

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 200  
**Version:** As introduced

**DATE:** January 16, 2015

**Authors:** Hilstrom and others

**Subject:** Uniform Fiduciary Access to Digital Access Act (UFADAA)

**Analyst:** Mary Mullen

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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, “Uniform Fiduciary Access to Digital Assets Act.”
- 2 **Definitions.** Provides definitions to terms used in the bill. Many of the definitions are based on the Uniform Probate Code and definitions for terms already defined in Minnesota law. Important definitions include:
  - “Account holder” is a person that had created an account with an individual or company to store or maintain digital assets.
  - “Custodian” is a person that holds or maintains the digital assets of an account holder.



## Section

- “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.

- 3**      **Applicability.** Indicates the situations where the law can be used to provide access to digital assets, which includes 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 also excludes the digital assets of an employee that is created in the ordinary course of business.
- 4**      **Access by personal representatives to digital assets of decedent.** Gives personal representatives appointed by the court the right to access certain electronic content but this can be altered by the terms of a will or by a court order. The bill specifically gives access any digital assets the decedent had a right or interest in at the time of their death and electronic communication, however access to the electronic communication is still governed by certain provisions in federal law.
- 5**      **Access by a conservator to digital asset of protected person.** Gives a conservator access to digital assets and electronic communication, subject to federal laws, when there has been an opportunity for a hearing under the Minnesota law governing conservatorships and when the court has granted access to those digital assets.
- 6**      **Access by an agent to digital assets of a principal.** Gives an “agent” or an attorney-in-fact appointed by a power of attorney the ability to access all digital assets, except electronic communication, unless the principal has explicitly indicated that the agent cannot have access. This operates as an “opt-out” provisions. However, this section requires that a principal explicitly provide that an agent or attorney-in-fact can access electronic communications, operating as an “opt-in” provision and subjects those communications to the federal laws governing disclosure of electronic communication.
- 7**      **Access by trustee to digital assets.** Gives trustees the right to access digital assets when the trustee is the original account holder, meaning the trustee was the person to set up the digital account, which includes situations where a successor trustee takes over for another trustee unless the court orders otherwise or a trust provides for different terms to access the digital assets. This section also gives a trustee access to digital assets and electronic communication when a trust created by a will or other testamentary document specifically provides that a digital asset, including electronic communication, becomes a part of the trust or is to be accessed by the trustee.
- 8**      **Fiduciary authority.**
- Provides that a fiduciary given access to digital assets under this bill can do the same things with the asset that the owner could do with them unless provisions of this law say that they cannot, but that the fiduciary cannot violate copyright laws, terms of service agreements, or other applicable laws.



## **Section**

- Provides that it is not a violation of electronic privacy laws or criminal laws for unlawful access to computers to access these digital assets when it is done in accordance with this law.
- Limits the ability of a term of service agreement to prevent access by a fiduciary, however if an account holder agrees that the digital asset cannot be accessed by a fiduciary or that the fiduciary's access will be limited and that agreement occurs after this law has gone into effect then the access can be limited even where a fiduciary would otherwise have access.
- Gives the fiduciary access to personal property capable of storing and receiving the digital assets such as a computer, mobile phone, tablet or hard-drive which prevents the fiduciary from violating criminal laws that would otherwise prevent that access.

- 9 Compliance.** Requires that fiduciaries must provide certified copies of documents including the court order for a conservatorship or letter of appointment in a probate case, or a copy of a power of attorney or certified copy of a trust document along with the request for access to the digital asset. This section requires the custodian of the digital assets to comply with a request within 60 days and to allow access the asset, or for the fiduciary to control it or copy it if it can be copied in compliance with copyright laws.
- 10 Custodian immunity.** Provides immunity from liability for a custodian or officers of the custodian of digital assets when they are acting in good faith to comply with this law.
- 11 Uniformity of application and construction.** Provides that consideration must be given to the need to promote this law in a uniform manner in the states in which it is enacted.
- 12 Relation to electronic signatures in global and national commerce act.** Provides that this law modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act but does not affect the provisions of that federal law related to consumer disclosures through electronic means or the provisions that exempt certain transactions from the act including court related matters.
- 13 Severability.** Provides that even when portions of this bill have been found to be invalid the other portions that have not been found to be invalid can still be used.
- 14 Effective date.** This bill is effective immediately and applies to powers of attorney, probates, trusts, and conservatorships currently in effect or that comes into effect in the future.