

1 **UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS**

2 **ACT**

3 2016 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: \_\_\_\_\_

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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.

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 **75-9-101**, Utah Code Annotated 1953

27 **75-9-102**, Utah Code Annotated 1953



- 28 [75-9-103](#), Utah Code Annotated 1953
- 29 [75-9-104](#), Utah Code Annotated 1953
- 30 [75-9-105](#), Utah Code Annotated 1953
- 31 [75-9-106](#), Utah Code Annotated 1953
- 32 [75-9-107](#), Utah Code Annotated 1953
- 33 [75-9-108](#), Utah Code Annotated 1953
- 34 [75-9-109](#), Utah Code Annotated 1953
- 35 [75-9-110](#), Utah Code Annotated 1953
- 36 [75-9-111](#), Utah Code Annotated 1953
- 37 [75-9-112](#), Utah Code Annotated 1953
- 38 [75-9-113](#), Utah Code Annotated 1953
- 39 [75-9-114](#), Utah Code Annotated 1953
- 40 [75-9-115](#), Utah Code Annotated 1953
- 41 [75-9-116](#), Utah Code Annotated 1953
- 42 [75-9-117](#), Utah Code Annotated 1953
- 43 [75-9-118](#), Utah Code Annotated 1953



44  
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **75-9-101** is enacted to read:

47 **CHAPTER 9. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

48 **75-9-101. Title.**

49 This chapter is known as the Uniform Fiduciary Access to Digital Assets Act.

50 Section 2. Section **75-9-102** is enacted to read:

51 **75-9-102. 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) "Conservator" means a person appointed by a court to manage the estate of a living  
63 individual. The term includes a limited conservator.

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

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

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

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

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

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

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

76           (10) "Digital asset" means an electronic record in which an individual has a right or  
77 interest. The term does not include an underlying asset or liability unless the asset or liability is  
78 itself an electronic record.

79           (11) "Electronic" means relating to technology having electrical, digital, magnetic,  
80 wireless, optical, electromagnetic, or similar capabilities.

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

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

85           (14) "Fiduciary" means an original, additional, or successor personal representative,  
86 conservator, agent, or trustee.

87           (15) "Information" means data, text, images, videos, sounds, codes, computer  
88 programs, software, databases, or the like.

89           (16) "Online tool" means an electronic service provided by a custodian that allows the

90 user, in an agreement distinct from the terms of service agreement between the custodian and  
91 user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

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

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

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

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

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

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

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

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

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

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

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

118 Section 3. Section **75-9-103** is enacted to read:

119 **75-9-103. Applicability.**

120 (1) This chapter applies to:

121 (a) a fiduciary or agent acting under a will or power of attorney executed before, on, or  
122 after May 10, 2016;

123 (b) a personal representative acting for a decedent who died before, on, or after May  
124 10, 2016;

125 (c) a conservatorship proceeding commenced before, on, or after May 10, 2016; and

126 (d) a trustee acting under a trust created before, on, or after May 10, 2016.

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

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

131 Section 4. Section **75-9-104** is enacted to read:

132 **75-9-104. User direction for disclosure of digital assets.**

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

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

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

145 Section 5. Section **75-9-105** is enacted to read:

146 **75-9-105. Terms-of-service agreement.**

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

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

152 (3) A fiduciary's or designated recipient's access to digital assets may be modified or  
153 eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not  
154 provided direction under Section 75-9-104.

155 Section 6. Section 75-9-106 is enacted to read:

156 **75-9-106. Procedure for disclosing digital assets.**

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

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

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

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

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

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

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

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

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

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

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

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

177 Section 7. Section 75-9-107 is enacted to read:

178 **75-9-107. Disclosure of content of electronic communications of deceased user.**

179 If a deceased user consented to or a court directs disclosure of the contents of electronic  
180 communications of the user, the custodian shall disclose to the personal representative of the  
181 estate of the user the content of an electronic communication sent or received by the user if the  
182 representative gives the custodian:

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

203           Section 8. Section **75-9-108** is enacted to read:

204           **75-9-108. Disclosure of other digital assets of deceased user.**

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

- 210           (1) a written request for disclosure in physical or electronic form;
- 211           (2) a certified copy of the death certificate of the user;
- 212           (3) a certified copy of the letter of appointment of the representative, a small estate  
213 affidavit, or court order; and

- 214 (4) if requested by the custodian:
- 215 (a) a number, username, address, or other unique subscriber or account identifier
- 216 assigned by the custodian to identify the user's account;
- 217 (b) evidence linking the account to the user;
- 218 (c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary
- 219 for administration of the estate; or
- 220 (d) a finding by the court that:
- 221 (i) the user had a specific account with the custodian, identifiable by the information
- 222 specified in Subsection (4)(a); or
- 223 (ii) disclosure of the user's digital assets is reasonably necessary for administration of
- 224 the estate.

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

226 **75-9-109. Disclosure of content of electronic communications of principal.**

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

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

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

230 the custodian:

- 231 (1) a written request for disclosure in physical or electronic form;
- 232 (2) an original or copy of the power of attorney expressly granting the agent authority
- 233 over the content of electronic communications of the principal;
- 234 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
- 235 effect; and

236 (4) if requested by the custodian:

- 237 (a) a number, username, address, or other unique subscriber or account identifier
- 238 assigned by the custodian to identify the principal's account; or
- 239 (b) evidence linking the account to the principal.

