

1 **UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS**

2 **ACT**

3 2017 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Lyle W. Hillyard

7

LONG TITLE

8 **Committee Note:**

9 The Judiciary Interim Committee recommended this bill.

10 **General Description:**

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

13 **Highlighted Provisions:**

14 This bill:

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

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 ENACTS:



- 28 [75-10-101](#), Utah Code Annotated 1953
- 29 [75-10-102](#), Utah Code Annotated 1953
- 30 [75-10-103](#), Utah Code Annotated 1953
- 31 [75-10-104](#), Utah Code Annotated 1953
- 32 [75-10-105](#), Utah Code Annotated 1953
- 33 [75-10-106](#), Utah Code Annotated 1953
- 34 [75-10-107](#), Utah Code Annotated 1953
- 35 [75-10-108](#), Utah Code Annotated 1953
- 36 [75-10-109](#), Utah Code Annotated 1953
- 37 [75-10-110](#), Utah Code Annotated 1953
- 38 [75-10-111](#), Utah Code Annotated 1953
- 39 [75-10-112](#), Utah Code Annotated 1953
- 40 [75-10-113](#), Utah Code Annotated 1953
- 41 [75-10-114](#), Utah Code Annotated 1953
- 42 [75-10-115](#), Utah Code Annotated 1953
- 43 [75-10-116](#), Utah Code Annotated 1953
- 44 [75-10-117](#), Utah Code Annotated 1953
- 45 [75-10-118](#), Utah Code Annotated 1953

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

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

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

50 **75-10-101. Title.**

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

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

53 **75-10-102. Definitions.**

54 As used in this chapter:

55 (1) "Account" means an arrangement under a terms of service agreement in which a
 56 custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides
 57 goods or services to the user.

58 (2) "Agent" means an attorney in fact granted authority under a durable or nondurable

59 power of attorney.

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

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

64 (5) "Conservator" means a person appointed by a court to manage the estate of a living
65 individual. The term includes a limited conservator.

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

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

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

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

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

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

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

78 (10) "Digital asset" means an electronic record in which an individual has a right or
79 interest. The term does not include an underlying asset or liability unless the asset or liability is
80 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, agent, or trustee.

89 (15) "Information" means data, text, images, videos, sounds, codes, computer

90 programs, software, databases, or the like.

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

94 (17) "Person" means an individual, estate, business or nonprofit entity, public
95 corporation, government or governmental subdivision, agency, instrumentality, or other legal
96 entity.

97 (18) "Personal representative" means an executor, administrator, special administrator,
98 or person that performs substantially the same function under the law of this state other than
99 this chapter.

100 (19) "Power of attorney" means a record that grants an agent authority to act in the
101 place of a principal.

102 (20) "Principal" means an individual who grants authority to an agent in a power of
103 attorney.

104 (21) "Protected person" means an individual for whom a conservator has been
105 appointed. The term includes an individual for whom an application for the appointment of a
106 conservator is pending.

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

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

112 (24) "Terms of service agreement" means an agreement that controls the relationship
113 between a user and a custodian.

114 (25) "Trustee" means a fiduciary with legal title to property pursuant to an agreement
115 or declaration that creates a beneficial interest in another. The term includes a successor
116 trustee.

117 (26) "User" means a person that has an account with a custodian.

118 (27) "Will" includes a codicil, a testamentary instrument that only appoints an
119 executor, and an instrument that revokes or revises a testamentary instrument.

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

121 **75-10-103. Applicability.**

122 (1) This chapter applies to:

123 (a) a fiduciary or agent acting under a will or power of attorney executed before, on, or
124 after May 9, 2017;125 (b) a personal representative acting for a decedent who died before, on, or after May 9,
126 2017;127 (c) a conservatorship proceeding commenced before, on, or after May 9, 2017; and128 (d) a trustee acting under a trust created before, on, or after May 9, 2017.129 (2) This chapter applies to a custodian if the user resides in this state or resided in this
130 state at the time of the user's death.131 (3) This chapter does not apply to a digital asset of an employer used by an employee
132 in the ordinary course of the employer's business.133 Section 4. Section **75-10-104** is enacted to read:134 **75-10-104. User direction for disclosure of digital assets.**135 (1) A user may use an online tool to direct the custodian to disclose or not to disclose
136 to a designated recipient some or all of the user's digital assets, including the content of
137 electronic communications. If the online tool allows the user to modify or delete a direction at
138 all times, a direction regarding disclosure using an online tool overrides a contrary direction by
139 the user in a will, trust, power of attorney, or other record.140 (2) If a user has not used an online tool to give direction under Subsection (1) or if the
141 custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power
142 of attorney, or other record disclosure to a fiduciary of some or all of the user's digital assets,
143 including the content of electronic communications sent or received by the user.144 (3) A user's direction under Subsection (1) or (2) overrides a contrary provision in a
145 terms of service agreement that does not require the user to act affirmatively and distinctly
146 from the user's assent to the terms of service.147 Section 5. Section **75-10-105** is enacted to read:148 **75-10-105. Terms of service agreement.**149 (1) This chapter does not change or impair a right of a custodian or a user under a
150 terms of service agreement to access and use digital assets of the user.151 (2) This chapter does not give a fiduciary or designated recipient any new or expanded

152 rights other than those held by the user for whom, or for whose estate, the fiduciary or
153 designated recipient acts or represents.

