

## LEGISLATIVE REFERENCE BUREAU

## AMENDMENTS TO SENATE BILL NO. 518

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1 Amend Bill, page 1, lines 2 through 9, by striking out "in  
2 fiduciary access to" in line 2 and all of lines 3 through 9 and  
3 inserting  
4 enacting the Revised Uniform Fiduciary Access to Digital Assets  
5 Act (2015); and providing for user direction and agreements,  
6 for disclosure of digital assets, for functions of  
7 fiduciaries and for compliance and immunity for custodians of  
8 digital assets.  
9 Amend Bill, page 1, lines 15 through 21; pages 2 through 11,  
10 lines 1 through 30; page 12, lines 1 through 22; by striking out  
11 all of said lines on said pages and inserting

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30 trustee not original user.31 3914. Disclosure of digital assets to conservator of protected  
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1 3916. Custodian compliance and immunity.  
2 3917. Uniformity of application and construction.  
3 3918. Relation to Electronic Signatures in Global and National  
4 Commerce Act.  
5 § 3901. Short title of chapter.  
6 This chapter may be cited as the Revised Uniform Fiduciary  
7 Access to Digital Assets Act (2015).  
8 § 3902. Definitions.  
9 The following words and phrases when used in this chapter  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:  
12 "Account." An arrangement under a terms-of-service agreement  
13 in which a custodian:  
14 (1) carries, maintains, processes, receives or stores a  
15 digital asset of the user; or  
16 (2) provides goods or services to the user.  
17 "Agent." An attorney-in-fact granted authority under a  
18 durable or nondurable power of attorney.  
19 "Carries." Engages in the transmission of an electronic  
20 communication.  
21 "Catalog of electronic communications." Information which  
22 identifies:  
23 (1) each person that has had an electronic communication  
24 with a user;  
25 (2) the time and date of the electronic communication;  
26 and  
27 (3) the electronic address of the person under paragraph  
28 (1).  
29 "Conservator." A person appointed by a court to manage the  
30 estate of a living individual. The term includes a limited  
31 conservator.  
32 "Content of an electronic communication." Information  
33 concerning the substance or meaning of the electronic  
34 communication which:  
35 (1) has been sent or received by a user;  
36 (2) is in electronic storage by a custodian providing an  
37 electronic communication service to the public or is carried  
38 or maintained by a custodian providing a remote computing  
39 service to the public; and  
40 (3) is not readily accessible to the public.  
41 "Court." The court of common pleas exercising the  
42 jurisdiction referred to in this title through its orphans'  
43 court division.  
44 "Custodian." A person that carries, maintains, processes,  
45 receives or stores a digital asset of a user.  
46 "Designated recipient." A person chosen by a user using an  
47 online tool to administer digital assets of the user.  
48 "Digital asset." An electronic record in which an individual  
49 has a right or interest. The term does not include an underlying  
50 asset or liability unless the asset or liability is itself an  
51 electronic record.

1 "Electronic." Relating to technology having electrical,  
2 digital, magnetic, wireless, optical, electromagnetic or similar  
3 capabilities.

4 "Electronic communication." As defined in 18 U.S.C. §  
5 2510(12) (relating to definitions).

6 "Electronic communications system." As defined in 18 U.S.C.  
7 § 2510(14).

8 "Electronic communication service." A custodian that  
9 provides to a user the ability to send or receive an electronic  
10 communication.

11 "Fiduciary." Any original, additional or successor personal  
12 representative, conservator, agent or trustee.

13 "Information." Data, text, images, videos, sounds, codes,  
14 computer programs, software, databases or the like.

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

20 "Person." Any individual; estate; business or nonprofit  
21 entity; public corporation; government or governmental  
22 subdivision, agency or instrumentality; or other legal entity.

23 "Personal representative." Any of the following:

24 (1) An executor, an administrator or a special  
25 administrator.

26 (2) A person that performs substantially the same  
27 function as a person specified in paragraph (1) under the  
28 laws of this Commonwealth other than this chapter.

29 "Power of attorney." A record which grants an agent  
30 authority to act in the place of a principal.

31 "Principal." An individual who grants authority to an agent  
32 in a power of attorney.

33 "Protected person." An individual for whom a conservator has  
34 been appointed. The term includes an individual for whom an  
35 application for the appointment of a conservator is pending.

