

One Hundred Fourth Legislature - Second Session - 2016

Introducer's Statement of Intent

LB829

Chairperson: Senator Les Seiler

Committee: Judiciary

Date of Hearing:

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The purpose of Legislative Bill 829 is to adopt the Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA), a bill based on the work of the Uniform Law Commission. Revised UFADAA ensures that Internet users have the power to manage and dispose of their digital assets in a way that is similar to the way they can make plans for their tangible property.

This law facilitates access and management of digital assets when people die or otherwise lose the ability to manage their own assets. Existing law on this is less than clear, and is subject to federal and state privacy and computer “hacking” laws as well as state probate law. Revised UFADAA is an overlay statute designed to provide clarity on this issue while working in conjunction with Nebraska’s laws on probate, guardianship, trusts, and powers of attorney. Revised UFADAA governs access to digital assets by four common types of fiduciaries:

1. Executors or administrators of the estates of deceased persons;
2. Court-appointed guardians or conservators of the estates of protected
3. Agents appointed under powers of attorney; and
4. Trustees.

Revised UFADAA gives people the power to authorize these types of fiduciaries to manage their digital assets in a way similar to the power they would have with respect to tangible property. Revised UFADAA provides a four-tiered system of priorities for handling digital assets:

1. If the company that stores the person’s assets on its servers (the persons; “custodian”) provides an on-line tool separate from the general terms of service that allows the user to name another person to have access to the user’s digital assets, Revised UFADAA makes the user’s on-line instructions legally enforceable.
2. If the custodian does not provide an on-line planning option or the user declines to use the one provided, the user may give legally enforceable directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.
3. If neither of the above situations apply, the custodian’s terms-of-service for the user’s account will determine fiduciary access.
4. If none of the three situations above apply, Revised UFADAA provides default terms that will govern fiduciary access.

Principal Introducer: _____

Senator Burke Harr