

SENATE, No. 2527

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED SEPTEMBER 12, 2016

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

SYNOPSIS

“Uniform Fiduciary Access to Digital Assets Act”; authorizes executor, agent, guardian, or trustee, under certain circumstances, to manage electronic records of decedent, principal, incapacitated person, or trust creator.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning access by fiduciaries to digital assets and
2 supplementing Title 3B of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Short Title. This act shall be known and may be cited as the
8 “Uniform Fiduciary Access to Digital Assets Act.”

9

10 2. Definitions. As used in this act:

11 “Account” means an arrangement under a terms-of-service in
12 which a custodian carries, maintains, processes, receives, or stores a
13 digital asset of the user or provides goods or services to the user.

14 “Agent” means an attorney-in-fact granted authority under a
15 durable or nondurable power of attorney.

16 “Carries” means engages in the transmission of an electronic
17 communication.

18 “Catalogue of electronic communications” means information
19 that identifies each person with which a user has had an electronic
20 communication, the time and date of the communication, and the
21 electronic address of the person.

22 “Content of an electronic communication” means information
23 concerning the substance or meaning of the communication which:

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

25 (b) is in electronic storage by a custodian providing an
26 electronic communication service to the public or is carried or
27 maintained by a custodian providing a remote computing service to
28 the public; and

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

30 “Court” means the Probate Part of the Chancery Division of the
31 Superior Court. For the purposes of this act, “court” includes the
32 Surrogate’s Court acting within the scope of its authority pursuant
33 to statute or the Rules of Court.

34 “Custodian” means a person that carries, maintains, processes,
35 receives, or stores a digital asset of a user.

36 “Designated recipient” means a person chosen by a user using an
37 online tool to administer digital assets of the user.

38 “Digital asset” means an electronic record in which an individual
39 has a right or interest. The term does not include an underlying
40 asset or liability unless the asset or liability is itself an electronic
41 record.

42 “Electronic” means relating to technology having electrical,
43 digital, magnetic, wireless, optical, electromagnetic, or similar
44 capabilities.

45 “Electronic communication” has the meaning set forth in 18
46 U.S.C. s.2510(12).

1 “Electronic-communication service” means a custodian that
2 provides to a user the ability to send or receive an electronic
3 communication.

4 “Fiduciary” means an original, additional, or successor personal
5 representative, guardian, agent, or trustee.

6 “Guardian” means a person appointed by the court to make
7 decisions regarding the property of an incapacitated adult, including
8 a person appointed in accordance with N.J.S.3B:12-1 et seq. or its
9 equivalent in a state other than New Jersey.

10 “Incapacitated person” means an incapacitated individual, as
11 defined in N.J.S.3B:1-2, for whom a guardian has been appointed.

12 “Information” means data, text, images, videos, sounds, codes,
13 computer programs, software, databases, or the like.

14 “Online tool” means an electronic service provided by a
15 custodian that allows the user, in an agreement distinct from the
16 terms-of-service agreement between the custodian and user, to
17 provide directions for disclosure or nondisclosure of digital assets
18 to a third person.

19 “Person” means an individual, estate, business or nonprofit
20 entity, public corporation, government or governmental subdivision,
21 agency, or instrumentality, or other legal entity.

22 “Personal representative” means an executor, administrator,
23 special administrator, or person that performs substantially the same
24 function under the law of this State other than this act.

25 “Power of attorney” means a written instrument by which an
26 individual known as the principal authorizes another individual or
27 individuals or a qualified bank within the meaning of section 28 of
28 P.L.1948, c.67 (C.17:9A-28) known as the attorney-in-fact to
29 perform specified acts on behalf of the principal as the principal's
30 agent.

31 “Principal” means an individual, at least 18 years of age, who, in
32 a power of attorney, authorizes an agent to act.

33 “Record” means information that is inscribed on a tangible
34 medium or that is stored in an electronic or other medium and is
35 retrievable in perceivable form.

36 “Remote-computing service” means a custodian that provides to
37 a user computer processing services or the storage of digital assets
38 by means of an electronic communications system, as defined in 18
39 U.S.C. s.2510(14).

