

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5029**

64th Legislature  
2016 Regular Session

Passed by the Senate March 7, 2016  
Yeas 47 Nays 1

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**President of the Senate**

Passed by the House March 3, 2016  
Yeas 80 Nays 15

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5029** as passed by Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5029**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

**State of Washington                      64th Legislature                      2016 Regular Session**

**By Senate Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Uniform Law Commission)**

READ FIRST TIME 01/22/16.

1            AN ACT Relating to the revised uniform fiduciary access to  
2 digital assets act; and adding a new chapter to Title 11 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**    SHORT TITLE. This act may be known and  
5 cited as the revised uniform fiduciary access to digital assets act.

6            NEW SECTION.    **Sec. 2.**    DEFINITIONS. In this chapter:

7            (1) "Account" means an arrangement under a terms-of-service  
8 agreement in which a custodian carries, maintains, processes,  
9 receives, or stores a digital asset of the user or provides goods or  
10 services to the user.

11           (2) "Agent" means an attorney in fact granted authority under a  
12 durable or nondurable power of attorney.

13           (3) "Carries" means engages in the transmission of an electronic  
14 communication.

15           (4) "Catalogue of electronic communications" means information  
16 that identifies each person with which a user has had an electronic  
17 communication, the time and date of the communication, and the  
18 electronic address of the person.

19           (5) "Content of an electronic communication" means information  
20 concerning the substance or meaning of the communication which:

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

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

6 (c) Is not readily accessible to the public.

7 (6) "Court" means the superior court of each county.

8 (7) "Custodian" means a person that carries, maintains,  
9 processes, receives, or stores a digital asset of a user.

10 (8) "Designated recipient" means a person chosen by a user using  
11 an online tool to administer digital assets of the user.

12 (9) "Digital asset" means an electronic record in which an  
13 individual has a right or interest. The term does not include an  
14 underlying asset or liability unless the asset or liability is itself  
15 an electronic record.

16 (10) "Electronic" means relating to technology having electrical,  
17 digital, magnetic, wireless, optical, electromagnetic, or similar  
18 capabilities.

19 (11) "Electronic communication" has the meaning set forth in 18  
20 U.S.C. Sec. 2510(12), as it existed on the effective date of this  
21 section.

22 (12) "Electronic communication service" means a custodian that  
23 provides to a user the ability to send or receive an electronic  
24 communication.

25 (13) "Fiduciary" means an original, additional, or successor  
26 personal representative, guardian, agent, or trustee.

27 (14) "Guardian" means a person appointed by a court to manage the  
28 estate or person, or both, of a living individual. The term includes  
29 a limited guardian or certified professional guardian.

30 (15) "Incapacitated person" means an individual for whom a  
31 guardian has been appointed.

32 (16) "Information" means data, text, images, videos, sounds,  
33 codes, computer programs, software, databases, or the like.

34 (17) "Online tool" means an electronic service provided by a  
35 custodian that allows the user, in an agreement distinct from the  
36 terms-of-service agreement between the custodian and user, to provide  
37 directions for disclosure or nondisclosure of digital assets to a  
38 third person.

1 (18) "Person" means an individual, estate, business or nonprofit  
2 entity, public corporation, government or governmental subdivision,  
3 agency, or instrumentality, or other legal entity.

4 (19) "Personal representative" means an executor, administrator,  
5 special administrator, or person that performs substantially the same  
6 function under law of this state other than this chapter.

7 (20) "Power of attorney" means a record that grants an agent  
8 authority to act in the place of a principal.

9 (21) "Principal" means an individual who grants authority to an  
10 agent in a power of attorney.

11 (22) "Record" means information that is inscribed on a tangible  
12 medium or that is stored in an electronic or other medium and is  
13 retrievable in perceivable form.

14 (23) "Remote computing service" means a custodian that provides  
15 to a user computer processing services or the storage of digital  
16 assets by means of an electronic communications system, as defined in  
17 18 U.S.C. Sec. 2510(14), as it existed on the effective date of this  
18 section.

19 (24) "Terms-of-service agreement" means an agreement that  
20 controls the relationship between a user and a custodian.

