

D R A F T

FOR DISCUSSION ONLY

**[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS
TO DIGITAL ASSETS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR
WILLIAMSBURG, VIRGINIA
JULY 10 - JULY 16, 2015

**[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS
TO DIGITAL ASSETS ACT**

STRIKE AND SCORE

Copyright ©2015

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

July 10, 2015

[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

SUZANNE BROWN WALSH, 185 Asylum St., Hartford, CT 06103-3469, *Chair*

TURNEY P. BERRY, 500 W. Jefferson St., Suite 2800, Louisville, KY 40202

DAVID D. BIKLEN, 799 Prospect Ave., B2, West Hartford, CT 06105

STEPHEN Y. CHOW, 125 Summer St., Boston, MA 02110-1624

VINCENT C. DELIBERATO, Legislative Reference Bureau, Main Capitol Bldg., Room 641,
Harrisburg, PA 17120-0033

MARC S. FEINSTEIN, 431 N. Phillips Ave., Suite 301, Sioux Falls, ND 57104

GENE H. HENNIG, 500 IDS Center, 80 S. 8th St., Minneapolis, MN 55402-3796

STANLEY C. KENT, 90 S. Cascade Ave., Suite 1210, Colorado Springs, CO 80903

SUSAN K. NICHOLS, 3217 Northampton St., Raleigh, NC 27609-0625

DANIEL ROBBINS, 15301 Ventura Blvd., Bldg. E, Sherman Oaks, CA 91403

LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338

NAOMI CAHN, George Washington University School of Law, 2000 H St. NW, Washington,
DC 20052, *Reporter*

EX OFFICIO

HARRIET LANSING, 1 Heather Pl., St. Paul, MN 55102-3017, *President*

GAIL HAGERTY, South Central Judicial District, P.O. Box 1013, 514 E. Thayer Ave.,
Bismarck, ND 58502-1013, *Division Chair*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

1 **[REVISED/AMENDED] UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Fiduciary
3 Access to Digital Assets Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Account” means an arrangement under a terms-of-service agreement in which the
6 custodian holds one or more digital assets of the user or provides goods or services to the user.

7 ~~(1) “Account holder” means a person that has entered into a terms-of-service agreement~~
8 ~~with a custodian or a fiduciary for the person.~~

9 (2) “Agent” means an attorney in fact granted authority under a durable or nondurable
10 power of attorney.

11 (3) “Carries” means engages in the transmission of electronic communications.

12 (4) “Catalogue of electronic communications” means information that identifies each
13 person with which ~~an account holder~~ a user has had an electronic communication, the time and
14 date of the communication, and the electronic address of the person.

15 (5) “[Conservator]” means a person appointed by a court to manage the estate of a living
16 individual. The term includes a limited [conservator].

17 (6) “Content of an electronic communication” means information concerning the
18 substance or meaning of the communication which:

19 (A) has been sent or received by ~~an account holder~~ a user;

20 (B) is in electronic storage by a custodian providing an electronic-communication
21 service to the public or is carried or maintained by a custodian providing a remote-computing
22 service to the public; and

23 (C) is not readily accessible to the public.

1 (7) “Court” means the [insert name of court in this state having jurisdiction in matters
2 relating to the content of this act].

3 (8) “Custodian” means a person that carries, maintains, processes, receives, or stores a
4 digital asset of ~~an account holder~~ a user.

5 (9) “Designated recipient” means a person appointed to administer digital assets by a user
6 using an online tool.

7 ~~(910)~~ “Digital asset” means ~~a record that is an~~ electronic record in which an individual
8 has a right or interest. The term does not include an underlying asset or liability unless the asset
9 or liability is itself an electronic record ~~that is electronic~~.

10 ~~(1011)~~ “Electronic” means relating to technology having electrical, digital, magnetic,
11 wireless, optical, electromagnetic, or similar capabilities.

12 ~~(1112)~~ “Electronic communication” has the same meaning as the definition in 18 U.S.C.
13 Section 2510(12) [as amended].