40 “Terms-of-service agreement” means an agreement that controls
41 the relationship between an account holder and a custodian.

42 “Trustee” means a fiduciary with legal title to property pursuant
43 to an agreement or declaration that creates a beneficial interest in
44 another. “Trustee” includes an original, additional, or successor
45 trustee, whether or not appointed or confirmed by court.

46 “User” means a person that has an account with a custodian.

47 “Will” means the last will and testament of a testator or testatrix
48 and includes any codicil and any testamentary instrument that

1 merely appoints an executor, revokes or revises another will,
2 nominates a guardian, or expressly excludes or limits the right of a
3 person or class to succeed to property of the decedent passing by
4 intestate succession.

5

6 3. User's Residence in State; Inapplicability of Act to
7 Employers' Digital Assets.

8 a. This act applies to a custodian if the user resides in this State
9 or resided in this State at the time of the user's death.

10 b. This act does not apply to a digital asset of an employer used
11 by an employee in the ordinary course of the employer's business.

12

13 4. User Direction for Disclosure of Digital Assets.

14 a. A user may use an online tool to direct the custodian to
15 disclose or not to disclose to a designated recipient some or all of
16 the user's digital assets, including the content of electronic
17 communications. If the online tool allows the user to modify or
18 delete a direction at all times, a direction regarding disclosure using
19 an online tool overrides a contrary direction by the user in a will,
20 trust, power of attorney, or other record.

21 b. If a user has not used an online tool to give direction under
22 subsection a. of this section or if the custodian has not provided an
23 online tool, the user may allow or prohibit in a will, trust, power of
24 attorney, or other record, disclosure to a fiduciary of some or all of
25 the user's digital assets, including the content of electronic
26 communications sent or received by the user.

27 c. A user's direction under subsection a. or b. of this section
28 overrides a contrary provision in a terms-of-service agreement that
29 does not require the user to act affirmatively and distinctly from the
30 user's assent to the terms of service.

31

32 5. Terms-of-Service Agreement.

33 a. This act does not change or impair a right of a custodian or a
34 user under a terms-of-service agreement to access and use digital
35 assets of the user.

36 b. This act does not give a fiduciary or designated recipient any
37 new or expanded rights other than those held by the user for whom,
38 or for whose estate, the fiduciary or designated recipient acts or
39 represents.

40 c. A fiduciary's or designated recipient's access to digital
41 assets may be modified or eliminated by a user, by federal law, or
42 by a terms-of-service agreement if the user has not provided
43 direction under section 4 of this act.

44

45 6. Procedure for Disclosing Digital Assets.

46 a. When disclosing digital assets of a user under this act, the
47 custodian shall either:

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

3 (2) grant a fiduciary or designated recipient partial access to the
4 user's account sufficient to perform the tasks with which the fiduciary
5 or designated recipient is charged; or

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

10 b. A custodian may assess a reasonable administrative charge for
11 the cost of disclosing digital assets under this act.

12 c. A custodian need not disclose under this act a digital asset
13 deleted by a user.

14 d. If a user directs or a fiduciary requests a custodian to disclose
15 under this act some, but not all, of the user's digital assets, the
16 custodian need not disclose the assets if segregation of the assets
17 would impose an undue burden on the custodian. If the custodian
18 believes the direction or request imposes an undue burden, the
19 custodian or fiduciary may seek an order from the court to disclose:

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

21 (2) all of the user's digital assets to the fiduciary or designated
22 recipient;

23 (3) none of the user's digital assets; or

24 (4) all of the user's digital assets to the court for review in
25 camera.

26

27 7. Disclosure of Content of Electronic Communications of
28 Deceased User.