21 (25) "Trustee" means a fiduciary with legal title to property  
22 under an agreement or declaration that creates a beneficial interest  
23 in another. The term includes a successor trustee.

24 (26) "User" means a person that has an account with a custodian.

25 (27) "Will" includes a codicil, testamentary instrument that only  
26 appoints an executor, and instrument that revokes or revises a  
27 testamentary instrument.

28 NEW SECTION. **Sec. 3.** APPLICABILITY. (1) This chapter applies  
29 to:

30 (a) A fiduciary acting under a will or power of attorney executed  
31 before, on, or after the effective date of this section;

32 (b) A personal representative acting for a decedent who died  
33 before, on, or after the effective date of this section;

34 (c) A guardian acting for an incapacitated person appointed  
35 before, on, or after the effective date of this section;

36 (d) A trustee acting under a trust created before, on, or after  
37 the effective date of this section; and

38 (e) A custodian if the user resides in this state or resided in  
39 this state at the time of the user's death.

1 (2) This chapter does not apply to a digital asset of an employer  
2 used by an employee in the ordinary course of the employer's  
3 business.

4 NEW SECTION. **Sec. 4.** USER DIRECTION FOR DISCLOSURE OF DIGITAL  
5 ASSETS. (1) A user may use an online tool to direct the custodian to  
6 disclose to a designated recipient or not to disclose some or all of  
7 the user's digital assets, including the content of electronic  
8 communications. If the online tool allows the user to modify or  
9 delete a direction at all times, a direction regarding disclosure  
10 using an online tool overrides a contrary direction by the user in a  
11 will, trust, power of attorney, or other record.

12 (2) If a user has not used an online tool to give direction under  
13 subsection (1) of this section or if the custodian has not provided  
14 an online tool, the user may allow or prohibit in a will, trust,  
15 power of attorney, or other record, disclosure to a fiduciary of some  
16 or all of the user's digital assets, including the content of  
17 electronic communications sent or received by the user.

18 (3) A user's direction under subsection (1) or (2) of this  
19 section overrides a contrary provision in a terms-of-service  
20 agreement that does not require the user to act affirmatively and  
21 distinctly from the user's assent to the terms-of-service agreement.

22 NEW SECTION. **Sec. 5.** TERMS-OF-SERVICE AGREEMENT. (1) This  
23 chapter does not change or impair a right of a custodian or a user  
24 under a terms-of-service agreement to access and use digital assets  
25 of the user.

26 (2) This chapter does not give a fiduciary or a designated  
27 recipient any new or expanded rights other than those held by the  
28 user for whom, or for whose estate, the fiduciary or designated  
29 recipient acts or represents.

30 (3) A fiduciary's or designated recipient's access to digital  
31 assets may be modified or eliminated by a user, by federal law, or by  
32 a terms-of-service agreement if the user has not provided direction  
33 under section 4 of this act.

34 NEW SECTION. **Sec. 6.** PROCEDURE FOR DISCLOSING DIGITAL ASSETS.  
35 (1) When disclosing digital assets of a user under this chapter, the  
36 custodian may at its sole discretion:

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

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

6 (c) Provide a fiduciary or designated recipient a copy in a  
7 record of any digital asset that, on the date the custodian received  
8 the request for disclosure, the user could have accessed if the user  
9 were alive and had full capacity and access to the account.

10 (2) A custodian may assess a reasonable administrative charge for  
11 the cost of disclosing digital assets under this chapter.

12 (3) A custodian need not disclose under this chapter a digital  
13 asset deleted by a user.

14 (4) If a user directs or a fiduciary or designated recipient  
15 requests a custodian to disclose under this chapter some, but not  
16 all, of the user's digital assets, the custodian need not disclose  
17 the assets if segregation of the assets would impose an undue burden  
18 on the custodian. If the custodian believes the direction or request  
19 imposes an undue burden, the custodian or the fiduciary or designated  
20 recipient may seek an order from the court to disclose:

21 (a) A subset limited by date of the user's digital assets;

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

24 (c) None of the user's digital assets; or

25 (d) All of the user's digital assets to the court for review in  
26 camera.