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

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

158 **75-10-106. Procedure for disclosing digital assets.**

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

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

162 (b) grant a fiduciary or designated recipient partial access to the user's account
163 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

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

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

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

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

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

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

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

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

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

180 **75-10-107. Disclosure of content of electronic communications of deceased user.**

181 If a deceased user consented to or a court directs disclosure of the contents of electronic
182 communications of the user, the custodian shall disclose to the personal representative of the

183 estate of the user the content of an electronic communication sent or received by the user if the
184 representative gives the custodian:

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

186 (2) a certified copy of the death certificate of the user;

187 (3) a certified copy of the letter of appointment of the representative or a small estate
188 affidavit or court order;

189 (4) unless the user provided direction using an online tool, a copy of the user's will,
190 trust, power of attorney, or other record evidencing the user's consent to disclosure of the

191 content of electronic communications; and

192 (5) if requested by the custodian:

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

195 (b) evidence linking the account to the user; or

196 (c) a finding by the court that:

197 (i) the user had a specific account with the custodian, identifiable by the information
198 specified in Subsection (5)(a);

199 (ii) disclosure of the content of electronic communications of the user would not
200 violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;

201 (iii) unless the user provided direction using an online tool, the user consented to
202 disclosure of the content of electronic communications; or

203 (iv) disclosure of the content of electronic communications of the user is reasonably
204 necessary for administration of the estate.

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

206 **75-10-108. Disclosure of other digital assets of deceased user.**

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

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

213 (2) a certified copy of the death certificate of the user;

214 (3) a certified copy of the letter of appointment of the representative, a small estate
215 affidavit, or court order; and

216 (4) if requested by the custodian:

217 (a) a number, username, address, or other unique subscriber or account identifier

218 assigned by the custodian to identify the user's account;

219 (b) evidence linking the account to the user;

220 (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary

221 for administration of the estate; or

222 (d) a finding by the court that:

223 (i) the user had a specific account with the custodian, identifiable by the information

224 specified in Subsection (4)(a); or

225 (ii) disclosure of the user's digital assets is reasonably necessary for administration of
226 the estate.

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

228 **75-10-109. Disclosure of content of electronic communications of principal.**

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

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

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

232 the custodian:

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

234 (2) an original or copy of the power of attorney expressly granting the agent authority

235 over the content of electronic communications of the principal;

236 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in

237 effect; and

238 (4) if requested by the custodian:

239 (a) a number, username, address, or other unique subscriber or account identifier

240 assigned by the custodian to identify the principal's account; or

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

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

243 **75-10-110. Disclosure of other digital assets of principal.**

244 Unless otherwise ordered by the court, directed by the principal, or provided by a power

245 of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or
246 general authority to act on behalf of a principal, a catalogue of electronic communications sent
247 or received by the principal and digital assets, other than the content of electronic
248 communications, of the principal if the agent gives the custodian:

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

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

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

254 (4) if requested by the custodian:

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

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

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

259 **75-10-111. Disclosure of digital assets held in trust when trustee is original user.**

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

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

265 **75-10-112. Disclosure of contents of electronic communications held in trust when**
266 **trustee not original user.**

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

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

273 (2) a certified copy of the trust instrument or a certification of the trust under Section
274 75-7-1013 that includes consent to disclosure of the content of electronic communications to
275 the trustee;

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

278 (4) if requested by the custodian:

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

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

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

283 **75-10-113. Disclosure of other digital assets held in trust when trustee not original**
284 **user.**

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

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

292 (2) a certified copy of the trust instrument or a certification of the trust under Section
293 [75-7-1013](#);

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

296 (4) if requested by the custodian:

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

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

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

301 **75-10-114. Disclosure of digital assets to conservator of protected person.**

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

305 (2) Unless otherwise ordered by the court or directed by the user, a custodian shall
306 disclose to a conservator the catalogue of electronic communications sent or received by a

307 protected person and any digital assets, other than the content of electronic communications, in
308 which the protected person has a right or interest if the conservator gives the custodian:

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

310 (b) a certified copy of the court order that gives the conservator authority over the
311 digital assets of the protected person; and

312 (c) if requested by the custodian:

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

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

316 (3) A conservator with general authority to manage the assets of a protected person
317 may request a custodian of the digital assets of the protected person to suspend or terminate an
318 account of the protected person for good cause. A request made under this section must be
319 accompanied by a certified copy of the court order giving the conservator authority over the
320 protected person's property.

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

322 **75-10-115. Fiduciary duty and authority.**

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

325 (a) the duty of care;

326 (b) the duty of loyalty; and

327 (c) the duty of confidentiality.

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

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

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

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

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

335 (3) A fiduciary with authority over the property of a decedent, protected person,
336 principal, or settlor has the right to access any digital asset in which the decedent, protected
337 person, principal, or settlor had a right or interest and that is not held by a custodian or subject

338 to a terms of service agreement.

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

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

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

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

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

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

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

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

357 (c) if requested by the custodian:

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

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

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

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

364 **75-10-116. Custodian compliance and immunity.**

365 (1) Not later than 60 days after receipt of the information required under Sections
366 75-10-107 through 75-10-115, a custodian shall comply with a request under this chapter from
367 a fiduciary or designated recipient to disclose digital assets or terminate an account. If the
368 custodian fails to comply, the fiduciary or designated recipient may apply to the court for an

369 order directing compliance.

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

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

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

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

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

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

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

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

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

387 **75-10-117. Uniformity of application and construction.**

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

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

391 **75-10-118. Relation to Electronic Signatures in Global and National Commerce**
392 **Act.**

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