14 ~~(1213)~~ “Electronic-communication service” means a custodian that provides to ~~an~~
15 ~~account holder~~ a user the ability to send or receive an electronic communication.

16 ~~(1314)~~ “Fiduciary” means an original, additional, or successor personal representative,
17 [conservator], agent, or trustee.

18 ~~(1415)~~ “Information” means data, text, images, videos, sounds, codes, computer
19 programs, software, databases, or the like.

20 (16) “Online tool” means an electronic service provided by a custodian that allows the
21 user, in an agreement distinct from the terms-of-service agreement between the custodian and
22 user, to provide directions for disclosure or non-disclosure of digital assets to a third person.

23 ~~(1517)~~ “Person” means an individual, estate, business or nonprofit entity, public

1 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
2 entity.

3 (1618) “Personal representative” means an executor, administrator, special administrator,
4 or person that performs substantially the same function under law of this state other than this
5 [act].

6 (1719) “Power of attorney” means a record that grants an agent authority to act in the
7 place of a principal.

8 (1820) “Principal” means an individual who grants authority to an agent in a power of
9 attorney.

10 (1921) “[Protected person]” means an individual for whom a [conservator] has been
11 appointed. The term includes an individual for whom an application for the appointment of a
12 [conservator] is pending.

13 (2022) “Record” means information that is inscribed on a tangible medium or that is
14 stored in an electronic or other medium and is retrievable in perceivable form.

15 (2123) “Remote-computing service” means a custodian that provides to ~~an account~~
16 ~~holder~~ a user computer processing services or the storage of digital assets by means of an
17 electronic communications system, as defined in 18 U.S.C. Section 2510(14) [, as amended].

18 (2224) “Terms-of-service agreement” means an agreement that controls the relationship
19 between ~~an account holder~~ a user and a custodian.

20 (2325) “Trustee” means a fiduciary with legal title to property pursuant to an agreement
21 or declaration that creates a beneficial interest in another. The term includes a successor trustee.

22 (24) “User” means a person that has an account with a custodian.

23 (2427) “Will” includes a codicil, testamentary instrument that only appoints an executor,

1 and instrument that revokes or revises a testamentary instrument.

2 **Legislative Note:** States should insert the appropriate term for a person named in a
3 conservatorship or comparable state proceeding to manage another's estate in paragraph (56),
4 the appropriate court in paragraph (78), and the appropriate term for the individual that would
5 be subject to a conservatorship or comparable state proceeding in paragraph (1922).

6 In states in which the constitution, or other law, does not permit the phrase "as amended" when
7 federal statutes are incorporated into state law, the phrase should be deleted in
8 paragraphs (113) and (2124).

9 **SECTION 3. APPLICABILITY.**

10 (a) This [act] applies to:

11 (1) a fiduciary ~~or agent~~ acting under a will or power of attorney executed before,
12 on, or after [the effective date of this [act]];

13 (2) a personal representative acting for a decedent who died before, on, or after
14 [the effective date of this [act]];

15 (3) a [conservatorship] proceeding, whether pending in a court or commenced
16 before, on, or after [the effective date of this [act]];

17 (4) a trustee acting under a trust created before, on, or after [the effective date of
18 this [act]]; and

19 (5) a custodian of digital assets for a user who resides in this state or who resided
20 in this state at the time of the user's death.

21 (b) This [act] does not apply to a digital asset of an employer used by an employee in the
22 ordinary course of the employer's business.

23 (c) This act allows a custodian to disclose account information to a fiduciary when the
24 information is required to close an account used to access licensed digital assets.

25

1 **SECTION 4. INDIVIDUAL’S DIRECTION FOR DISCLOSURE OF DIGITAL**
2 **ASSETS.**

3 (a) A user may use an online tool to allow a custodian to disclose or prohibit a custodian
4 from disclosing some or all of the user’s digital assets, including the contents of electronic
5 communications. If the online tool allows the user to modify or delete a direction at any time, a
6 direction regarding disclosure using an online tool supersedes a contrary direction by the user in
7 a will, trust, power of attorney, or other record.

