

AN ACT concerning digital assets.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

Section 2. Definitions. In this Act:

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

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

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

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

(5) "Guardian" means a person appointed by a court to manage the estate of a living individual. The term includes a standby or temporary guardian.

(6) "Content of an electronic communication" means information concerning the substance or meaning of the

communication which:

(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.

(7) "Court" means a court of competent jurisdiction.

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

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

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

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

(12) "Electronic communication" has the meaning set forth in 18 U.S.C. Section 2510(12), as amended.

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

(14) "Fiduciary" means an original, additional, or successor personal representative, guardian, agent, or

trustee.

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

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

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

(18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this Act.

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

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

(21) "Person with a disability" means an individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian is pending.

(22) "Record" means information that is inscribed on a

tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "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 18 U.S.C. Section 2510(14), as amended.

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

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

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

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

Section 3. Applicability.

(a) This Act applies to:

(1) a fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this Act;

(2) a personal representative acting for a decedent who died before, on, or after the effective date of this Act;

(3) a guardianship proceeding commenced before, on, or

after the effective date of this Act; and

(4) a trustee acting under a trust created before, on, or after the effective date of this Act.

(b) This Act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

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

Section 4. User direction for disclosure of digital assets.

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

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

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

Section 5. 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 any new or expanded rights other than those 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, by federal law, or by a terms-of-service agreement if the user has not provided direction under Section 4.

Section 6. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this Act, the custodian may at its sole discretion:

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

(2) 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

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on 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 charge for the cost of disclosing digital assets under this Act.

(c) A custodian need not disclose under this Act a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this Act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

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

(2) all of the user's digital assets to the fiduciary or designated recipient;

(3) none of the user's digital assets; or

(4) all of the user's digital assets to the court for review in camera.

Section 7. Disclosure of content of electronic communications of deceased user. If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a court order;

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

(5) 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 the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A);

(ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, 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; or

(iv) disclosure of the content of electronic communications of the user is permitted under this Act and reasonably necessary for administration of the estate.

Section 8. Disclosure of other digital assets of deceased user. Unless the user prohibited disclosure of digital assets or the court directs otherwise, 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, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a court order; and

(4) 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 the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A); or

(ii) disclosure of the user's digital assets is permitted under this Act and reasonably necessary for administration of the estate.

Section 9. Disclosure of content of electronic communications of principal. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney

expressly granting the agent authority over the content of electronic communications of the principal;

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

(4) 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.

Section 10. Disclosure of other digital assets of principal. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

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

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

(4) 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.

Section 11. Disclosure of digital assets held in trust when trustee is original user. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Section 12. Disclosure of contents of electronic communications held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account 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 of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument that

includes consent to disclosure of the content of electronic communications to the trustee;

(3) 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

(4) 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.

Section 13. Disclosure of other digital assets held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument;

(3) 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

(4) 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.

Section 14. Disclosure of contents of electronic communications and digital assets to guardian of person with a disability. (a) After an opportunity for a hearing under Article XIa of the Probate Act of 1975, the court may direct the disclosure of the digital assets of a person with a disability to his or her guardian.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by a person with a disability and any digital assets, other than the content of electronic communications, in which the person with a disability has a right or interest if the guardian gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the court order that gives the guardian authority over the digital assets of the person with a disability; and

(3) 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 person with a disability; or

(B) evidence linking the account to the person with a disability.

(c) A guardian with general authority to manage the assets of a person with a disability may request a custodian of the digital assets of the person with a disability to suspend or terminate an account of the person with a disability for good cause. A request made under this Section must be accompanied by a certified copy of the court order giving the guardian authority over the protected person's property.

Section 15. Fiduciary duty and authority.

(a) (Blank).

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

(1) except as otherwise provided in Section 4, is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties under Illinois law; and

(4) may not be used to impersonate the user.

(c) A fiduciary with authority over the property of a

decedent, person with a disability, principal, or settlor has the right to access any digital asset in which the decedent, person with a disability, principal, or settlor had a right or interest and that is not held 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 property of the decedent, person with a disability, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including Subdivision 30 of Article 17 of the Criminal Code of 2012, and may challenge the validity of an online tool in court when requesting an order directing compliance with this Act.

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

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including Subdivision 30 of Article 17 of the Criminal Code of 2012.

