

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill provides access to digital assets in certain situations including death or incapacity. Digital assets are content that is owned by an individual or business that is stored in a digital format such as photos, text, and other media and can also include online accounts. This bill provides access to fiduciaries including conservators, attorneys-in-fact appointed pursuant to a power of attorney document, trustees to trust, and personal representatives in an estate. The bill is based off of the Uniform Fiduciary Access to Digital Assets Act (UFADAA) that was passed by the National Conference of Commissioners on Uniform State Laws in the fall of 2014. Bills based on this act have been introduced in 2015 in the following states: Virginia, Florida, North Dakota, Kentucky, New Mexico, Washington, and Indiana.

### Section

- 1**      **Short title.** Provides a title to the act, “Revised Uniform Fiduciary Access to Digital Assets Act.”
- 2**      **Definitions.** Provides definitions to terms used in the bill. Some of definitions are based on the uniform probate code and definitions for terms already defined in Minnesota law. Important definitions include:
  - “Account” is an arrangement between an individual and a company to process, receive, store, or maintain digital assets, or provides good and services to the user.
  - “Custodian” is a person that holds or maintains the digital assets of an account holder.

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- “Digital asset” is defined as a record that is electronic, but does not include the underlying asset or liability unless that asset or liability is a record that is electronic.
- “Fiduciary” includes original or successor personal representatives, conservators, agents, or trustees.
- “Online tool” means a product that is used by company that stores or maintains digital assets which allows the user to agree to directions to disclose or not disclose those digital assets to a third party. This online tool would be distinct from a “terms of service agreement” that many online companies use for their Web sites.
- “Protected person” is the person for whom a conservator has been appointed, also often referred to in law as a ‘ward’ in a guardianship or conservatorship case.
- “Terms-of-service agreement” is an agreement between an individual using a Web site and the person running the Web site.

**3 Applicability.** Indicates the situations where the law can be used to provide a third party with access to digital assets. A third party can access digital assets when a power of attorney has been executed, when a personal representative has been appointed, when a conservator has been appointed or an appointment is pending, and when a trustee is acting under a trust.

This section prevents a fiduciary from getting at the digital assets of an employer that is used by an employee, such as an employee’s professional email account or a software program the employee used that belonged to the employer.

This law applies to custodians of digital assets (such as an email provider) if the account holder resides in Minnesota or resided in Minnesota at the time of their death.

**4 User direction for disclosure of digital assets.**

- Allows an individual to designate in a specific provision through a Web site who can access their digital assets, and allows that designation to override what is provided for in a will or other directive when the individual is able to update the designation at any time.
- Allows an individual to designate in a will or other directive (such as a trust or power of attorney) that a fiduciary may get access to their digital assets, including emails or prohibit a fiduciary from getting access to digital assets.
- Provides that a designation through a specific online tool that allows a user to designate a person to access their digital assets, or a will or other directive that provides that access to a fiduciary, overrides anything in a terms of service agreement.

**5 Terms-of-service Agreement.** Preserves the normal relationship between a Web site user and a Web site provider regarding the terms of service agreement. Provides that the fiduciary who can access the accounts of the account holder does not get any rights beyond the rights the account holder has. Provides that access to a user’s account by a designee or fiduciary can be limited or terminated by the user, federal law, or when the user has not

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provided specific direction under section 4 (such as through an online tool designation or a will), then by the terms of service agreement the user entered into when it used the custodian's Internet services.

- 6 Procedure for disclosing digital assets.** Allows a custodian (Web site operator, such as an email provider or social network provider) to disclose digital assets when allowed under this chapter in the following manner:

- grant the fiduciary or designee full access to the user's account
- grant the fiduciary or designee partial access to the user's account
- provide the fiduciary or designee with a copy of any digital assets that as of that time the user had access to if the user were able to access the account at that time

This section also provides that a custodian can assess a reasonable administrative charge to disclose assets to a fiduciary or designee; does not have to disclose anything deleted by a user; and the Web site can refuse to disclose the assets if it is unduly burdensome to determine which assets are allowed to be disclosed to a fiduciary and which are not and allows the Web site to seek a court order identifying which assets to disclose.

- 7 Disclosure of content of electronic communications of deceased users.** Provides the process for a personal representative to gain access to the email of a deceased user. This includes providing a copy of the document creating the fiduciary relationship (such as a will or trust), and when requested by the Web site information about the account (such as a user name or account number) and a court order indicating that releasing the emails does not violate the federal Stored Communications Act.
- 8 Disclosure of other digital assets of deceased user.** Provides the requirements a fiduciary must meet to get access to digital assets (other than emails) of a deceased user.
- 9 Disclosure of content of electronic communications of principal.** Provides the requirements for an attorney in fact to gain access to the email accounts of a principal under a power of attorney.
- 10 Disclosure of other digital assets of principal.** Provides the requirements for attorney in fact to gain access to the digital assets of a principal other than emails.
- 11 Disclosure of digital assets held in trust when trustee is original user.** Provides that trustees have access to accounts where they are an original user for any digital assets of the account that is held in trust, including a catalog of emails of the trustee and the content of those emails.
- 12 Disclosure of content of electronic communication held in trust when the trustee not original user.** Provides that a trustee can gain access to emails held by an original or successor user of an account by providing specific documentation identifying them as the trustee of a trust with approved access to emails for the trust.

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- 13 Disclosure of other digital assets held in trust when the trustee not original user.** Provides directions for how a trustee can gain access to digital assets (other than emails) when a trustee is not one of the original account holders.
- 14 Disclosure of digital assets to conservator of a protected person.** Allows a conservator to gain access to digital assets of a protected person (ward) when the court has held a hearing under the probate code and allowed that access. This section also allows a conservator to suspend or terminate an account between a protected person (ward) and a company when the conservator shows that they have authority over the protected person's property.
- 15 Fiduciary duty and authority.** Provides the standards that the fiduciary owes in carrying out their duties. This section also allows fiduciaries to access digital assets when the assets are not held by a custodian or subject to a terms of service agreement. This section also provides that when a fiduciary is accessing a person's digital assets they are an authorized user for the purposes of computer fraud laws, including the Minnesota criminal law against unauthorized computer access. This section also allows a fiduciary to destroy a user account.
- 16 Custodian compliance and immunity.** Provides that a custodian has 60 days to comply with a request made under this chapter and if the custodian (such as Web site) does not comply the fiduciary may seek a court order to require them to comply with their request and that the request does not violate the federal Stored Communication Act.
- This section allows the custodian to notify users when a request for access by a fiduciary has been made. This section also allows the custodian of the digital assets to not comply with a fiduciary's request when they have found that there is lawful access to the account, such as the user or another authorized user is accessing the account.
- 17 Uniformity of application and construction.** Provides that the court should consider the interest of the chapter being construed consistently among the state's that have enacted it.
- 18 Relation to electronic signatures in global and national commerce act.** Provides that this chapter does not modify parts of the federal E-Sign law that provide specific requirements for legally required disclosure when those disclosure are sent electronically.
- 19 Severability.** Provides that if a portion of this statute is struck down by a court the other portions remain in effect.
- 20 Effective date.** Provides that this chapter is effective on August 1, 2016, and applies to fiduciaries acting under a governing instrument that was executed before, on, or after that date.