8 (b) If a user has not used an online tool to give direction under subsection (a) regarding
9 disclosure of digital assets, or if a custodian has not provided an online tool, a user may allow or
10 prohibit in a will, trust, power of attorney, or other record, the disclosure to a fiduciary of some
11 or all of the user’s digital assets, including the content of an electronic communication sent or
12 received by the user.

13 (c) The user’s direction for disclosure of digital assets under subsection (a) or (b)
14 supersedes a contrary provision in a custodian’s terms-of-service agreement that did not require
15 the user to act affirmatively and separately from the user’s assent to the terms-of-service
16 agreement.

17 **SECTION 5. TERMS-OF-SERVICE AGREEMENT PRESERVED.**

18 (a) Nothing in this act changes or impairs a party’s rights under a terms-of-service
19 agreement to access and use digital assets of a user.

20 (b) This act does not give a fiduciary any new or expanded rights than those held by the
21 user for whom, or for whose estate, the fiduciary acts or represents.

22 (c) A fiduciary’s access to digital assets may be modified or eliminated by a user, by
23 federal law, or, when the user has not provided any direction that is recognized in Section 4, by a

1 terms-of-service agreement.

2 **SECTION 6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.**

3 (a) When disclosing the digital assets of a user under this act, the custodian may at its
4 sole discretion:

5 (1) grant the fiduciary or designated recipient full access to the user’s account;

6 (2) grant the fiduciary or designated recipient partial access to the user’s account
7 sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

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

11 (b) A custodian may assess a reasonable administrative charge for the cost of disclosing
12 digital assets.

13 (c) Nothing in this [act] shall be interpreted to confer upon the fiduciary or designated
14 recipient any greater rights in the contents of electronic communications than those enjoyed by
15 the account holder.

16 (d) A custodian need not disclose a digital asset deleted by a user.

17 (e) If a user directs or a fiduciary requests a custodian to disclose some, but not all, of the
18 user’s digital assets, the custodian need not comply if segregation of the digital assets would
19 impose an undue burden on the custodian. If the custodian believes that the direction or request
20 imposes an undue burden, either the custodian or the fiduciary may petition the court for an order
21 to:

22 (1) disclose a date delimited subset of the account holder’s digital assets;

23 (2) disclose all of the user’s digital assets to the fiduciary or designated recipient;

1 (3) disclose none of the user’s digital assets; or

2 (4) disclose all of the user’s digital assets to the court for review in chambers.

3 **SECTION 47. ACCESS BY PERSONAL REPRESENTATIVE TO DIGITAL**
4 **ASSET OF DECEDENT. DISCLOSURE OF THE CONTENT OF ELECTRONIC**

5 **COMMUNICATIONS OF DECEASED USER.** If the user consented to disclosure of the
6 content of an electronic communication or if the court directs disclosure, a custodian shall
7 disclose to the personal representative of the estate of a deceased user the content of an electronic
8 communication sent or received by the user if the personal representative gives to the custodian:

9 (1) a written request for disclosure in physical or electronic form;

10 (2) a certified copy of the death certificate of the user;

11 (3) a certified copy of [the letter of appointment of the representative or a small-estate
12 affidavit or court order];

13 (4) unless the user provided direction using an online tool, a copy of the user’s will, trust,
14 power of attorney, or other record evidencing the user’s consent to disclosure of the content of an
15 electronic communication; and

16 (5) any of the following requested by the custodian:

17 (A) a number, username, or address assigned by the custodian to identify the
18 user’s account;

19 (B) evidence linking the account to the user; or

20 (C) an order of the court finding that:

21 (i) the user had a specific account with the custodian, identifiable by a
22 number, username, or address assigned by the custodian;

23 (ii) that disclosure of the content of the user’s electronic communications

1 would not violate 18 U.S.C. Section 2701 et seq., 47 U.S.C. Section 222, or other applicable law;

2 (iii) unless the user provided direction using an online tool, that the user
3 consented to disclosure of the content of an electronic communication; or

4 (iv) disclosure of the content of an electronic communication of a user is
5 reasonably necessary for estate administration.