27 NEW SECTION. **Sec. 7.** DISCLOSURE OF CONTENT OF ELECTRONIC  
28 COMMUNICATIONS OF DECEASED USER. If a deceased user consented to or a  
29 court directs disclosure of the contents of electronic communications  
30 of the user, the custodian shall disclose to the personal  
31 representative of the estate of the user the content of an electronic  
32 communication sent or received by the user if the personal  
33 representative gives the custodian:

34 (1) A written request for disclosure in physical or electronic  
35 form;

36 (2) A certified copy of the death certificate of the user;

37 (3) A certified copy of the letter of appointment of the  
38 representative, or a small estate affidavit or court order;

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

5 (5) If requested by the custodian:

6 (a) A number, user name, address, or other unique subscriber or  
7 account identifier assigned by the custodian to identify the user's  
8 account;

9 (b) Evidence linking the account to the user; or

10 (c) A finding by the court that:

11 (i) The user had a specific account with the custodian,  
12 identifiable by the information specified in (a) of this subsection;

13 (ii) Disclosure of the content of electronic communications of  
14 the user would not violate 18 U.S.C. Sec. 2701 et seq. and 47 U.S.C.  
15 Sec. 222, existing on the effective date of this section, or other  
16 applicable law;

17 (iii) Unless the user provided direction using an online tool,  
18 the user consented to disclosure of the content of electronic  
19 communications; or

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

22 NEW SECTION. **Sec. 8.** DISCLOSURE OF OTHER DIGITAL ASSETS OF  
23 DECEASED USER. Unless the user prohibited disclosure of digital  
24 assets or the court directs otherwise, a custodian shall disclose to  
25 the personal representative of the estate of a deceased user a  
26 catalogue of electronic communications sent or received by the user  
27 and digital assets, other than the content of electronic  
28 communications of the user, if the representative gives the  
29 custodian:

30 (1) A written request for disclosure in physical or electronic  
31 form;

32 (2) A certified copy of the death certificate of the user;

33 (3) A certified copy of the letter of appointment of the  
34 representative, or a small estate affidavit or court order; and

35 (4) If requested by the custodian:

36 (a) A number, user name, or address, or other unique subscriber  
37 or account identifier assigned by the custodian to identify the  
38 user's account;

39 (b) Evidence linking the account to the user;

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

3 (d) A finding by the court that:

4 (i) The user had a specific account with the custodian,  
5 identifiable by the information specified in (a) of this subsection;  
6 or

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

9 NEW SECTION. **Sec. 9.** DISCLOSURE OF CONTENT OF ELECTRONIC  
10 COMMUNICATIONS OF PRINCIPAL. To the extent a power of attorney  
11 expressly grants an agent authority over the content of electronic  
12 communications sent or received by the principal and unless directed  
13 otherwise by the principal or the court, a custodian shall disclose  
14 to the agent the content if the agent gives the custodian:

15 (1) A written request for disclosure in physical or electronic  
16 form;

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

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

22 (4) If requested by the custodian:

23 (a) A number, user name, address, or other unique subscriber or  
24 account identifier assigned by the custodian to identify the  
25 principal's account; or

26 (b) Evidence linking the account to the principal.

27 NEW SECTION. **Sec. 10.** DISCLOSURE OF OTHER DIGITAL ASSETS OF  
28 PRINCIPAL. Unless otherwise ordered by the court, directed by the  
29 principal, or provided by a power of attorney, a custodian shall  
30 disclose to an agent with specific authority over digital assets or  
31 general authority to act on behalf of a principal a catalogue of  
32 electronic communications sent or received by the principal and  
33 digital assets, other than the content of electronic communications  
34 of the principal, if the agent gives the custodian:

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

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

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

6 (4) If requested by the custodian:

7 (a) A number, user name, address, or other unique subscriber or  
8 account identifier assigned by the custodian to identify the  
9 principal's account; or

10 (b) Evidence linking the account to the principal.

11 NEW SECTION. **Sec. 11.** DISCLOSURE OF DIGITAL ASSETS HELD IN  
12 TRUST WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the  
13 court or provided in a trust, a custodian shall disclose to a trustee  
14 that is an original user of an account any digital asset of that  
15 account held in trust, including a catalogue of electronic  
16 communications of the trustee and the content of electronic  
17 communications.

