
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 759 Session of
2015

INTRODUCED BY KITCHEN, BREWSTER, FONTANA, SCHWANK, COSTA,
HUGHES, YUDICHAK, RAFFERTY, WOZNIAK AND WILLIAMS, MAY 1, 2015

REFERRED TO JUDICIARY, MAY 1, 2015

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, enabling uniform
3 fiduciary access to digital assets; and providing for
4 authority, compliance and immunity.

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

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

9 CHAPTER 11

10 UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

11 Sec.

12 1101. Short title of chapter.

13 1102. Definitions.

14 1103. Applicability.

15 1104. Access by personal representative to digital asset of
16 decedent.

17 1105. Access by conservator to digital asset of protected
18 person.

19 1106. Access by agent to digital asset of principal.

1 1107. Access by trustee to digital asset.

2 1108. Fiduciary authority.

3 1109. Compliance.

4 1110. Custodian immunity.

5 1111. Uniformity of application and construction.

6 1112. Relation to Electronic Signatures in Global and National
7 Commerce Act.

8 § 1101. Short title of chapter.

9 This chapter shall be known and may be cited as the Uniform
10 Fiduciary Access to Digital Assets Act.

11 § 1102. Definitions.

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

15 "Account holder." A person that has entered into a terms of
16 service agreement with a custodian or a fiduciary for the
17 person.

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

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

22 "Catalog of electronic communications." Information which
23 identifies:

24 (1) each person with which an account holder has had an
25 electronic communication;

26 (2) the time and date of the communication; and

27 (3) the electronic address of the person.

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

1 "Content of an electronic communication." Information
2 concerning the substance or meaning of the communication which:
3 (1) has been sent or received by an account holder;
4 (2) is:
5 (i) in electronic storage by a custodian providing
6 an electronic communication service to the public; or
7 (ii) carried or maintained by a custodian providing
8 a remote computing service to the public; and
9 (3) is not readily accessible to the public.

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

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

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

18 "Electronic communication." As defined in 18 U.S.C. §
19 2510(12) (relating to definitions).

20 "Electronic communication service." A custodian that
21 provides to an account holder the ability to send or receive an
22 electronic communication.

23 "Electronic communications system." As defined in 18 U.S.C.
24 § 2510(14).

25 "Fiduciary." Includes an original, an additional and a
26 successor fiduciary.

27 "Governing instrument." Any will, trust, instrument creating
28 a power of attorney or other dispositive or nominative
29 instrument.

30 "Information." Data, text, images, videos, sounds, codes,

1 computer programs, software, databases or the like.

2 "Person." Any individual, estate, business or nonprofit
3 entity, public corporation, government or governmental
4 subdivision, agency, instrumentality or other legal entity.

5 "Personal representative." Includes a person that performs
6 substantially the same function as a personal representative
7 under the laws of this Commonwealth other than this chapter.

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

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

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

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

18 "Remote computing service." A custodian that provides to an
19 account holder computer processing services or the storage of
20 digital assets by means of an electronic communications system.

21 "State." A state of the United States, the District of
22 Columbia, Puerto Rico, the Virgin Islands or any territory or
23 insular possession subject to the jurisdiction of the United
24 States.

25 "Terms of service agreement." An agreement which controls
26 the relationship between an account holder and a custodian.

27 "Trustee." A fiduciary with legal title to property pursuant
28 to an agreement or declaration which creates a beneficial
29 interest in another. The term includes a successor trustee.

30 "Will." Includes a testamentary instrument which only

1 appoints an executor.

2 § 1103. Applicability.

3 (a) Within scope.--This chapter applies to:

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

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

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

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

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

17 § 1104. Access by personal representative to digital asset of
18 decedent.

19 Subject to section 1108(b) (relating to fiduciary authority)
20 and unless otherwise ordered by the court or provided in the
21 will of a decedent, the personal representative of the decedent
22 has the right to access:

23 (1) the content of an electronic communication that the
24 custodian is permitted to disclose under 18 U.S.C. § 2702(b)
25 (relating to voluntary disclosure of customer communications
26 or records);

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

29 (3) any other digital asset in which, at death, the
30 decedent had a right or interest.

1 § 1105. Access by conservator to digital asset of protected
2 person.

