

HOUSE BILL REPORT

HB 1150

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to compliance requirements of the revised uniform fiduciary access to digital assets act.

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

Sponsors: Representative Reeves.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/23/19, 2/1/19 [DP].

Brief Summary of Bill

- Provides a remedy to fiduciaries or designated representatives when a custodian has not complied with disclosure requests.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member.

Minority Report: Do not pass. Signed by 1 member: Representative Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

The Revised Uniform Fiduciary Access to Digital Assets Act (Act) is a uniform law adopted by the National Conference of Commissioners on the Uniform Law Commission (ULC) in

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

2015. Washington adopted the Act in 2016, with some modifications, to provide fiduciaries with a legal path to managing the digital assets of deceased or incapacitated persons. Washington's Act gives specified fiduciaries the legal authority to access and manage a deceased or incapacitated person's digital assets, similar to the management of tangible assets and financial accounts, and provides custodians of digital assets the legal authority to disclose digital asset information when requested by a fiduciary who needs access to the information to fulfill their fiduciary duties.

"Digital assets" are electronic records in which an individual has a right or interest, but does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

A "fiduciary" is a person with the legal authority to manage another person's property or affairs. Fiduciaries can be personal representatives; trustees; agents under a power of attorney; and guardians.

A "custodian" is a person that carries, maintains, processes, receives, or stores a digital asset of a "user," who is a person that has an account with a custodian under a terms-of-service agreement.

State law outlines the standards for the disclosure of digital assets to fiduciaries, as well as the different requirements for disclosure that apply based on the type of fiduciary involved. A custodian must comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account no later than 60 days after receipt of the request. A fiduciary or designated recipient may request a court order compelling access if disclosure is not granted. The order must contain a finding that compliance is not in violation of federal law governing privacy of electronic communications.

Summary of Bill:

A fiduciary or designated representative who seeks a court order following a custodian's noncompliance with a disclosure request must be awarded reasonable attorneys' fees and court costs if a court finds that a custodian failed to comply with the disclosure requirement within the timeframe as outlined in statute. The court may also impose a penalty for failure to comply with the disclosure requirement. The penalty for failure to disclose within 60 days after the receipt of a valid request is \$10,000; failure to comply within 90 days is \$25,000.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is a mechanism in current law that provides direction to a digital company that is retaining digital assets on how to handle those assets once a person is deceased or incapacitated. The law states that a company has 60 days to comply with a request for disclosure after a fiduciary submits a death certificate and a letter of administration proving that they are the executor of the estate. Some people have been waiting eight months for a company to comply with a request, and they have limited recourse. A fiduciary may petition the court to compel compliance once it has been verified that the required documentation has been submitted, but it is difficult for a nonattorney to navigate the court system. This bill puts teeth into the law by fining companies who do not comply. This bill is about protecting a fiduciary's right to access the materials that a person has entrusted to a digital company on their behalf, particularly after the person has passed away.

(Opposed) Internet companies promote policies that support an open and free Internet, as well as growth and innovation in that space. Current law is part of a model act that was adopted across most states to ensure consistent laws across states. These companies collaborate to increase protections for personal information and privacy protections for Internet users. There is a need to balance the protection of a person's data, while also recognizing the need for the fiduciaries to access data. The current law works and is appropriate at this time. When companies do not comply, a person can utilize the court process.

Persons Testifying: (In support) Representative Reeves, prime sponsor; and Brent Williams-Ruth.

(Opposed) Vicki Christopherson, Internet Association.

Persons Signed In To Testify But Not Testifying: None.