36 "Record." Information that is inscribed on a tangible medium  
37 or that is stored in an electronic or other medium and is  
38 retrievable in perceivable form.

39 "Remote computing service." A custodian that provides to a  
40 user computer-processing services or the storage of digital  
41 assets by means of an electronic communications system.

42 "Terms-of-service agreement." An agreement which controls  
43 the relationship between a user and a custodian.

44 "Trustee." A fiduciary with legal title to property under an  
45 agreement or declaration which creates a beneficial interest in  
46 another. The term includes a successor trustee.

47 "User." A person that has an account with a custodian.

48 "Will." Includes:

49 (1) a codicil;

50 (2) a testamentary instrument which only appoints an  
51 executor; and

1           (3) an instrument which revokes or revises a  
2           testamentary instrument.

3 § 3903. Applicability.

4           (a) Time.--This chapter applies to:

5           (1) a fiduciary acting under a will or power of attorney  
6           executed before, on or after the effective date of this  
7           section;

8           (2) a personal representative acting for a decedent who  
9           died before, on or after the effective date of this section;

10           (3) a conservatorship proceeding commenced before, on or  
11           after the effective date of this section; and

12           (4) a trustee acting under a trust created before, on or  
13           after the effective date of this section.

14           (b) Residence of user.--This chapter applies to a custodian  
15           if the user resides in this Commonwealth or resided in this  
16           Commonwealth at the time of the user's death.

17           (c) Employers.--This chapter does not apply to a digital  
18           asset of an employer used by an employee in the ordinary course  
19           of the employer's business.

20 § 3904. User direction for disclosure of digital assets.

21           (a) Use of online tool.--

22           (1) A user may use an online tool to direct the  
23           custodian to disclose or not to disclose some or all of the  
24           user's digital assets, including the content of electronic  
25           communications.

26           (2) If the online tool allows the user to modify or  
27           delete a direction at all times, a direction regarding  
28           disclosure using an online tool overrides a contrary  
29           direction by the user in a will, trust, power of attorney or  
30           other record.

31           (b) Nonuse of online tool.--If a user has not used an online  
32           tool to give direction under subsection (a) or if the custodian  
33           has not provided an online tool, the user may, in a will, trust,  
34           power of attorney or other record, allow or permit disclosure to  
35           a fiduciary of some or all of the user's digital assets,  
36           including the content of electronic communications sent or  
37           received by the user.

38           (c) User's direction.--A user's direction under subsection  
39           (a) or (b) overrides a contrary provision in a terms-of-service  
40           agreement which does not require the user to act affirmatively  
41           and distinctly from the user's assent to the terms of service.

42 § 3905. Terms-of-service agreement.

43           (a) Alteration of rights under this chapter.--This chapter  
44           does not change or impair a right of a custodian or a user under  
45           a terms-of-service agreement to access and use digital assets of  
46           the user.

47           (b) Additional rights under this chapter.--This chapter does  
48           not give a fiduciary any new or expanded rights other than those  
49           held by the user for whom, or for whose estate, the fiduciary  
50           acts or represents.

51           (c) Absence of direction.--A fiduciary's access to digital

1 assets may be modified or eliminated by a user, by Federal law,  
2 or by a terms-of-service agreement if the user has not provided  
3 direction under section 3904 (relating to user direction for  
4 disclosure of digital assets).

5 § 3906. Procedure for disclosing digital assets.

6 (a) Authority of custodian.--When disclosing digital assets  
7 of a user under this chapter, the custodian has the sole  
8 discretion to:

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

11 (2) grant a fiduciary or designated recipient partial  
12 access to the user's account sufficient to perform the tasks  
13 with which the fiduciary or designated recipient is charged;  
14 or

15 (3) provide a fiduciary or designated recipient a copy  
16 in a record of any digital asset which, on the date the  
17 custodian received the request for disclosure, the user could  
18 have accessed if the user were alive and had full capacity  
19 and access to the account.

20 (b) Charge.--A custodian may assess a reasonable  
21 administrative charge for the cost of disclosing digital assets  
22 under this chapter.

23 (c) Deleted digital assets.--A custodian need not disclose  
24 under this chapter a digital asset deleted by a user.

25 (d) Segregation.--If a user directs or a fiduciary requests  
26 a custodian to disclose under this chapter some, but not all, of  
27 the user's digital assets, the custodian need not disclose the  
28 digital assets if segregation of the digital assets would impose  
29 an undue burden on the custodian. If the custodian believes the  
30 direction or request imposes an undue burden, the custodian or  
31 fiduciary may seek an order from the court to do any of the  
32 following:

33 (1) Disclose a subset limited by date of the user's  
34 digital assets.