29 If a deceased user consented or a court directs disclosure of the
30 contents of electronic communications of the user, the custodian
31 shall disclose to the personal representative of the estate of the user
32 the content of an electronic communication sent or received by the
33 user if the representative gives the custodian:

34 a. a written request for disclosure in physical or electronic
35 form;

36 b. a copy of the death certificate of the user;

37 c. a certificate evidencing the appointment of the representative
38 or a small-estate affidavit;

39 d. unless the user provided direction using an online tool, a
40 copy of the user's will, trust, power of attorney, or other record
41 evidencing the user's consent to disclosure of the content of
42 electronic communications; and

43 e. if requested by the custodian, any of the following:

44 (1) a number, username, address, or other unique subscriber or
45 account identifier assigned by the custodian to identify the user's
46 account;

47 (2) evidence linking the account to the user; or

48 (3) a finding by the court of any of the following:

1 (a) the user had a specific account with the custodian,
2 identifiable by the information specified in paragraph (1) of this
3 subsection;

4 (b) disclosure of the content of electronic communications of
5 the user would not violate 18 U.S.C. s.2701 et seq., Unlawful
6 Access to Stored Communications; 47 U.S.C. s.222, Privacy of
7 Customer Information; or other applicable law;

8 (c) unless the user provided direction using an online tool, the
9 user consented to disclosure of the content of electronic
10 communications; or

11 (d) disclosure of the content of electronic communications of
12 the user is reasonably necessary for administration of the estate.

13

14 8. Disclosure of Other Digital Assets of Deceased User.

15 Unless the user prohibited disclosure of digital assets or the court
16 directs otherwise, a custodian shall disclose to the personal
17 representative of the estate of a deceased user a catalogue of
18 electronic communications sent or received by the user and digital
19 assets, other than the content of electronic communications, of the
20 user, if the representative gives the custodian:

21 a. a written request for disclosure in physical or electronic
22 form;

23 b. a copy of the death certificate of the user;

24 c. a certificate evidencing the appointment of the representative
25 or a small-estate affidavit; and

26 d. if requested by the custodian, any of the following:

27 (1) a number, username, address, or other unique subscriber or
28 account identifier assigned by the custodian to identify the user's
29 account;

30 (2) evidence linking the account to the user;

31 (3) an affidavit stating that disclosure of the user's digital assets
32 is reasonably necessary for administration of the estate; or

33 (4) a finding by the court of either of the following:

34 (a) the user had a specific account with the custodian,
35 identifiable by the information specified in paragraph (1) of this
36 subsection; or

37 (b) disclosure of the user's digital assets is reasonably necessary
38 for administration of the estate.

39

40 9. Disclosure of Content of Electronic Communications of
41 Principal.

42 To the extent a power of attorney expressly grants an agent
43 authority over the content of electronic communications sent or
44 received by the principal and unless directed otherwise by the
45 principal or the court, a custodian shall disclose to the agent the
46 content if the agent gives the custodian:

47 a. a written request for disclosure in physical or electronic
48 form;

- 1 b. an original or copy of the power of attorney expressly
2 granting the agent authority over the content of electronic
3 communications of the principal;
- 4 c. a certification by the agent, under penalty of perjury, that the
5 power of attorney is in effect; and
- 6 d. if requested by the custodian:
- 7 (1) a number, username, address, or other unique subscriber or
8 account identifier assigned by the custodian to identify the
9 principal's account; or
- 10 (2) evidence linking the account to the principal.

11

12 10. Disclosure of Other Digital Assets of Principal.

13 Unless otherwise ordered by the court, directed by the principal,
14 or provided by a power of attorney, a custodian shall disclose to an
15 agent with specific authority over digital assets or general authority
16 to act on behalf of a principal a catalogue of electronic
17 communications sent or received by the principal and digital assets,
18 other than the content of electronic communications, of the
19 principal if the agent gives the custodian:

- 20 a. a written request for disclosure in physical or electronic
21 form;
- 22 b. an original or a copy of the power of attorney that gives the
23 agent specific authority over digital assets or general authority to
24 act on behalf of the principal;
- 25 c. a certification by the agent, under penalty of perjury, that the
26 power of attorney is in effect; and
- 27 d. if requested by the custodian:
- 28 (1) a number, username, address, or other unique subscriber or
29 account identifier assigned by the custodian to identify the
30 principal's account; or
- 31 (2) evidence linking the account to the principal.

32

33 11. Disclosure of Digital Assets Held in Trust When Trustee is
34 Original User.

