
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 518 Session of
2015

INTRODUCED BY PILEGGI, BAKER, COSTA, RAFFERTY, FOLMER, GORDNER,
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FEBRUARY 20, 2015

REFERRED TO JUDICIARY, FEBRUARY 20, 2015

AN ACT

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

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

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

14 CHAPTER 39

15 FIDUCIARY ACCESS TO DIGITAL ASSETS

16 Sec.

17 3901. Definitions.

18 3902. Access by personal representative to digital assets of
19 decedent.

20 3903. Access by conservator to digital assets of protected
21 person.

- 1 3904. Access by agent to digital assets of principal.
- 2 3905. Access by trustee to digital assets.
- 3 3906. Fiduciary authority.
- 4 3907. Compliance.
- 5 3908. Custodian immunity.
- 6 3909. Uniformity of application and construction.
- 7 3910. Relation to Electronic Signatures in Global and National
- 8 Commerce Act.
- 9 3911. Applicability.
- 10 § 3901. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Account holder." Either of the following:

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

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

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

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

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

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

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

1 meaning of an electronic communication.

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

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

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

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

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

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

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

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

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

29 "Personal representative." An executor, administrator,
30 special administrator or person that performs substantially the

1 same function under the laws of this Commonwealth other than
2 this chapter.

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

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

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

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

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

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

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

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

25 § 3902. Access by personal representative to digital assets of
26 decedent.

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

30 (1) the content of an electronic communication sent or

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

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

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

9 § 3903. Access by conservator to digital assets of protected
10 person.

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

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

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

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

25 § 3904. Access by agent to digital assets of principal.

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

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

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

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

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

11 § 3905. Access by trustee to digital assets.

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

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

19 (2) not an original account holder may access:

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

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

29 (iii) another digital asset in which the original or
30 a successor account holder has a right or interest.

1 § 3906. Fiduciary authority.

2 (a) Authority.--A fiduciary that is an account holder or has
3 the right under section 3902 (relating to access by personal
4 representative to digital assets of decedent), 3903 (relating to
5 access by conservator to digital assets of protected person),
6 3904 (relating to access by agent to digital assets of
7 principal) or 3905 (relating to access by trustee to digital
8 assets) to access a digital asset of an account holder:

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

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

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

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

29 (c) Choice-of-law provision.--A choice-of-law provision in a
30 terms-of-service agreement is unenforceable against a fiduciary

1 acting under this chapter to the extent the provision designates
2 law that enforces a limitation on a fiduciary's access to
3 digital assets which limitation is void under subsection (b).

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

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

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

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

19 § 3907. Compliance.

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

24 (1) access to the asset;

25 (2) control of the asset; or

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

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

29 (1) a personal representative with a right of access
30 under section 3902 (relating to access by personal

1 representative to digital assets of decedent), the request
2 must be accompanied by a certified copy of the letter of
3 appointment of the representative or a small-estate affidavit
4 or court order;

5 (2) a conservator with the right of access under section
6 3903 (relating to access by conservator to digital assets of
7 protected person), the request must be accompanied by a
8 certified copy of the court order that gives the conservator
9 authority over the digital asset;

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

17 (4) a trustee with the right of access under section
18 3905 (relating to access by trustee to digital assets), the
19 request must be accompanied by a certified copy of the trust
20 instrument or a certification of the trust under section
21 7790.3 (relating to certification of trust - UTC 1013), that
22 authorizes the trustee to exercise authority over the digital
23 asset.

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

28 (d) Trustee.--Instead of furnishing a copy of the trust
29 instrument under subsection (b) (4), the trustee may provide the
30 certification of trust. The certification:

1 (1) must contain the following information:

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

4 (ii) the identity of the settlor;

5 (iii) the identity and address of the trustee;

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

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

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

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

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

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

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

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

28 (1) A custodian that acts in reliance on a certification
29 under subsection (d) without knowledge that the
30 representations contained in the certification are incorrect

1 is not liable to a person for the action and may assume
2 without inquiry the existence of facts stated in the
3 certification.

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

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

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

17 § 3908. Custodian immunity.

18 A custodian and its officers, employees and agents are immune
19 from liability for an act done in good faith in compliance with
20 this chapter.

21 § 3909. Uniformity of application and construction.

22 In applying and construing this chapter that is based on the
23 uniform act, consideration must be given to the need to promote
24 uniformity of the law with respect to its subject matter among
25 states that enact it.

26 § 3910. Relation to Electronic Signatures in Global and
27 National Commerce Act.

28 To the extent permitted by section 102 of the Electronic
29 Signatures in Global and National Commerce Act (Public Law 106-
30 229, 15 U.S.C. § 7001 et seq.) this chapter may modify, limit or

1 supersede provisions of that act, but does not:

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

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

7 § 3911. Applicability.

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

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

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

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

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

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

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