

SENATE FILE NO. SF0034

Uniform Fiduciary Access to Digital Assets Act.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to fiduciaries; providing fiduciaries
2 access to electronic records of a user of an electronic
3 communication service as specified; specifying procedures
4 for disclosure of electronic records; imposing duties on
5 fiduciaries and custodians of electronic records;
6 specifying applicability; providing definitions; and
7 providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 2-3-1001 through 2-3-1017 are created
12 to read:

13

14

ARTICLE 10

15

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

1

2 **2-3-1001. Uniform Fiduciary Access to Digital Assets**
3 **Act; short title.**

4

5 This act shall be known and may be cited as the "Uniform
6 Fiduciary Access to Digital Assets Act."

7

8 **2-3-1002. Definitions.**

9

10 (a) As used in this act:

11

12 (i) "Account" means an arrangement under a terms
13 of service agreement in which a custodian carries,
14 maintains, processes, receives or stores a digital asset of
15 a user or provides goods or services to a user;

16

17 (ii) "Agent" means an attorney in fact granted
18 authority under a power of attorney;

19

20 (iii) "Carries" means engages in the
21 transmission of an electronic communication;

22

1 (iv) "Catalogue of electronic communications"
2 means information that identifies a person with which a
3 user has had an electronic communication, including the
4 person's electronic address, and the time and date of the
5 communication;

6

7 (v) "Content of electronic communications" means
8 information concerning the substance or meaning of an
9 electronic communication that:

10

11 (A) Has been sent or received by a user;

12

13 (B) Is in electronic storage by a custodian
14 providing an electronic communication service to the public
15 or is carried or maintained by a custodian providing a
16 remote computing service to the public; and

17

18 (C) Is not readily accessible to the
19 public.

20

21 (vi) "Custodian" means a person that carries,
22 maintains, processes, receives or stores a digital asset of

1 a user through the internet as defined in W.S.
2 9-2-1035(a)(iii);

3

4 (vii) "Designated recipient" means a person
5 chosen by a user using an online tool to administer digital
6 assets of the user;

7

8 (viii) "Digital asset" means an electronic
9 record in which a person has a right or interest. "Digital
10 asset" does not include an underlying asset or liability
11 unless the asset or liability is itself an electronic
12 record;

13

14 (ix) "Electronic" means relating to technology
15 having electrical, digital, magnetic, wireless, optical,
16 electromagnetic or similar capabilities;

17

18 (x) "Electronic communication" means an
19 electronic communication as defined in section 2510 of
20 title 18 of the United States Code, as amended;

21

1 (xi) "Electronic communication service" means a
2 custodian that provides to a user the ability to send or
3 receive an electronic communication;

4
5 (xii) "Fiduciary" means a personal
6 representative, trustee, executor, administrator, guardian,
7 agent, conservator, distributee under title 2, chapter 1 of
8 the Wyoming statutes or other person performing
9 substantially these same functions. To be a fiduciary
10 under this act a person must be authorized to act as a
11 fiduciary with respect to the digital assets of a user or a
12 user's estate. A fiduciary shall have those privileges,
13 powers and obligations granted under this act which are not
14 inconsistent with other privileges, powers or obligations
15 imposed by this act on specific types of fiduciaries;

16
17 (xiii) "Information" means data, text, images,
18 videos, sounds, codes, computer programs, software,
19 databases or the like;

20
21 (xiv) "Online tool" means an electronic service
22 provided by a custodian that allows a user, in an agreement
23 distinct from a terms of service agreement between the

1 custodian and the user, to provide directions for
2 disclosure or nondisclosure of digital assets to a third
3 person;

4

5 (xv) "Principal" means a person who grants
6 authority to an agent in a power of attorney;

7

8 (xvi) "Record" means information that is
9 inscribed on a tangible medium or stored in an electronic
10 or other medium and is retrievable in perceivable form;

11

12 (xvii) "Remote computing service" means a
13 custodian that provides to a user computer processing
14 services or the storage of digital assets by means of an
15 electronic communications system, as defined in section
16 2510 of title 18 of the United States Code, as amended;

17

18 (xviii) "Terms of service agreement" means an
19 agreement that controls the relationship between a user and
20 a custodian;

21

22 (xix) "User" means a person that has an account
23 with a custodian;

1

2 (xx) "Ward" means a person for whom a
3 conservator has been appointed, including a person for whom
4 an application for the appointment of a conservator is
5 pending;

6

7 (xxi) "This act" means W.S. 2-3-1001 through
8 2-3-1017.

