

E AND R AMENDMENTS TO LB829

Introduced by Hansen, 26, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Sections 1 to 18 of this act shall be known and may be  
4 cited as the Revised Uniform Fiduciary Access to Digital Assets Act  
5 (2015).

6           Sec. 2. In the Revised Uniform Fiduciary Access to Digital Assets  
7 Act (2015):

8           (1) Account means an arrangement under a terms-of-service agreement  
9 in which a custodian carries, maintains, processes, receives, or stores a  
10 digital asset of the user or provides goods or services to the user;

11           (2) Agent means an attorney in fact granted authority under a  
12 durable or nondurable power of attorney;

13           (3) Carries means engages in the transmission of an electronic  
14 communication;

15           (4) Catalogue of electronic communications means information that  
16 identifies each person with which a user has had an electronic  
17 communication, the time and date of the communication, and the electronic  
18 address of the person;

19           (5) Conservator means a person appointed by a court to manage the  
20 estate of a living individual. The term includes a limited conservator;

21           (6) Content of an electronic communication means information  
22 concerning the substance or meaning of the communication which:

23           (A) has been sent or received by a user;

24           (B) is in electronic storage by a custodian providing an electronic  
25 communication service to the public or is carried or maintained by a  
26 custodian providing a remote-computing service to the public; and

27           (C) is not readily accessible to the public;

1           (7) Court means the county court;

2           (8) Custodian means a person that carries, maintains, processes,  
3 receives, or stores a digital asset of a user;

4           (9) Designated recipient means a person chosen by a user using an  
5 online tool to administer digital assets of the user;

6           (10) Digital asset means an electronic record in which an individual  
7 has a right or interest. The term does not include an underlying asset or  
8 liability unless the asset or liability is itself an electronic record;

9           (11) Electronic means relating to technology having electrical,  
10 digital, magnetic, wireless, optical, electromagnetic, or similar  
11 capabilities;

12           (12) Electronic communication has the meaning set forth in 18 U.S.C.  
13 2510(12), as amended;

14           (13) Electronic communication service means a custodian that  
15 provides to a user the ability to send or receive an electronic  
16 communication;

17           (14) Fiduciary means an original, additional, or successor personal  
18 representative, conservator, agent, or trustee;

19           (15) Information means data, text, images, videos, sounds, codes,  
20 computer programs, software, databases, or the like;

21           (16) Online tool means an electronic service provided by a custodian  
22 that allows the user, in an agreement distinct from the terms-of-service  
23 agreement between the custodian and user, to provide directions for  
24 disclosure or nondisclosure of digital assets to a third person;

25           (17) Person means an individual, estate, business or nonprofit  
26 entity, public corporation, government or governmental subdivision,  
27 agency, or instrumentality, or other legal entity;

28           (18) Personal representative means an executor, administrator,  
29 special administrator, or person that performs substantially the same  
30 function under law of this state other than the Revised Uniform Fiduciary  
31 Access to Digital Assets Act (2015);

1       (19) Power of attorney means a record that grants an agent authority  
2 to act in the place of a principal;

3       (20) Principal means an individual who grants authority to an agent  
4 in a power of attorney;

5       (21) Protected person means an individual for whom a conservator has  
6 been appointed. The term includes an individual for whom an application  
7 for the appointment of a conservator is pending;

8       (22) Record means information that is inscribed on a tangible medium  
9 or that is stored in an electronic or other medium and is retrievable in  
10 perceivable form;

11       (23) Remote-computing service means a custodian that provides to a  
12 user computer-processing services or the storage of digital assets by  
13 means of an electronic communications system, as defined in 18 U.S.C.  
14 2510(14), as amended;

15       (24) Terms-of-service agreement means an agreement that controls the  
16 relationship between a user and a custodian;

17       (25) Trustee means a fiduciary with legal title to property under an  
18 agreement or declaration that creates a beneficial interest in another.  
19 The term includes a successor trustee;

20       (26) User means a person that has an account with a custodian; and

21       (27) Will includes a codicil, testamentary instrument that only  
22 appoints an executor, and instrument that revokes or revises a  
23 testamentary instrument.

