

Bill Text

LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session – 2016

IN THE SENATE

RS _____
BY _____

AN ACT

Be It Enacted by the Legislature of the State of Idaho:

That Chapter Five of Title Fifteen, Idaho Code, be amended to read as follows:

§ 15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN

(a) Delegation Effective Immediately. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, or in the case of military personnel serving beyond the territorial limits of the United States for a period not exceeding twelve (12) months, any of the parent's or guardian's powers regarding care, custody, or property of the minor or ward including, but not limited to, powers for medical care and educational care of the minor or ward, except the parent's or guardian's power to consent to marriage or adoption of a minor or ward. The delegation for a minor to a grandparent of the minor, or to a sibling of the minor, or to a sibling of either parent of the minor, shall continue in effect until the time period, or date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs. If the power of attorney does not provide a time period, or date, or condition for automatic expiration of the power, the power of attorney shall continue in effect for a period of three (3) years. The power may be revoked prior to the expiration of the three (3) year period, or prior to the time period, or date, or condition for automatic expiration, in a writing delivered to the grandparent or sibling by the delegating parent or guardian. The power of attorney does not need to be notarized or recorded to be valid. However, if the power is recorded, any revocation of the power by a writing must also be recorded, except where actual notice exists, before the revocation is effective.

(b) Springing Delegation. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor or ward including, but not limited to, powers for medical care and educational care of the minor or ward, except the parent's or guardian's power to consent to marriage or adoption of a minor or ward. The delegation shall become effective upon any of the following:

1) Certification by a licensed physician that the delegating parent is unable to adequately care for the minor or incapacitated person. If effective under this provision, the power will continue until a licensed physician has certified that the delegating parent has regained the ability to adequately care for the minor or incapacitated person. The written delegation may require certification by one or more specific physicians or more than one physician to be effective.

2) The incarceration of the nominating parent. If effective under this provision, the

power will continue until the delegating parent is no longer incarcerated and has given notice that the power has been terminated.

3) Certification by the nominating parent that the delegation should become effective.

The power may be revoked in a writing delivered to the power holder by the delegating parent or guardian. The power of attorney does not need to be notarized or recorded to be valid. However, if the power is recorded, any revocation of the power by a writing must also be recorded, except where actual notice exists, before the revocation is effective.

Bill Text

LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session – 2016

IN THE SENATE

RS _____
BY _____

AN ACT

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 14, Title 15, Idaho Code, and to read as follows:

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

SECTION 15-14-1. SHORT TITLE. This act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

SECTION 15-14-2. DEFINITIONS. In this act:

- (1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) "Carries" means engages in the transmission of an electronic communication.
- (4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) "Conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.
- (6) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:
 - (A) has been sent or received by a user;
 - (B) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and
 - (C) is not readily accessible to the public.
- (7) "Court" means the court in this state having jurisdiction in matters relating to the content of this act.
- (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

- (10) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (12) "Electronic communication" has the meaning set forth in 18 U.S.C. Section 2510(12), as amended.
- (13) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.
- (14) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.
- (15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.
- (16) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.
- (17) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this act.
- (19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.
- (20) "Principal" means an individual who grants authority to an agent in a power of attorney.
- (21) "Protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.
- (22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended.
- (24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.
- (25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.
- (26) "User" means a person that has an account with a custodian.
- (27) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

SECTION 15-14-3. APPLICABILITY.

- (a) This act applies to:
- (1) a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this act;
 - (2) a personal representative acting for a decedent who died before, on, or after the effective date of this act;
 - (3) a conservatorship proceeding commenced before, on, or after the effective date of this act; and
 - (4) a trustee acting under a trust created before, on, or after the effective date of this act.
- (b) This act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.
- (c) This act does not apply to a digital asset of an employer used by an employee in the

ordinary course of the employer's business.

SECTION 15-14-4. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

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

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

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

SECTION 15-14-5. TERMS-OF-SERVICE AGREEMENT.