9

10 **2-3-1003. Applicability.**

11

12 (a) This act applies to:

13

14 (i) A fiduciary acting under a will, power of
15 attorney or other authorization to act as a fiduciary with
16 respect to the digital assets of a user entered or executed
17 before, on or after July 1, 2016;

18

19 (ii) A personal representative acting for a
20 decedent who died before, on or after July 1, 2016;

21

22 (iii) A conservatorship proceeding commenced
23 before, on or after July 1, 2016; and

1

2 (iv) A trustee acting under a trust created
3 before, on or after July 1, 2016.

4

5 (b) This act applies to a custodian of digital assets
6 of a user who resides in the state or resided in the state
7 at the time of the user's death.

8

9 (c) This act does not apply to digital assets of an
10 employer used by an employee in the ordinary course of the
11 employer's business.

12

13 **2-3-1004. User direction for disclosure of digital**
14 **assets.**

15

16 (a) A user may use an online tool to direct a
17 custodian to disclose or not to disclose to a designated
18 recipient some or all of the user's digital assets,
19 including the content of electronic communications sent or
20 received by the user. If the online tool at all times
21 allows a user to modify or delete a direction to a
22 custodian to disclose some or all of the user's digital
23 assets, the direction regarding disclosure overrides a

1 contrary direction by the user in a will, trust, power of
2 attorney or other like record.

3

4 (b) If a user has not used an online tool to direct a
5 custodian under subsection (a) of this section or if a
6 custodian has not provided an online tool, the user may
7 direct in a will, trust, power of attorney or other like
8 record the disclosure or nondisclosure to a fiduciary some
9 or all of the user's digital assets, including the content
10 of electronic communications sent or received by the user.

11

12 (c) A user's direction under subsection (a) or (b) of
13 this section overrides a contrary provision in a terms of
14 service agreement if the agreement did not require the user
15 to act affirmatively and distinctly from the user's assent
16 to the agreement.

17

18 **2-3-1005. Terms of service agreement.**

19

20 (a) This act does not change or impair a right of a
21 custodian or a user under a terms of service agreement to
22 access and use digital assets of the user.

23

1 (b) This act does not give a fiduciary or designated
2 recipient new or expanded rights other than those rights
3 held by the user for whom, or for whose estate, the
4 fiduciary or designated recipient acts or represents.

5

6 (c) A fiduciary's or designated recipient's access to
7 digital assets may be modified or eliminated by a user,
8 federal law or a terms of service agreement if the user has
9 not provided direction under W.S. 2-3-1004.

10

11 **2-3-1006. Procedure for disclosing digital assets.**

12

13 (a) When disclosing digital assets of a user under
14 this act, a custodian may:

15

16 (i) Grant a fiduciary or designated recipient
17 full access to the user's account;

18

19 (ii) Grant a fiduciary or designated recipient
20 partial access to the user's account sufficient to perform
21 the tasks with which the fiduciary or designated recipient
22 is charged; or

23

1 (iii) Provide a fiduciary or designated
2 recipient a copy in a record of any digital asset that, on
3 the date the custodian received the request for disclosure,
4 the user could have accessed if the user were alive and had
5 full capacity and access to the account.

6

7 (b) A custodian may assess a reasonable
8 administrative fee for the cost of disclosing digital
9 assets under this act.

10

11 (c) A custodian is not required to disclose under
12 this act a digital asset deleted by a user.

