

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT (CORRECTED)
LB829

Hearing Date: Thursday February 11, 2016
Committee On: Judiciary
Introducer: Harr
One Liner: Adopt the Revised Uniform Fiduciary Access to Digital Assets Act (2015)

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Chambers, Coash, Ebke, Krist, Morfeld, Pansing Brooks, Seiler, Williams

Nay:

Absent:

Present Not Voting:

Verbal Testimony:

Proponents:

JAMISON WYATT
WILLIAM LINDSAY
STEVE WILLBORN
KORBY GILBERTSON

Representing:

INTRODUCER ON BEHALF OF SENATOR HARR
NE STATE BAR ASSOCIATION
NEBRASKA UNIFORM LAW COMMISSION
MOTION PICTURE ASSOCIATION OF AMERICA

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB829 would provide a process for providing access to digital assets for personal representatives, conservators, agents and trustees.

Section 2 defines the terms used in LB829.

Section 3 provides that LB829 applies to fiduciaries acting under a will or power of attorney, a personal representative acting for a decedent, a conservatorship proceeding, a trustee acting under a trust and custodians if the user resides in Nebraska or resided in Nebraska at the time of death. The bill does not apply to assets of employers used by employees in the normal course of business.

Section 4 would provide the priority of a user's directions to a custodian related to access for a fiduciary. The first priority is an online tool, the second priority is direction in a will, trust, power of attorney, or other record and the lowest priority is the terms of service agreement.

Section 6 would provide the custodian discretion to full or partial access to the fiduciary as necessary to perform the fiduciary tasks. This section would also authorize the custodian to assess a reasonable administrative charge.

Section 7 describes the documentation the personal representative of an estate would need to provide to a custodian

to permit access to the content of the user's electronic communication.

Section 8 describes the documentation the personal representative of an estate would need to provide to a custodian to permit access to a catalogue of the user's electronic communication that does not include the content of that communication.

Section 9 describes the documentation an agent under a power of attorney would need to provide to a custodian to permit access to the content of the user's electronic communication.

Section 10 describes the documentation an agent under a power of attorney would need to provide to a custodian to permit access to a catalogue of the user's electronic communication that does not include the content of that communication.

Section 11 would require a custodian to disclose any digital asset, including a catalogue and the content of electronic communication, to a trustee that is an original user of an account held in trust.

Section 12 describes the documentation a trustee that is not an original user would need to provide to a custodian to permit access to the content of the user's electronic communication.

Section 13 describes the documentation a trustee that is not an original user would need to provide to a custodian to permit access to a catalogue of the user's electronic communication that does not include the content of that communication.

Section 14 would provide access to a conservator of the digital assets of a protected person, but excludes the content of electronic communication.

Section 15 provides that the same legal duties imposed on a fiduciary managing tangible property apply to the management of digital assets. This section would also include fiduciaries in the definition of authorized users of the digital assets.

Section 16 would provide a custodian sixty days to comply with a request from a fiduciary. If the custodian does not comply, the fiduciary is authorized to seek a court order.

Section 19 provides an operative date for LB829 of January 1, 2017.

Explanation of amendments:

AM2056

Section 4 of LB829 would allow a user to use an online tool to direct a custodian to disclose or not disclose digital assets. AM2056 would expand the language to include recipients designated by such a tool that are not necessarily fiduciaries.

Les Seiler, Chairperson