

To: Scope and Program Committee

From: David English, Executive Director, JEB-UTEA

Date: 1/8/12

Re: Digital Assets

You have asked for the views of JEB-UTEA on whether a uniform act should be drafted on the ability of a fiduciary to access the digital assets and property of a deceased or incapacitated individual.

By way of background, accompanying this email are detailed letters by Commissioner Gene Hennig dated 5/31/2011 and 7/5/2011 outlining the need for the project.

JEB-UTEA concurs there is an important need for the project but raises two issues for consideration before drafting begins. First, is access by fiduciaries the only digital asset issue the Act should address? Or is there a need for a broader statute dealing with access to digital assets more generally? Second, for the Act to be successful, approval by or at least acquiescence by the major technology companies is essential. Before drafting begins, perhaps a stakeholders meeting might be held to identify issues where progress is possible.

At the JEB-UTEA meeting, it was concluded that the best way to address these issues was to appoint a study Committee. On the other hand, the project might go directly to a drafting committee with the first meeting reserved for discussion of issues and meetings with constituent groups. The key issue is not the form the committee should take but rather consensus on the issues to be addressed and the likely success of any resulting statute.