

SENATE FILE NO. SF0034

Uniform Fiduciary Access to Digital Assets Act.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

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

8

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

10

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

13

14

ARTICLE 10

15

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

1

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

4

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

7

8 **2-3-1002. Definitions.**

9

10 (a) As used in this act:

11

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

16

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

19

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

22

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

6

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

10

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

12

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

17

18 (C) Is not readily accessible to the
19 public.

20

21 (vi) "Custodian" means a person that carries,
22 maintains, processes, receives or stores a digital asset of

1 a user through the internet as defined in W.S.
2 9-2-1035(a)(iii);

3

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

7

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

13

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

17

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

21

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

4

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

8

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

15

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

18

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

22

1 (xvi) "Remote computing service" means a
2 custodian that provides to a user computer processing
3 services or the storage of digital assets by means of an
4 electronic communications system, as defined in section
5 2510 of title 18 of the United States Code, as amended;

6

7 (xvii) "Terms of service agreement" means an
8 agreement that controls the relationship between a user and
9 a custodian;

10

11 (xviii) "User" means a person that has an
12 account with a custodian;

13

14 (xix) "Ward" means a person for whom a
15 conservator has been appointed, including a person for whom
16 an application for the appointment of a conservator is
17 pending;

18

19 (xx) "This act" means W.S. 2-3-1001 through
20 2-3-1017.

21

22 **2-3-1003. Applicability.**

23

1 (a) This act applies to:

2

3 (i) A fiduciary acting under a will or power of
4 attorney executed before, on or after July 1, 2016;

5

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

8

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

11

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

14

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

18

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

22

1 **2-3-1004. User direction for disclosure of digital**
2 **assets.**

3
4 (a) A user may use an online tool to direct a
5 custodian to disclose or not to disclose some or all of the
6 user's digital assets, including the content of electronic
7 communications sent or received by the user. If the online
8 tool at all times allows a user to modify or delete a
9 direction to a custodian to disclose some or all of the
10 user's digital assets, the direction regarding disclosure
11 overrides a contrary direction by the user in a will,
12 trust, power of attorney or other like record.

13
14 (b) If a user has not used an online tool to direct a
15 custodian under subsection (a) of this section or if a
16 custodian has not provided an online tool, the user may
17 direct in a will, trust, power of attorney or other like
18 record the disclosure or nondisclosure to a fiduciary some
19 or all of the user's digital assets, including the content
20 of electronic communications sent or received by the user.

21
22 (c) A user's direction under subsection (a) or (b) of
23 this section overrides a contrary provision in a terms of

1 service agreement if the agreement did not require the user
2 to act affirmatively and distinctly from the user's assent
3 to the agreement.

4

5 **2-3-1005. Terms of service agreement.**

6

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

10

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

15

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

20

21 **2-3-1006. Procedure for disclosing digital assets.**

22

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

3
4 (i) Grant a fiduciary or designated recipient
5 full access to the user's account;

6
7 (ii) Grant a fiduciary or designated recipient
8 partial access to the user's account sufficient to perform
9 the tasks with which the fiduciary or designated recipient
10 is charged; or

11
12 (iii) Provide a fiduciary or designated
13 recipient a copy in a record of any digital asset that, on
14 the date the custodian received the request for disclosure,
15 the user could have accessed if the user were alive and had
16 full capacity and access to the account.

17
18 (b) A custodian may assess a reasonable
19 administrative fee for the cost of disclosing digital
20 assets under this act.

21
22 (c) A custodian is not required to disclose under
23 this act a digital asset deleted by a user.

1

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

10

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

13

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

16

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

19

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

22

1 **2-3-1007. Disclosure of the content of electronic**
2 **communications of a deceased user.**

3
4 (a) A custodian shall disclose to a personal
5 representative of the estate of a deceased user the content
6 of electronic communications sent or received by the user
7 if the user directed disclosure as specified in W.S.
8 2-3-1004 or a court directs disclosure of the content of
9 electronic communications of the user and if the
10 representative provides the custodian with the following:

11
12 (i) A request for disclosure in written or
13 electronic form;

14
15 (ii) A certified copy of the death certificate
16 of the user;

17
18 (iii) A certified copy of the court order
19 appointing the personal representative;

20
21 (iv) Unless the user provided direction using an
22 online tool, a copy of the user's will, trust, power of
23 attorney or other like record evidencing the user's consent

1 to disclosure of the content of electronic communications;
2 and

3

4 (v) If requested by the custodian:

5

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

9

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

12

13 (C) A finding by a court that:

14

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

18

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

1

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

6

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

10

11 **2-3-1008. Disclosure of other digital assets of a**
12 **deceased user.**

13

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

21

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

1

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

4

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

7

8 (iv) If requested by the custodian:

9

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

13

14 (B) Evidence linking the account to the
15 user;

16

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

20

21 (D) A finding by a court that:

22

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

4

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

8

9 **2-3-1009. Disclosure of content of electronic**
10 **communications of a principal.**

11

12 (a) To the extent a power of attorney expressly
13 grants an agent authority over the content of electronic
14 communications sent or received by a principal and unless
15 otherwise directed by a court order or the principal as
16 specified in W.S. 2-3-1004, a custodian shall disclose to
17 the agent the content of electronic communications sent or
18 received by the principal if the agent provides the
19 custodian with the following:

20

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

23

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

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

8
9 (iv) If requested by the custodian:

10
11 (A) A number, username, address or other
12 unique subscriber or account identifier assigned by the
13 custodian to identify the principal's account; or

14
15 (B) Evidence linking the account to the
16 principal.