240 Section 10. Section **75-9-110** is enacted to read:

241 **75-9-110. Disclosure of other digital assets of principal.**

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

243 of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or

244 general authority to act on behalf of a principal, a catalogue of electronic communications sent



245 or received by the principal and digital assets, other than the content of electronic  
246 communications, of the principal if the agent gives the custodian:

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

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

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

252 (4) if requested by the custodian:

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

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

256 Section 11. Section **75-9-111** is enacted to read:

257 **75-9-111. Disclosure of digital assets held in trust when trustee is original user.**

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

262 Section 12. Section **75-9-112** is enacted to read:

263 **75-9-112. Disclosure of contents of electronic communications held in trust when**  
264 **trustee not original user.**

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

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

271 (2) a certified copy of the trust instrument or a certification of the trust under Section  
272 [75-7-1013](#) that includes consent to disclosure of the content of electronic communications to  
273 the trustee;

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

276 (4) if requested by the custodian:

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

278 assigned by the custodian to identify the trust's account; or

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

280 Section 13. Section **75-9-113** is enacted to read:

281 **75-9-113. Disclosure of other digital assets held in trust when trustee not original**

282 **user.**

283 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a  
284 custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of  
285 electronic communications sent or received by an original or successor user and stored, carried,

286 or maintained by the custodian in an account of the trust and any digital assets, other than the

287 content of electronic communications, in which the trust has a right or interest if the trustee

288 gives the custodian:

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

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

291 [75-7-1013](#);

292 (3) a certification by the trustee, under penalty of perjury, that the trust exists and the

293 trustee is a currently acting trustee of the trust; and

294 (4) if requested by the custodian:

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

296 assigned by the custodian to identify the trust's account; or

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

298 Section 14. Section **75-9-114** is enacted to read:

299 **75-9-114. Disclosure of digital assets to conservator of protected person.**

300 (1) After an opportunity for a hearing under Chapter 5b, Uniform Adult Guardianship

301 and Protective Proceedings Jurisdiction Act, the court may grant a conservator access to the

302 digital assets of a protected person.

303 (2) Unless otherwise ordered by the court or directed by the user, a custodian shall

304 disclose to a conservator the catalogue of electronic communications sent or received by a

305 protected person and any digital assets, other than the content of electronic communications, in

306 which the protected person has a right or interest if the conservator gives the custodian:

- 307 (a) a written request for disclosure in physical or electronic form;
- 308 (b) a certified copy of the court order that gives the conservator authority over the
- 309 digital assets of the protected person; and
- 310 (c) if requested by the custodian:
  - 311 (i) a number, username, address, or other unique subscriber or account identifier
  - 312 assigned by the custodian to identify the account of the protected person; or
  - 313 (ii) evidence linking the account to the protected person.
- 314 (3) A conservator with general authority to manage the assets of a protected person
- 315 may request a custodian of the digital assets of the protected person to suspend or terminate an
- 316 account of the protected person for good cause. A request made under this section must be
- 317 accompanied by a certified copy of the court order giving the conservator authority over the
- 318 protected person's property.

319 Section 15. Section **75-9-115** is enacted to read:

320 **75-9-115. Fiduciary duty and authority.**

321 (1) The legal duties imposed on a fiduciary charged with managing tangible property

322 apply to the management of digital assets, including:

- 323 (a) the duty of care;
- 324 (b) the duty of loyalty; and
- 325 (c) the duty of confidentiality.

326 (2) A fiduciary's or designated recipient's authority with respect to a digital asset of a

327 user:

- 328 (a) except as otherwise provided in Section [75-9-104](#), is subject to the applicable terms
- 329 of service;
- 330 (b) is subject to other applicable law, including copyright law;
- 331 (c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- 332 (d) may not be used to impersonate the user.

333 (3) A fiduciary with authority over the property of a decedent, protected person,

334 principal, or settlor has the right to access any digital asset in which the decedent, protected

335 person, principal, or settlor had a right or interest and that is not held by a custodian or subject

336 to a terms-of-service agreement.

337 (4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of

338 the property of the decedent, protected person, principal, or settlor for the purpose of applicable  
339 computer fraud and unauthorized computer access laws.

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

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

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

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

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

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

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

355 (c) if requested by the custodian:

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

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

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

361 Section 16. Section **75-9-116** is enacted to read:

362 **75-9-116. Custodian compliance and immunity.**

363 (1) Not later than 60 days after receipt of the information required under Sections  
364 75-9-107 through 75-9-115, a custodian shall comply with a request under this chapter from a  
365 fiduciary or designated recipient to disclose digital assets or terminate an account. If the  
366 custodian fails to comply, the fiduciary or designated recipient may apply to the court for an  
367 order directing compliance.

368 (2) An order under Subsection (1) directing compliance shall contain a finding that

369 compliance is not in violation of 18 U.S.C. Sec. 2702.

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

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

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

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

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

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

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

384 Section 17. Section **75-9-117** is enacted to read:

385 **75-9-117. Uniformity of application and construction.**

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

388 Section 18. Section **75-9-118** is enacted to read:

389 **75-9-118. Relation to Electronic Signatures in Global and National Commerce**  
390 **Act.**

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