6 **SECTION 8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED**

7 **USER.** ~~Subject to Section 8(b) and unless otherwise ordered by the court or provided in the will~~
8 ~~of a decedent.~~ Unless the user prohibited disclosure of digital assets or the court directs

9 otherwise, a custodian shall disclose to the personal representative of the estate of a deceased

10 user a catalogue of electronic communications sent or received by the user, and a digital asset in

11 which the user had a right or interest, except the content of an electronic communication, if the

12 personal representative gives to the custodian ~~the personal representative of the decedent has the~~
13 ~~right to access:~~

14 (1) a written request for disclosure in physical or electronic form;

15 (2) a certified copy of the death certificate of the user;

16 (3) a certified copy of [the letter of appointment of the representative or a small-estate
17 affidavit or court order]; and

18 (4) any of the following requested by the custodian:

19 (A) a number, username, or address assigned by the custodian to identify the
20 user's account;

21 (B) evidence linking the account to the user;

22 (C) an affidavit stating that disclosure of the user's digital assets is reasonably
23 necessary for estate administration; or

1 (D) an order of the court finding that:

2 (i) the user had a specific account with the custodian, identifiable by a
3 number, username, or address assigned by the custodian; or

4 (ii) disclosure of the user’s digital assets is reasonably necessary for estate
5 administration.

6 ~~(1) the content of an electronic communication that the custodian is permitted to~~
7 ~~disclose under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b)~~
8 ~~{as amended};~~

9 ~~(2) any catalogue of electronic communications sent or received by the decedent;~~
10 ~~and~~

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

12 *Legislative Note: In states in which the constitution, or other law, does not permit the phrase “as*
13 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
14 *paragraph (1).*

15 **~~SECTION 5. ACCESS BY [CONSERVATOR] TO DIGITAL ASSET OF~~**

16 **~~[PROTECTED PERSON].~~** Subject to Section 8(b), the court, after an opportunity for hearing
17 under ~~[state conservatorship law], may grant a [conservator] the right to access:~~

18 ~~(1) the content of an electronic communication that the custodian is permitted to disclose~~
19 ~~under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b) [as amended];~~

20 ~~(2) any catalogue of electronic communications sent or received by the [protected~~
21 ~~person]; and~~

22 ~~(3) any other digital asset in which the [protected person] has a right or interest.~~

23 *Legislative Note: In states in which the constitution, or other law, does not permit the phrase “as*
24 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
25 *paragraph (1).*

1 *States should insert the appropriate term for a conservator or comparable fiduciary throughout*
2 *this Section.*

3 **SECTION 6-9. ACCESS BY AGENT TO DIGITAL ASSET OF PRINCIPAL**
4 **DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATION OF**
5 **PRINCIPAL.**

6 ~~(a)~~ To the extent a power of attorney expressly grants an agent authority over the content
7 of an electronic communication ~~of~~ sent or received by the principal and unless directed otherwise
8 by the principal or the court and subject to Section 8(b), a custodian shall disclose to the agent
9 has the right to access the content of an a principal's electronic communication if the agent gives
10 to the custodian; that the custodian is permitted to disclose under the Electronic Communications
11 Privacy Act, 18 U.S.C. Section 2702(b) [as amended].

12 (1) a written request for disclosure in physical or electronic form;

13 (2) an original or copy of the power of attorney expressly granting the agent authority
14 over the contents of electronic communications of the principal to the agent;

15 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
16 effect; and

17 (4) any of the following requested by the custodian:

18 (A) a number, username, or address assigned by the custodian to identify the
19 principal's account; or

20 (B) evidence linking the account to the principal.