24       Sec. 3. (a) The Revised Uniform Fiduciary Access to Digital Assets  
25 Act (2015) applies to:

26       (1) a fiduciary acting under a will or power of attorney executed  
27 before, on, or after the operative date of this act;

28       (2) a personal representative acting for a decedent who died before,  
29 on, or after the operative date of this act;

30       (3) a conservatorship proceeding commenced before, on, or after the  
31 operative date of this act; and

1       (4) a trustee acting under a trust created before, on, or after the  
2 operative date of this act.

3       (b) The Revised Uniform Fiduciary Access to Digital Assets Act  
4 (2015) applies to a custodian if the user resides in this state or  
5 resided in this state at the time of the user's death.

6       (c) The Revised Uniform Fiduciary Access to Digital Assets Act  
7 (2015) does not apply to a digital asset of an employer used by an  
8 employee in the ordinary course of the employer's business.

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

16       (b) If a user has not used an online tool to give direction under  
17 subsection (a) of this section or if the custodian has not provided an  
18 online tool, the user may allow or prohibit in a will, trust, power of  
19 attorney, or other record, disclosure to a fiduciary of some or all of  
20 the user's digital assets, including the content of electronic  
21 communications sent or received by the user.

22       (c) A user's direction under subsection (a) or (b) of this section  
23 overrides a contrary provision in a terms-of-service agreement that does  
24 not require the user to act affirmatively and distinctly from the user's  
25 assent to the terms of service.

26       Sec. 5. (a) The Revised Uniform Fiduciary Access to Digital Assets  
27 Act (2015) does not change or impair a right of a custodian or a user  
28 under a terms-of-service agreement to access and use digital assets of  
29 the user.

30       (b) The Revised Uniform Fiduciary Access to Digital Assets Act  
31 (2015) does not give a fiduciary or a designated recipient any new or

1 expanded rights other than those held by the user for whom, or for whose  
2 estate, the fiduciary or designated recipient acts or represents.

3 (c) A fiduciary's or designated recipient's access to digital assets  
4 may be modified or eliminated by a user, by federal law, or by a terms-  
5 of-service agreement if the user has not provided direction under section  
6 4 of this act.

7 Sec. 6. (a) When disclosing digital assets of a user under the  
8 Revised Uniform Fiduciary Access to Digital Assets Act (2015), the  
9 custodian may at its sole discretion:

10 (1) grant a fiduciary or designated recipient full access to the  
11 user's account;

12 (2) grant a fiduciary or designated recipient partial access to the  
13 user's account sufficient to perform the tasks with which the fiduciary  
14 or designated recipient is charged; or

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

19 (b) A custodian may assess a reasonable administrative charge for  
20 the cost of disclosing digital assets under the Revised Uniform Fiduciary  
21 Access to Digital Assets Act (2015).

22 (c) A custodian need not disclose under the Revised Uniform  
23 Fiduciary Access to Digital Assets Act (2015) a digital asset deleted by  
24 a user.

25 (d) If a user directs or a fiduciary requests a custodian to  
26 disclose under the Revised Uniform Fiduciary Access to Digital Assets Act  
27 (2015) some, but not all, of the user's digital assets, the custodian  
28 need not disclose the assets if segregation of the assets would impose an  
29 undue burden on the custodian. If the custodian believes the direction or  
30 request imposes an undue burden, the custodian or fiduciary may seek an  
31 order from the court to disclose:

- 1       (1) a subset limited by date of the user's digital assets;
- 2       (2) all of the user's digital assets to the fiduciary or designated
- 3       recipient;
- 4       (3) none of the user's digital assets; or
- 5       (4) all of the user's digital assets to the court for review in
- 6       camera.

