

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Uniform Fiduciary Access to Digital Assets Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Estates Code is amended by adding Title 4 to read as follows:

TITLE 4. DIGITAL ASSETS

CHAPTER 2001. UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Sec. 2001.001. SHORT TITLE. This chapter may be cited as the Uniform Fiduciary Access to Digital Assets Act.

Sec. 2001.002. DEFINITIONS. In this chapter:

(1) "Account holder" means:

(A) a person that has entered into a terms-of-service agreement; and

(B) a fiduciary for a person described in Paragraph (A).

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

(3) "Catalogue of electronic communications" means information that identifies each person with whom an account holder has had an electronic communication, the time and date of the communication, and the electronic mail address of the person.

(4) "Content of an electronic communication" means information not readily accessible to the public concerning the

1 substance or meaning of an electronic communication.

2 (5) "Custodian" means a person that carries,
3 maintains, or stores a digital asset of an account holder.

4 (6) "Digital asset" means an electronic record. The
5 term does not include an underlying asset or liability unless the
6 asset or liability is itself an electronic record.

7 (7) "Electronic" means relating to technology having
8 electrical, digital, magnetic, wireless, optical, electromagnetic,
9 or similar capabilities.

10 (8) "Electronic communication" means a digital asset
11 stored by an electronic-communication service or carried or
12 maintained by a remote-computing service. The term includes the
13 catalogue of electronic communications and the content of an
14 electronic communication.

15 (9) "Electronic-communication service" means a
16 custodian that provides to the public the ability to send or receive
17 an electronic communication.

18 (10) "Fiduciary" means a person that is a personal
19 representative, guardian of the estate, agent, or trustee.

20 (11) "Governing instrument" means a will, trust,
21 instrument creating a power of attorney, or other dispositive or
22 nominative instrument.

23 (12) "Guardian" has the meaning assigned by Section
24 [1002.012](#).

25 (13) "Information" means data, text, images, videos,
26 sounds, codes, computer programs, software, databases, or other
27 similar items.

1 (14) Notwithstanding Section 22.027, "person" means
2 an individual, estate, business or nonprofit entity, public
3 corporation, government or governmental subdivision, agency, or
4 instrumentality, or other legal entity.

5 (15) "Power of attorney" means a record that grants an
6 agent authority to act in the place of a principal.

7 (16) "Principal" means an individual who grants
8 authority to an agent in a power of attorney.

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

12 (18) "Remote-computing service" means a custodian
13 that provides to the public computer processing services or the
14 storage of digital assets by means of an electronic communications
15 system, as defined in 18 U.S.C. Section 2510(14).

16 (19) "Terms-of-service agreement" means an agreement
17 that controls the relationship between an account holder and a
18 custodian.

19 (20) "Trustee" means a fiduciary with legal title to
20 an asset under an agreement or declaration that creates a
21 beneficial interest in others.

22 Sec. 2001.003. ACCESS BY PERSONAL REPRESENTATIVE TO DIGITAL
23 ASSETS OF DECEDENT. Unless otherwise provided by a court or the
24 will of a decedent, a personal representative of the estate of a
25 decedent may access:

26 (1) the content of an electronic communication sent or
27 received by the decedent only if the electronic-communication

1 service or remote-computing service is permitted to disclose the
2 content under 18 U.S.C. Section 2702(b);

3 (2) the catalogue of electronic communications sent or
4 received by the decedent; and

5 (3) any other digital asset in which the decedent at
6 death had a right or interest.

7 Sec. 2001.004. ACCESS BY GUARDIAN TO DIGITAL ASSETS OF
8 WARD. The court, after an opportunity for a hearing, may authorize
9 a guardian of the ward's estate to access:

10 (1) the content of an electronic communication sent or
11 received by the ward only if the electronic-communication service
12 or remote-computing service is permitted to disclose the content
13 under 18 U.S.C. Section 2702(b);

14 (2) the catalogue of electronic communications sent or
15 received by the ward; and

16 (3) any other digital asset in which the ward has a
17 right or interest.

18 Sec. 2001.005. ACCESS BY AGENT TO DIGITAL ASSETS OF
19 PRINCIPAL. (a) To the extent a power of attorney expressly grants
20 authority to an agent over the content of an electronic
21 communication of the principal, the agent may access the content of
22 an electronic communication sent or received by the principal if
23 the electronic-communication service or remote-computing service
24 is permitted to disclose the content under 18 U.S.C. Section
25 2702(b).

26 (b) Unless otherwise provided by a power of attorney or the
27 court, an agent may access:

1 (1) the catalogue of electronic communications sent or
2 received by the principal; and

3 (2) any other digital asset in which the principal has
4 a right or interest.

