

13102072D

SENATE BILL NO. 914

Offered January 9, 2013

Prefiled January 7, 2013

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 64.2 an article numbered 3, consisting of sections numbered 64.2-109 and 64.2-110, relating to fiduciary access to digital assets.

Patron—Ruff

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 64.2 an article numbered 3, consisting of sections numbered 64.2-109 and 64.2-110, as follows:

Article 3.

Fiduciary Access to Digital Assets.

§ 64.2-109. Definitions.

As used in this article, unless the context requires otherwise:

"Custodian" means any person that electronically stores the digital assets of an individual or that maintains, manages, controls, or operates the digital accounts owned or accessed by an individual or his agents or representatives.

"Digital account" means an electronic account containing a digital asset and includes blogging, email, financial, multimedia, personal, social networking, and other online accounts.

"Digital asset" means any text, images, multimedia information, or other personal property stored in an analog or digital format, whether stored on a server, computer, or other electronic device or in an electronic medium, regardless of the ownership of the server, computer, device, or electronic medium and regardless of whether the digital asset is remotely stored. "Digital asset" includes any words, characters, codes, or contractual rights necessary to access the digital assets.

"Fiduciary" has the same meaning as provided in § 64.2-100.

"Terms of service agreement" means any agreement that controls a relationship between an individual and any person that maintains, manages, or supervises a digital account or digital asset of an individual, including any contract between a person and the user of the person's site or service that establishes the terms, conditions, or privacy policy of the person's site or service or that otherwise defines the rights and limitations of each party with regard to the use of the site.

§ 64.2-110. Power granted to fiduciaries to take control of digital accounts; responsibility of custodian.

A. A fiduciary, whether heretofore or hereafter appointed, is hereby granted the power to take control of, conduct, continue, or terminate any accounts of a person or estate to whom he owes a fiduciary duty on any social networking website, microblogging or short message service website, or electronic mail service website unless such actions are contrary to the express provisions of the will, trust instrument, power of attorney, or court order creating the fiduciary powers.

B. A custodian shall transfer, deliver, or provide to the fiduciary access to or possession of any digital accounts and electronic copies of digital assets maintained, managed, controlled, or operated by the custodian within 30 days from the receipt of a written request from the fiduciary for such access or possession and:

1. In the case of a personal representative of a decedent's estate, a copy of the death certificate of the decedent or a copy of the order from the court administering the estate granting administration to the personal representative;

2. In the case of a trustee, a copy of the trust instrument;

3. In the case of an agent under a power of attorney, a copy of the power of attorney; or

4. In the case of a guardian or conservator, a copy of the court order appointing the guardian or conservator.

C. A custodian shall not destroy or dispose of a digital asset or account for two years after the custodian receives a written request from a fiduciary pursuant to subsection B.

D. This section supersedes any contrary provision in the terms of service agreement, and a fiduciary shall be considered an authorized user who has the lawful consent of the person or estate to whom he owes a fiduciary duty for purposes of accessing or possessing such person's or estate's digital accounts and digital assets.

E. No person may maintain a cause of action against a custodian who complies with the provisions of this article.