



|| SENATE OF PENNSYLVANIA
BILL SUMMARY

Senate Bill 827
Printer's No. 1050

Prime Sponsor: Senator Killion
Committee: Judiciary

SYNOPSIS:

This bill amends Title 20 (Decedents, Estates and Fiduciaries), adding a new Chapter 39 to provide for access by agents and other fiduciaries to digital assets of a decedent.

SUMMARY:

Authorizes courts of common pleas to exercise jurisdiction over matters related to digital assets.

Specifies that Chapter 39 applies to a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of the act; to a personal representative acting for a decedent who died before, on, or after the effective date of the act; to a proceeding for the appointment of a guardian of the estate commenced before, on, or after the effective date of the act; and to a trustee acting under a trust created before, on, or after the effective date of the act.

Applies to a custodian if the user resided in the Commonwealth at the time of his death. Does not apply to the digital asset of an employer used by an employee in the ordinary course of business.

Permits a user to use an online tool to direct the custodian to disclose or not disclose the user's digital assets, including electronic communications. If the tool allows modifications at any time, the direction regarding disclosure using an online tool overrides any contrary direction by the user in a will, trust, power of attorney, or other record. If the user does not employ an online tool, the user may direct the disclosure or non-disclosure of digital assets in a will, trust, power of attorney, or other record. The act does not impair the right of a custodian or a user under a terms-of-service agreement.

Grants the custodian the discretion to allow full or partial access by a fiduciary to accomplish the fiduciary's designated duty. Permits the custodian to assess a reasonable administrative charge for the cost of disclosing digital assets. Clarifies that the custodian need not disclose digital assets that were deleted by the user.

Electronic Communications

If a deceased user consented to the disclosure of electronic communications, the custodian shall disclose to the personal representative of the estate of the user the content of communications sent or received if the personal representative provides to the custodian (1) a written request for disclosure, (2) a certified copy of the death certificate of the user, (3) a certified copy of the letters, and, (4) in the absence of directions in an online tool, a copy of the user's will, trust, power of attorney, or other record

showing consent to disclosure of electronic communications. The custodian may request any number, username, or other unique account identifier, as well as any information linking the account to the user.

Digital Assets

Unless the user prohibited disclosure, a custodian shall disclose a catalog of electronic communications and digital assets to the personal representative of the estate. The issuance of letters testamentary or letters of administration shall have the same force and effect as a finding of the court if the personal representative provides an affidavit containing certain information to the Register of Wills.

Disclosures to Principals, Trustees, and Guardians of the Estate

Sets forth the manner in which digital assets and electronic communications may be disclosed when the assets belonged to a principal, are held in trust, or are subject to a guardian of an estate.

Legal Duties of a Fiduciary

Clarifies that the duties of care, loyalty, and confidentiality that apply to a fiduciary who manages tangible property also apply to the management of digital assets. Grants the fiduciary the same right of access to digital assets that the decedent had, including the right to terminate an account.

EFFECTIVE DATE: This bill is effective in 60 days.

BILL HISTORY:

None.

Prepared by: Cawley 9/15/2017