

1 **UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Lyle W. Hillyard

6 Cosponsor: Kelly B. Miles

7

8 **LONG TITLE**

9 **General Description:**

10 This bill creates a new chapter within the Utah Uniform Probate Code addressing
11 access to digital assets when a person is incapacitated or deceased.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ specifies who has access to the digital assets of an incapacitated or deceased person;
- 16 ▶ sets out responsibilities for agents and fiduciaries with access to a person's digital
17 assets; and
- 18 ▶ provides for the responsibilities of the custodian of a digital asset upon request of an
19 agent or fiduciary.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 ENACTS:

26 **75-10-101**, Utah Code Annotated 1953

27 **75-10-102**, Utah Code Annotated 1953

- 28 **75-10-103**, Utah Code Annotated 1953
- 29 **75-10-104**, Utah Code Annotated 1953
- 30 **75-10-105**, Utah Code Annotated 1953
- 31 **75-10-106**, Utah Code Annotated 1953
- 32 **75-10-107**, Utah Code Annotated 1953
- 33 **75-10-108**, Utah Code Annotated 1953
- 34 **75-10-109**, Utah Code Annotated 1953
- 35 **75-10-110**, Utah Code Annotated 1953
- 36 **75-10-111**, Utah Code Annotated 1953
- 37 **75-10-112**, Utah Code Annotated 1953
- 38 **75-10-113**, Utah Code Annotated 1953
- 39 **75-10-114**, Utah Code Annotated 1953
- 40 **75-10-115**, Utah Code Annotated 1953
- 41 **75-10-116**, Utah Code Annotated 1953
- 42 **75-10-117**, Utah Code Annotated 1953
- 43 **75-10-118**, Utah Code Annotated 1953



45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **75-10-101** is enacted to read:

47 **CHAPTER 10. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

48 **75-10-101. Title.**

49 This chapter may be cited as the "Uniform Fiduciary Access to Digital Assets Act."

50 Section 2. Section **75-10-102** is enacted to read:

51 **75-10-102. Definitions.**

52 As used in this chapter:

53 (1) "Account" means an arrangement under a terms of service agreement in which a
54 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides

55 goods or services to the user.

56 (2) "Agent" means an attorney in fact granted authority under a durable or nondurable
57 power of attorney.

58 (3) "Carries" means engages in the transmission of an electronic communication.

59 (4) "Catalogue of electronic communications" means information that identifies each
60 person with which a user has had an electronic communication, the time and date of the
61 communication, and the electronic address of the person.

62 (5) (a) "Conservator" means a person appointed by a court to manage the estate of a
63 living individual.

64 (b) "Conservator" includes a limited conservator.

65 (6) "Content of an electronic communication" means information concerning the
66 substance or meaning of the communication that:

67 (a) has been sent or received by a user;

68 (b) is in electronic storage by a custodian providing an electronic communication
69 service to the public or is carried or maintained by a custodian providing a remote computing
70 service to the public; and

71 (c) is not readily accessible to the public.

72 (7) "Court" means the district court.

73 (8) "Custodian" means a person that carries, maintains, processes, receives, or stores a
74 digital asset of a user.

75 (9) "Designated recipient" means a person chosen by a user using an online tool to
76 administer digital assets of the user.

77 (10) (a) "Digital asset" means an electronic record in which an individual has a right or
78 interest.

79 (b) "Digital asset" does not include an underlying asset or liability unless the asset or
80 liability is itself an electronic record.

81 (11) "Electronic" means relating to technology having electrical, digital, magnetic,

82 wireless, optical, electromagnetic, or similar capabilities.

83 (12) "Electronic communication" has the same meaning as the definition in 18 U.S.C.
84 Sec. 2510(12).

85 (13) "Electronic communication service" means a custodian that provides to a user the
86 ability to send or receive an electronic communication.

87 (14) "Fiduciary" means an original, additional, or successor personal representative,
88 conservator, guardian, agent, or trustee.

89 (15) (a) "Guardian" means a person appointed by a court to manage the affairs of a
90 living individual.

91 (b) "Guardian" includes a limited guardian.

92 (16) "Information" means data, text, images, videos, sounds, codes, computer
93 programs, software, databases, or the like.

94 (17) "Online tool" means an electronic service provided by a custodian that allows the
95 user, in an agreement distinct from the terms of service agreement between the custodian and
96 user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

97 (18) "Person" means an individual, estate, business or nonprofit entity, public
98 corporation, government or governmental subdivision, agency, instrumentality, or other legal
99 entity.

100 (19) "Personal representative" means an executor, administrator, special administrator,
101 or person that performs substantially the same function under the law of this state other than
102 this chapter.

