

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 AN ACT

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

6 Be it enacted by the Legislature of Louisiana:

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

9 Art. 3191. General duties; appointment of agent

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

15 B. A nonresident succession representative may execute a power of attorney
16 appointing a resident of the state to represent him in all acts of his administration. A
17 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.(1) Except as provided in Subparagraph (D)(2) of this Article, any
9 person that electronically stores, maintains, manages, controls, operates or
10 administers the digital accounts of a decedent shall transfer, deliver, or provide
11 a succession representative access or possession of any digital account of a
12 decedent within thirty days after receipt of letters testamentary, letters of
13 administration, or letters of independent administration evidencing the
14 appointment of the succession representative.

15 (2) Notwithstanding any other provision of law to the contrary, R.S.
16 6:325 or R.S. 6:767 shall exclusively govern how federally insured financial
17 institutions provide Internet or other electronic access to an authorized
18 succession representative for the administration of a decedent's estate.

19 E. This Article supersedes any contrary provision in the terms and
20 conditions of any service agreement and a succession representative shall be
21 considered an authorized user with lawful consent of the decedent for purposes
22 of accessing or possessing the decedent's digital accounts.

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

28 G. For purposes of this Article, the term "digital account" shall include
29 any account of the decedent on any social networking Internet website, web log

1 Internet website, microblog service Internet website, short message service
 2 Internet website, electronic mail service Internet website, financial account
 3 Internet website, or any similar electronic services or records, together with any
 4 words, characters, codes, or contractual rights necessary to access such digital
 5 assets and any text, images, multimedia information, or other personal property
 6 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 McHenry Lee.

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, except as provided in proposed law, 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 after receipt of letters testamentary, letters of administration, or letters of independent administration evidencing the appointment of the succession representative.

Proposed law provides that La. R.S. 6:325 or R.S. 6:767 will exclusively govern how federally insured financial institutions provide Internet or other electronic access to an authorized succession representative for the administration of a decedent's estate.

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 possessing 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 Senate

Committee 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.

Senate Floor Amendments to engrossed bill

1. Changes the information evidencing the appointment of the succession representative relative to the transfer, delivery, or access to digital accounts of the decedent.
2. Requires how federally insured financial institutions provide Internet or other electronic access to a succession representative.
3. Makes technical changes.