13

14 (d) A custodian is not required to disclose under
15 this act a user's digital assets if the user directs or a
16 fiduciary requests a custodian to disclose some, but not
17 all, of the user's digital assets and the segregation of
18 the assets would impose an undue burden on the custodian.
19 If a custodian finds that a direction or request imposes an
20 undue burden, the custodian or fiduciary may seek an order
21 from the circuit court or other court of competent
22 jurisdiction to disclose:

23

1 (i) A subset of the user's digital assets
2 limited by date to the fiduciary or designated recipient;

3

4 (ii) All of the user's digital assets to the
5 fiduciary or designated recipient;

6

7 (iii) None of the user's digital assets to the
8 fiduciary or designated recipient; or

9

10 (iv) All of the user's digital assets to the
11 court for an in camera review.

12

13 **2-3-1007. Disclosure of the content of electronic**
14 **communications of a deceased user.**

15

16 (a) A custodian shall disclose to a personal
17 representative of the estate of a deceased user and to a
18 distributee holding a certified decree of summary
19 distribution of property the content of electronic
20 communications sent or received by the user if the user
21 directed disclosure as specified in W.S. 2-3-1004 or a
22 court directs disclosure of the content of electronic

1 communications of the user and if the representative or
2 distributee provides the custodian with the following:

3

4 (i) A request for disclosure in written or
5 electronic form;

6

7 (ii) A certified copy of the death certificate
8 of the user;

9

10 (iii) A certified copy of the court order
11 appointing the personal representative or granting the
12 distributee's application for decree of summary
13 distribution of property;

14

15 (iv) Unless the user provided direction using an
16 online tool, a copy of the user's will, trust, power of
17 attorney or other like record evidencing the user's consent
18 to disclosure of the content of electronic communications;
19 and

20

21 (v) If requested by the custodian:

22

1 (A) A number, username, address or other
2 unique subscriber or account identifier assigned by the
3 custodian to identify the user's account;

4

5 (B) Evidence linking the account to the
6 user; or

7

8 (C) A finding by a circuit court or other
9 court of competent jurisdiction that:

10

11 (I) The user had a specific account
12 with the custodian identifiable by the information
13 specified in subparagraph (A) of this paragraph;

14

15 (II) Disclosure of the content of
16 electronic communications of the user would not violate
17 section 2701 et seq. of title 18 of the United States Code,
18 as amended, or section 222 of title 47 of the United States
19 Code, as amended, or other applicable law;

20

21 (III) Unless the user provided
22 direction using an online tool, the user consented to

1 disclosure of the content of electronic communications as
2 specified in W.S. 2-3-1004; or

3

4 (IV) Disclosure of the content of
5 electronic communications of the user is reasonably
6 necessary for administration of the estate or the proper
7 distribution of property.

8

9 **2-3-1008. Disclosure of other digital assets of a**
10 **deceased user.**

11

12 (a) Unless otherwise directed by a court order or a
13 user as specified in W.S. 2-3-1004, a custodian shall
14 disclose to the personal representative of the estate of a
15 deceased user and to a distributee holding a certified
16 decree of summary distribution of property a catalogue of
17 electronic communications sent or received by the user and
18 digital assets of the user, other than the content of
19 electronic communications, if the representative or
20 distributee provides the custodian with the following:

21

22 (i) A request for disclosure in written or
23 electronic form;

1

2 (ii) A certified copy of the death certificate
3 of the user;

4

5 (iii) A certified copy of the court order
6 appointing the personal representative or granting the
7 distributee's application for decree of summary
8 distribution of property; and

9

10 (iv) If requested by the custodian:

11

12 (A) A number, username, address or other
13 unique subscriber or account identifier assigned by the
14 custodian to identify the user's account;

15

16 (B) Evidence linking the account to the
17 user;

18

19 (C) An affidavit stating that disclosure of
20 the user's digital assets is reasonably necessary for
21 administration of the estate or the proper distribution of
22 property; or

23

1 (D) A finding by a circuit court or other
2 court of competent jurisdiction that:

3

4 (I) The user had a specific account
5 with the custodian identifiable by the information
6 specified in subparagraph (A) of this paragraph; or

7

8 (II) Disclosure of the user's digital
9 assets is reasonably necessary for administration of the
10 estate or the proper distribution of property.

