



HOUSE OF REPRESENTATIVES

HB 2467

fiduciary access to digital assets

Prime Sponsor: Representative Brophy McGee, LD 28

DPA Committee on Banking and Financial Services

X Caucus and COW

House Engrossed

OVERVIEW

HB 2467 adopts the Revised Uniform Fiduciary Access to Digital Assets Act (Act) as developed by the Nation Conference of Commissioners on Uniform State Laws which governs the disclosure of certain types of digital assets.

PROVISIONS

Applicability

1. Applies the Act, after the date of enactment, to the following:
 - a. A fiduciary acting under a will or power of attorney,
 - b. A personal representative acting for a decedent who is deceased,
 - c. A conservatorship proceeding,
 - d. A trustee acting under a trust, and
 - e. A custodian, if the user resides or has resided in this state at the time of the user's death.
2. Exempts a digital asset of an employer used by an employee in the ordinary course of the employer's business from the Act.

User Direction for Disclosure

3. Allows a user to use an online tool to direct the custodian to disclose some or all of the user's digital assets.
4. Stipulates that a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, or other record, if the online tool allows the user to modify a direction at all times.
5. States the user may allow or prohibit disclosure to a fiduciary of some or all of the user's digital assets, if the user has not used or if the custodian has not provided an online tool.
6. Asserts the user's direction 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.

Procedure for Disclosure

7. Authorizes a custodian, when disclosing digital assets, to do any of the following:
 - a. Grant a fiduciary full access to the user's account or partial access sufficient enough to perform any charged tasks.
 - b. Provide a fiduciary a copy in a record of any digital asset that the user could have accessed if the user were alive and had full access to the account.
8. Allows a custodian to charge a reasonable fee for the cost of disclosing digital assets.

9. Specifies a custodian does not need to disclose a deleted digital access.
10. Stipulates that if a direction or request to disclose some of the user's digital assets would impose an undue burden on the custodian in the segregation of the assets, the custodian does not need to disclose the assets.
 - a. The custodian or fiduciary may seek a court order to disclose any of the following:
 - i. A subset limited by date of the user's digital assets,
 - ii. All of the user's digital assets to the fiduciary,
 - iii. None of the user's digital assets, or
 - iv. All of the user's digital assets to the court for review in camera.

Disclosure of Digital Assets

11. Stipulates that, if a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian must disclose the content to the personal representative of the user provided the representative gives the custodian certain specified information relating to the user.
12. Requires a custodian to disclose, unless the user prohibited disclosure or the court directs otherwise, a catalogue of electronic communications by the user and digital assets, other than the content of electronic communications of the user, if the representative gives the custodian certain specified information relating to the user.
13. Requires a custodian to disclose the content, to the extent a power of attorney grants an agent authority over the content of electronic communications by the principal and unless directed otherwise by the principal or the court, to the agent provided the agent gives the custodian certain specified information.
14. Requires a custodian to disclose, unless otherwise ordered by the court, directed by the principal to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications by the principal and digital assets, other than the content of electronic communications, of the principal provided the agent gives the custodian certain specified information.
15. Stipulates that a custodian must disclose any digital asset of the account held in trust to a trustee that is an original user of an account, unless otherwise ordered by the court or provided in a trust.
16. Requires a custodian to disclose, unless ordered or directed otherwise, the content of an electronic communication by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust to a trustee that is not an original user of an account, if the trustee gives the custodian certain specified information.
17. Requires a custodian to disclose, unless ordered or directed otherwise, a catalogue of electronic communications 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 to a trustee that is not an original user of an account, if the trustee gives the custodian certain specified information.
18. Authorizes a conservator access to the digital assets of a protected person after a court hearing.

19. Stipulates that a custodian must disclose, unless ordered or directed otherwise, the catalogue of electronic communications by a protected person and any digital assets, other than the content of electronic communications, which the protected person has a right or interest to a conservator provided that the conservator gives the custodian certain specified information.
20. Allows a conservator to request a custodian of the digital assets of a protected person to suspend or terminate an account of the protected person for good cause.

Fiduciary Authority

21. Asserts the legal duties imposed on a fiduciary apply to the management of digital assets.
22. States a fiduciary's authority with respect to a digital asset of a user: 1) is subject to the applicable terms of service, 2) is subject to other applicable laws, 3) is limited by the scope of the fiduciary's duties, and 4) cannot be used to impersonate the user.
23. Asserts a fiduciary has the right to access any digital asset of a decedent, protected person, principal or settlor in which the fiduciary has the authority over.
24. Specifies a fiduciary acting within the scope of their duties is an authorized user of property for the purpose of applicable computer-fraud laws.
25. Specifies a fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:
 - a. Has the right to access the property, and
 - b. Is an authorized user for the purpose of computer-fraud laws.
26. Allows a custodian to 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.
27. Allows a fiduciary to request a custodian to terminate the user's account.
 - a. The request must be in writing and be accompanied by certain specified information.

Miscellaneous

28. Asserts the Act:
 - a. Does not change or impair a right of a custodian or a user under an agreement to access and use digital assets of the user.
 - b. Does not give a fiduciary any new or expanded rights other than those held by the user for whom the fiduciary represents.
29. States the fiduciary's access to digital assets may be modified by a user, federal law, or a terms-of-service agreement, if the user has not provided direction.
30. Requires a custodian to comply with a request under the Act from a fiduciary to disclose digital assets or terminate an account within 60 days.
 - a. A fiduciary may apply for a court order for noncompliance.
 - b. The court order must contain a finding stating the compliance is violating federal law regarding voluntary discloser of customer communications or recorders.
31. Authorizes a custodian to notify the user that a request for disclosure or to terminate an account was made under the Act.
32. Allows a custodian to deny a request from a fiduciary for disclose of digital assets or to terminate an account if the custodian is aware of any lawful access to the account.
33. States the Act does not limit a custodian's ability to obtain a court order that:

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- a. Specifies that an account belongs to the protected person or principal.
 - b. Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure.
 - c. Contains a finding required by another law.
34. Exempts a custodian and its officers, employees and agents from liability for an act or omission done in good faith.
 35. Acknowledges that uniformity must be considered in the application and construction of this Act.
 36. Asserts the Act supersedes federal law only as applicable.
 37. Defines pertinent terms.

AMENDMENTS BY BANKING AND FINANCIAL SERVICES COMMITTEE

1. Makes clarifying changes.

ADDITIONAL INFORMATION

The [Uniform Law Commission](#) (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

In 2015, the ULC developed the Revised Uniform Fiduciary Access to Digital Assets [Act](#), which extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. To date, 18 other states have introduced version of the Act.