3 Subject to section 1108(b) (relating to fiduciary authority),
4 the court, after an opportunity for hearing under Chapter 59
5 (relating to uniform adult guardianship and protective
6 proceedings jurisdiction), may grant a conservator the right to
7 access:

8 (1) the content of an electronic communication which the
9 custodian is permitted to disclose under 18 U.S.C. § 2702(b)
10 (relating to voluntary disclosure of customer communications
11 or records);

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

14 (3) any other digital asset in which the protected
15 person has a right or interest.

16 § 1106. Access by agent to digital asset of principal.

17 (a) Electronic communications.--To the extent a power of
18 attorney expressly grants an agent authority over the content of
19 an electronic communication of the principal and subject to
20 section 1108(b) (relating to fiduciary authority), the agent has
21 the right to access the content of an electronic communication
22 which the custodian is permitted to disclose under 18 U.S.C. §
23 2702(b) (relating to voluntary disclosure of customer
24 communications or records).

25 (b) Catalogs and digital assets.--Subject to section 1108(b)
26 and unless otherwise ordered by the court or provided by a power
27 of attorney, an agent has the right to access:

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

30 (2) any other digital asset in which the principal has a

1 right or interest.

2 § 1107. Access by trustee to digital asset.

3 (a) Original account holder.--Subject to section 1108(b)
4 (relating to fiduciary authority) and unless otherwise ordered
5 by the court or provided in a trust, a trustee that is an
6 original account holder has the right to access any digital
7 asset held in trust, including:

8 (1) the content of an electronic communication; and

9 (2) any catalog of electronic communications of the
10 trustee.

11 (b) Subsequent account holder.--Subject to section 1108(b)
12 and unless otherwise ordered by the court or provided in a
13 trust, a trustee that is not an original account holder has the
14 right to access:

15 (1) the content of an electronic communication that the
16 custodian is permitted to disclose under 18 U.S.C. § 2702(b)
17 (relating to voluntary disclosure of customer communications
18 or records);

19 (2) any catalog of electronic communications sent or
20 received by the original or any successor account holder; and

21 (3) any other digital asset in which the original or any
22 successor account holder has a right or interest.

23 § 1108. Fiduciary authority.

24 (a) Action, consent and authorization.--All of the following
25 apply to a fiduciary that is an account holder or has the right
26 under this chapter to access a digital asset of an account
27 holder:

28 (1) Subject to the terms of service agreement, copyright
29 law and other applicable law, the fiduciary may take action
30 concerning the asset to the extent of the account holder's

1 authority and the fiduciary's power under the laws of this
2 Commonwealth other than this chapter.

3 (2) The fiduciary has, for the purpose of applicable
4 electronic privacy laws, the lawful consent of the account
5 holder for the custodian to divulge the content of an
6 electronic communication to the fiduciary.

7 (3) The fiduciary is, for the purpose of applicable
8 computer fraud and unauthorized computer access laws,
9 including 18 Pa.C.S. Ch. 57 (relating to wiretapping and
10 electronic surveillance), an authorized user.

11 (b) Void limitations.--Unless an account holder, after the
12 effective date of this chapter, agrees to a provision in a terms
13 of service agreement which limits a fiduciary's access to a
14 digital asset of the account holder by an affirmative act
15 separate from the account holder's assent to other provisions of
16 the agreement:

17 (1) the provision is void as against the strong public
18 policy of the Commonwealth; and

19 (2) the fiduciary's access under this chapter to a
20 digital asset does not violate the terms of service agreement
21 even if the agreement requires notice of a change in the
22 account holder's status.

23 (c) Choice of law.--A choice of law provision in a terms of
24 service agreement is unenforceable against a fiduciary acting
25 under this chapter to the extent the provision designates law
26 which enforces a limitation on a fiduciary's access to a digital
27 asset, and the limitation is void under subsection (b).

28 (d) Tangible personal property.--As to tangible personal
29 property capable of receiving, storing, processing or sending a
30 digital asset, a fiduciary with authority over the property of a

1 decedent, protected person, principal or settlor:

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

4 (2) is an authorized user for purposes of any applicable
5 computer fraud and unauthorized computer access laws,
6 including 18 Pa.C.S. Ch. 57.

7 § 1109. Compliance.

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

12 (1) access to the asset;

13 (2) control of the asset; and

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

16 (b) Requirements for fiduciary.--

17 (1) If a request under subsection (a) is made by a
18 personal representative with the right of access under
19 section 1104 (relating to access by personal representative
20 to digital asset of decedent), the request must be
21 accompanied by a certified copy of the letter of appointment
22 of the representative or a small estate affidavit or court
23 order.