(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 must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) a certified copy of the letter of appointment of the representative or a small-estate affidavit or court order, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) 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 the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

Section 16. Custodian compliance and immunity.

(a) Not later than 60 days after receipt of the information required under Sections 7 through 15, a custodian shall comply with a request under this Act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing

compliance.

(b) An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702, as amended.

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

(d) A custodian may deny a request under this Act from a fiduciary or designated recipient for disclosure of 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 request.

(e) This Act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this Act to obtain a court order which:

(1) specifies that an account belongs to the person with a disability or principal;

(2) specifies that there is sufficient consent from the person with a disability or principal to support the requested disclosure; and

(3) contains a finding required by law other than this Act.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith, except for willful and wanton misconduct, in compliance with this Act.

Section 17. (Blank).

Section 18. 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, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

Section 19. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 20. The Criminal Code of 2012 is amended by changing Sections 17-51 and 17-54 as follows:

(720 ILCS 5/17-51) (was 720 ILCS 5/16D-3)

Sec. 17-51. Computer tampering.

(a) A person commits computer tampering when he or she knowingly and without the authorization of a computer's owner

or in excess of the authority granted to him or her:

(1) Accesses or causes to be accessed a computer or any part thereof, a computer network, or a program or data;

(2) Accesses or causes to be accessed a computer or any part thereof, a computer network, or a program or data, and obtains data or services;

(3) Accesses or causes to be accessed a computer or any part thereof, a computer network, or a program or data, and damages or destroys the computer or alters, deletes, or removes a computer program or data;

(4) Inserts or attempts to insert a program into a computer or computer program knowing or having reason to know that such program contains information or commands that will or may:

(A) damage or destroy that computer, or any other computer subsequently accessing or being accessed by that computer;

(B) alter, delete, or remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer; or

(C) cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program; or

(5) Falsifies or forges electronic mail transmission information or other routing information in any manner in

connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

(a-5) Distributing software to falsify routing information. It is unlawful for any person knowingly to sell, give, or otherwise distribute or possess with the intent to sell, give, or distribute software which:

(1) is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(2) has only a limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

(3) is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(a-10) For purposes of subsection (a), accessing a computer network is deemed to be with the authorization of a computer's owner if:

(1) the owner authorizes patrons, customers, or guests to access the computer network and the person accessing the computer network is an authorized patron, customer, or

guest and complies with all terms or conditions for use of the computer network that are imposed by the owner; ~~or~~

(2) the owner authorizes the public to access the computer network and the person accessing the computer network complies with all terms or conditions for use of the computer network that are imposed by the owner; or

(3) The person accesses the computer network in compliance with the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

(b) Sentence.

(1) A person who commits computer tampering as set forth in subdivision (a)(1) or (a)(5) or subsection (a-5) of this Section is guilty of a Class B misdemeanor.

(2) A person who commits computer tampering as set forth in subdivision (a)(2) of this Section is guilty of a Class A misdemeanor and a Class 4 felony for the second or subsequent offense.

(3) A person who commits computer tampering as set forth in subdivision (a)(3) or (a)(4) of this Section is guilty of a Class 4 felony and a Class 3 felony for the second or subsequent offense.

(4) If an injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each

unsolicited bulk electronic mail message transmitted in violation of this Section, or \$25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited bulk electronic mail over its computer network.

(5) If an injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the greater of \$10 for each unsolicited electronic mail advertisement transmitted in violation of this Section, or \$25,000 per day.

(6) The provisions of this Section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(c) Whoever suffers loss by reason of a violation of subdivision (a)(4) of this Section may, in a civil action against the violator, obtain appropriate relief. In a civil action under this Section, the court may award to the prevailing party reasonable attorney's fees and other litigation expenses.

(Source: P.A. 95-326, eff. 1-1-08; 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11.)

Sec. 17-54. Evidence of lack of authority. For the purposes of Sections 17-50 through 17-52, the trier of fact may infer that a person accessed a computer without the authorization of its owner or in excess of the authority granted if the person accesses or causes to be accessed a computer, which access requires a confidential or proprietary code which has not been issued to or authorized for use by that person. This Section does not apply to a person who acquires access in compliance with the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

(Source: P.A. 96-1551, eff. 7-1-11.)

Section 21. Effective date. This Act takes effect upon becoming law.