103 (20) "Power of attorney" means a record that grants an agent authority to act in the
104 place of a principal.

105 (21) "Principal" means an individual who grants authority to an agent in a power of
106 attorney.

107 (22) (a) "Protected person" means an individual for whom a conservator or guardian
108 has been appointed.

109 (b) "Protected person" includes an individual for whom an application for the
110 appointment of a conservator or guardian is pending.

111 (23) "Record" means information that is inscribed on a tangible medium or that is
112 stored in an electronic or other medium and is retrievable in perceivable form.

113 (24) "Remote computing service" means a custodian that provides to a user computer
114 processing services or the storage of digital assets by means of an electronic communications
115 system, as defined in 18 U.S.C. Sec. 2510(14).

116 (25) "Terms of service agreement" means an agreement that controls the relationship
117 between a user and a custodian.

118 (26) (a) "Trustee" means a fiduciary with legal title to property pursuant to an
119 agreement or declaration that creates a beneficial interest in another.

120 (b) "Trustee" includes a successor trustee.

121 (27) "User" means a person that has an account with a custodian.

122 (28) "Will" includes a codicil, a testamentary instrument that only appoints an
123 executor, and an instrument that revokes or revises a testamentary instrument.

124 Section 3. Section **75-10-103** is enacted to read:

125 **75-10-103. Applicability.**

126 (1) This chapter applies to:

127 (a) a fiduciary or agent acting under a will or power of attorney executed before, on, or
128 after May 9, 2017;

129 (b) a personal representative acting for a decedent who died before, on, or after May 9,
130 2017;

131 (c) a conservatorship or guardianship proceeding commenced before, on, or after May
132 9, 2017; and

133 (d) a trustee acting under a trust created before, on, or after May 9, 2017.

134 (2) This chapter applies to a custodian if the user resides in this state or resided in this
135 state at the time of the user's death.

136 (3) This chapter does not apply to a digital asset of an employer used by an employee
137 in the ordinary course of the employer's business.

138 Section 4. Section **75-10-104** is enacted to read:

139 **75-10-104. User direction for disclosure of digital assets.**

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

145 (2) If a user has not used an online tool to give direction under Subsection (1) or if the
146 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power
147 of attorney, or other record disclosure to a fiduciary of some or all of the user's digital assets,
148 including the content of electronic communications sent or received by the user.

149 (3) A user's direction under Subsection (1) or (2) overrides a contrary provision in a
150 terms of service agreement that does not require the user to act affirmatively and distinctly
151 from the user's assent to the terms of service.

152 Section 5. Section **75-10-105** is enacted to read:

153 **75-10-105. Terms of service agreement.**

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

156 (2) This chapter does not give a fiduciary or designated recipient any new or expanded
157 rights other than those held by the user for whom, or for whose estate, the fiduciary or
158 designated recipient acts or represents.

159 (3) A fiduciary's or designated recipient's access to digital assets may be modified or
160 eliminated by a user, by federal law, or by a terms of service agreement if the user has not
161 provided direction under Section [75-10-104](#).

162 Section 6. Section **75-10-106** is enacted to read:

163 **75-10-106. Procedure for disclosing digital assets.**

164 (1) When disclosing digital assets of a user under this chapter, the custodian may at the
165 custodian's sole discretion:

166 (a) grant a fiduciary or designated recipient full access to the user's account;

167 (b) grant a fiduciary or designated recipient partial access to the user's account

168 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

169 (c) provide a fiduciary or designated recipient a copy in a record of any digital asset
170 that, on the date the custodian received the request for disclosure, the user could have accessed
171 if the user were alive and had full capacity and access to the account.

172 (2) A custodian may assess a reasonable administrative charge for the cost of
173 disclosing digital assets under this chapter.

174 (3) A custodian need not disclose under this chapter a digital asset deleted by a user.

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

180 (a) a subset limited by date of the user's digital assets;

181 (b) all of the user's digital assets to the fiduciary or designated recipient;

182 (c) none of the user's digital assets; or

183 (d) all of the user's digital assets to the court for review in camera.

184 Section 7. Section **75-10-107** is enacted to read:

185 **75-10-107. Disclosure of content of electronic communications of deceased user.**

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

- 190 (1) a written request for disclosure in physical or electronic form;
- 191 (2) a certified copy of the death certificate of the user;
- 192 (3) a certified copy of the letter of appointment of the representative or a small estate
193 affidavit or court order;
- 194 (4) unless the user provided direction using an online tool, a copy of the user's will,
195 trust, power of attorney, or other record evidencing the user's consent to disclosure of the
196 content of electronic communications; and
- 197 (5) if requested by the custodian:
 - 198 (a) a number, username, address, or other unique subscriber or account identifier
199 assigned by the custodian to identify the user's account;
 - 200 (b) evidence linking the account to the user; or
 - 201 (c) a finding by the court that:
 - 202 (i) the user had a specific account with the custodian, identifiable by the information
203 specified in Subsection (5)(a);
 - 204 (ii) disclosure of the content of electronic communications of the user would not
205 violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;
 - 206 (iii) unless the user provided direction using an online tool, the user consented to
207 disclosure of the content of electronic communications; or
 - 208 (iv) disclosure of the content of electronic communications of the user is reasonably
209 necessary for administration of the estate.

