

ENROLLED ACT NO. 25, SENATE

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2016 BUDGET SESSION

AN ACT relating to fiduciaries; providing fiduciaries access to electronic records of a user of an electronic communication service as specified; specifying procedures for disclosure of electronic records; imposing duties on fiduciaries and custodians of electronic records; specifying applicability; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 2-3-1001 through 2-3-1017 are created to read:

ARTICLE 10
UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

2-3-1001. Uniform Fiduciary Access to Digital Assets Act; short title.

This act shall be known and may be cited as the "Uniform Fiduciary Access to Digital Assets Act."

2-3-1002. Definitions.

(a) As used in this act:

(i) "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of a user or provides goods or services to a user;

(ii) "Agent" means an attorney in fact granted authority under a power of attorney;

(iii) "Carries" means engages in the transmission of an electronic communication;

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(iv) "Catalogue of electronic communications" means information that identifies a person with which a user has had an electronic communication, including the person's electronic address, and the time and date of the communication;

(v) "Content of electronic communications" means information concerning the substance or meaning of an electronic communication that:

(A) Has been sent or received by a user;

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

(C) Is not readily accessible to the public.

(vi) "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user through the internet as defined in W.S. 9-2-1035(a)(iii);

(vii) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user;

(viii) "Digital asset" means an electronic record in which a person has a right or interest. "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

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(ix) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(x) "Electronic communication" means an electronic communication as defined in section 2510 of title 18 of the United States Code, as amended;

(xi) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication;

(xii) "Fiduciary" means a personal representative, trustee, executor, administrator, guardian, agent, conservator or other person performing substantially these same functions. To be a fiduciary under this act a person must be authorized to act as a fiduciary with respect to the digital assets of a user or a user's estate. A fiduciary shall have those privileges, powers and obligations granted under this act which are not inconsistent with other privileges, powers or obligations imposed by this act on specific types of fiduciaries;

(xiii) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like;

(xiv) "Online tool" means an electronic service provided by a custodian that allows a user, in an agreement distinct from a terms of service agreement between the custodian and the user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

(xv) "Principal" means a person who grants authority to an agent in a power of attorney;

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(xvi) "Record" means information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form;

(xvii) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in section 2510 of title 18 of the United States Code, as amended;

(xviii) "Terms of service agreement" means an agreement that controls the relationship between a user and a custodian;

(xix) "User" means a person that has an account with a custodian;

(xx) "Ward" means a person for whom a conservator has been appointed, including a person for whom an application for the appointment of a conservator is pending;

(xxi) "This act" means W.S. 2-3-1001 through 2-3-1017.

2-3-1003. Applicability.

(a) This act applies to:

(i) A fiduciary acting under a will, power of attorney or other authorization to act as a fiduciary with respect to the digital assets of a user entered or executed before, on or after July 1, 2016;

(ii) A personal representative acting for a decedent who died before, on or after July 1, 2016;

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(iii) A conservatorship proceeding commenced before, on or after July 1, 2016; and

(iv) A trustee acting under a trust created before, on or after July 1, 2016.

(b) This act applies to a custodian of digital assets of a user who resides in the state or resided in the state at the time of the user's death.

(c) This act does not apply to digital assets of an employer used by an employee in the ordinary course of the employer's business.

2-3-1004. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct a custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications sent or received by the user. If the online tool at all times allows a user to modify or delete a direction to a custodian to disclose some or all of the user's digital assets, the direction regarding disclosure overrides a contrary direction by the user in a will, trust, power of attorney or other like record.

(b) If a user has not used an online tool to direct a custodian under subsection (a) of this section or if a custodian has not provided an online tool, the user may direct in a will, trust, power of attorney or other like record the disclosure or nondisclosure to a fiduciary some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

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(c) A user's direction under subsection (a) or (b) of this section overrides a contrary provision in a terms of service agreement if the agreement did not require the user to act affirmatively and distinctly from the user's assent to the agreement.

2-3-1005. Terms of service agreement.

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

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

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, federal law or a terms of service agreement if the user has not provided direction under W.S. 2-3-1004.

2-3-1006. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this act, a custodian may:

(i) Grant a fiduciary or designated recipient full access to the user's account;

(ii) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(iii) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on

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the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative fee for the cost of disclosing digital assets under this act.

(c) A custodian is not required to disclose under this act a digital asset deleted by a user.