35 Unless otherwise ordered by the court or provided in a trust, a
36 custodian shall disclose to a trustee that is an original user of an
37 account any digital asset of the account held in trust, including a
38 catalogue of electronic communications of the trustee and the
39 content of electronic communications.

40

41 12. Disclosure of Contents of Electronic Communications Held
42 in Trust When Trustee Not Original User.

43 Unless otherwise ordered by the court, directed by the user, or
44 provided in a trust, a custodian shall disclose to a trustee that is not
45 an original user of an account the content of an electronic
46 communication sent or received by an original or successor user and
47 carried, maintained, processed, received, or stored by the custodian
48 in the account of the trust if the trustee gives the custodian:

- 1 a. a written request for disclosure in physical or electronic
- 2 form;
- 3 b. a certified copy of the trust instrument or a certification of
- 4 the trust under N.J.S.3B:31-81 that includes consent to disclosure of
- 5 the content of electronic communications to the trustee;
- 6 c. a certification by the trustee, under penalty of perjury, that
- 7 the trust exists and the trustee is a currently acting trustee of the
- 8 trust; and
- 9 d. if requested by the custodian:
- 10 (1) a number, username, address, or other unique subscriber or
- 11 account identifier assigned by the custodian to identify the trust's
- 12 account; or
- 13 (2) evidence linking the account to the trust.

14

15 13. Disclosure of Other Digital Assets Held in Trust When

16 Trustee Not Original User.

17 Unless otherwise ordered by the court, directed by the user, or

18 provided in a trust, a custodian shall disclose, to a trustee that is not

19 an original user of an account, a catalogue of electronic

20 communications sent or received by an original or successor user

21 and stored, carried, or maintained by the custodian in an account of

22 the trust and any digital assets, other than the content of electronic

23 communications, in which the trust has a right or interest if the

24 trustee gives the custodian:

- 25 a. a written request for disclosure in physical or electronic
- 26 form;
- 27 b. a certified copy of the trust instrument or a certification of
- 28 the trust under N.J.S.3B:31-81;
- 29 c. a certification by the trustee, under penalty of perjury, that
- 30 the trust exists and the trustee is a currently acting trustee of the
- 31 trust; and
- 32 d. if requested by the custodian:
- 33 (1) a number, username, address, or other unique subscriber or
- 34 account identifier assigned by the custodian to identify the trust's
- 35 account; or
- 36 (2) evidence linking the account to the trust.

37

38 14. Disclosure of Digital Assets to Guardian of Incapacitated

39 Person.

- 40 a. After an opportunity for a hearing under N.J.S.3B:12-1 et
- 41 seq., the court may grant a guardian access to the digital assets of an
- 42 incapacitated person.
- 43 b. Unless otherwise ordered by the court or directed by the
- 44 user, a custodian shall disclose to a guardian the catalogue of
- 45 electronic communications sent or received by the incapacitated
- 46 person and any digital assets, other than the content of electronic
- 47 communications, in which the incapacitated person has a right or
- 48 interest if the guardian gives the custodian:

- 1 (1) a written request for disclosure in physical or electronic
2 form;
- 3 (2) a copy of the court order that gives the guardian authority
4 over the digital assets of the incapacitated person; and
- 5 (3) if requested by the custodian:
- 6 (a) a number, username, address, or other unique subscriber or
7 account identifier assigned by the custodian to identify the account
8 of the incapacitated person; or
- 9 (b) evidence linking the account to the incapacitated person.
- 10 c. A guardian with general authority to manage the assets of an
11 incapacitated person may request a custodian of the digital assets of
12 the incapacitated person to suspend or terminate an account of the
13 incapacitated person for good cause. A request made under this
14 section shall be accompanied by a copy of the court order giving the
15 guardian authority over the incapacitated person's property.

16
17 15. Fiduciary Duty and Authority.

18 a. The legal duties imposed on a fiduciary charged with
19 managing tangible property apply to the management of digital
20 assets, including:

- 21 (1) the duty of care;
- 22 (2) the duty of loyalty; and
- 23 (3) the duty of confidentiality.