21 **SECTION 10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.** ~~(b)~~

22 ~~Subject to Section 8(b) and unless~~ Unless otherwise ordered by the court, directed by the
23 principal, or provided by a power of attorney, a custodian shall disclose to an agent with general
24 authority to act on behalf of a principal ~~has the right to access:~~

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

3 (2) any ~~other~~ digital asset in which the principal has a right or interest, except the
4 content of an electronic communication,- if the agent gives to the custodian:

5 (1) a written request for disclosure in physical or electronic form;

6 (2) an original or a copy of the power of attorney that gives the agent general authority to
7 act on behalf of the principal;

8 (3) a certification by the agent, under penalty of perjury, that the power of attorney is in
9 effect; and

10 (4) if requested by the custodian:

11 (A) a number, username, or address assigned by the custodian to identify the
12 principal's account; or

13 (B) evidence linking the account to the principal.

14 *Legislative Note: In states in which the constitution, or other law, does not permit the phrase “as*
15 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
16 *paragraph (a).*

17 *States may also need to amend their power of attorney statutes and forms to include this power.*

18 **SECTION 7-11. ACCESS BY TRUSTEE TO DIGITAL ASSET DISCLOSURE OF**
19 **DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS THE ORIGINAL USER.**

20 ~~(a) Subject to Section 8(b) and unless~~ Unless otherwise ordered by the court or provided
21 in a trust, a custodian shall disclose to a trustee that is an original account holder user has the
22 right to access any digital asset held in trust, including any catalogue of electronic
23 communications of the trustee and the content of an electronic communication.

24

1 **(b) SECTION 12. DISCLOSURE OF CONTENT OF ELECTRONIC**

2 **COMMUNICATION HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER.**

3 ~~Subject to Section 8(b) and unless~~ Unless otherwise ordered by the court, directed by the user, or
4 provided in a trust, a custodian shall disclose to a trustee that is not an original ~~account holder~~
5 user has the right to access;

6 ~~(1) the content of an electronic communication that the custodian is permitted to~~
7 ~~disclose under the Electronic Communications Privacy Act, 18 U.S.C. Section 2702(b) [as~~
8 ~~amended]~~ sent or received by an original or successor user and carried, maintained, processed,
9 received, or stored by a custodian in an account of the trust if the trustee gives to the custodian;

10 ~~(2) any catalogue of electronic communications sent or received by the original or~~
11 ~~any successor account holder; and~~

12 ~~(3) any other digital asset in which the original or any successor account holder~~
13 ~~has a right or interest.~~

14 (1) a written request for disclosure in physical or electronic form;

15 (2) a certified copy of the trust instrument[, or a certification of the trust under [cite
16 trust-certification statute, such as Uniform Trust Code Section 1013],] that includes consent to
17 disclosure of the content of an electronic communication to the trustee;

18 (3) a certification by the trustee, under penalty of perjury, that the trust exists and that the
19 trustee is a currently acting trustee of the trust; and

20 (4) if requested by the custodian:

21 (A) a number, username, or address assigned by the custodian to identify the
22 trust's account; or

23 (B) evidence linking the account to the trust.

1 **SECTION 13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST**

2 **WHEN TRUSTEE NOT ORIGINAL USER.** Unless otherwise ordered by the court, directed
3 by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original
4 user the catalogue of electronic communications sent or received by an original or successor user
5 and stored, carried, or maintained by a custodian in an account of the trust and any digital asset
6 in which the trust has a right or interest, other than the content of electronic communications, if
7 the trustee gives to the custodian:

8 (1) a written request for disclosure in physical or electronic form;

9 (2) a certified copy of the trust instrument[, or a certification of the trust under [cite
10 trust-certification statute, such as Uniform Trust Code Section 1013],];

11 (3) a certification by the trustee, under penalty of perjury, that the trust exists and that the
12 trustee is a currently acting trustee of the trust; and

13 (4) if requested by the custodian:

14 (A) a number, username, or address assigned by the custodian to identify the
15 trust’s account; or

16 (B) evidence linking the account to the trust.

17 ***Legislative Note:** In states in which the constitution, or other law, does not permit the phrase “as*
18 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
19 *paragraph (b)(1).*

20 **SECTION 14. DISCLOSURE OF DIGITAL ASSETS TO- [CONSERVATOR] OF**
21 **[PROTECTED PERSON].**

22 (a) The court, after an opportunity for a hearing under [state conservatorship law], may
23 grant a [conservator] the right to access a [protected person]’s digital assets.