210 Section 8. Section **75-10-108** is enacted to read:

211 **75-10-108. Disclosure of other digital assets of deceased user.**

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

- 217 (1) a written request for disclosure in physical or electronic form;
- 218 (2) a certified copy of the death certificate of the user;
- 219 (3) a certified copy of the letter of appointment of the representative, a small estate
- 220 affidavit, or court order; and
- 221 (4) if requested by the custodian:
 - 222 (a) a number, username, address, or other unique subscriber or account identifier
 - 223 assigned by the custodian to identify the user's account;
 - 224 (b) evidence linking the account to the user;
 - 225 (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary
 - 226 for administration of the estate; or
 - 227 (d) a finding by the court that:
 - 228 (i) the user had a specific account with the custodian, identifiable by the information
 - 229 specified in Subsection (4)(a); or
 - 230 (ii) disclosure of the user's digital assets is reasonably necessary for administration of
 - 231 the estate.

232 Section 9. Section **75-10-109** is enacted to read:

233 **75-10-109. Disclosure of content of electronic communications of principal.**

234 To the extent a power of attorney expressly grants an agent authority over the content of

235 electronic communications sent or received by the principal and unless directed otherwise by

236 the principal or the court, a custodian shall disclose to the agent the content if the agent gives

237 the custodian:

- 238 (1) a written request for disclosure in physical or electronic form;
- 239 (2) an original or copy of the power of attorney expressly granting the agent authority
- 240 over the content of electronic communications of the principal;
- 241 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
- 242 effect; and
- 243 (4) if requested by the custodian;

244 (a) a number, username, address, or other unique subscriber or account identifier
245 assigned by the custodian to identify the principal's account; or

246 (b) evidence linking the account to the principal.

247 Section 10. Section **75-10-110** is enacted to read:

248 **75-10-110. Disclosure of other digital assets of principal.**

249 Unless otherwise ordered by the court, directed by the principal, or provided by a power
250 of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or
251 general authority to act on behalf of a principal, a catalogue of electronic communications sent
252 or received by the principal and digital assets, other than the content of electronic
253 communications, of the principal if the agent gives the custodian:

254 (1) a written request for disclosure in physical or electronic form;

255 (2) an original or a copy of the power of attorney that gives the agent specific authority
256 over digital assets or general authority to act on behalf of the principal;

257 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
258 effect; and

259 (4) if requested by the custodian:

260 (a) a number, username, address, or other unique subscriber or account identifier
261 assigned by the custodian to identify the principal's account; or

262 (b) evidence linking the account to the principal.

263 Section 11. Section **75-10-111** is enacted to read:

264 **75-10-111. Disclosure of digital assets held in trust when trustee is original user.**

265 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose
266 to a trustee that is an original user of an account any digital asset of the account held in trust,
267 including a catalogue of electronic communications of the trustee and the content of electronic
268 communications.

269 Section 12. Section **75-10-112** is enacted to read:

270 **75-10-112. Disclosure of contents of electronic communications held in trust when**

271 trustee not original user.

272 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
273 custodian shall disclose to a trustee that is not an original user of an account the content of an
274 electronic communication sent or received by an original or successor user and carried,
275 maintained, processed, received, or stored by the custodian in the account of the trust if the
276 trustee gives the custodian:

277 (1) a written request for disclosure in physical or electronic form;

278 (2) a certified copy of the trust instrument or a certification of the trust under Section
279 75-7-1013 that includes consent to disclosure of the content of electronic communications to
280 the trustee;

281 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
282 trustee is a currently acting trustee of the trust; and

283 (4) if requested by the custodian:

284 (a) a number, username, address, or other unique subscriber or account identifier
285 assigned by the custodian to identify the trust's account; or

286 (b) evidence linking the account to the trust.

