



**BOK FINANCIAL®**  
**THE PRIVATE BANK**

Jeff Bottenberg  
Assistant Vice President & Trust Officer  
jbottenberg@bokf.com 785.414.3222

900 S Kansas Avenue  
Topeka, Kansas 66612

January 23, 2017

The Honorable Rick Wilborn, Chairman Senate Judiciary Committee  
Room 541-E  
Topeka, KS 666112

Re: SB 63

Dear Senator Wilborn:

Mr. Chairman and Members of the Committee: My name is Jeff Bottenberg and I appear before you today on behalf of the Trust Division of the Kansas Bankers Association ("KBA") in support of SB 63.

SB 63 enacts the Revised Uniform Fiduciary Access to Digital Assets Act, which is a model law created by the Uniform Law Commission, which is a nonprofit organization composed of lawyers, judges, law professors, legislative staff and others who draft uniform laws for state implementation. SB 63 modernizes fiduciary law as it allows fiduciaries to access electronic property and records in the same fashion as they do other forms of property.

The KBA Trust Division is composed of persons who act as fiduciaries through their employment with banks and state chartered trust companies. The term fiduciary generally encompasses four distinct positions: Executor, Conservator, Agents appointed under Powers of Attorney and Trustees. In a typical scenario that would be affected by the passage of SB 63, a person names a bank or trust company as Executor in his or her Will. Once the client has passed the Executor steps in to legally carry out the deceased's instructions regarding the disposition of his or her property. Pursuant to Kansas law, the Executor is empowered to marshal the client's assets and distribute them according to his or her instructions as stated in the will. In most instances this is a rather simple exercise in that the fiduciary presents the copy of the legal document to the financial institution, realtor or other holder of property of the deceased. When fiduciaries review the deceased's property, including letters and other non-financial assets, such review often leads to the discovery of significant assets and property located at other locations, such as bank accounts and safe deposit boxes.

As you can imagine, having access to digital records such as emails, or simply the recipients of such emails as allowed in the legislation, would be valuable to fiduciaries in locating property and fulfilling our mission to carry out the wishes of the deceased. As noted in the legislation, SB 63 sets out specific procedures that a fiduciary must comply with in order to access digital assets, including electronic mail. As fiduciaries we understand the sensitivity of electronic mail, and therefore SB 63 allows a fiduciary access to individual emails only upon the prior consent of the deceased, or upon an order of the court. However unless previously prohibited by the deceased, upon presenting the proper authorization, a custodian shall disclose to a fiduciary a catalogue of electronic communications sent or received by the deceased. According to the legislation a 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.

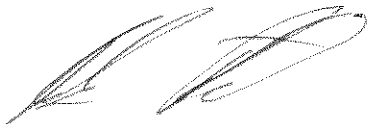
As previously noted, this information will be extremely helpful in fulfilling our duties as fiduciaries, including locating assets and the beneficiaries of the deceased.

I want to stress that as noted in New Section 5 of SB 63, this legislation does not give a fiduciary any new or expanded rights other than those held by the person for whom the fiduciary acts or represents. Furthermore, New Section 15 mandates that the legal duties that are imposed upon a fiduciary under current law, such as the Duties of Care, Loyalty and Confidentiality, apply to fiduciaries managing digital assets. Therefore the protections that exist in current law for the assets held by a fiduciary will also exist for digital assets.

I would also note that although I am testifying on behalf of professional fiduciaries, the provisions of SB 63 would apply to any person who has assumed the role of a fiduciary simply by being named as such in the legal document. Therefore this legislation will help, as an example, family members who agree to be the personal representative or trustee of a loved one, such as a parent.

Therefore, for the above-mentioned reasons, the KBA stands in strong support of SB 63 and urges its enactment into law. I would be happy to take any questions that you or the Committee may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Bottenberg', with a stylized, cursive script.

Jeff Bottenberg