11

12 **2-3-1009. Disclosure of content of electronic**
13 **communications of a principal.**

14

15 (a) To the extent a power of attorney expressly
16 grants an agent authority over the content of electronic
17 communications sent or received by a principal and unless
18 otherwise directed by a court order or the principal as
19 specified in W.S. 2-3-1004, a custodian shall disclose to
20 the agent the content of electronic communications sent or
21 received by the principal if the agent provides the
22 custodian with the following:

23

1 (i) A request for disclosure in written or
2 electronic form;

3
4 (ii) An original or copy of the power of
5 attorney expressly granting the agent authority over the
6 content of electronic communications of the principal;

7
8 (iii) A certification by the agent, under
9 penalty of perjury, that the power of attorney is in
10 effect; and

11
12 (iv) If requested by the custodian:

13
14 (A) A number, username, address or other
15 unique subscriber or account identifier assigned by the
16 custodian to identify the principal's account; or

17
18 (B) Evidence linking the account to the
19 principal.

20
21 **2-3-1010. Disclosure of other digital assets of a**
22 **principal.**

23

1 (a) Unless otherwise directed by a court order, a
2 principal as specified in W.S. 2-3-1004 or a power of
3 attorney, a custodian shall disclose to an agent a
4 catalogue of electronic communications sent or received by
5 the principal and digital assets of the principal, other
6 than the content of electronic communications, if the agent
7 provides the custodian with the following:

8

9 (i) A request for disclosure in written or
10 electronic form;

11

12 (ii) An original or a copy of the power of
13 attorney that gives the agent specific authority over
14 digital assets of the principal or general authority to act
15 on behalf of the principal;

16

17 (iii) A certification by the agent, under
18 penalty of perjury, that the power of attorney is in
19 effect; and

20

21 (iv) If requested by the custodian:

22

1 (A) A number, username, address or other
2 unique subscriber or account identifier assigned by the
3 custodian to identify the principal's account; or

4

5 (B) Evidence linking the account to the
6 principal.

7

8 **2-3-1011. Disclosure of digital assets held in trust**
9 **when trustee is original user.**

10

11 Unless otherwise directed by a court order or a trust, a
12 custodian shall disclose to a trustee who is an original
13 user of an account of the trust digital assets of the
14 account, including a catalogue of electronic communications
15 of the trustee and the content of electronic communications
16 sent or received by the trustee and carried, maintained,
17 processed, received or stored by the custodian in the
18 account.

19

20 **2-3-1012. Disclosure of the content of electronic**
21 **communications held in trust when trustee not original**
22 **user.**

23

1 (a) Unless otherwise directed by a court order, a
2 user as specified in W.S. 2-3-1004 or a trust, a custodian
3 shall disclose to a trustee who is not an original user of
4 an account of the trust the content of an electronic
5 communication sent or received by an original or successor
6 user and carried, maintained, processed, received or stored
7 by the custodian in the account if the trustee provides the
8 custodian with the following:

9

10 (i) A request for disclosure in written or
11 electronic form;

12

13 (ii) A certification or affidavit of trust as
14 provided in W.S. 4-10-1014 that includes consent to
15 disclosure of the content of electronic communications to
16 the trustee;

17

18 (iii) A certification by the trustee, under
19 penalty of perjury, that the trust exists and the trustee
20 is a currently acting trustee of the trust; and

21

22 (iv) If requested by the custodian:

23

1 (A) A number, username, address or other
2 unique subscriber or account identifier assigned by the
3 custodian to identify the trust's account; or

4

5 (B) Evidence linking the account to the
6 trust.