7       Sec. 7. If a deceased user consented or a court directs disclosure  
8       of the contents of electronic communications of the user, the custodian  
9       shall disclose to the personal representative of the estate of the user  
10       the content of an electronic communication sent or received by the user  
11       if the representative gives the custodian:

- 12       (1) a written request for disclosure in physical or electronic form;
- 13       (2) a certified copy of the death certificate of the user;
- 14       (3) a certified copy of the letter of appointment of the
- 15       representative or a small-estate affidavit or court order;
- 16       (4) unless the user provided direction using an online tool, a copy
- 17       of the user's will, trust, power of attorney, or other record evidencing
- 18       the user's consent to disclosure of the content of electronic
- 19       communications; and
- 20       (5) if requested by the custodian:

- 21       (A) a number, username, address, or other unique subscriber or
- 22       account identifier assigned by the custodian to identify the user's
- 23       account;

- 24       (B) evidence linking the account to the user; or

- 25       (C) a finding by the court that:

- 26       (i) the user had a specific account with the custodian, identifiable
- 27       by the information specified in subdivision (5)(A) of this section;

- 28       (ii) disclosure of the content of electronic communications of the
- 29       user would not violate 18 U.S.C. 2701 et seq., as amended, 47 U.S.C. 222,
- 30       as amended, or other applicable law;

- 31       (iii) unless the user provided direction using an online tool, the

1 user consented to disclosure of the content of electronic communications;  
2 or  
3 (iv) disclosure of the content of electronic communications of the  
4 user is reasonably necessary for administration of the estate.

5 Sec. 8. Unless the user prohibited disclosure of digital assets or  
6 the court directs otherwise, a custodian shall disclose to the personal  
7 representative of the estate of a deceased user a catalogue of electronic  
8 communications sent or received by the user and digital assets, other  
9 than the content of electronic communications, of the user, if the  
10 representative gives the custodian:

11 (1) a written request for disclosure in physical or electronic form;  
12 (2) a certified copy of the death certificate of the user;

13 (3) a certified copy of the letter of appointment of the  
14 representative or a small-estate affidavit or court order; and

15 (4) if requested by the custodian:

16 (A) a number, username, address, or other unique subscriber or  
17 account identifier assigned by the custodian to identify the user's  
18 account;

19 (B) evidence linking the account to the user;

20 (C) an affidavit stating that disclosure of the user's digital  
21 assets is reasonably necessary for administration of the estate; or

22 (D) a finding by the court that:

23 (i) the user had a specific account with the custodian, identifiable  
24 by the information specified in subdivision (4)(A) of this section; or

25 (ii) disclosure of the user's digital assets is reasonably necessary  
26 for administration of the estate.

27 Sec. 9. To the extent a power of attorney expressly grants an agent  
28 authority over the content of electronic communications sent or received  
29 by the principal and unless directed otherwise by the principal or the  
30 court, a custodian shall disclose to the agent the content if the agent  
31 gives the custodian:

1           (1) a written request for disclosure in physical or electronic form;

2           (2) an original or copy of the power of attorney expressly granting  
3 the agent authority over the content of electronic communications of the  
4 principal;

5           (3) a certification by the agent, under penalty of perjury, that the  
6 power of attorney is in effect; and

7           (4) if requested by the custodian:

8           (A) a number, username, address, or other unique subscriber or  
9 account identifier assigned by the custodian to identify the principal's  
10 account; or

11           (B) evidence linking the account to the principal.

12           Sec. 10. Unless otherwise ordered by the court, directed by the  
13 principal, or provided by a power of attorney, a custodian shall disclose  
14 to an agent with specific authority over digital assets or general  
15 authority to act on behalf of a principal a catalogue of electronic  
16 communications sent or received by the principal and digital assets,  
17 other than the content of electronic communications, of the principal if  
18 the agent gives the custodian:

19           (1) a written request for disclosure in physical or electronic form;

20           (2) an original or a copy of the power of attorney that gives the  
21 agent specific authority over digital assets or general authority to act  
22 on behalf of the principal;

23           (3) a certification by the agent, under penalty of perjury, that the  
24 power of attorney is in effect; and

25           (4) if requested by the custodian:

26           (A) a number, username, address, or other unique subscriber or  
27 account identifier assigned by the custodian to identify the principal's  
28 account; or

29           (B) evidence linking the account to the principal.

30           Sec. 11. Unless otherwise ordered by the court or provided in a  
31 trust, a custodian shall disclose to a trustee that is an original user

1 of an account any digital asset of the account held in trust, including a  
2 catalogue of electronic communications of the trustee and the content of  
3 electronic communications.