35 (2) Disclose all of the user's digital assets to the  
36 fiduciary or designated recipient.

37 (3) Disclose none of the user's digital assets.

38 (4) Disclose all of the user's digital assets to the  
39 court for review in camera.

40 § 3907. Disclosure of content of electronic communications of  
41 deceased user.

42 If a deceased user consented or a court directs disclosure of  
43 the content of electronic communications of the user, the  
44 custodian shall disclose to the personal representative of the  
45 estate of the user the content of an electronic communication  
46 sent or received by the user if the personal representative  
47 gives the custodian:

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

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

1 (3) a certified copy of the letters;

2 (4) unless the user provided direction using an online  
3 tool, a copy of the user's will, trust, power of attorney or  
4 other record evidencing the user's consent to disclosure of  
5 the content of electronic communications; and

6 (5) if requested by the custodian:

7 (i) any number, username, address or other unique  
8 subscriber or account identifier, assigned by the  
9 custodian to identify the user's account;

10 (ii) evidence linking the account to the user; or

11 (iii) a finding by the court that:

12 (A) the user had a specific account with the  
13 custodian, identifiable by the information specified  
14 in subparagraph (i);

15 (B) disclosure of the content of electronic  
16 communications of the user would not violate 18  
17 U.S.C. § 2701 (relating to unlawful access to stored  
18 communications) et seq., section 222 of the  
19 Communications Act of 1934 (47 U.S.C. § 222) or other  
20 applicable law;

21 (C) unless the user provided direction using an  
22 online tool, the user consented to disclosure of the  
23 content of electronic communications; or

24 (D) disclosure of the content of electronic  
25 communications of the user is reasonably necessary  
26 for administration of the estate.

27 § 3908. Disclosure of other digital assets of deceased user.

28 Unless the user prohibited disclosure of digital assets or  
29 the court directs otherwise, a custodian shall disclose to the  
30 personal representative of the estate of a deceased user a  
31 catalog of electronic communications sent or received by the  
32 user and digital assets, other than the content of electronic  
33 communications, of the user, if the personal representative  
34 gives the custodian:

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

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

39 (3) a certified copy of the letters; and

40 (4) if requested by the custodian:

41 (i) any number, username, address or other unique  
42 subscriber or account identifier, assigned by the  
43 custodian to identify the user's account;

44 (ii) evidence linking the account to the user;

45 (iii) an affidavit stating that disclosure of the  
46 user's digital assets is reasonably necessary for  
47 administration of the estate; or

48 (iv) a finding by the court that:

49 (A) the user had a specific account with the  
50 custodian, identifiable by the information specified  
51 in subparagraph (i); or

1                   (B) disclosure of the user's digital assets is  
2                   reasonably necessary for administration of the  
3                   estate.

4 § 3909. Disclosure of content of electronic communications of  
5 principal.

6       To the extent a power of attorney expressly grants an agent  
7 authority over the content of electronic communications sent or  
8 received by the principal and unless directed otherwise by the  
9 principal or the court, a custodian shall disclose to the agent  
10 the content of an electronic communication if the agent gives  
11 the custodian:

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

14           (2) an original or a copy of the power of attorney  
15 expressly granting the agent authority over the content of  
16 electronic communications of the principal;

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

19           (4) if requested by the custodian:

20                   (i) any number, username, address or other unique  
21 subscriber or account identifier, assigned by the  
22 custodian to identify the principal's account; or

23                   (ii) evidence linking the account to the principal.

24 § 3910. Disclosure of other digital assets of principal.

25       Unless otherwise ordered by the court, directed by the  
26 principal or provided by a power of attorney, a custodian shall  
27 disclose to an agent with specific authority over digital assets  
28 or general authority to act on behalf of a principal a catalog  
29 of electronic communications sent or received by the principal  
30 and digital assets, other than the content of electronic  
31 communications, of the principal if the agent gives the  
32 custodian:

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

35           (2) an original or a copy of the power of attorney that  
36 gives the agent specific authority over digital assets or  
37 general authority to act on behalf of the principal;

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

40           (4) if requested by the custodian:

41                   (A) any number, username, address or other  
42 unique subscriber or account identifier, assigned by  
43 the custodian to identify the principal's account; or

44                   (B) evidence linking the account to the  
45 principal.

