INTRODUCED BY PILEGGI, BAKER, COSTA, RAFFERTY, FOLMER, GORDNER, VULAKOVICH, HUGHES, SCHWANK AND TARTAGLIONE, FEBRUARY 20, 2015

REFERRED TO JUDICIARY, FEBRUARY 20, 2015

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in fiduciary access to digital assets, providing for access by personal representative to digital assets of decedent, for access by conservator to digital assets of protected person, for access by agent to digital assets of principal, for access by trustee to digital assets, for fiduciary authority, for compliance, for custodian immunity, for uniformity of application and construction and for applicability.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 20 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 39

FIDUCIARY ACCESS TO DIGITAL ASSETS

Sec.

3901. Definitions.

3902. Access by personal representative to digital assets of decedent.

3903. Access by conservator to digital assets of protected person.
3904. Access by agent to digital assets of principal.
3905. Access by trustee to digital assets.
3906. Fiduciary authority.
3907. Compliance.
3908. Custodian immunity.
3909. Uniformity of application and construction.
3910. Relation to Electronic Signatures in Global and National Commerce Act.
3911. Applicability.

§ 3901. Definitions.
The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account holder." Either of the following:

(1) a person that has entered into a terms-of-service agreement with a custodian; or

(2) a fiduciary for a person described in paragraph (1).

"Agent." An attorney-in-fact granted authority under a durable or nondurable power of attorney.

"Carries." Engaging in the transmission of electronic communications.

"Catalog of electronic communications." Information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication and the electronic address of the person.

"Conservator." A person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.

"Content of an electronic communication." Information not readily accessible to the public concerning the substance or
meaning of an electronic communication.

"Custodian." A person that carries, maintains, processes, receives or stores a digital asset of an account holder.

"Digital asset." A record that is electronic. The term does not include an underlying asset or liability unless the asset or liability is itself a record that is electronic.

"Electronic." Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication." A digital asset stored by an electronic communication service or carried or maintained by a remote computing service. The term includes the catalog of electronic communications and the content of an electronic communication.

"Electronic communication service." A custodian that provides to the public the ability to send or receive an electronic communication.

"Fiduciary." A person that is an original, additional or successor personal representative, conservator, agent or trustee.

"Governing instrument." A will, trust or instrument establishing a power of attorney or other dispositive or nominative instrument.

"Information." Data, text, images, videos, sounds, codes, computer programs, software, databases or the like.

"Person." An individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

"Personal representative." An executor, administrator, special administrator or person that performs substantially the
same function under the laws of this Commonwealth other than this chapter.

"Power of attorney." A record that grants an agent authority to act in the place of a principal.

"Principal." An individual who grants authority to an agent in a power of attorney.

"Protected person." An individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.

"Record." Information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

"Remote computing service." A custodian that provides to the public computer processing services or the storage of digital assets by means of an electronic communications system as defined in 18 U.S.C. § 2510(14) (relating to definitions).

"Terms-of-service agreement." An agreement that controls the relationship between an account holder and a custodian.

"Trustee." A fiduciary with legal title to an asset under an agreement or declaration that establishes a beneficial interest in others.

"Will." Includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

§ 3902. Access by personal representative to digital assets of decedent.

Subject to section 3906(b) (relating to fiduciary authority) and unless otherwise provided by the court or the will of a decedent, a personal representative of the decedent may access:

(1) the content of an electronic communication sent or
received by the decedent if the electronic communication
service or remote computing service is permitted to disclose
the content under 18 U.S.C. § 2702(b) (relating to voluntary
disclosure of customer communications or records);

(2) the catalog of electronic communications sent or
received by the decedent; and

(3) another digital asset in which the decedent at death
had a right or interest.

§ 3903. Access by conservator to digital assets of protected
person.

After an opportunity for hearing under Chapter 51 (relating
to minors) or Subchapter C of Chapter 55 (relating to
appointment of guardian; bonds; removal and discharge), the
court may grant a conservator the right to access:

(1) the content of an electronic communication sent or
received by the protected person if the electronic
communication service or remote computing service is
permitted to disclose the content under 18 U.S.C. § 2702(b)
(relating to voluntary disclosure of customer communications
or records);

(2) the catalog of electronic communications sent or
received by the protected person; and

(3) another digital asset in which the protected person
has a right or interest.

§ 3904. Access by agent to digital assets of principal.

(a) Express grant of authority.--To the extent a power of
attorney expressly grants authority to an agent over the content
of an electronic communication of the principal, the agent may
access the content of an electronic communication sent or
received by the principal if the electronic communication

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service or remote computing service is permitted to disclose the content under 18 U.S.C. § 2702(b) (relating to voluntary disclosure of customer communications or records).

(b) Authority of agent.--Except as provided in subsection (a) and unless otherwise provided by a power of attorney or the court, an agent may access:

(1) the catalog of electronic communications sent or received by the principal; and

(2) a digital asset in which the principal has a right or interest.

§ 3905. Access by trustee to digital assets.

Subject to section 3906(b) (relating to fiduciary authority) and unless otherwise provided by the court or the settlor in the terms of a trust, a trustee or successor of the trustee that is:

(1) an original account holder may access a digital asset held in trust, including the catalog of electronic communications sent or received by the trustee and the content of an electronic communication; and

(2) not an original account holder may access:

(i) the content of an electronic communication sent or received by the original or a successor account holder if the electronic communication service or remote computing service is permitted to disclose the content under 18 U.S.C. § 2702(b) (relating to voluntary disclosure of customer communications or records);

(ii) the catalog of electronic communications sent or received by the original or a successor account holder; and

(iii) another digital asset in which the original or a successor account holder has a right or interest.
§ 3906. Fiduciary authority.

(a) Authority.--A fiduciary that is an account holder or has the right under section 3902 (relating to access by personal representative to digital assets of decedent), 3903 (relating to access by conservator to digital assets of protected person), 3904 (relating to access by agent to digital assets of principal) or 3905 (relating to access by trustee to digital assets) to access a digital asset of an account holder:

(1) subject to the terms-of-service agreement and copyright or other applicable law, may take an action concerning the asset to the extent of the account holder's authority and the fiduciary's powers under this title;

(2) has, under applicable electronic privacy laws, the lawful consent of the account holder for the custodian to divulge the content of an electronic communication to the fiduciary; and

(3) is, under applicable computer fraud and unauthorized access laws, including 18 Pa.C.S. §§ 7611(a)(1) and (2) (relating to unlawful use of computer and other computer crimes) and 7615 (relating to computer trespass), an authorized user.

(b) Terms-of-service agreement.--If a provision in a terms-of-service agreement limits a fiduciary's access to the digital assets of the account holder, the provision is void, unless the account holder, after the effective date of this chapter takes effect, agreed to the provision by an affirmative act separate from the account holder's assent to other provisions of the terms-of-service agreement.

(c) Choice-of-law provision.--A choice-of-law provision in a terms-of-service agreement is unenforceable against a fiduciary.
acting under this chapter to the extent the provision designates
law that enforces a limitation on a fiduciary's access to
digital assets which limitation is void under subsection (b).

(d) Effect of terms-of-service agreement.--Except as
provided in subsection (b), a fiduciary's access under this
chapter to a digital asset does not violate a terms-of-service
agreement, notwithstanding a provision of the agreement that
limits third-party access or requires notice of change in the
account holder's status.

(e) Tangible personal property.--As to tangible personal
property capable of receiving, storing, processing or sending a
digital asset, a fiduciary with authority over the property of a
decedent, protected person, principal or settlor:

(1) may access the property and any digital asset stored
in the property; and

(2) is an authorized user for purposes of applicable
computer fraud and unauthorized access laws, including 18
Pa.C.S. § 7611(a)(1) and (2).

§ 3907. Compliance.

(a) Custodian.--If a fiduciary with a right under this
chapter to access a digital asset of an account holder complies
with subsection (b), the custodian shall comply with the
fiduciary's request in a record for:

(1) access to the asset;

(2) control of the asset; or

(3) a copy of the asset to the extent permitted by
copyright law.

(b) Request.--If a request under subsection (a) is made by:

(1) a personal representative with a right of access
under section 3902 (relating to access by personal
representative to digital assets of decedent), the request
must be accompanied by a certified copy of the letter of
appointment of the representative or a small-estate affidavit
or court order;

(2) a conservator with the right of access under section
3903 (relating to access by conservator to digital assets of
protected person), the request must be accompanied by a
certified copy of the court order that gives the conservator
authority over the digital asset;

(3) an agent with the right of access under section 3904
(relating to access by agent to digital assets of principal),
the request must be accompanied by an original or a copy of
the power of attorney that authorizes the agent to exercise
authority over the digital asset and a certification of the
agent, under penalty of perjury, that the power of attorney
is in effect; and

(4) a trustee with the right of access under section
3905 (relating to access by trustee to digital assets), the
request must be accompanied by a certified copy of the trust
instrument or a certification of the trust under section
7790.3 (relating to certification of trust - UTC 1013), that
authorizes the trustee to exercise authority over the digital
asset.

(c) Custodian.--A custodian shall comply with a request made
under subsection (a) not later than 15 days after receipt. If
the custodian fails to comply, the fiduciary may apply to the
court for an order directing compliance.

(d) Trustee.--Instead of furnishing a copy of the trust
instrument under subsection (b)(4), the trustee may provide the
certification of trust. The certification:
(1) must contain the following information:

(i) that the trust exists and the date the trust instrument was executed;

(ii) the identity of the settlor;

(iii) the identity and address of the trustee;

(iv) that there is nothing inconsistent in the trust with respect to the trustee's powers over digital assets;

(v) whether the trust is revocable and the identity of any person holding a power to revoke the trust; and

(vi) whether a cotrustee has authority to sign or otherwise authenticate and whether all or fewer than all cotrustees are required to exercise powers of the trustee;

(2) must be signed or otherwise authenticated by a trustee;

(3) must state that the trust has not been revoked, modified or amended in a manner that would cause the representations contained in the certification of trust to be incorrect; and

(4) need not contain the dispositive terms of the trust.

(e) Trust documents.--A custodian that receives a certification of trust under subsection (d) may require the trustee to provide copies of excerpts from the original trust instrument and later amendments that designate the trustee and confer on the trustee the power to act in the pending transaction.

(f) Reliance on certification.--The following apply:

(1) A custodian that acts in reliance on a certification under subsection (d) without knowledge that the representations contained in the certification are incorrect
is not liable to a person for the action and may assume
without inquiry the existence of facts stated in the
certification.

(2) A person that in good faith enters into a
transaction in reliance on a certification of trust under
subsection (d) may enforce the transaction against the trust
property as if the representations contained in the
certification were correct.

(g) Demand of trust instrument.--A person that demands the
trust instrument in addition to a certification of trust under
subsection (d) or excerpts under subsection (e) is liable for
damages if the court determines that the person did not act in
good faith in demanding the trust instrument.

(h) Copy of trust instrument.--This section does not limit
the right of a person to obtain a copy of a trust instrument in
a judicial proceeding concerning the trust.

§ 3908. Custodian immunity.
A custodian and its officers, employees and agents are immune
from liability for an act done in good faith in compliance with
this chapter.

§ 3909. Uniformity of application and construction.
In applying and construing this chapter that is based on the
uniform act, consideration must be given to the need to promote
uniformity of the law with respect to its subject matter among
states that enact it.

§ 3910. Relation to Electronic Signatures in Global and
National Commerce Act.
To the extent permitted by section 102 of the Electronic
Signatures in Global and National Commerce Act (Public Law 106-
229, 15 U.S.C. § 7001 et seq.) this chapter may modify, limit or
supersede provisions of that act, but does not:

(1) modify, limit or supersede section 101(c) of the
Electronics Signatures in Global and National Commerce Act; or

(2) authorize electronic delivery of a notice described
in section 103(b) of the Electronic Signatures in Global and
National Commerce Act.

§ 3911. Applicability.

(a) Applicability.--Subject to subsection (b), this chapter applies to:

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

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

(3) a conservatorship proceeding, whether pending in a court or commenced before, on or after the effective date of this chapter; and

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

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

Section 2. This act shall take effect in 60 days.