(d) A custodian is not required to disclose under this act a user's digital assets if the user directs or a fiduciary requests a custodian to disclose some, but not all, of the user's digital assets and the segregation of the assets would impose an undue burden on the custodian. If a custodian finds that a direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the circuit court or other court of competent jurisdiction to disclose:

(i) A subset of the user's digital assets limited by date to the fiduciary or designated recipient;

(ii) All of the user's digital assets to the fiduciary or designated recipient;

(iii) None of the user's digital assets to the fiduciary or designated recipient; or

(iv) All of the user's digital assets to the court for an in camera review.

2-3-1007. Disclosure of the content of electronic communications of a deceased user.

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(a) A custodian shall disclose to a personal representative of the estate of a deceased user the content of electronic communications sent or received by the user if the user directed disclosure as specified in W.S. 2-3-1004 or a court directs disclosure of the content of electronic communications of the user and if the representative provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certified copy of the death certificate of the user;

(iii) A certified copy of the court order appointing the personal representative;

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

(v) If requested by the custodian:

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

(B) Evidence linking the account to the user; or

(C) A finding by a circuit court or other court of competent jurisdiction that:

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(I) The user had a specific account with the custodian identifiable by the information specified in subparagraph (A) of this paragraph;

(II) Disclosure of the content of electronic communications of the user would not violate section 2701 et seq. of title 18 of the United States Code, as amended, or section 222 of title 47 of the United States Code, as amended, or other applicable law;

(III) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications as specified in W.S. 2-3-1004; or

(IV) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

2-3-1008. Disclosure of other digital assets of a deceased user.

(a) Unless otherwise directed by a court order or a user as specified in W.S. 2-3-1004, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets of the user, other than the content of electronic communications, if the representative provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certified copy of the death certificate of the user;

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(iii) A certified copy of the court order appointing the personal representative; and

(iv) If requested by the custodian:

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

(B) Evidence linking the account to the user;

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

(D) A finding by a circuit court or other court of competent jurisdiction that:

(I) The user had a specific account with the custodian identifiable by the information specified in subparagraph (A) of this paragraph; or

(II) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

2-3-1009. Disclosure of content of electronic communications of a principal.

(a) To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by a principal and unless otherwise directed by a court order or the principal as specified in W.S. 2-3-1004, a custodian shall disclose to the agent the content of electronic communications sent or

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received by the principal if the agent provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(iii) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(iv) If requested by the custodian:

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

(B) Evidence linking the account to the principal.

2-3-1010. Disclosure of other digital assets of a principal.

(a) Unless otherwise directed by a court order, a principal as specified in W.S. 2-3-1004 or a power of attorney, a custodian shall disclose to an agent a catalogue of electronic communications sent or received by the principal and digital assets of the principal, other than the content of electronic communications, if the agent provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

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(ii) An original or a copy of the power of attorney that gives the agent specific authority over digital assets of the principal or general authority to act on behalf of the principal;

(iii) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(iv) If requested by the custodian:

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

(B) Evidence linking the account to the principal.

2-3-1011. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise directed by a court order or a trust, a custodian shall disclose to a trustee who is an original user of an account of the trust digital assets of the account, including a catalogue of electronic communications of the trustee and the content of electronic communications sent or received by the trustee and carried, maintained, processed, received or stored by the custodian in the account.

2-3-1012. Disclosure of the content of electronic communications held in trust when trustee not original user.

(a) Unless otherwise directed by a court order, a user as specified in W.S. 2-3-1004 or a trust, a custodian shall disclose to a trustee who is not an original user of

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an account of the trust the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account if the trustee provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certification or affidavit of trust as provided in W.S. 4-10-1014 that includes consent to disclosure of the content of electronic communications to the trustee;

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

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) Evidence linking the account to the trust.

2-3-1013. Disclosure of other digital assets held in trust when trustee not original user.

(a) Unless otherwise directed by a court order, a user as specified in W.S. 2-3-1004 or a trust, a custodian shall disclose to a trustee who is not an original user of an account of a trust a catalogue of electronic communications sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account and digital assets in which

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the trust has a right or interest, other than the content of electronic communications, if the trustee provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certification or affidavit of trust as provided in W.S. 4-10-1014 that includes consent to disclosure of the content of electronic communications to the trustee;

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

(iv) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) Evidence linking the account to the trust.

