

Regular Session, 2014

SENATE BILL NO. 461

BY SENATORS PEACOCK AND LAFLEUR

SUCCESSIONS. Provides relative to electronic assets of a decedent. (8/1/14)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact Code of Civil Procedure Art. 3191, relative to administration of successions; to provide relative to certain functions, powers, and duties of a succession representative; to provide relative to terms and definitions; to provide with respect to electronic assets of a decedent; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Art. 3191 is hereby amended and reenacted to read as follows:

Art. 3191. General duties; appointment of agent

A. A succession representative is a fiduciary with respect to the succession, and shall have the duty of collecting, preserving, and managing the property of the succession in accordance with law. He shall act at all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure so to act.

B. A nonresident succession representative may execute a power of attorney appointing a resident of the state to represent him in all acts of his administration. A resident succession representative who will be absent from the state temporarily

1 similarly may appoint an agent to act for him during his absence. In either case, the
2 power of attorney appointing the agent shall be filed in the record of the succession
3 proceeding.

4 C. Subject to any restrictions provided in a valid testament of a decedent
5 or a contrary order of a court of competent jurisdiction, a succession
6 representative shall have the power and authority to take control of, handle,
7 conduct, continue, distribute, or terminate any digital account of the decedent.

8 D. Any person that electronically stores, maintains, manages, controls,
9 operates or administers the digital accounts of a decedent shall transfer, deliver,
10 or provide a succession representative access or possession of any digital
11 account of a decedent within thirty days after receipt of either a death
12 certificate of the decedent and letters testamentary evidencing the appointment
13 of the succession representative or a copy of the court order appointing the
14 succession representative.

15 E. This Article supersedes any contrary provision in the terms and
16 conditions of any service agreement and a succession representative shall be
17 considered an authorized user with lawful consent of the decedent for purposes
18 of accessing or possession the decedent's digital accounts.

19 F. The authority provided in this Article shall be specifically subject to
20 copyright law and shall not increase the scope of the license granted in the terms
21 of service of any digital account. The agent, representative or fiduciary shall be
22 personally responsible for any infringement of third party copyrights that
23 occurs in the transfer or distribution of any digital account or its contents.

24 G. For purposes of this Article, the term "digital account" shall include
25 any account of the decedent on any social networking Internet website, web log
26 Internet website, microblog service Internet website, short message service
27 Internet website, electronic mail service Internet website, financial account
28 Internet website, or any similar electronic services or records, together with any
29 words, characters, codes, or contractual rights necessary to access such digital

- 1 **assets and any text, images, multimedia information, or other personal property**
2 **stored by or through such digital account.**

The original instrument was prepared by Angela Lockett De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Julie J Baxter.

DIGEST

Peacock (SB 461)

Present law provides that a succession representative is a fiduciary with respect to the succession, and shall have the duty of collecting, preserving, and managing the property of the succession in accordance with law. He shall act at all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure so to act.

Present law provides that a nonresident succession representative may execute a power of attorney appointing a resident of the state to represent him in all acts of his administration. A resident succession representative who will be absent from the state temporarily similarly may appoint an agent to act for him during his absence. In either case, the power of attorney appointing the agent shall be filed in the record of the succession proceeding.

Proposed law provides that subject to any restrictions provided in a valid testament of a decedent or a contrary order of a court of competent jurisdiction, a succession representative shall have the power and authority to take control of, handle, conduct, continue, distribute, or terminate any digital account of the decedent.

Proposed law provides that any person that electronically stores, maintains, manages, controls, operates or administers the digital accounts of a decedent shall transfer, deliver, or provide a succession representative access or possession of any digital account of a decedent within 30 days of its receipt of either a death certificate of the decedent and letters testamentary evidencing the appointment of the succession representative or a copy of the court order appointing the succession representative.

Proposed law provides that it supersedes any contrary provision in the terms and conditions of any service agreement and a succession representative shall be considered an authorized user with lawful consent of the decedent for purposes of accessing or possession of the decedent's digital accounts.

Proposed law provides that for purposes of proposed law, the term "digital account" includes any account of the decedent on any social networking Internet website, web log Internet website, microblog service Internet website, short message service Internet website, electronic mail service Internet website, financial account Internet website, or any similar electronic services or records, together with any words, characters, codes, or contractual rights necessary to access such digital assets and any text, images, multimedia information, or other personal property stored by or through such digital account.

Proposed law provides that the authority provided in proposed law shall be specifically subject to copyright law and shall not increase the scope of the license granted in the terms of service of any digital account. Proposed law further provides that the agent, representative or fiduciary shall be personally responsible for any infringement of third party copyrights that occurs in the transfer or distribution of any digital account or its contents.

Effective August 1, 2014.

(Amends C.C.P. Art. 3191)

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Provides that subject to any restrictions provided in a valid testament of a decedent or a contrary order of a court of competent jurisdiction, a succession representative shall have the power and authority to take control of, handle, conduct, continue, distribute, or terminate any digital account of the decedent.
2. Provides that the authority provided in proposed law shall be specifically subject to copyright law and shall not increase the scope of the license granted in the terms of service of any digital account. Also provides that the agent, representative or fiduciary shall be personally responsible for any infringement of third party copyrights that occurs in the transfer or distribution of any digital account or its contents.