24 b. A fiduciary's authority with respect to a digital asset of a
25 user:

- 26 (1) except as otherwise provided in section 4 of this act, is
27 subject to the applicable terms of service;
- 28 (2) is subject to other applicable law, including copyright law;
- 29 (3) is limited by the scope of the fiduciary's duties; and
- 30 (4) may not be used to impersonate the user.

31 c. A fiduciary with authority over the property of a decedent,
32 incapacitated person, principal, or settlor has the right to access any
33 digital asset in which the decedent, incapacitated person, principal,
34 or settlor had a right or interest and that is not held by a custodian
35 or subject to a terms-of-service agreement.

36 d. A fiduciary acting within the scope of the fiduciary's duties
37 is an authorized user of the property of the decedent, incapacitated
38 person, principal, or settlor for the purpose of applicable computer-
39 fraud and unauthorized-computer-access laws, including but not
40 limited to the provisions of P.L.1984, c.184 (C.2C:20-23 et seq.)
41 and N.J.S.2C:20-2.

42 e. A fiduciary with authority over the tangible, personal
43 property of a decedent, incapacitated person, principal, or settlor:

- 44 (1) has the right to access the property and any digital asset
45 stored in it; and
- 46 (2) is an authorized user for the purpose of computer-fraud and
47 unauthorized-computer-access laws, including but not limited to the

1 provisions of P.L.1984, c.184 (C.2C:20-23 et seq.) and
2 N.J.S.2C:20-2.

3 f. A custodian may disclose information in an account to a
4 fiduciary of the user when the information is required to terminate
5 an account used to access digital assets licensed to the user.

6 g. A fiduciary of a user may request a custodian to terminate
7 the user's account. A request for termination must be in writing, in
8 either physical or electronic form, and accompanied by:

9 (1) if the user is deceased, a copy of the death certificate of the
10 user;

11 (2) a copy of the letters testamentary or letters of administration,
12 court order, power of attorney, or trust giving the fiduciary
13 authority over the account; and

14 (3) if requested by the custodian:

15 (a) a number, username, address, or other unique subscriber or
16 account identifier assigned by the custodian to identify the user's
17 account;

18 (b) evidence linking the account to the user; or

19 (c) a finding by the court that the user had a specific account
20 with the custodian, identifiable by the information specified in
21 subparagraph (a) of this paragraph.

22

23 16. Custodian Compliance and Immunity.

24 a. Not later than 60 days after receipt of the information
25 required under sections 7 through 15 of this act, a custodian shall
26 comply with a request under this act from a fiduciary or designated
27 recipient to disclose digital assets or terminate an account. If the
28 custodian fails to comply, the fiduciary or designated recipient may
29 apply to the court for an order directing compliance.

30 b. An order under subsection a. of this section directing
31 compliance must contain a finding that compliance is not in
32 violation of 18 U.S.C. s.2702.

33 c. A custodian may notify the user that a request for disclosure
34 or to terminate an account was made under this act.

35 d. A custodian may deny a request under this act from a
36 fiduciary or designated recipient for disclosure of digital assets or to
37 terminate an account if the custodian is aware of any lawful access
38 to the account following the receipt of the fiduciary's request.

39 e. This act does not limit a custodian's ability to obtain or
40 require a fiduciary or designated recipient requesting disclosure or
41 termination under this act to obtain a court order which:

42 (1) specifies that an account belongs to the incapacitated person
43 or principal;

44 (2) specifies that there is sufficient consent from the
45 incapacitated person or principal to support the requested
46 disclosure; and

47 (3) contains a finding required by law other than this act.

1 f. A custodian and its officers, employees, and agents are
2 immune from liability for an act or omission done in good faith in
3 compliance with this act.

4
5 17. Uniformity of Application and Construction.

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

9
10 18. Relation to Electronic Signatures in Global and National
11 Commerce Act.

12 This act modifies, limits, or supersedes the Electronic Signatures
13 in Global and National Commerce Act, 15 U.S.C. s.7001 et seq., but
14 does not modify, limit, or supersede section 101(c) of that act, 15
15 U.S.C. s.7001(c), or authorize electronic delivery of any of the
16 notices described in s.103(b) of that act, 15 U.S.C. s.7003(b).