24 (b) Unless otherwise ordered by a court or directed by the user, a custodian shall disclose

1 to a [conservator] the catalogue of electronic communications sent or received by a [protected
2 person] and any digital asset in which the [protected person] has a right or interest, other than the
3 content of an electronic communication, if the [conservator] gives to the custodian:

4 (1) a written request for disclosure in physical or electronic form;

5 (2) a certified copy of the court order that gives the [conservator] authority over
6 the [protected person's] digital assets; and

7 (3) if requested by the custodian:

8 (A) a number, username, or address assigned by the custodian to identify
9 the [protected person]'s account; or

10 (B) evidence linking the account to the [protected person].

11 (c) A [conservator] with general authority to manage the assets of a [protected person]
12 may request a custodian of the [protected person's] digital assets to suspend or terminate an
13 account of the [protected person] for good cause. A request made under this section shall be
14 accompanied by a certified copy of the court order giving the [conservator] authority over the
15 protected person's property.

16 *Legislative Note: States should insert the appropriate term for a conservator or comparable*
17 *fiduciary throughout this section.*

18 **SECTION 8-15. FIDUCIARY DUTY AND AUTHORITY.**

19 (a) The legal duties imposed on a fiduciary charged with managing tangible property also
20 apply to the management of digital assets, including when applicable:

21 (1) the duty of care;

22 (2) the duty of loyalty; and

23 (3) the duty of confidentiality.

24 (ba) A fiduciary's authority ~~that is an account holder or has the right under this [act]~~ to

1 ~~access with respect to a digital asset of an account holder a user:~~

2 (1) except as provided in Section 4, is subject to the terms-of-service agreement
3 governing the account;

4 (2) is subject to other applicable laws, including copyright law, and other
5 applicable law;

6 (3) is limited by the scope of the fiduciary's duties; and

7 (4) may not be used to impersonate the user. , may take any action concerning the
8 asset to the extent of the account holder's authority and the fiduciary's power under the law of
9 this state other than this [act];

10 (2) has, for the purpose of applicable electronic privacy laws, the lawful consent
11 of the account holder for the custodian to divulge the content of an electronic communication to
12 the fiduciary; and

13 (3) is, for the purpose of applicable computer fraud and
14 unauthorized computer access laws, including [this state's law on unauthorized computer
15 access], an authorized user.

16 (c) ~~Unless an account holder, after [the effective date of this [act]], agrees to a provision~~
17 ~~in a terms of service agreement that limits a fiduciary's access to a digital asset of the account~~
18 ~~holder by an affirmative act separate from the account holder's assent to other provisions of the~~
19 ~~agreement:~~

20 (1) ~~the provision is void as against the strong public policy of this state; and~~

21 (2) ~~the fiduciary's access under this [act] to a digital asset does not violate the~~
22 ~~terms of service agreement even if the agreement requires notice of a change in the account~~
23 ~~holder's status.~~

1 ~~(d) A choice of law provision in a terms of service agreement is unenforceable against a~~
2 ~~fiduciary acting under this [act] to the extent the provision designates law that enforces a~~
3 ~~limitation on a fiduciary's access to a digital asset, and the limitation is void under~~
4 ~~subsection (e).~~

5 (c) A fiduciary with authority over the property of a decedent, [protected person],
6 principal, or settlor has the right to access any digital asset in which the decedent, [protected
7 person], principal, or settlor had a right or interest and that is not held by a custodian or subject
8 to a terms-of-service agreement.

9 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of
10 the property of the decedent, [protected person], principal, or settlor for the purpose of applicable
11 computer-fraud and unauthorized-computer-access laws, including [this state's law on
12 unauthorized computer access].

13 ~~(e) As to tangible personal property capable of receiving, storing, processing, or sending~~
14 ~~a digital asset, a~~ A fiduciary with authority over the tangible, personal property of a decedent,
15 [protected person], principal, or settlor:

16 (1) has the right to access the property and any digital asset stored in it; and

17 (2) is an authorized user of a stored digital asset for purposes of any applicable
18 computer-fraud and unauthorized-computer-access laws, including [this state's law on
19 unauthorized computer access].