46 § 3911. Disclosure of digital assets held in trust when trustee  
47 is original user.

48       Unless otherwise ordered by the court or provided in a trust,  
49 a custodian shall disclose to a trustee that is an original user  
50 of an account any digital asset of the account held in trust,  
51 including a catalog of electronic communications of the trustee

1 and the content of electronic communications.

2 § 3912. Disclosure of contents of electronic communications  
3 held in trust when trustee not original user.

4 Unless otherwise ordered by the court, directed by the user  
5 or provided in a trust, a custodian shall disclose to a trustee  
6 that is not an original user of an account the content of an  
7 electronic communication sent or received by an original or  
8 successor user and carried, maintained, processed, received or  
9 stored by the custodian in the account of the trust if the  
10 trustee gives the custodian:

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

13 (2) a certified copy of the trust instrument or a  
14 certification of the trust under section 7790.3 (relating to  
15 certification of trust - UTC 1013), which includes consent to  
16 disclosure of the content of electronic communications to the  
17 trustee;

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

21 (4) if requested by the custodian:

22 (i) any number, username, address or other unique  
23 subscriber or account identifier, assigned by the  
24 custodian to identify the trust's account; or

25 (ii) evidence linking the account to the trust.

26 § 3913. Disclosure of other digital assets held in trust when  
27 trustee not original user.

28 Unless otherwise ordered by the court, directed by the user  
29 or provided in a trust, a custodian shall disclose to a trustee  
30 that is not an original user of an account a catalog of  
31 electronic communications sent or received by an original or  
32 successor user and stored, carried or maintained by the  
33 custodian in an account of the trust and any digital assets,  
34 other than the content of electronic communications, in which  
35 the trust has a right or interest if the trustee gives the  
36 custodian:

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

39 (2) a certified copy of the trust instrument or a  
40 certification of the trust under section 7790.3 (relating to  
41 certification of trust - UTC 1013);

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

45 (4) if requested by the custodian:

46 (i) any number, username, address or other unique  
47 subscriber or account identifier, assigned by the  
48 custodian to identify the trust's account; or

49 (ii) evidence linking the account to the trust.

50 § 3914. Disclosure of digital assets to conservator of  
51 protected person.



1 (a) Access.--After an opportunity for a hearing, the court  
2 may grant a conservator access to the digital assets of a  
3 protected person.

4 (b) Disclosure.--Unless otherwise ordered by the court or  
5 directed by the user, a custodian shall disclose to a  
6 conservator the catalog of electronic communications sent or  
7 received by the protected person and any digital assets, other  
8 than the content of electronic communications, in which the  
9 protected person has a right or interest if the conservator  
10 gives the custodian:

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

13 (2) a certified copy of the court order that gives the  
14 conservator authority over the digital assets of the  
15 protected person; and

16 (3) if requested by the custodian:

17 (i) any number, username, address or other unique  
18 subscriber or account identifier, assigned by the  
19 custodian to identify the account of the protected  
20 person; or

21 (ii) evidence linking the account to the protected  
22 person.

23 (c) Account activity.--A conservator with general authority  
24 to manage the assets of a protected person may request a  
25 custodian of the digital assets of the protected person to  
26 suspend or terminate an account of the protected person for good  
27 cause. A request made under this subsection must be accompanied  
28 by a certified copy of the court order giving the conservator  
29 authority over the protected person's property.

30 § 3915. Fiduciary duty and authority.

31 (a) Duties.--The legal duties imposed on a fiduciary charged  
32 with managing tangible property apply to the management of  
33 digital assets, including:

34 (1) the duty of care;

35 (2) the duty of loyalty; and

36 (3) the duty of confidentiality.

37 (b) Authority.--A fiduciary's authority with respect to a  
38 digital asset of a user:

39 (1) except as otherwise provided in section 3904  
40 (relating to user direction for disclosure of digital  
41 assets), is subject to the applicable terms of service;

42 (2) is subject to other applicable law, including  
43 copyright law;

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

46 (4) may not be used to impersonate the user.

47 (c) Access.--A fiduciary with authority over the property of  
48 a decedent, protected person, principal or settlor has the right  
49 to access any digital asset:

50 (1) in which the decedent, protected person, principal  
51 or settlor had a right or interest; and