17
18 19. Effective date and applicability.

19 This act shall take effect on the 90th day following enactment and
20 shall apply to:

- 21 a. a fiduciary acting under a will or power of attorney executed
22 before, on, or after the effective date of this act;
23 b. a personal representative acting for a decedent who died
24 before, on, or after the effective date of this act;
25 c. a guardianship, whether the guardian was appointed before,
26 on, or after the effective date of this act; and
27 d. a trustee acting under a trust created before, on, or after the
28 effective date of this act.

29
30
31 STATEMENT

32
33 This bill would enact the “Uniform Fiduciary Access to Digital
34 Assets Act” (UFADAA). The act was promulgated by the Uniform
35 Law Commission in 2014 and revised by the commission in 2015.

36 OVERVIEW OF THE BILL:

37 Under the UFADAA, the traditional power of a fiduciary to
38 manage a person’s tangible property when that person dies or loses the
39 ability to manage his own property would be extended to allow the
40 fiduciary to manage digital assets. The act defines the term “digital
41 assets” to mean a person’s digital property and electronic
42 communications. The term does not include an underlying asset or
43 liability unless the asset or liability is itself an electronic record.

44 The UFADAA allows fiduciaries to manage digital property, such
45 as computer files, web domains, and virtual currency, but restricts a
46 fiduciary’s access to electronic communications such as email, text
47 messages, and social media accounts unless the original user consented
48 in a will, trust, power of attorney, or other record.

1 The act encompasses four types of fiduciaries: (1) executors or
2 administrators of deceased persons' estates; (2) court-appointed
3 guardians of incapacitated persons; (3) agents appointed under powers
4 of attorney; and (4) trustees.

5 The act would not apply to digital assets of an employer used by an
6 employee during the ordinary course of business.

7 The act distinguishes between a "catalogue of electronic
8 communications" (information that identifies each person with which a
9 user has had an electronic communication, and the time and date of
10 that communication) and the "content of an electronic communication"
11 (information concerning the substance or meaning of the
12 communication). The act provides that generally a fiduciary would
13 have access to a catalogue of the user's communications, but not the
14 content, unless the user consented to the disclosure of the content.

15 Under the act, a "custodian" is a person or entity that carries,
16 maintains, processes, receives, or stores digital assets. The act
17 provides that if a custodian provides an "online tool," separate from
18 the general terms of service, that allows the user to name another
19 person to have access to the user's digital assets or to direct the
20 custodian to delete the user's digital assets, the user's online
21 instructions would be enforceable.

22 If the custodian does not provide an online tool or if the user
23 declines to use the online tool provided, the user may give directions
24 for the disposition of digital assets in a will, trust, power of attorney, or
25 other written record.

26 If the user has not provided any direction, either online or in an
27 estate plan, the terms of service for the user's account would determine
28 whether a fiduciary may access the user's digital assets. If the terms of
29 service do not address fiduciary access, the default rules of the
30 UFADAA would apply.

31 Under the UFADAA, fiduciaries for digital assets would be subject
32 to the same fiduciary duties that normally apply to tangible assets.
33 Thus, for example, an executor would not be authorized to publish the
34 decedent's confidential communications or impersonate the decedent
35 by sending email from the decedent's account. A fiduciary's
36 management of digital assets may also be limited by other law. For
37 example, a fiduciary may not copy or distribute digital files in
38 violation of copyright law, and may not exceed the user's authority
39 under the account's terms of service.

40 In order to gain access to digital assets, a fiduciary would be
41 required to send a request to the custodian, accompanied by a copy of
42 the document granting fiduciary authority, such as a letter of
43 appointment, court order, or certification of trust.

44 Under the bill, custodians of digital assets would be immune from
45 any liability for an act or omission done in good faith in compliance
46 with the act.

1 SPECIFIC SECTIONS OF THE BILL:

2 Section 1: Designates the bill as the “Uniform Fiduciary Access to
3 Digital Assets Act.”

4 Section 2: Sets out definitions of terms. Among other definitions,
5 this section of the bill defines the term “court” to mean the Probate
6 Part of the Chancery Division of the Superior Court, and including the
7 Surrogate’s Court acting within the scope of its authority.