20 (f) A fiduciary may request termination of a user's account if termination would not
21 violate any fiduciary duty. A request for account termination must be in writing, in either
22 physical or electronic form, and accompanied by:

23 (1) if the user is deceased, a certified copy of the death certificate of the user;

1 (2) a certified copy of [the letter of appointment of the representative or a
2 small-estate affidavit or court order,] court order, power of attorney, or trust giving the
3 fiduciary authority over the account; and

4 (3) if requested by the custodian:

5 (A) a number, username, or address assigned by the custodian to identify
6 the user's account;

7 (B) evidence linking the account to the user; or

8 (C) an order of the court finding that the user had a specific account with
9 the custodian, identifiable by a number, username, or address assigned by the custodian.

10 ***Legislative Note:** A state with a computer trespass statute should add the appropriate reference*
11 *in paragraphs ~~(a)(3)~~ and ~~(g)~~(2) and may want to amend the statute to be in accord with this act.*

12 **SECTION 9-16. CUSTODIAN COMPLIANCE AND IMMUNITY.**

13 ~~(a) If a fiduciary with a right under this [act] to access a digital asset of an account holder~~
14 ~~complies with subsection (b), the custodian shall comply with the fiduciary's request in a record~~
15 ~~for:~~

16 ~~(1) access to the asset;~~

17 ~~(2) control of the asset; and~~

18 ~~(3) a copy of the asset to the extent permitted by copyright law.~~

19 ~~(b) If a request under subsection (a) is made by:~~

20 ~~(1) a personal representative with the right of access under Section 4, the request~~
21 ~~must be accompanied by a certified copy of [the letter of appointment of the representative or a~~
22 ~~small-estate affidavit or court order];~~

23 ~~(2) a [conservator] with the right of access under Section 5, the request must be~~
24 ~~accompanied by a certified copy of the court order that gives the [conservator] authority over the~~

1 ~~digital asset;~~

2 ~~(3) an agent with the right of access under Section 6, the request must be~~
3 ~~accompanied by an original or a copy of the power of attorney that authorizes the agent to~~
4 ~~exercise authority over the digital asset and a certification of the agent, under penalty of perjury,~~
5 ~~that the power of attorney is in effect; and~~

6 ~~(4) a trustee with the right of access under Section 7, the request must be~~
7 ~~accompanied by a certified copy of the trust instrument[, or a certification of the trust under [cite~~
8 ~~trust certification statute, such as Uniform Trust Code Section 1013],] that authorizes the trustee~~
9 ~~to exercise authority over the digital asset.~~

10 ~~(e)~~ A custodian shall comply with a fiduciary's request made under subsection (a) for
11 disclosure of digital assets or account termination not later than [60] days after receipt of all the
12 required information. If the custodian fails to comply, the fiduciary may apply to the court for an
13 order directing compliance.

14 (b) An order directing compliance must contain a finding that compliance is not in
15 violation of 18 U.S.C. § 2702.

16 (c) A custodian may notify the user that a request for disclosure of digital assets or
17 account termination was made pursuant to this [act].

18 (d) A custodian may deny a fiduciary's request for disclosure of digital assets or account
19 termination if the custodian is aware of any lawful access to the account following the receipt of
20 the fiduciary's request.

21 (e) Nothing in this [act] shall limit a custodian's ability to obtain or to require a requesting
22 party to obtain a court order from an appropriate court which makes the finding that:

23 (1) the account belongs to the [protected person]/principal;

1 (2) there is sufficient consent from the [protected person]/principal] to support the
2 requested disclosure; and

3 (3) disclosure will not violate federal or state law.

4 (f) A custodian and its officers, employees, and agents are immune from liability for an
5 act or omission done in good faith in compliance with this [act].

