

AMENDED IN ASSEMBLY AUGUST 25, 2016

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY JUNE 27, 2016

AMENDED IN SENATE APRIL 5, 2016

**SENATE BILL**

**No. 873**

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**Introduced by Senator Beall**

(Principal coauthor: Assembly Member Calderon)

January 14, 2016

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An act to amend Section 881 of the Probate Code, ~~as added by Assembly Bill 691 of the 2015–16 Regular Session~~, relating to estates.

LEGISLATIVE COUNSEL'S DIGEST

SB 873, as amended, Beall. 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.

AB 691 of the 2015–16 Regular Session 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. Among other provisions, AB 691 would provide that a custodian of digital assets, and its officers, employees, and agents, are immune from liability for an act or omission done in good faith and in compliance with the act.

This bill would specify that this immunity does not apply in a case of gross negligence or willful or wanton misconduct. The bill would

become operative only if AB 691 is enacted prior to the enactment of this bill.

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. *It is the intent of the Legislature that this act be*  
 2 *enacted subsequent, and as a companion, to Assembly Bill 691 so*  
 3 *that if Assembly Bill 691 is chaptered, the version of Section 881*  
 4 *of the Probate Code contained in this act shall replace the version*  
 5 *of that same section provided in Assembly Bill 691.*

6     ~~SECTION 1.~~

7     SEC. 2. Section 881 of the Probate Code, as added by Assembly  
 8 Bill 691 of the 2015–16 Regular Session, is amended to read:

9     881. (a) Not later than 60 days after receipt of the information  
 10 required under Sections 876 to 879, inclusive, a custodian shall  
 11 comply with a request under this part from a fiduciary or designated  
 12 recipient to disclose digital assets or terminate an account. If the  
 13 custodian fails to comply with a request, the fiduciary or designated  
 14 recipient may apply to the court for an order directing compliance.

15     (b) An order under subdivision (a) directing compliance shall  
 16 contain a finding that compliance is not in violation of Section  
 17 2702 of Title 18 of the United States Code.

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

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

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

- 29     (1) The account belongs to the decedent, principal, or trustee.
- 30     (2) There is sufficient consent from the decedent, principal, or  
 31 settlor to support the requested disclosure.
- 32     (3) Any specific factual finding required by any other applicable  
 33 law in effect at that time, including, but not limited to, a finding

1 that disclosure is not in violation of Section 2702 of Title 18 of  
2 the United States Code.

3 (f) (1) A custodian and its officers, employees, and agents are  
4 immune from liability for an act or omission done in good faith  
5 *and* in compliance with this part.

6 (2) The protections specified in paragraph (1) shall not apply  
7 in a case of gross negligence or willful or wanton misconduct of  
8 the custodian or its officers, employees, or ~~agents under this part.~~  
9 *agents.*

10 ~~SEC. 2.~~

11 *SEC. 3.* This act shall become operative only if Assembly Bill  
12 691 is also enacted and this act is enacted after Assembly Bill 691.