2-3-1014. Disclosure of digital assets to conservator of a ward.

(a) After an opportunity for a hearing under title 3, chapter 2 of the Wyoming statutes, the court may grant a conservator access to the digital assets of a ward.

(b) Unless otherwise directed by a court order or a user as specified in W.S. 2-3-1004, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a ward and digital assets in which the ward has a right or interest, other

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than the content of electronic communications, if the conservator provides the custodian with the following:

(i) A request for disclosure in written or electronic form;

(ii) A certified copy of the court order that gives the conservator authority over the digital assets of the ward; and

(iii) If requested by the custodian:

(A) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or

(B) Evidence linking the account to the ward.

(c) A conservator with general authority to manage the assets of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this subsection shall be accompanied by a certified copy of the court order that gives the conservator authority over the ward's property.

2-3-1015. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible, personal property of a decedent, ward, principal or settlor apply to the management of digital assets, including the duty of care, loyalty and confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to digital assets of a user:

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(i) Unless otherwise directed by a user as specified in W.S. 2-3-1004, is subject to the applicable terms of service agreement;

(ii) Is subject to other applicable law;

(iii) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(iv) Shall not be used to impersonate the user.

(c) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal or settlor has the right to access digital assets in which the decedent, ward, principal or settlor had a right or interest and which are not carried, maintained, processed, received or stored by a custodian or subject to a terms of service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the tangible, personal property of the decedent, ward, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including W.S. 40-25-101.

(e) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal or settlor:

(i) Has the right to access the property and any digital asset stored in the property; and

(ii) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including W.S. 40-25-101.

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

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination under this subsection shall be in writing or electronic form and accompanied by:

(i) A copy of the death certificate of the user if the user is deceased;

(ii) A certified copy of the court order appointing the personal representative or a certified copy of the court order, power of attorney, trust or other authorization giving the fiduciary authority over the account; and

(iii) If requested by the custodian:

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

(B) Evidence linking the account to the user; or

(C) A finding by a circuit court or other court of competent jurisdiction that the user had a specific account with the custodian identifiable by the information specified in subparagraph (A) of this paragraph.

2-3-1016. Custodian compliance and immunity.

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(a) Not later than sixty (60) days after receipt of the information required under W.S. 2-3-1007 through 2-3-1015, a custodian shall comply with a request from a fiduciary or designated recipient under this act to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated representative may apply to the circuit court or other court of competent jurisdiction for an order directing compliance.

(b) An order under subsection (a) of this section directing compliance shall contain a finding that compliance is not in violation of section 2702 of title 18 of the United States Code, as amended.

(c) A custodian may notify the user that a request for disclosure of digital assets or to terminate an account was made under this act.

(d) A custodian may deny a request from a fiduciary or designated representative under this act to disclose digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's or personal representative's request.

(e) This act does not limit a custodian's ability to obtain or require a fiduciary or designated representative requesting disclosure of digital assets or termination of an account under this act to obtain a court order that:

(i) Specifies the account belongs to the ward or principal;

(ii) Specifies there is sufficient consent from the ward or principal to support the requested disclosure; and

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(iii) Contains a finding required by law in addition to any finding required under this act.

(f) A custodian and any officers, employees or agents of the custodian are immune from liability for an act or omission done in good faith to comply with the provisions of this act.

2-3-1017. Relation to Electronic Signatures in Global and National Commerce Act.

This act modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, section 7001 et seq. of title 15 of the United States Code, as amended, but does not modify, limit or supersede section 7001(c) of title 15 of the United States Code, as amended, or authorize electronic delivery of any of the notices described in section 7003(b) of title 15 of the United States Code, as amended.

Section 2. W.S. 2-1-301(a)(intro) and 5-9-128 by creating a new subsection (e) are amended to read:

2-1-301. Generally.

(a) When used in this code, unless otherwise defined or required by the context, the following words and phrases shall be construed as follows:

5-9-128. Civil jurisdiction.

(e) The circuit court shall have jurisdiction to enforce and make findings under the Uniform Fiduciary Access to Digital Assets Act, W.S. 2-3-1001 through 2-3-1017. This jurisdiction shall include the authority to make necessary findings concerning compliance with federal

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law as required by the Uniform Fiduciary Access to Digital Assets Act.

Section 3. This act is effective July 1, 2016.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk