

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 827

PRINTER NO. 1290

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

June 29, 2017

PRIME SPONSOR

Senator Killion

DESCRIPTION

Senate Bill 827 amends Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes to provide for access by agents and other fiduciaries to digital assets of a decedent.

Title 20 is amended by adding a chapter (Chapter 39) titled the "Revised Uniform Fiduciary Access to Digital Assets Act (2015)."

The legislation authorizes courts of common pleas to exercise jurisdiction over matters related to digital assets.

This newly created chapter applies to:

- 1) A fiduciary acting under a will or power of attorney executed before, on or after the effective date of the act;
- 2) A personal representative acting for a decedent who died before, on or after the effective date of the act;
- 3) A proceeding for the appointment of a guardian of the estate commenced before, on or after the effective date of the act; and
- 4) A trustee acting under a trust created before, on or after the effective date of the act.

Chapter 39 applies to a custodian if the user resides in the Commonwealth or resided in the Commonwealth at the time of the user's death. The chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

User direction for disclosure of digital assets is established and provides for the use of, or, nonuse of, an online tool for direction. The act does not impair the right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

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Electronic Communications: Provides that a custodian shall disclose to a personal representative of an estate of the user the content of communications sent or received if the personal representative provides any of the following:

- 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 letters; and
- 4) In the absence of directions in 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.

The custodian may request any number, username, address or other unique subscriber or account identifier, as well as any other information linking the account to the user.

Digital Assets:

Provides that unless the user prohibited disclosure, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user.

Disclosures of Principals, Trusts and Guardians of Estate:

Provides for the manner in which digital assets and electronic communications may be disclosed when the assets belonged to a principal, are being held in trust or are subject to a guardian of an estate.

Fiduciary Duty and Authority:

Provides that the legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including care, loyalty and confidentiality. Additionally, a fiduciary is granted the same right of access to digital assets that the decedent had, including the right to terminate an account.

"Digital Asset" is defined as 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.

"Electronic communication" is defined as in 18 U.S.C. §2510(12) (relating to definitions). Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include the following:

- a) Any wire or oral communication;
- b) Any communication made through a tone-only paging device;
- c) Any communication from a tracking device; or
- d) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

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This act shall take effect in 180 days.

FISCAL IMPACT:

According to the Administrative Office of Pennsylvania Courts (AOPC), enactment of this legislation will have no adverse fiscal impact on Commonwealth Funds.