5 Sec. 2001.006. ACCESS BY TRUSTEE TO DIGITAL ASSETS. Unless
6 otherwise provided by a court or the settlor in the terms of a
7 trust:

8 (1) a trustee that is an original account holder, or a
9 successor of the trustee, may access each digital asset held in
10 trust, including the catalogue of electronic communications sent or
11 received by the trustee and the content of an electronic
12 communication; and

13 (2) a trustee that is not an original account holder,
14 or a successor of the trustee, may access:

15 (A) the content of an electronic communication
16 sent or received by the original or any successor account holder
17 only if the electronic-communication service or remote-computing
18 service is permitted to disclose the content under 18 U.S.C.
19 Section 2702(b);

20 (B) the catalogue of electronic communications
21 sent or received by the original or any successor account holder;
22 and

23 (C) any other digital asset of the original or
24 any successor account holder.

25 Sec. 2001.007. FIDUCIARY AUTHORITY. (a) A fiduciary that
26 is an account holder or has the right to access a digital asset of an
27 account holder:

1 (1) subject to the terms-of-service agreement and
2 copyright or other applicable law, may take any action concerning
3 the asset to the extent of the account holder's authority and the
4 fiduciary's powers under the law of this state;

5 (2) has, under applicable electronic privacy laws, the
6 lawful consent of the account holder for the custodian to divulge
7 the content of an electronic communication to the fiduciary; and

8 (3) is, under applicable computer fraud and
9 unauthorized-access laws, an authorized user.

10 (b) If a provision in a terms-of-service agreement limits a
11 fiduciary's access to the digital assets of the account holder, the
12 provision is void as against the public policy of this state, unless
13 the account holder, after September 1, 2015, agreed to the
14 provision by an affirmative act separate from the account holder's
15 assent to other provisions of the terms-of-service agreement.

16 (c) A choice-of-law provision in a terms-of-service
17 agreement is unenforceable against a fiduciary acting under this
18 chapter to the extent the provision designates law that enforces a
19 limitation on a fiduciary's access to digital assets that is void
20 under Subsection (b).

21 (d) A fiduciary's access under this chapter to a digital
22 asset does not violate a terms-of-service agreement,
23 notwithstanding a provision of the agreement that limits
24 third-party access or requires notice of change in the account
25 holder's status.

26 (e) If tangible personal property of a decedent, ward,
27 principal, or settlor can receive, store, process, or send a

1 digital asset, a fiduciary with authority over the property may
2 access the property and any digital asset stored in it. The
3 fiduciary is an authorized user for purposes of any applicable
4 computer fraud and unauthorized-access laws.

5 Sec. 2001.008. COMPLIANCE. (a) If a fiduciary with a right
6 under this chapter to access a digital asset of an account holder
7 complies with Subsection (b), the custodian shall comply with the
8 fiduciary's request for:

9 (1) access to the asset;

10 (2) control of the asset; and

11 (3) a copy of the asset to the extent permitted by
12 copyright law.

13 (b) If a request under Subsection (a) is made by:

14 (1) a personal representative with a right of access
15 under Section 2001.003, the request must be accompanied by a
16 certified copy of the letters testamentary or of administration
17 appointing the representative;

18 (2) a guardian of the estate with the right of access
19 under Section 2001.004, the request must be accompanied by a
20 certified copy of the court order that gives the guardian authority
21 over the digital asset;

22 (3) an agent with the right of access under Section
23 2001.005, the request must be accompanied by an original or a copy
24 of the power of attorney that authorizes the agent to exercise
25 authority over the digital asset and a certification of the agent,
26 under penalty of perjury, that the power of attorney is in effect;
27 and

1 (4) a trustee with the right of access under Section
2 2001.006, the request must be accompanied by a certified copy of the
3 trust instrument, or a certification of the trust under Section
4 114.086, Property Code, that authorizes the trustee to exercise
5 authority over the digital asset.

6 (c) A custodian shall comply with a request made under
7 Subsection (a) not later than 60 days after receipt. If the
8 custodian fails to comply, the fiduciary may apply to the court for
9 an order directing compliance.

10 (d) This section does not limit the right of a person to
11 obtain a copy of a trust instrument in a judicial proceeding
12 concerning the trust.

13 Sec. 2001.009. CUSTODIAN IMMUNITY. A custodian and the
14 custodian's officers, employees, and agents are immune from
15 liability for any act done in good faith in compliance with this
16 chapter.

17 Sec. 2001.010. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
18 In applying and construing this uniform act, consideration must be
19 given to the need to promote uniformity of the law with respect to
20 its subject matter among states that enact it.

21 Sec. 2001.011. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
22 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
23 supersedes the Electronic Signatures in Global and National
24 Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify,
25 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
26 7001(c)) or authorize electronic delivery of any of the notices
27 described in Section 103(b) of that Act (15 U.S.C. Section

1 7003(b)).

2 SECTION 2. This Act applies to:

3 (1) a fiduciary or agent acting under a will, trust, or
4 power of attorney executed before, on, or after the effective date
5 of this Act;

6 (2) a personal representative acting for a decedent
7 who died before, on, or after the effective date of this Act; and

8 (3) a guardianship proceeding pending or commenced
9 before, on, or after the effective date of this Act.

10 SECTION 3. This Act takes effect September 1, 2015.