17
18 **2-3-1010. Disclosure of other digital assets of a**
19 **principal.**

20
21 (a) Unless otherwise directed by a court order, a
22 principal as specified in W.S. 2-3-1004 or a power of
23 attorney, a custodian shall disclose to an agent a

1 catalogue of electronic communications sent or received by
2 the principal and digital assets of the principal, other
3 than the content of electronic communications, if the agent
4 provides the custodian with the following:

5

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

8

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

13

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

17

18 (iv) If requested by the custodian:

19

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

23

1 (B) Evidence linking the account to the
2 principal.

3

4 **2-3-1011. Disclosure of digital assets held in trust**
5 **when trustee is original user.**

6

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

15

16 **2-3-1012. Disclosure of the content of electronic**
17 **communications held in trust when trustee not original**
18 **user.**

19

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

1 communication sent or received by an original or successor
2 user and carried, maintained, processed, received or stored
3 by the custodian in the account if the trustee provides the
4 custodian with the following:

5

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

8

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

13

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

17

18 (iv) If requested by the custodian:

19

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

23

1 (B) Evidence linking the account to the
2 trust.

3

4 **2-3-1013. Disclosure of other digital assets held in**
5 **trust when trustee not original user.**

6

7 (a) Unless otherwise directed by a court order, a
8 user as specified in W.S. 2-3-1004 or a trust, a custodian
9 shall disclose to a trustee who is not an original user of
10 an account of a trust a catalogue of electronic
11 communications sent or received by an original or successor
12 user and carried, maintained, processed, received or stored
13 by the custodian in the account and digital assets in which
14 the trust has a right or interest, other than the content
15 of electronic communications, if the trustee provides the
16 custodian with the following:

17

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

20

21 (ii) A certification or affidavit of trust as
22 provided in W.S. 4-10-1014 that includes consent to

1 disclosure of the content of electronic communications to
2 the trustee;

3

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

7

8 (iv) If requested by the custodian:

9

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

13

14 (B) Evidence linking the account to the
15 trust.

16

17 **2-3-1014. Disclosure of digital assets to conservator**
18 **of a ward.**

19

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

23

1 (b) Unless otherwise directed by a court order or a
2 user as specified in W.S. 2-3-1004, a custodian shall
3 disclose to a conservator the catalogue of electronic
4 communications sent or received by a ward and digital
5 assets in which the ward has a right or interest, other
6 than the content of electronic communications, if the
7 conservator provides the custodian with the following:

8

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

11

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

15

16 (iii) If requested by the custodian:

17

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

21

22 (B) Evidence linking the account to the
23 ward.

1

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

9

10 **2-3-1015. Fiduciary duty and authority.**

11

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

17

18 (b) A fiduciary's authority with respect to digital
19 assets of a user:

20

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

1

2 (ii) Is subject to other applicable law;

3

4 (iii) Is limited by the scope of the fiduciary's
5 duties; and

6

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

8

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

16

17 (d) A fiduciary acting within the scope of the
18 fiduciary's duties is an authorized user of the tangible,
19 personal property of the decedent, ward, principal or
20 settlor for the purpose of applicable computer fraud and
21 unauthorized computer access laws, including W.S.
22 40-25-101.

23

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

4

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

7

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

11

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

16

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

21

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

1

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

6

7 (iii) If requested by the custodian:

8

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

12

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

15

16 (C) A finding by a court that the user had
17 a specific account with the custodian identifiable by the
18 information specified in subparagraph (A) of this
19 paragraph.

20

21 **2-3-1016. Custodian compliance and immunity.**

22

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

9

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

14

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

18

19 (d) A custodian may deny a request from a fiduciary
20 or designated representative under this act to disclose
21 digital assets or to terminate an account if the custodian
22 is aware of any lawful access to the account following the

1 receipt of the fiduciary's or personal representative's
2 request.

3

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

8

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

11

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

15

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

18

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

23

1 **2-3-1017. Relation to Electronic Signatures in Global**
2 **and National Commerce Act.**

3

4 This act modifies, limits or supersedes the Electronic
5 Signatures in Global and National Commerce Act, section
6 7001 et seq. of title 15 of the United States Code, as
7 amended, but does not modify, limit or supersede section
8 7001(c) of title 15 of the United States Code, as amended,
9 or authorize electronic delivery of any of the notices
10 described in section 7003(b) of title 15 of the United
11 States Code, as amended.

12

13 **Section 2.** This act is effective July 1, 2016.

14

15

(END)