18 NEW SECTION. **Sec. 12.** DISCLOSURE OF CONTENT OF ELECTRONIC  
19 COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless  
20 otherwise ordered by the court, directed by the user, or provided in  
21 a trust, a custodian shall disclose to a trustee that is not an  
22 original user of an account the content of an electronic  
23 communication sent or received by an original or successor user and  
24 carried, maintained, processed, received, or stored by the custodian  
25 in the account of the trust if the trustee gives the custodian:

26 (1) A written request for disclosure in physical or electronic  
27 form;

28 (2) A certified copy of the trust instrument, or a certification  
29 of the trust under RCW 11.98.075, that includes consent to disclosure  
30 of the content of electronic communications to the trustee;

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

34 (4) If requested by the custodian:

35 (a) A number, user name, address, or other unique subscriber or  
36 account identifier assigned by the custodian to identify the trust's  
37 account; or

38 (b) Evidence linking the account to the trust.

1        NEW SECTION.    **Sec. 13.**    DISCLOSURE OF OTHER DIGITAL ASSETS HELD  
2    IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by  
3    the court, directed by the user, or provided in a trust, a custodian  
4    shall disclose, to a trustee that is not an original user of an  
5    account, a catalogue of electronic communications sent or received by  
6    an original or successor user and stored, carried, or maintained by  
7    the custodian in an account of the trust and any digital assets,  
8    other than the content of electronic communications in which the  
9    trust has a right or interest, if the trustee gives the custodian:

10        (1) A written request for disclosure in physical or electronic  
11    form;

12        (2) A certified copy of the trust instrument or a certification  
13    of the trust under RCW 11.98.075;

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

17        (4) If requested by the custodian:

18            (a) A number, user name, address, or other unique subscriber or  
19    account identifier assigned by the custodian to identify the trust's  
20    account; or

21            (b) Evidence linking the account to the trust.

22        NEW SECTION.    **Sec. 14.**    DISCLOSURE OF DIGITAL ASSETS TO GUARDIAN  
23    OF INCAPACITATED PERSON. (1) Unless otherwise ordered by the court, a  
24    guardian appointed due to a finding of incapacity under RCW  
25    11.88.010(1) has the right to access an incapacitated person's  
26    digital assets other than the content of electronic communications.

27        (2) Unless otherwise ordered by the court or directed by the  
28    user, a custodian shall disclose to a guardian the catalogue of  
29    electronic communications sent or received by an incapacitated person  
30    and any digital assets, other than the content of electronic  
31    communications, if the guardian gives the custodian:

32            (a) A written request for disclosure in physical or electronic  
33    form;

34            (b) Certified copies of letters of guardianship and the court  
35    order appointing the guardian; and

36            (c) If requested by the custodian:

37            (i) A number, user name, address, or other unique subscriber or  
38    account identifier assigned by the custodian to identify the account  
39    of the person; or

1 (ii) Evidence linking the account to the incapacitated person.

2 (3) A guardian may request a custodian of the incapacitated  
3 person's digital assets to suspend or terminate an account of the  
4 incapacitated person for good cause. A request made under this  
5 section must be accompanied by certified copies of letters of  
6 guardianship and the court order appointing the guardian.

7 NEW SECTION. **Sec. 15.** FIDUCIARY DUTY AND AUTHORITY. (1) The  
8 legal duties imposed on a fiduciary charged with managing tangible  
9 property apply to the management of digital assets, including:

- 10 (a) The duty of care;  
11 (b) The duty of loyalty; and  
12 (c) The duty of confidentiality.

13 (2) A fiduciary's or designated recipient's authority with  
14 respect to a digital asset of a user:

- 15 (a) Except as otherwise provided in section 4 of this act, is  
16 subject to the applicable terms-of-service agreement;  
17 (b) Is subject to other applicable law, including copyright law;  
18 (c) In the case of a fiduciary, is limited by the scope of the  
19 fiduciary's duties; and  
20 (d) May not be used to impersonate the user.