287 Section 13. Section 75-10-113 is enacted to read:

288 **75-10-113. Disclosure of other digital assets held in trust when trustee not original**
289 **user.**

290 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
291 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of
292 electronic communications sent or received by an original or successor user and stored, carried,
293 or maintained by the custodian in an account of the trust and any digital assets, other than the
294 content of electronic communications, in which the trust has a right or interest if the trustee
295 gives the custodian:

296 (1) a written request for disclosure in physical or electronic form;

297 (2) a certified copy of the trust instrument or a certification of the trust under Section

298 [75-7-1013](#);

299 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the
300 trustee is a currently acting trustee of the trust; and

301 (4) if requested by the custodian:

302 (a) a number, username, address, or other unique subscriber or account identifier
303 assigned by the custodian to identify the trust's account; or

304 (b) evidence linking the account to the trust.

305 Section 14. Section **75-10-114** is enacted to read:

306 **75-10-114. Disclosure of digital assets to conservator or guardian of protected**
307 **person.**

308 (1) After an opportunity for a hearing under Chapter 5b, Uniform Adult Guardianship
309 and Protective Proceedings Jurisdiction Act, the court may grant a conservator or guardian
310 access to the digital assets of a protected person.

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

316 (a) a written request for disclosure in physical or electronic form;

317 (b) a certified copy of the court order that gives the conservator or guardian authority
318 over the digital assets of the protected person; and

319 (c) if requested by the custodian:

320 (i) a number, username, address, or other unique subscriber or account identifier
321 assigned by the custodian to identify the account of the protected person; or

322 (ii) evidence linking the account to the protected person.

323 (3) A conservator or guardian with general authority to manage the assets of a
324 protected person may request a custodian of the digital assets of the protected person to

325 suspend or terminate an account of the protected person for good cause. A request made under
326 this section must be accompanied by a certified copy of the court order giving the conservator
327 or guardian authority over the protected person's property.

328 Section 15. Section **75-10-115** is enacted to read:

329 **75-10-115. Fiduciary duty and authority.**

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

332 (a) the duty of care;

333 (b) the duty of loyalty; and

334 (c) the duty of confidentiality.

335 (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a
336 user:

337 (a) except as otherwise provided in Section [75-10-104](#), is subject to the applicable
338 terms of service;

339 (b) is subject to other applicable law, including copyright law;

340 (c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

341 (d) may not be used to impersonate the user.

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

346 (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
347 the property of the decedent, protected person, principal, or settlor for the purpose of applicable
348 computer fraud and unauthorized computer access laws.

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

351 (a) has the right to access the property and any digital asset stored in it; and

352 (b) is an authorized user for the purpose of computer fraud and unauthorized computer
353 access laws.

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

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

360 (a) if the user is deceased, a certified copy of the death certificate of the user;

361 (b) a certified copy of the letter of appointment of the representative, a small estate
362 affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the
363 account; and

364 (c) if requested by the custodian:

365 (i) a number, username, address, or other unique subscriber or account identifier
366 assigned by the custodian to identify the user's account;

367 (ii) evidence linking the account to the user; or

368 (iii) a finding by the court that the user had a specific account with the custodian,
369 identifiable by the information specified in Subsection (7)(c)(i).

370 Section 16. Section **75-10-116** is enacted to read:

371 **75-10-116. Custodian compliance and immunity.**

372 (1) Not later than 60 days after receipt of the information required under Sections
373 75-10-107 through 75-10-115, a custodian shall comply with a request under this chapter from
374 a fiduciary or designated recipient to disclose digital assets or terminate an account. If the
375 custodian fails to comply, the fiduciary or designated recipient may apply to the court for an
376 order directing compliance.

377 (2) An order under Subsection (1) directing compliance shall contain a finding that
378 compliance is not in violation of 18 U.S.C. Sec. 2702.

379 (3) A custodian may notify the user that a request for disclosure or to terminate an
380 account was made under this chapter.

381 (4) A custodian may deny a request under this chapter from a fiduciary or designated
382 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of
383 any lawful access to the account following the receipt of the fiduciary's request.

384 (5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or
385 designated recipient requesting disclosure or termination under this chapter to obtain a court
386 order that:

387 (a) specifies that an account belongs to the protected person or principal;

388 (b) specifies that there is sufficient consent from the protected person or principal to
389 support the requested disclosure; and

390 (c) contains a finding required by law other than this chapter.

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

393 Section 17. Section **75-10-117** is enacted to read:

394 **75-10-117. Uniformity of application and construction.**

395 In applying and construing this uniform act, consideration shall be given to the need to
396 promote uniformity of the law with respect to its subject matter among states that enact it.

397 Section 18. Section **75-10-118** is enacted to read:

398 **75-10-118. Relation to Electronic Signatures in Global and National Commerce**
399 **Act.**

400 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
401 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
402 Section 101(c) of that act or 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of
403 the notices described in Section 103(b) of that act or 15 U.S.C. Sec. 7003(b).