(a) This act does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This act does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

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

SECTION 15-14-6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

(a) When disclosing digital assets of a user under this act, the custodian may at its sole discretion:

- (1) grant a fiduciary or designated recipient full access to the user's account;
- (2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
- (3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this act.

(c) A custodian need not disclose under this act a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

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

SECTION 15-14-7. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED USER.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order;
- (4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- (5) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
 - (iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

SECTION 15-14-8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user;
 - (C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
 - (D) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A); or
 - (ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SECTION 15-14-9. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

SECTION 15-14-10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

SECTION 15-14-11. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

SECTION 15-14-12. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

SECTION 15-14-13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right

or interest if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

SECTION 15-14-14. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF PROTECTED PERSON.

(a) After an opportunity for a hearing under Chapter Five of Title Fifteen, Idaho Code, the court may grant a conservator access to the digital assets of a protected person.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and
- (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or
 - (B) evidence linking the account to the protected person.
 - (C) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the [protected person] to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

SECTION 15-14-15. FIDUCIARY DUTY AND AUTHORITY.

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

- (1) the duty of care;
- (2) the duty of loyalty; and
- (3) the duty of confidentiality.

(b) A fiduciary's authority with respect to a digital asset of a user:

- (1) except as otherwise provided in Section 4, is subject to the applicable terms of service;
- (2) is subject to other applicable law, including copyright law;
- (3) is limited by the scope of the fiduciary's duties; and
- (4) may not be used to impersonate the user.

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

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including this state's law on

unauthorized computer access.

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

- (1) has the right to access the property and any digital asset stored in it; and
- (2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including this state's law on unauthorized computer access.

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

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

- (1) if the user is deceased, a [certified] copy of the death certificate of the user;
- (2) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and
- (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

SECTION 15-14-16. CUSTODIAN COMPLIANCE AND IMMUNITY.

(a) Not later than 60 days after receipt of the information required under Sections 7 through 14, a custodian shall comply with a request under this act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

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

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this act.

(d) A custodian may deny a request under this act 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 receipt of the fiduciary's request.

(e) This act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this act to obtain a court order which:

- (1) specifies that an account belongs to the protected person or principal;
- (2) specifies that there is sufficient consent from the [protected person] or principal] to support the requested disclosure; and
- (3) contains a finding required by law other than this act.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done [**reasonably and - ITLA**] in good faith in compliance with this act.

SECTION 15-14-17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 15-14-18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize

electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 15-14-19. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Bill Text

LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session – 2016

IN THE SENATE

RS _____
BY _____

AN ACT

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 14, Title 15, Idaho Code, and to read as follows:

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

SECTION 15-14-1. SHORT TITLE. This act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

SECTION 15-14-2. DEFINITIONS. In this act:

- (1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) "Carries" means engages in the transmission of an electronic communication.
- (4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) "Conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.
- (6) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:
 - (A) has been sent or received by a user;
 - (B) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and
 - (C) is not readily accessible to the public.
- (7) "Court" means the court in this state having jurisdiction in matters relating to the content of this act.
- (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

- (10) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (12) "Electronic communication" has the meaning set forth in 18 U.S.C. Section 2510(12), as amended.
- (13) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.
- (14) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.
- (15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.
- (16) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.
- (17) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this act.
- (19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.
- (20) "Principal" means an individual who grants authority to an agent in a power of attorney.
- (21) "Protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.
- (22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended.
- (24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.
- (25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.
- (26) "User" means a person that has an account with a custodian.
- (27) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

SECTION 15-14-3. APPLICABILITY.

- (a) This act applies to:
- (1) a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this act;
 - (2) a personal representative acting for a decedent who died before, on, or after the effective date of this act;
 - (3) a conservatorship proceeding commenced before, on, or after the effective date of this act; and
 - (4) a trustee acting under a trust created before, on, or after the effective date of this act.
- (b) This act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.
- (c) This act does not apply to a digital asset of an employer used by an employee in the

ordinary course of the employer's business.

SECTION 15-14-4. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

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

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

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

SECTION 15-14-5. TERMS-OF-SERVICE AGREEMENT.