21 (3) A fiduciary with authority over the property of a decedent,  
22 incapacitated person, principal, or settlor has the right to access  
23 any digital asset in which the decedent, incapacitated person,  
24 principal, or settlor had a right or interest and that is not held by  
25 a custodian or subject to a terms-of-service agreement.

26 (4) A fiduciary acting within the scope of the fiduciary's duties  
27 is an authorized user of the property of the decedent, incapacitated  
28 person, principal, or settlor for the purpose of applicable computer  
29 fraud and unauthorized computer access laws.

30 (5) A fiduciary with authority over the tangible, personal  
31 property of a decedent, incapacitated person, principal, or settlor:

- 32 (a) Has the right to access the property and any digital asset  
33 stored in it; and  
34 (b) Is an authorized user for the purpose of computer fraud and  
35 unauthorized computer access laws.

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

1 (7) A fiduciary of a user may request a custodian to terminate  
2 the user's account. A request for termination must be in writing, in  
3 either physical or electronic form, and accompanied by:

4 (a) If the user is deceased, a certified copy of the death  
5 certificate of the user;

6 (b) A certified copy of the letter of appointment of the  
7 representative or a small estate affidavit or court order, court  
8 order, power of attorney, or trust giving the fiduciary authority  
9 over the account; and

10 (c) If requested by the custodian:

11 (i) A number, user name, address, or other unique subscriber or  
12 account identifier assigned by the custodian to identify the user's  
13 account;

14 (ii) Evidence linking the account to the user; or

15 (iii) A finding by the court that the user had a specific account  
16 with the custodian, identifiable by the information specified in

17 (c)(i) of this subsection.

18 NEW SECTION. **Sec. 16.** CUSTODIAN COMPLIANCE AND IMMUNITY. (1)

19 Not later than sixty days after receipt of the information required  
20 under sections 7 through 15 of this act, a custodian shall comply  
21 with a request under this chapter from a fiduciary or designated  
22 recipient to disclose digital assets or terminate an account. If the  
23 custodian fails to comply, the fiduciary or designated recipient may  
24 apply to the court for an order directing compliance.

25 (2) An order under subsection (1) of this section directing  
26 compliance must contain a finding that compliance is not in violation  
27 of 18 U.S.C. Sec. 2702, as it existed on the effective date of this  
28 section.

29 (3) A custodian may notify the user that a request for disclosure  
30 or to terminate an account was made under this chapter.

31 (4) A custodian may deny a request under this chapter from a  
32 fiduciary or designated recipient for disclosure of digital assets or  
33 to terminate an account if the custodian is aware of any lawful  
34 access to the account following the receipt of the fiduciary's  
35 request.

36 (5) This section does not limit a custodian's ability to obtain  
37 or require a fiduciary or designated recipient requesting disclosure  
38 or termination under this chapter to obtain a court order which:

1 (a) Specifies that an account belongs to the incapacitated  
2 person, trustor, decedent, or principal;

3 (b) Specifies that there is sufficient consent from the  
4 incapacitated person, trustor, decedent, or principal to support the  
5 requested disclosure; and

6 (c) Contains a finding required by law other than this chapter.

7 (6) A custodian and its officers, employees, and agents are  
8 immune from liability for an act or omission done in good faith in  
9 compliance with this chapter.

10 NEW SECTION. **Sec. 17.** UNIFORMITY OF APPLICATION AND  
11 CONSTRUCTION. In applying and construing this chapter, consideration  
12 must be given to the need to promote uniformity of the law with  
13 respect to its subject matter among states that enact it.

14 NEW SECTION. **Sec. 18.** RELATION TO ELECTRONIC SIGNATURES IN  
15 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or  
16 supersedes the electronic signatures in global and national commerce  
17 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or  
18 supersede 15 U.S.C. Sec. 7001(c) or authorize electronic delivery of  
19 any of the notices described in 15 U.S.C. Sec. 7003(b).

20 NEW SECTION. **Sec. 19.** SEVERABILITY. If any provision of this  
21 act or its application to any person or circumstance is held invalid,  
22 the remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 20.** Sections 1 through 19 of this act  
25 constitute a new chapter in Title 11 RCW.

--- END ---