4 Sec. 12. Unless otherwise ordered by the court, directed by the  
5 user, or provided in a trust, a custodian shall disclose to a trustee  
6 that is not an original user of an account the content of an electronic  
7 communication sent or received by an original or successor user and  
8 carried, maintained, processed, received, or stored by the custodian in  
9 the account of the trust if the trustee gives the custodian:

- 10 (1) a written request for disclosure in physical or electronic form;  
11 (2) a certified copy of the trust instrument, or a certification of  
12 the trust under section 30-38,102, that includes consent to disclosure of  
13 the content of electronic communications to the trustee;  
14 (3) a certification by the trustee, under penalty of perjury, that  
15 the trust exists and the trustee is a currently acting trustee of the  
16 trust; and  
17 (4) if requested by the custodian:  
18 (A) a number, username, address, or other unique subscriber or  
19 account identifier assigned by the custodian to identify the trust's  
20 account; or  
21 (B) evidence linking the account to the trust.

22 Sec. 13. Unless otherwise ordered by the court, directed by the  
23 user, or provided in a trust, a custodian shall disclose, to a trustee  
24 that is not an original user of an account, a catalogue of electronic  
25 communications sent or received by an original or successor user and  
26 stored, carried, or maintained by the custodian in an account of the  
27 trust and any digital assets, other than the content of electronic  
28 communications, in which the trust has a right or interest if the trustee  
29 gives the custodian:

- 30 (1) a written request for disclosure in physical or electronic form;  
31 (2) a certified copy of the trust instrument, or a certification of

1 the trust under section 30-38,102;

2 (3) a certification by the trustee, under penalty of perjury, that  
3 the trust exists and the trustee is a currently acting trustee of the  
4 trust; and

5 (4) if requested by the custodian:

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

9 (B) evidence linking the account to the trust.

10 Sec. 14. (a) After an opportunity for a hearing under section  
11 30-2636, the court may grant a conservator access to the digital assets  
12 of a protected person.

13 (b) Unless otherwise ordered by the court or directed by the user, a  
14 custodian shall disclose to a conservator the catalogue of electronic  
15 communications sent or received by a protected person and any digital  
16 assets, other than the content of electronic communications, in which the  
17 protected person has a right or interest if the conservator gives the  
18 custodian:

19 (1) a written request for disclosure in physical or electronic form;

20 (2) a certified copy of the court order that gives the conservator  
21 authority over the digital assets of the protected person; and

22 (3) if requested by the custodian:

23 (A) a number, username, address, or other unique subscriber or  
24 account identifier assigned by the custodian to identify the account of  
25 the protected person; or

26 (B) evidence linking the account to the protected person.

27 (c) A conservator with general authority to manage the assets of a  
28 protected person may request a custodian of the digital assets of the  
29 protected person to suspend or terminate an account of the protected  
30 person for good cause. A request made under this section must be  
31 accompanied by a certified copy of the court order giving the conservator

1 authority over the protected person's property.

2 Sec. 15. (a) The legal duties imposed on a fiduciary charged with  
3 managing tangible property apply to the management of digital assets,  
4 including:

5 (1) the duty of care;

6 (2) the duty of loyalty; and

7 (3) the duty of confidentiality.

8 (b) A fiduciary's or designated recipient's authority with respect  
9 to a digital asset of a user:

10 (1) except as otherwise provided in section 4 of this act, is  
11 subject to the applicable terms-of-service agreement;

12 (2) is subject to other applicable law, including copyright law;

13 (3) in the case of a fiduciary, is limited by the scope of the  
14 fiduciary's duties; and

15 (4) may not be used to impersonate the user.

16 (c) A fiduciary with authority over the property of a decedent,  
17 protected person, principal, or settlor has the right to access any  
18 digital asset in which the decedent, protected person, principal, or  
19 settlor had a right or interest and that is not held by a custodian or  
20 subject to a terms-of-service agreement.