(a) This act does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This act does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

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

SECTION 15-14-6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

(a) When disclosing digital assets of a user under this act, the custodian may at its sole discretion:

- (1) grant a fiduciary or designated recipient full access to the user's account;
- (2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or
- (3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this act.

(c) A custodian need not disclose under this act a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

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

SECTION 15-14-7. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED USER.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order;
- (4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- (5) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A);
 - (ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;
 - (iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or
 - (iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

SECTION 15-14-8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED USER.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the death certificate of the user;
- (3) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user;
 - (C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
 - (D) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A); or
 - (ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SECTION 15-14-9. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

SECTION 15-14-10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

SECTION 15-14-11. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

SECTION 15-14-12. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust that includes consent to disclosure of the content of electronic communications to the trustee;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

SECTION 15-14-13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right

or interest if the trustee gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the trust instrument or a certification of the trust;
- (3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
 - (B) evidence linking the account to the trust.

SECTION 15-14-14. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF PROTECTED PERSON.

(a) After an opportunity for a hearing under Chapter Five of Title Fifteen, Idaho Code, the court may grant a conservator access to the digital assets of a protected person.

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

- (1) a written request for disclosure in physical or electronic form;
- (2) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and
- (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or
 - (B) evidence linking the account to the protected person.
 - (C) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the [protected person] to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

SECTION 15. FIDUCIARY DUTY AND AUTHORITY.

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

- (1) the duty of care;
- (2) the duty of loyalty; and
- (3) the duty of confidentiality.

(b) A fiduciary's authority with respect to a digital asset of a user:

- (1) except as otherwise provided in Section 4, is subject to the applicable terms of service;
- (2) is subject to other applicable law, including copyright law;
- (3) is limited by the scope of the fiduciary's duties; and
- (4) may not be used to impersonate the user.

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

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including this state's law on

unauthorized computer access.

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

- (1) has the right to access the property and any digital asset stored in it; and
- (2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including this state's law on unauthorized computer access.

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

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

- (1) if the user is deceased, a [certified] copy of the death certificate of the user;
- (2) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and
- (3) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user; or
 - (C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

SECTION 15-14-16. CUSTODIAN COMPLIANCE AND IMMUNITY.

(a) Not later than 60 days after receipt of the information required under Sections 7 through 14, a custodian shall comply with a request under this act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

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

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this act.

(d) A custodian may deny a request under this act 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 receipt of the fiduciary's request.

(e) This [act] does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this act to obtain a court order which:

- (1) specifies that an account belongs to the protected person or principal;
- (2) specifies that there is sufficient consent from the [protected person] or principal] to support the requested disclosure; and
- (3) contains a finding required by law other than this act.

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

SECTION 15-14-17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 15-14-18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize

electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 15-14-19. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Bill Text

LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session – 2016

IN THE SENATE

RS _____
BY _____

AN ACT

Be It Enacted by the Legislature of the State of Idaho:

That a NEW section 114 of Chapter 6 of Title 15, Idaho Code, be enacted to read as follows:

Section 15-6-114. COMMUNITY PROPERTY. A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or of the provisions of this Chapter may not be altered by will.

Bill Text

LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session – 2016

IN THE SENATE

RS _____
BY _____

AN ACT

Be It Enacted by the Legislature of the State of Idaho:

SECTION ONE. That Section 15-2-203, Idaho Code, be amended to read as follows:

15-2-203. ELECTIVE RIGHT TO QUASI-COMMUNITY PROPERTY AND AUGMENTED ESTATE.

(a) The right of the surviving spouse in the augmented quasi-community property estate shall be elective and shall be limited to one-half ($\frac{1}{2}$) of the total augmented quasi-community property estate which will include, as a part of the property described in section 15-2-201 and section 15-2-202, of this code, property received from the decedent and owned by the surviving spouse at the decedent's death, plus the value of such property transferred by the surviving spouse at any time during marriage to any person other than the decedent which would have been in the surviving spouse's quasi-community property augmented estate if that spouse had predeceased the decedent to the extent that the owner's transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or moneys worth. This shall not include any benefits derived from the federal social security system by reason of service performed or disability incurred by the decedent and shall include property transferred from the decedent to the surviving spouse by virtue of joint ownership and through the exercise of a power of appointment also exercisable in favor of others than the surviving spouse and appointed to the surviving spouse.