7

8 **2-3-1013. Disclosure of other digital assets held in**
9 **trust when trustee not original user.**

10

11 (a) Unless otherwise directed by a court order, a
12 user as specified in W.S. 2-3-1004 or a trust, a custodian
13 shall disclose to a trustee who is not an original user of
14 an account of a trust a catalogue of electronic
15 communications sent or received by an original or successor
16 user and carried, maintained, processed, received or stored
17 by the custodian in the account and digital assets in which
18 the trust has a right or interest, other than the content
19 of electronic communications, if the trustee provides the
20 custodian with the following:

21

22 (i) A request for disclosure in written or
23 electronic form;

1

2 (ii) A certification or affidavit of trust as
3 provided in W.S. 4-10-1014 that includes consent to
4 disclosure of the content of electronic communications to
5 the trustee;

6

7 (iii) A certification by the trustee, under
8 penalty of perjury, that the trust exists and the trustee
9 is a currently acting trustee of the trust; and

10

11 (iv) If requested by the custodian:

12

13 (A) A number, username, address or other
14 unique subscriber or account identifier assigned by the
15 custodian to identify the trust's account; or

16

17 (B) Evidence linking the account to the
18 trust.

19

20 **2-3-1014. Disclosure of digital assets to conservator**
21 **of a ward.**

22

1 (a) After an opportunity for a hearing under title 3,
2 chapter 2 of the Wyoming statutes, the court may grant a
3 conservator access to the digital assets of a ward.

4

5 (b) Unless otherwise directed by a court order or a
6 user as specified in W.S. 2-3-1004, a custodian shall
7 disclose to a conservator the catalogue of electronic
8 communications sent or received by a ward and digital
9 assets in which the ward has a right or interest, other
10 than the content of electronic communications, if the
11 conservator provides the custodian with the following:

12

13 (i) A request for disclosure in written or
14 electronic form;

15

16 (ii) A certified copy of the court order that
17 gives the conservator authority over the digital assets of
18 the ward; and

19

20 (iii) If requested by the custodian:

21

1 (A) A number, username, address or other
2 unique subscriber or account identifier assigned by the
3 custodian to identify the account of the ward; or

4

5 (B) Evidence linking the account to the
6 ward.

7

8 (c) A conservator with general authority to manage
9 the assets of a ward may request a custodian of the digital
10 assets of the ward to suspend or terminate an account of
11 the ward for good cause. A request made under this
12 subsection shall be accompanied by a certified copy of the
13 court order that gives the conservator authority over the
14 ward's property.

15

16 **2-3-1015. Fiduciary duty and authority.**

17

18 (a) The legal duties imposed on a fiduciary charged
19 with managing tangible, personal property of a decedent,
20 ward, principal or settlor apply to the management of
21 digital assets, including the duty of care, loyalty and
22 confidentiality.

23

1 (b) A fiduciary's or designated recipient's authority
2 with respect to digital assets of a user:

3
4 (i) Unless otherwise directed by a user as
5 specified in W.S. 2-3-1004, is subject to the applicable
6 terms of service agreement;

7
8 (ii) Is subject to other applicable law;

9
10 (iii) In the case of a fiduciary, is limited by
11 the scope of the fiduciary's duties; and

12
13 (iv) Shall not be used to impersonate the user.

14
15 (c) A fiduciary with authority over the tangible,
16 personal property of a decedent, ward, principal or settlor
17 has the right to access digital assets in which the
18 decedent, ward, principal or settlor had a right or
19 interest and which are not carried, maintained, processed,
20 received or stored by a custodian or subject to a terms of
21 service agreement.

22

1 (d) A fiduciary acting within the scope of the
2 fiduciary's duties is an authorized user of the tangible,
3 personal property of the decedent, ward, principal or
4 settlor for the purpose of applicable computer fraud and
5 unauthorized computer access laws, including W.S.
6 40-25-101.

7

8 (e) A fiduciary with authority over the tangible,
9 personal property of a decedent, ward, principal or
10 settlor:

11

12 (i) Has the right to access the property and any
13 digital asset stored in the property; and

14

15 (ii) Is an authorized user for the purpose of
16 computer fraud and unauthorized computer access laws,
17 including W.S. 40-25-101.