24 (2) If a request under subsection (a) is made by a
25 conservator with the right of access under section 1105
26 (relating to access by conservator to digital asset of
27 protected person), the request must be accompanied by a
28 certified copy of the court order which gives the conservator
29 authority over the digital asset.

30 (3) If a request under subsection (a) is made by an

1 agent with the right of access under section 1106 (relating
2 to access by agent to digital asset of principal), the
3 request must be accompanied by an original or a copy of the
4 power of attorney which authorizes the agent to exercise
5 authority over the digital asset and a certification of the
6 agent, under penalty of perjury, that the power of attorney
7 is in effect.

8 (4) If a request under subsection (a) is made by a
9 trustee with the right of access under section 1107 (relating
10 to access by trustee to digital asset), the request must be
11 accompanied by:

12 (i) except as set forth in subsection (d), a
13 certified copy of the trust instrument, which authorizes
14 the trustee to exercise authority over the digital asset;
15 or

16 (ii) a certification under section 7790.3 (relating
17 to certification of trust - UTC 1013), which authorizes
18 the trustee to exercise authority over the digital asset.

19 (c) Time period.--

20 (1) A custodian shall comply with a request made under
21 subsection (a) not later than 60 days after receipt.

22 (2) If the custodian fails to comply, the fiduciary may
23 apply to the court for an order directing compliance.

24 (d) Certification of trust.--Instead of furnishing a copy of
25 the trust instrument under subsection (b) (4) (i), the trustee may
26 provide a certification of trust.

27 (1) The certification must contain all of the following
28 information:

29 (i) That the trust exists and the date the trust
30 instrument was executed.

1 (ii) The identity of the settlor.

2 (iii) The identity and address of the trustee.

3 (iv) That there is nothing inconsistent in the trust
4 with respect to the trustee's powers over digital assets.

5 (v) Whether the trust is revocable and the identity
6 of any person holding a power to revoke the trust.

7 (vi) Whether a cotrustee has authority to sign or
8 otherwise authenticate.

9 (vii) Whether all or fewer than all cotrustees are
10 required to exercise powers of the trustee.

11 (2) The certification must be signed or otherwise
12 authenticated by a trustee.

13 (3) The certification must state that the trust has not
14 been revoked, modified or amended in a manner which would
15 cause the representations contained in the certification of
16 trust to be incorrect.

17 (4) The certification need not contain the dispositive
18 terms of the trust.

19 (e) Support for certification of trust.--A custodian that
20 receives a certification under subsection (d) may require the
21 trustee to provide copies of excerpts from the original trust
22 instrument and later amendments designating the trustee and
23 conferring on the trustee the power to act in the pending
24 transaction.

25 (f) Immunity.--A custodian that acts in reliance on a
26 certification under subsection (d) without knowledge that the
27 representations contained in it are incorrect is not liable to
28 any person for so acting and may assume without inquiry the
29 existence of facts stated in the certification.

30 (g) Enforcement.--A person that in good faith enters into a

1 transaction in reliance on a certification under subsection (d)
2 may enforce the transaction against the trust property as if the
3 representations contained in the certification were correct.

4 (h) Liability for improper demand.--A person that demands
5 the trust instrument in addition to a certification under
6 subsection (d) or excerpts under subsection (e) is liable for
7 damages, including attorney fees, if the court determines that
8 the person did not act in good faith in demanding the
9 instrument.

10 (i) Judicial access.--This section does not limit the right
11 of a person to obtain a copy of a trust instrument in a judicial
12 proceeding concerning the trust.

13 § 1110. Custodian immunity.

14 A custodian and its officers, employees and agents are immune
15 from liability for an act or omission done in good faith in
16 compliance with this chapter.

17 § 1111. Uniformity of application and construction.

18 In applying and construing this uniform act, consideration
19 must be given to the need to promote uniformity of the law with
20 respect to its subject matter among states which enact it.

21 § 1112. Relation to Electronic Signatures in Global and
22 National Commerce Act.

23 To the extent permitted by section 102 of the Electronic
24 Signatures in Global and National Commerce Act (Public Law 106-
25 229, 15 U.S.C. § 7002), this chapter may supersede provisions of
26 that act.

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