6 ~~(d) [Instead of furnishing a copy of the trust instrument under subsection (b)(4), the~~
7 ~~trustee may provide a certification of trust. The certification:~~

8 ~~(1) must contain the following information:~~

9 ~~(A) that the trust exists and the date the trust instrument was executed;~~

10 ~~(B) the identity of the settlor;~~

11 ~~(C) the identity and address of the trustee;~~

12 ~~(D) that there is nothing inconsistent in the trust with respect to the~~
13 ~~trustee's powers over digital assets;~~

14 ~~(E) whether the trust is revocable and the identity of any person holding a~~
15 ~~power to revoke the trust;~~

16 ~~(F) whether a cotrustee has authority to sign or otherwise authenticate; and~~

17 ~~(G) whether all or fewer than all cotrustees are required to exercise powers~~
18 ~~of the trustee;~~

19 ~~(2) must be signed or otherwise authenticated by a trustee;~~

20 ~~(3) must state that the trust has not been revoked, modified, or amended in a~~
21 ~~manner that would cause the representations contained in the certification of trust to be incorrect;~~

22 ~~and~~

23 ~~(4) need not contain the dispositive terms of the trust.~~

1 ~~(e) A custodian that receives a certification under subsection (d) may require the trustee~~
2 ~~to provide copies of excerpts from the original trust instrument and later amendments~~
3 ~~designating the trustee and conferring on the trustee the power to act in the pending transaction.~~

4 ~~(f) A custodian that acts in reliance on a certification under subsection (d) without~~
5 ~~knowledge that the representations contained in it are incorrect is not liable to any person for so~~
6 ~~acting and may assume without inquiry the existence of facts stated in the certification.~~

7 ~~(g) A person that in good faith enters into a transaction in reliance on a certification under~~
8 ~~subsection (d) may enforce the transaction against the trust property as if the representations~~
9 ~~contained in the certification were correct.~~

10 ~~(h) A person that demands the trust instrument in addition to a certification under~~
11 ~~subsection (d) or excerpts under subsection (e) is liable for damages, including attorneys' fees, if~~
12 ~~the court determines that the person did not act in good faith in demanding the instrument.~~

13 ~~(i)] This section does not limit the right of a person to obtain a copy of a trust instrument~~
14 ~~in a judicial proceeding concerning the trust.~~

15 *~~Legislative Note: The bracketed language in paragraphs (d) (i) allows states that have already~~*
16 *~~enacted the Uniform Trust Code or a similar law permitting a certification of trust in lieu of~~*
17 *~~furnishing a complete copy of the trust instrument to delete the bracketed language when setting~~*
18 *~~out procedures concerning a trustee's request. States that have not adopted the Uniform Trust~~*
19 *~~Code or a certification of trust procedure may choose to include the bracketed language, which~~*
20 *~~is a slight modification of the language in Uniform Trust Code Section 1013.~~*

21 ~~**SECTION 10. CUSTODIAN IMMUNITY.** A custodian and its officers, employees,~~
22 ~~and agents are immune from liability for an act or omission done in good faith in compliance~~
23 ~~with this [act].~~

24 ~~**SECTION 11-17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In~~
25 ~~applying and construing this uniform act, consideration must be given to the need to promote~~
26 ~~uniformity of the law with respect to its subject matter among states that enact it.~~

1 **SECTION ~~12~~18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
2 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
3 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
4 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
5 authorize electronic delivery of any of the notices described in Section 103(b) of that act,
6 15 U.S.C. Section 7003(b).

7 **[SECTION ~~13~~19. SEVERABILITY.** If any provision of this [act] or its application to
8 any person or circumstance is held invalid, the invalidity does not affect other provisions or
9 applications of this [act] which can be given effect without the invalid provision or application,
10 and to this end the provisions of this [act] are severable.]

11 ***Legislative Note:** Include this section only if this state lacks a general severability statute or a*
12 *decision by the highest court of this state stating a general rule of severability.*

13 **SECTION ~~14~~20. REPEALS; CONFORMING AMENDMENTS.**

14 (a)

15 (b)

16 (c)

17 **SECTION ~~15~~21. EFFECTIVE DATE.** This [act] takes effect....