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SENATE BILL NO. 913

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 18, 2013)

(Patron Prior to Substitute—Senator Ruff)

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 personal representative access to digital accounts.

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.

Personal Representative Access to Digital Accounts.

§ 64.2-109. Definitions.

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

"Digital account" means an electronic account maintained, managed, controlled, or operated by a minor in accordance with a terms of service agreement legally executed by such minor and includes blogging, email, multimedia, personal, social networking, and other online accounts or comparable items as technology develops. "Digital account" excludes accounts as such term is defined in § 6.2-604 to which a financial institution, financial institution holding company, or affiliate or subsidiary of a financial institution is a party.

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

"Terms of service agreement" means any legally executed agreement that controls a relationship between a minor and any person or entity that maintains, manages, or supervises a digital account of a minor.

§ 64.2-110. Power granted to personal representative.

A. A personal representative of a deceased minor who was domiciled in the Commonwealth at the time of his death may assume the deceased minor's terms of service agreement for a digital account with an Internet service provider, communications service provider, or other online account service provider for purposes of consenting to and obtaining the disclosure of the contents of the deceased minor's communications and subscriber records pursuant to 18 U.S.C. § 2702 unless such access is contrary to the express provisions of a will, trust instrument, power of attorney, or court order. Such access shall be subject to the same license, restrictions, or legal obligations of the deceased minor.

B. An Internet service provider, communications service provider, or other online account service provider shall provide to the personal representative access to the deceased minor's communications and subscriber records pursuant to subsection A within 60 days from the receipt of (i) a written request for such access by the personal representative and (ii) a copy of the death certificate of the deceased minor. However, if the Internet service provider, communications service provider, or other online account service provider receives notice of a claim or dispute regarding providing access to the deceased minor's communications and subscriber records pursuant to this subsection, such provider is not required to comply with any written request received pursuant to this subsection until a final nonappealable judgment is rendered by a court of competent jurisdiction determining the rights in or entitlement to any content in the deceased minor's digital account.

C. Nothing in this section shall be construed to require an Internet service provider, communications service provider, or other online account service provider to disclose any information in violation of any applicable state or federal law.

D. No person may maintain a cause of action against an Internet service provider, communications service provider, or other online account service provider for acting in compliance with this section.