



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR H.B. 2467

fiduciary access to digital assets

Purpose

Adopts the Revised Fiduciary Access to Digital Assets Act as developed by the Uniform Law Commission.

Background

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, established in 1892, provides states with legislation that brings clarity and stability to critical areas of state statutory law. The ULC is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the US Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed. Most jurisdictions provide for their commission by statute.

The ULC finalized the Revised Fiduciary Access to Digital Assets Act (Act) in 2015. The Act extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person's best interest. Common types of fiduciaries include executors of a decedent's estate, trustees, conservators and agents under a power of attorney.

As of 2015, Oregon, Florida, Tennessee and Wyoming are the only states to have enacted the Revised Fiduciary Access to Digital Assets Act. At least 22 other states have introduced the Act for consideration.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

General Provisions

1. States that the provisions of the bill apply to all of the following after enactment:
 - a) a fiduciary acting under a will or power of attorney;
 - b) a personal representative acting for a decedent;
 - c) a conservatorship proceeding;

- d) a trustee acting under a trust; and
 - e) a custodian if the user resides in this state.
2. Exempts a digital asset of an employer used by an employee in the ordinary course of the employer's business from the Act.
 3. Allows a user to direct a custodian to disclose, or not disclose, to a designated recipient some or all digital assets using an online tool and stipulates that such directions:
 - a) override any contrary direction in a will, trust, power of attorney or other record, if the online tool allows for modification or deletion of a direction at any time; and
 - b) override any contrary provision in a terms-of-service agreement, if the agreement does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.
 4. Specifies that the act does not change or impair the right of a custodian or user to access and use digital assets under a terms-of-service agreement.
 5. Exempts custodians and their officers, employees and agents from liability for any act or omission done in good faith pursuant to this act.

Custodians of Digital Assets

6. Allows a custodian to grant a fiduciary with the following:
 - a) full access to the user's account;
 - b) partial access sufficient to perform the charged tasks; and
 - c) provide a fiduciary 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.
7. Allows custodians to access a reasonable administrative charge for the cost of disclosing digital assets.
8. Specifies that a custodian need not disclose digital assets deleted by the user, or partial assets if the action creates undue burden on the custodian.
9. Stipulates that if a custodian believes a direction or request to disclose a portion of digital assets imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:
 - a) a subset of the assets limited by date;
 - b) all of the assets;
 - c) none of the assets; or
 - d) all of the assets to the court for review in camera.
10. Requires custodians to disclose a catalogue of electronic communications, the content of those communications or other digital assets in a user or trust's account to an agent, estate representative or trustee who is not an original user of the account, if the user consented or did not prohibit disclosure, a court has directed the disclosure and the requesting party provides all of the following:

- a) a written request for the disclosure;
 - b) a certified copy of the user's death certificate, letters testamentary, small-estate affidavit, will, trust or certification of the trust, power of attorney, court order or other record evidencing the requesting party's authority or the user's consent;
 - c) if applicable, a certification by the agent or trustee, under penalty of perjury, that the power of attorney or trust is in effect and that the person is acting accordingly;
 - d) if applicable, an affidavit from the personal representative of the user's estate stating that the disclosure is reasonably necessary for administration of the user's estate; and
 - e) if applicable and requested by the custodian, a unique account identifier, evidence linking the account to the user or trust or a finding by the court that:
 - i. the user consented to disclosure;
 - ii. the user or trust has a specific, identifiable account;
 - iii. disclosure would not violate any applicable laws; or
 - iv. disclosure is reasonably necessary for administration of a user's estate.
11. Requires custodians to disclose any digital asset in an account held in trust to a trustee that is an original user of the account.
12. Stipulates that the act does not limit a custodian's ability to obtain, or request that a fiduciary or designated recipient obtain, a court order that:
 - a) specifies that an account belongs to a protected person or principal;
 - b) specifies that there is sufficient consent from the protected person or principal to support disclosure; or
 - c) contains any other finding required by law.
13. Requires custodians to comply with requests from a fiduciary or designated recipient for the disclosure of digital assets or the termination of an account no later than 60 days after receiving the information required.
14. Allows a fiduciary or designated recipient to apply for a court order directing a custodian to comply with a request and requires such an order to contain a finding that compliance would not be in violation of 18 U.S.C. § 2702 relating to the voluntary disclosure of customer communications and records.
15. Allows a custodian to notify a user that a request for disclosure has been made.
16. Allows a custodian to deny a request for disclosure from a fiduciary or designated recipient if the custodian is aware of any lawful access to the account after the request has been made.

Conservators

17. Allows a court to grant a conservator access to the digital assets of a protected person after a power of attorney hearing.
18. Requires a custodian to disclose to a conservator a catalogue of electronic communications and any other digital assets, except the content of electronic communications, in which the protected person has a right or interest if the conservator provides all of the following:

- a) a written request for disclosure;
- b) a certified copy of the court order granting authority over digital assets; and
- c) if requested by the custodian, a unique account identifier or evidence linking the account to the trust.

19. Allows a conservator to request that a custodian suspend or terminate a protected person's account for good cause if the request is accompanied by a certified copy of a court order granting the conservator general authority over the protected person's property.

Fiduciaries

20. Stipulates that the legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets including duty of care, duty of loyalty and duty of confidentiality.

21. Stipulates that a fiduciary's authority over digital assets is subject to terms of service agreements, copyright and other applicable laws, is limited by the scope of the fiduciary's duties and may not be used to impersonate the user.

22. Specifies that the act does not give a fiduciary, or a designated recipient, any new or expanded rights, other than those held by the user.

23. Specifies that a user that has not provided direction about the disclosure of digital assets using an online tool may allow or prohibit disclosure to a fiduciary in a will, trust, power of attorney or other record and that in such cases access may be modified or eliminated by the user, federal law or a terms-of-service agreement.

24. Allows a custodian to disclose information in a user's account to a user's fiduciary if the information is required to terminate an account used to access digital assets licensed to the user.

25. Allows a fiduciary to request that a custodian terminate a user's account if the request is in writing and accompanied by all of the following:

- a) a certified copy of the death certificate if the user is deceased;
- b) a certified copy of the letters testamentary of the representative, small-estate affidavit, court order, power of attorney or trust giving the fiduciary authority over the account; and
- c) if requested by the custodian, a unique account identifier, evidence linking the account to the user or a court finding that the user has a specific identifiable account.

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

27. Makes fiduciaries acting within the scope of their duties authorized users of the property of the decedent, protected person, principal or settlor for the purposes of computer-fraud and unauthorized-computer-access laws.

Miscellaneous

28. Specifies that the act does not apply to the digital assets of an employer used by an employee in the ordinary course of business.
29. Requires consideration to be given to uniformity with other states when applying and constructing this act.
30. Specifies that this act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001-7031) except for 15 U.S.C. § 7001(c) relating to consumer disclosures and does not authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).
31. Defines appropriate terms.
32. Becomes effective on the general effective date.

House Action

BFS	2/16/16	DPA	7-1-0
3 rd Read	3/1/16		55-4-1

Prepared by Senate Research
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FB/ZD/rf