

FINAL BILL REPORT

ESSB 5029

C 140 L 16
Synopsis as Enacted

Brief Description: Concerning the revised uniform fiduciary access to digital assets act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Uniform Law Commission).

Senate Committee on Law & Justice
House Committee on Judiciary

Background: The Uniform Fiduciary Access to Digital Assets Act (UFADAA) is a model law drafted and approved by the Uniform Laws Commission (ULC) in 2014. The UFADAA sets standards for access to electronic information held by Internet providers when a fiduciary, acting on behalf of the information owner, needs the information to carry out fiduciary duties. During the 2015 legislative interim, the ULC approved changes to the model law addressing opponents' concerns.

Digital assets consist of any content or media, in any form, maintained and accessed electronically. Examples of digital assets include electronic information in online banking, investment accounts, photos, emails, and social media accounts.

The ULC developed the UFADAA because widespread Internet use is changing how electronic information is used and stored for routine business matters and social media. Internet service providers maintain custody of digital assets and keep the electronic information secure according to a terms-of-service-agreement with the owner of the digital assets. Fiduciaries often need access to digital assets on the owner's behalf to manage tangible and digital assets when the owner dies, or gives a power of attorney, or loses the capacity to manage the owner's own property. The UFADAA facilitates the fiduciary's access but also preserves privacy rights for the owner of the assets and third parties.

Under the UFADAA, the owner retains the power to plan for the disposition of the owner's digital assets. Revisions to the UFADAA clarify priorities for determining a fiduciary's access to digital assets if the owner does not provide instruction or multiple instructions conflict.

Summary: The Act provides a process for a digital asset custodian to disclose digital asset information when requested by a fiduciary who needs access to the information to fulfill fiduciary duties. The process applies to four types of fiduciaries: personal representatives of

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a deceased person's estate; court appointed guardians of incapacitated persons; trustees; and attorneys in fact under a power of attorney. The revised UFADAA includes standard definitions and the proof elements a that fiduciary must provide to the custodian of digital assets that verify legal authority to obtain the information.

The ULC's revised version clarifies the model law in seven main areas:

- The federal Electronic Communications Privacy Act (ECPA) governs disclosure of the content of private electronic communications such as voicemail and email. Under the ECPA, either the sender or the intended recipient of the communication must consent to the custodian's disclosure of the communication's content.
- The digital-assets-owner may consent to disclosure of electronic information and content either in a written record or by using an online tool supplied by the custodian. The account holder's specific consent overrides a blanket prohibition against content disclosure in the terms-of-service contract.
- When the custodian does not supply an online tool or an account holder elects not to use the custodian's tool, the owner may give legally-enforceable directions for disclosure of the digital assets in a will, trust, power of attorney, or other written record.
- The terms-of-service contract determines the fiduciary's access if the owner does not provide directions. The UFADAA provides default rules if the contract does not address fiduciary access.
- Custodians of digital assets are immune from liability for actions taken in good faith compliance with a fiduciary's request for access to digital assets.
- Custodians are not required to provide the fiduciary with full online account access. The custodian is only required to provide information contained in the account and may select the format used to disclose the requested information.
- The fiduciary must provide sufficient specific information for the custodian to identify and retrieve the electronic information that is requested.

In addition, the digital asset custodian may obtain a court order confirming that the principal, deceased person, trustor, or incapacitated person owns the account containing digital assets and that the owner gave the custodian sufficient consent to disclose the assets or close the account at a fiduciary's request. A custodian may refuse an unduly burdensome disclosure request from other designated recipients in addition to a user's or a fiduciary's unduly burdensome request. The phrase "digital communications" is changed to "electronic communications" with reference to a custodian's non-disclosure of the content of an incapacitated person's communications to a guardian. A small number of technical changes are added to conform more specifically to Washington's guardianship laws and practices and to include technical changes approved by the Uniform Law Commission's executive committee in January 2016.

Votes on Final Passage:

Senate	48	0	
House	80	15	(House amended)
Senate	47	1	(Senate concurred)

Effective: June 9, 2016