

AMENDED IN SENATE JUNE 14, 2016
AMENDED IN SENATE APRIL 20, 2016
AMENDED IN SENATE APRIL 11, 2016
AMENDED IN SENATE SEPTEMBER 4, 2015
AMENDED IN SENATE JULY 1, 2015
AMENDED IN ASSEMBLY APRIL 30, 2015
AMENDED IN ASSEMBLY APRIL 20, 2015
AMENDED IN ASSEMBLY APRIL 14, 2015
AMENDED IN ASSEMBLY MARCH 23, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 691

**Introduced by Assembly Member Calderon
(Coauthors: Assembly Members Travis Allen, Chang, Chávez, Chu,
Dababneh, Cristina Garcia, Gatto, Gonzalez, Steinorth, and
Waldron)**

February 25, 2015

An act to add Part 20 (commencing with Section 870) to Division 2 of the Probate Code, relating to estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Calderon. Revised Uniform Fiduciary Access to Digital Assets Act.

Existing law provides for the disposition of a testator's property by will. Existing law also provides for the disposition of that portion of a

decedent’s estate not disposed of by will. Existing law provides that the decedent’s property, including property devised by a will, is generally subject to probate administration, except as specified.

This bill would enact the Revised Uniform Fiduciary Access to Digital Assets Act, which would authorize a decedent’s personal representative or trustee to access and manage digital assets and electronic communications, as specified. The bill would authorize a person to use an online tool to give directions to the custodian of his or her digital assets regarding the disclosure of those assets. The bill would specify that, if a person has not used an online tool to give that direction, he or she may give direction regarding the disclosure of digital assets in a will, trust, power of attorney, or other record. The bill would require a custodian of the digital assets to comply with a fiduciary’s request for disclosure of digital assets or to terminate an account, except under certain circumstances, including when the decedent has prohibited this disclosure using the online tool. The bill would make custodians immune from liability for an act or omission done in good faith in compliance with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 20 (commencing with Section 870) is added
2 to Division 2 of the Probate Code, to read:

3
4 PART 20. REVISED UNIFORM FIDUCIARY ACCESS TO
5 DIGITAL ASSETS ACT
6

7 870. This part shall be known, and may be cited, as the Revised
8 Uniform Fiduciary Access to Digital Assets Act.

9 871. As used in this part, the following terms shall have the
10 following meanings:

11 (a) “Account” means an arrangement under a terms-of-service
12 agreement in which the custodian carries, maintains, processes,
13 receives, or stores a digital asset of the user or provides goods or
14 services to the user.

15 (b) “Carries” means engages in the transmission of electronic
16 communications.

1 (c) “Catalogue of electronic communications” means
2 information that identifies each person with which a user has had
3 an electronic communication, the time and date of the
4 communication, and the electronic address of the person.

5 (d) “Content of an electronic communication” means
6 information concerning the substance or meaning of the
7 communication, which meets all of the following requirements:

8 (1) Has been sent or received by a user.

9 (2) Is in electronic storage by a custodian providing an electronic
10 communication service to the public or is carried or maintained
11 by a custodian providing a remote-computing service to the public.

12 (3) Is not readily accessible to the public.

13 (e) “Court” means the superior court presiding over the judicial
14 proceedings which have been initiated under this code to administer
15 the estate of the deceased user, or, if none, the superior court sitting
16 in the exercise of jurisdiction under this code in the county of the
17 user’s domicile, and the court, as defined in this section, shall have
18 exclusive jurisdiction over proceedings brought under this part.

19 (f) “Custodian” means a person that carries, maintains,
20 processes, receives, or stores a digital asset of a user.

21 (g) “Designated recipient” means a person chosen by a user
22 using an online tool to administer digital assets of the user.

23 (h) “Digital asset” means an electronic record in which an
24 individual has a right or interest. The term “digital asset” does not
25 include an underlying asset or liability, unless the asset or liability
26 is itself an electronic record.

27 (i) “Electronic” means relating to technology having electrical,
28 digital, magnetic, wireless, optical, electromagnetic, or similar
29 capabilities.

30 (j) “Electronic communication” has the same meaning as the
31 definition in Section 2510(12) of Title 18 of the United States
32 Code.

33 (k) “Electronic communication service” means a custodian that
34 provides to a user the ability to send or receive an electronic
35 communication.

36 (l) “Fiduciary” means an original, additional, or successor
37 personal representative or trustee.

38 (m) “Information” means data, text, images, videos, sounds,
39 codes, computer programs, software, databases, or other items
40 with like characteristics.

1 (n) “Online tool” means an electronic service provided by a
2 custodian that allows the user, in an agreement distinct from the
3 terms-of-service agreement between the custodian and user, to
4 provide directions for disclosure or nondisclosure of digital assets
5 to a third person.

6 (o) “Person” means an individual, estate, business or nonprofit
7 entity, public corporation, government or governmental
8 subdivision, agency, or instrumentality, or other legal entity.

9 (p) “Personal representative” means an executor, administrator,
10 special administrator, or person that performs substantially the
11 same function under any other law.

12 (q) “Power of attorney” means a record that grants an agent
13 authority to act in the place of the principal.

14 (r) “Record” means information that is inscribed on a tangible
15 medium or that is stored in an electronic or other medium and is
16 retrievable in a perceivable form.

17 (s) “Remote-computing service” means a custodian that provides
18 to a user computer processing services or the storage of digital
19 assets by means of an electronic communications system, as
20 defined in Section ~~2510(4)~~ 2510(14) of Title 18 of the United
21 States Code.

22 (t) “Terms-of-service agreement” means an agreement that
23 controls the relationship between a user and a custodian.

24 (u) “Trustee” means a fiduciary with legal title to property under
25 an agreement or declaration that creates a beneficial interest in
26 another. The term includes a successor trustee.

27 (v) “User” means a person that has an account with a custodian.

28 (w) “Will” includes a codicil, a testamentary instrument that
29 only appoints an executor, or an instrument that revokes or revises
30 a testamentary instrument.

31 872. (a) This part shall apply to any of the following:

32 (1) A fiduciary acting under a will executed before, on, or after
33 January 1, 2017.

34 (2) A personal representative acting for a decedent who died
35 before, on, or after January 1, 2017.

36 (3) A trustee acting under a trust created before, on, or after
37 January 1, 2017.

38 (4) A custodian of digital assets for a user if the user resides in
39 this state or resided in this state at the time of the user’s death.

1 (b) This part shall not apply to a digital asset of an employer
2 used by an employee in the ordinary course of the employer's
3 business.

4 873. (a) A user may use an online tool to direct the custodian
5 to disclose to a designated recipient or not disclose some or all of
6 the user's digital assets, including the content of electronic
7 communications. If the online tool allows the user to modify or
8 delete a direction at all times, a direction regarding disclosure using
9 an online tool overrides a contrary direction by the user in a will,
10 trust, power of attorney, or other record.

11 (b) If a user has not used an online tool to give direction under
12 subdivision (a) or if a custodian has not provided an online tool,
13 a user may allow or prohibit in a will, trust, power of attorney, or
14 other record the disclosure to a fiduciary of some or all of the user's
15 digital assets, including the contents of electronic communications
16 sent or received by the user.

17 (c) A user's direction under subdivision (a) or (b) overrides a
18 contrary provision in a terms-of-service ~~agreement that does not~~
19 ~~require the user to act affirmatively and distinctly from the user's~~
20 ~~assent to the terms-of-service agreement.~~ *agreement.*

21 874. (a) This part does not change or impair a right of a
22 custodian or a user under a terms-of-service agreement to access
23 and use digital assets of a user.

24 (b) This part does not give a fiduciary or designated recipient
25 any new or expanded rights other than those held by the user for
26 whom, or for whose estate or trust, the fiduciary or designated
27 recipient acts or represents.

28 (c) A fiduciary's or designated recipient's access to digital assets
29 may be modified or eliminated by a user, by federal law, or by a
30 terms-of-service agreement when the user has not provided any
31 direction that is recognized in Section 873.

32 875. (a) When disclosing the digital assets of a user under this
33 part, the custodian may, in its sole discretion, do any of the
34 following:

35 (1) Grant the fiduciary or designated recipient full access to the
36 user's account.

37 (2) Grant the fiduciary or designated recipient partial access to
38 the user's account sufficient to perform the tasks with which the
39 fiduciary or designated recipient is charged.

1 (3) Provide the fiduciary or designated recipient with a copy in
2 a record of any digital asset that, on the date the custodian received
3 the request for disclosure, the user could have accessed if the user
4 were alive and had full capacity and access to the account.

5 (b) A custodian may assess a reasonable administrative charge
6 for the cost of disclosing digital assets under this part.

7 (c) A custodian need not disclose under this part a digital asset
8 deleted by a user.

9 (d) If a user directs or a fiduciary or designated recipient requests
10 a custodian to disclose under this part some, but not all, of the
11 user's digital assets, the custodian need not disclose the assets if
12 segregation of the assets would impose an undue burden on the
13 custodian. If the custodian believes the direction or request imposes
14 an undue burden, the custodian, fiduciary, or designated recipient
15 may petition the court for an order to do any of the following:

16 (1) Disclose a subset limited by date of the user's digital assets.

17 (2) Disclose all of the user's digital assets to the fiduciary or
18 designated recipient.

19 (3) Disclose none of the user's digital assets.

20 (4) Disclose all of the user's digital assets to the court for review
21 in camera.

22 876. If a deceased user consented to or a court directs disclosure
23 of the content of electronic communications of the user, the
24 custodian shall disclose to the personal representative of the estate
25 of the user the content of an electronic communication sent or
26 received by the user if the personal representative gives to the
27 custodian all of the following:

28 (a) A written request for disclosure in physical or electronic
29 form.

30 (b) A certified copy of the death certificate of the user.

31 (c) A certified copy of the letter of appointment of the
32 representative, a small-estate affidavit under Section 13101, or
33 court order.

34 (d) Unless the user provided direction using an online tool, a
35 copy of the user's will, trust, power of attorney, or other record
36 evidencing the user's consent to disclosure of the content of
37 electronic communications.

38 (e) If requested by the custodian, any of the following:

1 (1) A number, ~~user name~~, *username*, address, or other unique
2 subscriber or account identifier assigned by the custodian to
3 identify the user's account.

4 (2) Evidence linking the account to the user.

5 (3) An order of the court finding any of the following:

6 (A) That the user had a specific account with the custodian,
7 identifiable by the information specified in paragraph (1).

8 (B) That disclosure of the content of the user's electronic
9 communications would not violate Chapter 121 (commencing with
10 Section 2701) of Part 1 of Title 18 of, and Section 222 of Title 47
11 of, the United ~~State~~ *States* Code, or other applicable law.

12 (C) Unless the user provided direction using an online tool, that
13 the user consented to disclosure of the content of electronic
14 communications.

15 (D) That disclosure of the content of electronic communications
16 of a user is reasonably necessary for estate administration.

17 877. Unless the user prohibited disclosure of digital assets or
18 the court directs otherwise, a custodian shall disclose to the
19 personal representative of the estate of a deceased user a catalogue
20 of electronic communications sent or received by the user and
21 digital assets, other than the content of electronic communications,
22 of the user, if the personal representative gives to the custodian all
23 of the following:

24 (a) A written request for disclosure in physical or electronic
25 form.

26 (b) A certified copy of the death certificate of the user.

27 (c) A certified copy of the letter of appointment of the
28 representative, a small-estate affidavit under Section 13101, or
29 court order.

30 (d) If requested by the custodian, any of the following:

31 (1) A number, ~~user name~~, *username*, address, or other unique
32 subscriber or account identifier assigned by the custodian to
33 identify the user's account.

34 (2) Evidence linking the account to the user.

35 (3) An affidavit stating that disclosure of the user's digital assets
36 is reasonably necessary for estate administration.

37 (4) An order of the court finding either of the following:

38 (A) That the user had a specific account with the custodian,
39 identifiable by the information specified in paragraph (1).

1 (B) That disclosure of the user's digital assets is reasonably
2 necessary for estate administration.

3 878. Unless otherwise ordered by the court, directed by the
4 user, or provided in a trust, a custodian shall disclose to a trustee
5 that is not an original user of an account the content of an electronic
6 communication sent or received by an original or successor user
7 and carried, maintained, processed, received, or stored by the
8 custodian in the account of the trust if the trustee gives to the
9 custodian all of the following:

10 (a) A written request for disclosure in physical or electronic
11 form.

12 (b) A certified copy of the death certificate of the settlor.

13 (c) A certified copy of the trust instrument, or a certification of
14 trust under Section 18100.5, evidencing the settlor's consent to
15 disclosure of the content of electronic communications to the
16 trustee.

17 (d) A certification by the trustee, under penalty of perjury, that
18 the trust exists and that the trustee is a currently acting trustee of
19 the trust.

20 (e) If requested by the custodian, any of the following:

21 (1) A number, username, address, or other unique subscriber or
22 account identifier assigned by the custodian to identify the trust's
23 account.

24 (2) Evidence linking the account to the trust.

25 879. Unless otherwise ordered by the court, directed by the
26 user, or provided in a trust, a custodian shall disclose, to a trustee
27 that is not an original user of an account, the catalogue of electronic
28 communications sent or received by an original or successor user
29 and stored, carried, or maintained by the custodian in an account
30 of the trust and any digital assets, other than the content of
31 electronic communications, in which the trust has a right or interest
32 if the settlor of the trust is deceased and the trustee gives the
33 custodian all of the following:

34 (a) A written request for disclosure in physical or electronic
35 form.

36 (b) A certified copy of the death certificate of the settlor.

37 (c) A certified copy of the trust instrument or a certification of
38 trust under Section 18100.5.

1 (d) A certification by the trustee, under penalty of perjury, that
2 the trust exists and that the trustee is a currently acting trustee of
3 the trust.

4 (e) If requested by the custodian, any of the following:

5 (1) A number, username, address, or other unique subscriber or
6 account identifier assigned by the custodian to identify the trust's
7 account.

8 (2) Evidence linking the account to the trust.

9 880. (a) The legal duties imposed on a fiduciary charged with
10 managing tangible property apply to the management of digital
11 assets, including all of the following:

12 (1) The duty of care.

13 (2) The duty of loyalty.

14 (3) The duty of confidentiality.

15 (b) All of the following shall apply to a fiduciary's or designated
16 recipient's authority with respect to a digital asset of a user:

17 (1) Except as otherwise provided in Section 873, a fiduciary's
18 or designated recipient's authority is subject to the applicable
19 terms-of-service agreement.

20 (2) A fiduciary's or designated recipient's authority is subject
21 to other applicable law, including copyright law.

22 (3) In the case of a fiduciary, a fiduciary's authority is limited
23 by the scope of the fiduciary's duties.

24 (4) A fiduciary's or designated recipient's authority may not be
25 used to impersonate the user.

26 (c) A fiduciary with authority over the property of a decedent
27 or settlor has the right of access to any digital asset in which the
28 decedent or settlor had a right or interest and that is not held by a
29 custodian or subject to a terms-of-service agreement. *Nothing in*
30 *this subdivision requires a custodian to share passwords or decrypt*
31 *protected devices.*

32 (d) A fiduciary acting within the scope of the fiduciary's duties
33 is an authorized user of the property of the decedent or settlor for
34 the purpose of applicable computer-fraud and
35 unauthorized-computer-access laws.

36 (e) The following shall apply to a fiduciary with authority over
37 the tangible, personal property of a decedent or settlor:

38 (1) The fiduciary has the right to access the property and any
39 digital asset stored in it. *Nothing in this subdivision requires a*
40 *custodian to share passwords or decrypt protected devices.*

1 (2) The fiduciary is an authorized user for purposes of any
 2 applicable computer-fraud and unauthorized-computer-access
 3 laws.

