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SENATE BILL NO. 913

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 1, 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 assets.

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 Assets.

§ 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 containing a digital asset 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.

"Digital asset" means any text, images, multimedia information, or other personal property contained in a minor's digital account that is 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. "Digital asset" excludes any such assets held by a financial institution, financial institution holding company, or affiliate or subsidiary of a financial institution.

"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 or digital asset 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 ratify the deceased minor's terms of service agreement 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 digital assets 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.

B. An Internet service provider, communications service provider, or other online account service provider shall provide to the personal representative an electronic copy of the deceased minor's digital assets pursuant to subsection A within 30 days from the receipt of (i) a written request for such a copy by the personal representative and (ii) a copy of the death certificate of the deceased minor.

C. Upon receipt by the Internet service provider, communications service provider, or other online account service provider of a written request in accordance with subsection B, such provider shall maintain and not destroy or dispose of the subject digital asset or account at least until the personal representative has been provided an electronic copy of the digital assets requested in accordance with subsection B.

D. 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.

E. 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.