ‘Electronic communication service’ means any service which provides to users the ability to send or receive wire or electronic communications, as defined in 18 U.S.C. Section 2510(15).

(4) ‘Electronic communications system’ means any wire, radio, electromagnetic, photoelectronic, or photo‑optical facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of these communications, as defined in 18 U.S.C. Section 2510(14).

(5) ‘Provider’ means an electronic communications service or remote computing service as defined in 18 U.S.C. Section 2510 or 2711.

(6) ‘Record or other information pertaining to a user’ means the same as term in 18 U.S.C. Section 2702(c).

(7) ‘Remote computing service’ means the provision to the public of computer storage or processing services by means of an electronic communications system, as defined in 18 U.S.C. Section 2711(2).

(8) ‘User’ means any person or entity who:

(a) uses an electronic communication service; and

(b) is authorized by the provider of the service to engage in this use, as defined in 18 U.S.C. Section 2510(13).

(B)(1) The probate court shall order a provider of electronic communications service to the public or a provider of remote computing service to the public to disclose to the personal representative of the estate a record or other information pertaining to the deceased user as described in 18 U.S.C. Section 2702, but not including the contents of communications or stored contents if the court makes the following findings of facts:

(a) the user is deceased;

(b) the deceased user was the subscriber to or customer of the provider;

(c) the accounts belonging to the deceased user have been identified with specificity including a unique identifier assigned by the provider;

(d) there are no other authorized users or owners of the deceased user’s accounts;

(e) disclosure is not in violation of 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

(f) the request for disclosure is narrowly tailored to the purpose of the administration of the estate;

(g) the personal representative demonstrates a good faith belief that account records are relevant to resolve fiscal assets of the estate;

(h) the request seeks information spanning no more than a year prior to the date of death; and

(i) the request is not in conflict with the deceased user’s will or testament.

(2) A provider is required to disclose to the personal representative of the estate of a deceased user the contents of the deceased user’s account only if the personal representative gives the provider all of the following:

(a) a written request for the contents of the deceased user’s account;

(b) a copy of the death certificate of the deceased user; and

(c) an order of the court of probate that by law has jurisdiction of the estate of a deceased user:

(i) finding that the will of the decedent or setting within the product or service regarding how the user’s contents can be treated after a set period of inactivity or other event expressly consented to the disclosure of the contents of the deceased user’s account by the executor or administrator of the estate of the deceased user;

(ii) ordering that the estate shall first indemnify the provider from all liability in complying with the order;

(iii) finding that the user is deceased;

(iv) finding that the deceased user was the subscriber to or customer of the provider;

(v) finding that the accounts belonging to the deceased user have been identified with specificity including a unique identifier assigned by the provider;

(vi) finding that there are no other authorized users or owners of the deceased user’s accounts; and

(vii) finding that disclosure of the contents is not in violation of 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law.

(C) A court issuing an order pursuant to subsection (B), on a motion made promptly by the provider, shall quash or modify the order if compliance with the order otherwise would cause an undue burden on the provider, or any of the requirements in subsection (B) are not satisfied.

(D)(1) Notwithstanding the provisions of subsection (B), a provider cannot be compelled to disclose any record or any contents of communications if:

(a) the deceased user expressed a different intent through the deletion of the records or contents during the user’s lifetime, or an affirmative indication through a setting within the product or service regarding how the user’s records or contents can be treated after a set period of inactivity or other event;

(b) the provider is aware of any indication of lawful access to the account after the date of the deceased user’s death; or

(c) disclosure violates other applicable law.

(2) Nothing in this section may be interpreted to confer upon the recipient greater rights in the contents than those enjoyed by the deceased user.

(E) A provider may notify the current user of the account, if applicable, that a request for information was made pursuant to subsection (B), and may provide any current user of the account a reasonable period of time to object to disclosure during which no disclosure may be made. If a user notifies the provider that he or she objects, no disclosure may be made.

(F) A provider is not required to allow any requesting party to assume control of the deceased user’s account.

(G) A provider is not liable in a civil or criminal action for compliance in good faith with a court order issued pursuant to this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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