



Rep. Marcus C. Evans, Jr.

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1 AMENDMENT TO SENATE BILL 1376

2 AMENDMENT NO. _____. Amend Senate Bill 1376 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Access to Records of Deceased Individuals Act.

6 Section 5. Definitions. As used in this Act:

7 "Contents", when used with respect to any wire, oral, or
8 electronic communication, includes any information concerning
9 the substance, purport, or meaning of that communication, as
10 defined in 18 U.S.C. 2510(8), and includes the subject line of
11 a communication.

12 "Electronic communication" means any transfer of signs,
13 signals, writing, images, sounds, data, or intelligence of any
14 nature transmitted in whole or in part by a wire, radio,
15 electromagnetic, or photoelectronic or photooptical system
16 that affects interstate or foreign commerce, but does not

1 include:

2 (1) any wire or oral communication;

3 (2) any communication made through a tone-only paging
4 device;

5 (3) any communication from a tracking device; or

6 (4) electronic funds transfer information stored by a
7 financial institution in a communications system used for
8 the electronic storage and transfer of funds,

9 as defined in 18 U.S.C. 2510(12).

10 "Electronic communication service" means any service which
11 provides to users thereof the ability to send or receive wire
12 or electronic communications, as defined in 18 U.S.C. 2510(15).

13 "Electronic communications system" means any wire, radio,
14 electromagnetic, or photooptical or photoelectronic facilities
15 for the transmission of wire or electronic communications and
16 any computer facilities or related electronic equipment for the
17 electronic storage of such communications, as defined in 18
18 U.S.C. 2510(14).

19 "Provider" means an electronic communication service or
20 remote computing service as defined in 18 U.S.C. 2510 or 2711.

21 "Record or other information pertaining to" shall be
22 interpreted in a manner consistent with that term as used in 18
23 U.S.C. 2702(c).

24 "Remote computing service" means the provision to the
25 public of computer storage or processing services by means of
26 an electronic communications system, as defined in 18 U.S.C.

1 2711(2).

2 "User" means any person or entity that:

3 (1) uses an electronic communication service; and

4 (2) is duly authorized by the provider of the service
5 to engage in such use,

6 as defined in 18 U.S.C. 2510(13).

7 Section 10. Disclosure to executor or administrator.

8 (a) A court that has jurisdiction of the estate of a
9 deceased user shall order a provider to disclose to the
10 executor or administrator of the estate a record or other
11 information pertaining to the deceased user as described in 18
12 U.S.C. 2702, but not including the contents of communications
13 or stored contents, if the court makes the following findings
14 of fact:

15 (1) the user is deceased;

16 (2) the deceased user was the subscriber to or customer
17 of the provider;

18 (3) the accounts belonging to the deceased user have
19 been identified with specificity, including a unique
20 identifier assigned by the provider;

21 (4) there are no other authorized users or owners of
22 the deceased user's accounts;

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

25 (6) the request for disclosure is narrowly tailored to

1 effect the purpose of the administration of the estate;

2 (7) the executor or administrator demonstrates a good
3 faith belief that account records are relevant to resolve
4 fiscal assets of the estate;

5 (8) the request seeks information spanning no more than
6 one year prior to the date of death; and

7 (9) the request is not in conflict with the deceased
8 user's will.

9 (b) A provider shall be required to disclose to the
10 executor or administrator of the estate of a deceased user the
11 contents of the deceased user's account only if the executor or
12 administrator gives the provider all of the following:

13 (1) a written request for the contents of deceased
14 user's account;

15 (2) a copy of the death certificate of the deceased
16 user; and

17 (3) an order of the court that has jurisdiction of the
18 estate of a deceased user:

19 (A) finding that the will of the decedent or a
20 setting within the product or service regarding how the
21 user's contents can be treated after a set period of
22 inactivity or other event expressly consented to the
23 disclosure of the contents of the deceased user's
24 account by the executor or administrator of the estate
25 of the deceased user;

26 (B) ordering that the estate shall first indemnify

1 the provider from all liability in complying with the
2 order;

3 (C) finding that the user is deceased;

4 (D) finding that the deceased user was the
5 subscriber to or customer of the provider;

6 (E) finding that accounts belonging to the
7 deceased user have been identified with specificity,
8 including a unique identifier assigned by the
9 provider;

10 (F) finding that there are no other authorized
11 users or owners of the deceased user's accounts; and

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

15 Section 15. Undue hardship. A court entering an order
16 pursuant to Section 10 shall quash or modify the order, on a
17 motion made promptly by the provider, if compliance with the
18 order would otherwise cause an undue burden on the provider or
19 if any of the requirements of Section 10 are not satisfied.

20 Section 20. Limitations on disclosure.

21 (a) Notwithstanding Section 10, a provider shall not be
22 compelled to disclose any record or any contents of
23 communications if:

24 (1) the deceased user expressed his or her intent to

1 disallow disclosure through (i) deletion of the records or
2 contents during the user's lifetime or (ii) affirmatively
3 indicating through a setting within the product or service
4 regarding how the user's records or contents can be treated
5 after a set period of inactivity or other event;

6 (2) the provider is aware of any indication of lawful
7 access to the account after the date of the deceased user's
8 death; or

9 (3) disclosure violates other applicable law.

10 (b) Nothing in this Act shall be interpreted to confer upon
11 the recipient any greater rights in the contents than those
12 enjoyed by the deceased user.

13 Section 25. Notice of request for disclosure; time for
14 objection. A provider may notify the account that a request for
15 information was made pursuant to Section 10, and may provide
16 any current user of the account a reasonable period of time to
17 object to disclosure, during which no disclosure shall be made.
18 If a user notifies the provider that he or she objects, no
19 disclosure shall be made.

20 Section 30. Allowing assumption of control not required. A
21 provider shall not be required to allow any requesting party to
22 assume control of the deceased user's account.

23 Section 35. No liability; good faith compliance. A provider

1 shall not be held liable in any civil or criminal action for
2 compliance in good faith with a court order issued pursuant to
3 this Act.".