18

19 (f) A custodian may disclose information in an
20 account to a fiduciary of the user when the information is
21 required to terminate an account used to access digital
22 assets licensed to the user.

23

1 (g) A fiduciary of a user may request a custodian to
2 terminate the user's account. A request for termination
3 under this subsection shall be in writing or electronic
4 form and accompanied by:

5

6 (i) A copy of the death certificate of the user
7 if the user is deceased;

8

9 (ii) A certified copy of the court order
10 appointing the personal representative or a certified copy
11 of the court order, power of attorney, trust or other
12 authorization giving the fiduciary authority over the
13 account; and

14

15 (iii) If requested by the custodian:

16

17 (A) A number, username, address or other
18 unique subscriber or account identifier assigned by the
19 custodian to identify the user's account;

20

21 (B) Evidence linking the account to the
22 user; or

23

1 (C) A finding by a circuit court or other
2 court of competent jurisdiction that the user had a
3 specific account with the custodian identifiable by the
4 information specified in subparagraph (A) of this
5 paragraph.

6

7 **2-3-1016. Custodian compliance and immunity.**

8

9 (a) Not later than sixty (60) days after receipt of
10 the information required under W.S. 2-3-1007 through
11 2-3-1015, a custodian shall comply with a request from a
12 fiduciary or designated recipient under this act to
13 disclose digital assets or terminate an account. If the
14 custodian fails to comply, the fiduciary or designated
15 representative may apply to the circuit court or other
16 court of competent jurisdiction for an order directing
17 compliance.

18

19 (b) An order under subsection (a) of this section
20 directing compliance shall contain a finding that
21 compliance is not in violation of section 2702 of title 18
22 of the United States Code, as amended.

23

1 (c) A custodian may notify the user that a request
2 for disclosure of digital assets or to terminate an account
3 was made under this act.

4

5 (d) A custodian may deny a request from a fiduciary
6 or designated representative under this act to disclose
7 digital assets or to terminate an account if the custodian
8 is aware of any lawful access to the account following the
9 receipt of the fiduciary's or personal representative's
10 request.

11

12 (e) This act does not limit a custodian's ability to
13 obtain or require a fiduciary or designated representative
14 requesting disclosure of digital assets or termination of
15 an account under this act to obtain a court order that:

16

17 (i) Specifies the account belongs to the ward or
18 principal;

19

20 (ii) Specifies there is sufficient consent from
21 the ward or principal to support the requested disclosure;
22 and

23

1 (iii) Contains a finding required by law in
2 addition to any finding required under this act.

3

4 (f) A custodian and any officers, employees or agents
5 of the custodian are immune from liability for an act or
6 omission done in good faith to comply with the provisions
7 of this act.

8

9 **2-3-1017. Relation to Electronic Signatures in Global
10 and National Commerce Act.**

11

12 This act modifies, limits or supersedes the Electronic
13 Signatures in Global and National Commerce Act, section
14 7001 et seq. of title 15 of the United States Code, as
15 amended, but does not modify, limit or supersede section
16 7001(c) of title 15 of the United States Code, as amended,
17 or authorize electronic delivery of any of the notices
18 described in section 7003(b) of title 15 of the United
19 States Code, as amended.

20

21 **Section 2.** W.S. 2-1-301(a)(intro) and 5-9-128 by
22 creating a new subsection (e) are amended to read:

23

1 **2-1-301. Generally.**

2

3 (a) When used in this code, unless otherwise defined
4 or required by the context, the following words and phrases
5 shall be construed as follows:

6

7 **5-9-128. Civil jurisdiction.**

8

9 (e) The circuit court shall have jurisdiction to
10 enforce and make findings under the Uniform Fiduciary
11 Access to Digital Assets Act, W.S. 2-3-1001 through
12 2-3-1017. This jurisdiction shall include the authority to
13 make necessary findings concerning compliance with federal
14 law as required by the Uniform Fiduciary Access to Digital
15 Assets Act.

16

17 **Section 3.** This act is effective July 1, 2016.

18

19

(END)