

Senate Bill No. 873

Passed the Senate August 31, 2016

Secretary of the Senate

Passed the Assembly August 30, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 881 of the Probate Code, relating to estates.

LEGISLATIVE COUNSEL'S DIGEST

SB 873, 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.

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

SECTION 1. It is the intent of the Legislature that this act be enacted subsequent, and as a companion, to Assembly Bill 691 so that if Assembly Bill 691 is chaptered, the version of Section 881 of the Probate Code contained in this act shall replace the version of that same section provided in Assembly Bill 691.

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

881. (a) Not later than 60 days after receipt of the information required under Sections 876 to 879, inclusive, a custodian shall

comply with a request under this part from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply with a request, the fiduciary or designated recipient may apply to the court for an order directing compliance.

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

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

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

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

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

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

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

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

(2) The protections specified in paragraph (1) shall not apply in a case of gross negligence or willful or wanton misconduct of the custodian or its officers, employees, or agents.

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

Approved _____, 2016

Governor