(b) The elective share to the quasi-community estate thus computed shall be reduced by an allocable portion of general administration expenses, homestead allowance, ~~family allowance~~, exempt property and enforceable claims.

(c) Property owned by the surviving spouse at the time of the decedent's death and property transferred by the surviving spouse is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

SECTION TWO. That Section 15-2-206, Idaho Code, be amended to read as follows:

15-2-206. EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE. (a) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the

surviving spouse thereunder is treated, subject to contribution under subsection 15-2-207(b), as if the surviving spouse had predeceased the testator.

(b) A surviving spouse is entitled to homestead allowance; and exempt property ~~and family allowance~~ whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.

SECTION THREE. That Section 15-2-208, Idaho Code, be amended to read as follows:

15-2-208. WAIVER. The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance; and exempt property ~~and family allowance~~, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance; and exempt property ~~and family allowance~~ by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

SECTION FOUR. That Section 15-3-906, Idaho Code, be amended to read as follows:

15-3-906. DISTRIBUTION IN KIND -- VALUATION -- METHOD. (a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 15-2-403 of this code shall receive the items selected.

(2) Any homestead ~~or family allowance~~ or devise payable in money may be satisfied by value in kind provided:

(A) the person entitled to the payment has not demanded payment in cash;

(B) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(C) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty (30) days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(4) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary

property may be converted into cash for distribution.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty (30) days after mailing or delivery of the proposal.

SECTION FIVE. That Section 15-3-1004, Idaho Code, be amended to read as follows:

15-3-1004. LIABILITY OF DISTRIBUTEES TO CLAIMANTS. After assets of an estate have been distributed and subject to section 15-3-1006 of this Part, an undischarged claim not barred may be prosecuted in a proceeding against one (1) or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

SECTION SIX. That Section 68-10-201, Idaho Code, be amended to read as follows:

68-10-201. DETERMINATION AND DISTRIBUTION OF NET INCOME. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in parts 3 through 5 of this chapter which apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in parts 3 through 5 of this chapter which apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

(B) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection (2) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is

provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in section 68-10-202, Idaho Code, to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in section 68-10-501 or 68-10-502, Idaho Code, to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Bill Text

LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature

Second Regular Session – 2016

IN THE SENATE

RS _____
BY _____

AN ACT

Be It Enacted by the Legislature of the State of Idaho:

SECTION ONE

That Section 201 of Chapter Five of Title Fifteen be amended to read as follows

§ 15-5-201. STATUS OF GUARDIAN OF MINOR - GENERAL

A person becomes a guardian of a minor by acceptance of a testamentary or inter vivos nomination appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

SECTION TWO

That a NEW Section 15-5-202A be added to Chapter Five to Title Fifteen, Idaho Code, to read as follows:

§ 15-5-202A. INTER VIVOS NOMINATION APPOINTMENT OF GUARDIAN OF MINOR

A parent of a minor may nominate a guardian of an unmarried minor the parent has or may have in the future by a signed writing, subject to the right of the minor under section 15-5-203, Idaho Code. The nomination may specify the desired limitations on the powers to be given to the guardian. The nominating parent may revoke or amend the nomination before confirmation by the court. The termination of parental rights of a parent as to the minor shall also terminate the right of that parent to nominate a guardian for the minor. An inter vivos nomination becomes effective upon:

1. the filing of the guardian's acceptance in the court that has venue under Section 15-5-211, Idaho Code; and
2. an adjudication that the nominating parent is an incapacitated person, or a written determination by a physician who has examined the nominating parent that the nominating parent is no longer able to care for the minor, whichever first occurs.