21 (d) A fiduciary acting within the scope of the fiduciary's duties is  
22 an authorized user of the property of the decedent, protected person,  
23 principal, or settlor for the purpose of applicable computer-fraud and  
24 unauthorized-computer-access laws, including the Computer Crimes Act and  
25 section 86-2,104.

26 (e) A fiduciary with authority over the tangible personal property  
27 of a decedent, protected person, principal, or settlor:

28 (1) has the right to access the property and any digital asset  
29 stored in it; and

30 (2) is an authorized user for the purpose of computer-fraud and  
31 unauthorized-computer-access laws, including the Computer Crimes Act and

1 section 86-2,104.

2 (f) A custodian may disclose information in an account to a  
3 fiduciary of the user when the information is required to terminate an  
4 account used to access digital assets licensed to the user.

5 (g) A fiduciary of a user may request a custodian to terminate the  
6 user's account. A request for termination must be in writing, in either  
7 physical or electronic form, and accompanied by:

8 (1) if the user is deceased, a certified copy of the death  
9 certificate of the user;

10 (2) a certified copy of the letter of appointment of the  
11 representative or a small-estate affidavit or court order, power of  
12 attorney, or trust giving the fiduciary authority over the account; and

13 (3) if requested by the custodian:

14 (A) a number, username, address, or other unique subscriber or  
15 account identifier assigned by the custodian to identify the user's  
16 account;

17 (B) evidence linking the account to the user; or

18 (C) a finding by the court that the user had a specific account with  
19 the custodian, identifiable by the information specified in subdivision  
20 (3)(A) of this subsection.

21 Sec. 16. (a) Not later than sixty days after receipt of the  
22 information required under sections 7 to 15 of this act, a custodian  
23 shall comply with a request under the Revised Uniform Fiduciary Access to  
24 Digital Assets Act (2015) from a fiduciary or designated recipient to  
25 disclose digital assets or terminate an account. If the custodian fails  
26 to comply, the fiduciary or designated recipient may apply to the court  
27 for an order directing compliance.

28 (b) An order under subsection (a) of this section directing  
29 compliance must contain a finding that compliance is not in violation of  
30 18 U.S.C. 2702, as amended.

31 (c) A custodian may notify the user that a request for disclosure or

1 to terminate an account was made under the Revised Uniform Fiduciary  
2 Access to Digital Assets Act (2015).

3 (d) A custodian may deny a request under the Revised Uniform  
4 Fiduciary Access to Digital Assets Act (2015) from a fiduciary or  
5 designated recipient for disclosure of digital assets or to terminate an  
6 account if the custodian is aware of any lawful access to the account  
7 following the receipt of the fiduciary's request.

8 (e) The Revised Uniform Fiduciary Access to Digital Assets Act  
9 (2015) does not limit a custodian's ability to obtain or require a  
10 fiduciary or designated recipient requesting disclosure or termination  
11 under the act to obtain a court order which:

12 (1) specifies that an account belongs to the protected person or  
13 principal;

14 (2) specifies that there is sufficient consent from the protected  
15 person or principal to support the requested disclosure; and

16 (3) contains a finding required by law other than the act.

17 (f) A custodian and its officers, employees, and agents are immune  
18 from liability for an act or omission done in good faith in compliance  
19 with the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

20 Sec. 17. In applying and construing the Revised Uniform Fiduciary  
21 Access to Digital Assets Act (2015), consideration must be given to the  
22 need to promote uniformity of the law with respect to its subject matter  
23 among states that enact it.

24 Sec. 18. The Revised Uniform Fiduciary Access to Digital Assets Act  
25 (2015) modifies, limits, or supersedes the federal Electronic Signatures  
26 in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not  
27 modify, limit, or supersede section 101(c) of that act, 15 U.S.C.  
28 7001(c), or authorize electronic delivery of any of the notices described  
29 in section 103(b) of that act, 15 U.S.C. 7003(b).

30 Sec. 19. This act becomes operative on January 1, 2017.

31 Sec. 20. If any provision of this act or its application to any

1 person or circumstance is held invalid, the invalidity does not affect  
2 other provisions or applications of this act which can be given effect  
3 without the invalid provision or application, and to this end the  
4 provisions of this act are severable.