8 Section 3: Provides that the act applies to a custodian if the user
9 resides in this State or resided in this State at the time of the user’s
10 death, and provides that the act does not apply to a digital asset of an
11 employer used by an employee in the ordinary course of the
12 employer’s business.

13 Section 4: Sets out procedures concerning the use of an online tool
14 to designate disclosure or non-disclosure of the user’s digital assets.

15 Section 5: Establishes that the terms-of-service agreement
16 governing an online account applies to fiduciaries as well as users, and
17 clarifies that a fiduciary or designated recipient would not have any
18 new or expanded rights other than those held by the user.

19 Section 6: Gives the custodians of digital assets some discretion in
20 determining disclosure of digital assets to fiduciaries. This section
21 provides that a custodian may, for example, comply with a request for
22 access by allowing the fiduciary to reset the password and access the
23 user’s account. Under the act, a custodian may also comply without
24 giving access to a user’s account by simply giving a copy of all the
25 user’s digital assets to the fiduciary. This section also allows the
26 custodian to assess a reasonable administrative charge for the cost of
27 disclosing digital assets.

28 Section 6 provides that the custodian shall either: (1) grant a
29 fiduciary or designated recipient full access to the account; (2) grant a
30 fiduciary or designated recipient partial access; or (3) provide a
31 fiduciary or designated recipient a copy in a record of any digital asset
32 that the user could have accessed on the date the custodian received
33 the request if the user were alive and had full capacity. Thus, the
34 custodian would have discretion as to which method of disclosure to
35 use, but would not have discretion to refuse disclosure.

36 Sections 7-14: Establishes the rights of personal representatives of
37 an estate, guardians, agents acting pursuant to a power of attorney, and
38 trustees. Each of the fiduciaries is subject to different rules for the
39 content of communications protected under federal privacy laws and
40 for other types of digital assets.

41 Section 15: Provides that the legal duties imposed on a fiduciary
42 charged with managing tangible property apply to the management of
43 digital assets, including the duty of care, the duty of loyalty, and the
44 duty of confidentiality. Section 15 also provides that, except as
45 otherwise provided in section 4 of the act concerning online tools, a
46 fiduciary’s authority with respect to a digital asset is subject to the
47 applicable terms of service, is subject to other applicable law,
48 including copyright law, and may not be used to impersonate the user.

1 This section also authorizes a fiduciary to request a custodian to
2 terminate the use's account and sets out the documentation that must
3 accompany such a request, such as a copy of the death certificate,
4 court order, power of attorney, or trust.

5 Section 16: Requires the custodian to comply with a request from a
6 fiduciary within 60 days after receipt. If the custodian fails to comply,
7 the fiduciary or designated recipient may apply to the court for an
8 order directing compliance. (A "designated recipient" is a person
9 chosen by the user, using an online tool, to administer the user's digital
10 assets.) Section 16 also allows a custodian to deny a request from a
11 fiduciary or designated recipient for disclosure of digital assets or to
12 terminate an account if the custodian is aware of any lawful access to
13 the account following the receipt of the fiduciary's request. This
14 provision is intended to protect joint owners of the account.

15 Section 17: Provides that in applying and construing this uniform
16 act, consideration must be given to the need to promote uniformity of
17 the law with respect to its subject matter among states that enact it.

18 Section 18: Provides that the act modifies, limits, or supersedes
19 the federal Electronic Signatures in Global and National Commerce
20 Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or
21 supersede Section 101(c) of that act, 15 U.S.C. section 7001(c), or
22 authorize electronic delivery of any of the notices described in section
23 103(b) of that act, 15 U.S.C. section 7003(b).

24 Section 19: Provides that the act will take effect on the 90th day
25 following enactment and would apply retroactively: the act would
26 encompass a fiduciary acting under a will or power of attorney
27 executed before, on, or after the effective date of the act; a personal
28 representative acting for a decedent who died before, on, or after the
29 effective date; a guardianship, whether the guardian was appointed
30 before, on, or after the effective date; and a trustee acting under a trust
31 created before, on, or after the effective date.