4 (f) A custodian may disclose information in an account to a
 5 fiduciary of the decedent or settlor when the information is required
 6 to terminate an account used to access digital assets licensed to
 7 the user.

8 (g) A fiduciary of a decedent or settlor may request a custodian
 9 to terminate the user’s account. A request for termination shall be
 10 in writing, in either physical or electronic form, and accompanied
 11 by all of the following:

12 (1) If the user is deceased, a certified copy of the death
 13 certificate of the user.

14 (2) A certified copy of the letter of appointment of the
 15 representative, a small-estate affidavit under Section 13101, a court
 16 order, a certified copy of the trust ~~instrument~~ *instrument*, or a
 17 certification of the trust under Section 18100.5 giving the fiduciary
 18 authority over the account.

19 (3) If requested by the custodian, any of the following:

20 (A) A number, ~~user name~~, *username*, address, or other unique
 21 subscriber or account identifier assigned by the custodian to
 22 identify the user’s account.

23 (B) Evidence linking the account to the user.

24 (C) A finding by the court that the user had a specific account
 25 with the custodian, identifiable by the information specified in
 26 subparagraph (A).

27 881. (a) Not later than 60 days after receipt of the information
 28 required under ~~Section~~ *Sections* 876 to ~~Section~~ 879, inclusive, a
 29 custodian shall comply with a request under this part from a
 30 fiduciary or designated recipient to disclose digital assets or
 31 terminate an account. If the custodian fails to comply with a
 32 request, the fiduciary or designated recipient may apply to the
 33 court for an order directing compliance.

34 (b) An order under subdivision (a) directing compliance shall
 35 contain a finding that compliance is not in violation of Section
 36 2702 of Title 18 of the United States Code.

37 (c) A custodian may notify a user that a request for disclosure
 38 of digital assets or to terminate an account was made pursuant to
 39 this part.

1 (d) A custodian may deny a request under this part from a
2 fiduciary or designated recipient for disclosure of digital assets or
3 to terminate an account if the custodian is aware of any lawful
4 access to the account following the date of death of the user.

5 (e) This part does not limit a custodian’s ability to obtain or to
6 require a fiduciary or designated recipient requesting disclosure
7 or account termination under this part to obtain a court order that
8 makes all of the following findings:

9 (1) The account belongs to the decedent, principal, or trustee.

10 (2) There is sufficient consent from the decedent, principal, or
11 settlor to support the requested disclosure.

12 (3) Any specific factual finding required by any other applicable
13 law in effect at that time, including, but not limited to, a finding
14 that disclosure is not in violation of Section 2702 of Title 18 of
15 the ~~United~~ *United States Code*.

16 (f) A custodian and its officers, employees, and agents are
17 immune from liability for an act or omission done in good faith in
18 compliance with this part.

19 ~~882. In applying and construing this part, which is based upon
20 a uniform act, consideration shall be given to the need to promote
21 uniformity of the law with respect to its subject matter among
22 states that enact similar acts.~~

23 ~~883.~~

24 882. This part modifies, limits, or supersedes the federal
25 Electronic Signatures in Global and National Commerce Act (15
26 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede
27 Section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize
28 electronic delivery of any of the notices described in Section 103(b)
29 of that act (15 U.S.C. Sec. 7003(b)).

30 ~~884.~~

31 883. Disclosure of the contents of the deceased user’s or
32 settlor’s account to a fiduciary of the deceased user or settlor is
33 subject to the same license, restrictions, terms of service, and legal
34 obligations, including copyright law, that applied to the deceased
35 user or settlor.

36 ~~885.~~

37 884. If any provision of this part or its application to any person
38 or circumstance is held invalid, the invalidity does not affect other
39 provisions or applications of this part that can be given effect

- 1 without the invalid provision or application, and, to this end, the
- 2 provisions of this part are severable.

O