If the written nomination of a guardian of a minor provides for its effectiveness to be conditioned upon the examination and determination of one or more specific physicians or more than one physician, such provision shall be mandatory. Written notice of acceptance of the appointment must be given by the guardian to the minor and to the person having his custody, or if none, his care, or if none, to his nearest adult relation immediately upon acceptance of appointment. The nominating parent may nominate one (1) or more alternate guardians, in order of priority. If a guardian nominated in the writing fails to accept guardianship within thirty (30) days after receiving a written request to file an acceptance, or files a notice of declination to accept

appointment prior to the running of the thirty (30) day period, or is deceased, or ceases to act after acceptance, then the alternate guardian next in priority becomes the nominated guardian and may file a written notice of acceptance as provided herein.

SECTION THREE

That Section 203 of Chapter Five of Title Fifteen, Idaho Code, be amended to read as follows:

§ 15-5-203. OBJECTION BY MINOR OF FOURTEEN YEARS OR OLDER TO ~~TESTAMENTARY~~ APPOINTMENT

A minor of fourteen (14) or more years may prevent an appointment of his testamentary or nominated inter vivos guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court where the acceptance was filed in which the will is probated a written objection to the appointment ~~before it is accepted~~ or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. In the event of such objection, the alternate guardian next in priority ~~named in the will~~ may accept appointment as set forth in sections 15-5-202 or 15-5-202A, Idaho Code, and the minor shall have the same right of objection. An objection does not preclude appointment by the court in a proper proceeding of the ~~testamentary~~-nominee, or any other suitable person.

SECTION FOUR

That Section 208 of Chapter Five to Title Fifteen, Idaho Code, be amended to read as follows:

§ 15-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT - NOTICE

By accepting an inter vivos, testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

SECTION FIVE

That Section 210 of Chapter Five of Title Fifteen, Idaho Code, be amended to read as follows:

§ 15-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN - GENERAL

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. An inter vivos appointment terminates upon an adjudication that the nominating parent is no longer an incapacitated person, or a written determination by a physician who has examined the nominating parent that the nominating parent is able to care for the minor, whichever first occurs.

SECTION SIX

That Section 211 of Chapter Five of Title Fifteen, Idaho Code, be amended to read as follows:

§ 15-5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT - VENUE

(a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary or intervivos appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, if in this state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. If the court in which acceptance of appointment is filed is in another state, the court in this state shall proceed in accordance with chapters 9, 10 and/or 11, title 15, Idaho Code, as appropriate.

Section 2-802. Effect of Divorce, Annulment, and Decree of Separation.

- (a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he [or she] is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.
- (b) For purposes of Parts 1, 2, 3, and 4 of this Article, and of Section 3-203, a surviving spouse does not include:
- (1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;
 - (2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or
 - (3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Section 2-804. Revocation of Probate and Nonprobate Transfers by Divorce; No Revocation by other Changes of Circumstances.

- (a) **[Definitions.]** In this section:
- (1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.
 - (2) "Divorce or annulment" means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of Section 2-802. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.
 - (3) "Divorced individual" includes an individual whose marriage has been annulled.
 - (4) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of his [or her] marriage to his [or her] former spouse.
 - (5) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.
 - (6) "Revocable," with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his [or her] former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself [or herself] in place of his [or her] former spouse or in place of his [or her] former spouse's relative and whether or not

the divorced individual then had the capacity to exercise the power.

(b) **[Revocation Upon Divorce.]** Except as provided by the express terms of a governing instrument, a Court Order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable (i) disposition or appointment of property made by a divorced individual to his [or her] former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, and (iii) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship transforming the interests of the former spouses into equal tenancies in common.

(c) **[Effect of Severance.]** A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) **[Effect of Revocation.]** Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) **[Revival if Divorce Nullified.]** Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(f) **[No Revocation for Other Change of Circumstances.]** No change of circumstances other than as described in this section and in Section 2-803 effects a revocation.

(g) **[Protection of Payors and Other Third Parties.]**

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(2) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the Court.

(h) **[Protection of Bona Fide Purchasers; Personal Liability of Recipient.]**

(1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.