

HOUSE BILL NO. 108

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES CLAMAN, Kawasaki

Introduced: 2/8/17

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital**
2 **Assets Act."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 13 is amended by adding a new chapter to read:

5 **Chapter 63. Revised Uniform Fiduciary Access to Digital Assets Act.**

6 **Sec. 13.63.010. User direction for disclosure of digital assets.** (a) A user may
7 use an online tool to direct the custodian to disclose to a designated recipient, or not to
8 disclose, some or all of the user's digital assets, including the content of electronic
9 communications. If the online tool allows the user to modify or delete a direction at all
10 times, a direction regarding disclosure using an online tool overrides a contrary
11 direction by the user in a will, trust, power of attorney, or other record.

12 (b) If a user has not used an online tool to give direction under (a) of this
13 section or if the custodian has not provided an online tool, the user may allow or
14 prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of

1 some or all of the user's digital assets, including the content of electronic
2 communications sent or received by the user.

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

6 **Sec. 13.63.020. Terms-of-service agreement.** (a) This chapter does not
7 change or impair a right of a custodian or a user under a terms-of-service agreement to
8 access and use digital assets of the user.

9 (b) This chapter does not give a fiduciary or designated recipient any new or
10 expanded rights other than those held by the user for whom, or for whose estate, the
11 fiduciary or designated recipient acts or represents.

12 (c) A fiduciary's or designated recipient's access to digital assets may be
13 modified or eliminated by a user, by federal law, or by a terms-of-service agreement if
14 the user has not provided direction under AS 13.63.010.

15 **Sec. 13.63.030. Procedures for disclosing digital assets.** (a) When disclosing
16 digital assets of a user under this chapter, the custodian may, in its sole discretion,

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

19 (2) grant a fiduciary or designated recipient partial access to the user's
20 account sufficient to perform the tasks with which the fiduciary or designated recipient
21 is charged; or

22 (3) provide a fiduciary or designated recipient a copy in a record of
23 any digital asset that, on the date the custodian received the request for disclosure, the
24 user could have accessed if the user were alive and had full capacity and access to the
25 account.

26 (b) A custodian may assess a reasonable administrative charge for the cost of
27 disclosing digital assets under this chapter.

28 (c) A custodian is not required to disclose under this chapter a digital asset
29 deleted by a user.

30 (d) If a user directs or a fiduciary requests a custodian to disclose under this
31 chapter some, but not all, of the user's digital assets, the custodian is not required to

1 disclose the assets if segregation of the assets would impose an undue burden on the
 2 custodian. If the custodian believes the direction or request imposes an undue burden,
 3 the custodian or fiduciary may seek an order from the superior court to disclose

- 4 (1) a subset limited by date of the user's digital assets;
 5 (2) all of the user's digital assets to the fiduciary or designated
 6 recipient;
 7 (3) none of the user's digital assets; or
 8 (4) all of the user's digital assets to the superior court for review in
 9 camera.

10 **Sec. 13.63.040. Disclosure of content of electronic communications of**
 11 **deceased user.** If a deceased user consented or a superior court directs disclosure of
 12 the contents of electronic communications of the user, the custodian shall disclose to
 13 the personal representative of the estate of the user the content of an electronic
 14 communication sent or received by the user if the personal representative gives the
 15 custodian

- 16 (1) a written request for disclosure in physical or electronic form;
 17 (2) a certified copy of the death certificate of the user;
 18 (3) a certified copy of the letters testamentary of the personal
 19 representative;
 20 (4) unless the user provided direction using an online tool, a copy of
 21 the user's will, trust, power of attorney, or other record evidencing the user's consent to
 22 disclosure of the content of electronic communications; and
 23 (5) if requested by the custodian,
 24 (A) a number, username, address, or other unique subscriber or
 25 account identifier assigned by the custodian to identify the user's account;
 26 (B) evidence linking the account to the user; or
 27 (C) a finding by the superior court that
 28 (i) the user had a specific account with the custodian,
 29 identifiable by the information specified in (A) of this paragraph;
 30 (ii) disclosure of the content of electronic
 31 communications of the user would not violate 18 U.S.C. 2701 - 2712,

1 47 U.S.C. 222, or other applicable law;

2 (iii) unless the user provided direction using an online
3 tool, the user consented to disclosure of the content of electronic
4 communications; or

5 (iv) disclosure of the content of electronic
6 communications of the user is reasonably necessary for administration
7 of the estate.

8 **Sec. 13.63.050. Disclosure of other digital assets of deceased user.** Unless
9 the user prohibited disclosure of digital assets or the superior court directs otherwise, a
10 custodian shall disclose to the personal representative of the estate of a deceased user a
11 catalog of electronic communications sent or received by the user and digital assets,
12 other than the content of electronic communications, of the user if the representative
13 gives the custodian

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

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

16 (3) a certified copy of the letters testamentary of the personal
17 representative; and

18 (4) if requested by the custodian,

19 (A) a number, username, address, or other unique subscriber or
20 account identifier assigned by the custodian to identify the user's account;

21 (B) evidence linking the account to the user;

22 (C) an affidavit stating that disclosure of the user's digital
23 assets is reasonably necessary for administration of the estate; or

24 (D) a finding by the superior court that

25 (i) the user had a specific account with the custodian,
26 identifiable by the information specified in (A) of this paragraph; or

27 (ii) disclosure of the user's digital assets is reasonably
28 necessary for administration of the estate.

29 **Sec. 13.63.060. Disclosure of content of electronic communications of**
30 **principal.** To the extent a power of attorney expressly grants an agent authority over
31 the content of electronic communications sent or received by the principal and unless

1 directed otherwise by the principal or the superior court, a custodian shall disclose to
2 the agent the content if the agent gives the custodian

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

4 (2) an original or copy of the power of attorney expressly granting the
5 agent authority over the content of electronic communications of the principal;

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

8 (4) if requested by the custodian,

9 (A) a number, username, address, or other unique subscriber or
10 account identifier assigned by the custodian to identify the principal's account;

11 or

12 (B) evidence linking the account to the principal.

13 **Sec. 13.63.070. Disclosure of other digital assets of principal.** Unless
14 otherwise ordered by the superior court, directed by the principal, or provided by a
15 power of attorney, a custodian shall disclose to an agent with specific authority over
16 digital assets or general authority to act on behalf of a principal a catalog of electronic
17 communications sent or received by the principal and digital assets, other than the
18 content of electronic communications, of the principal if the agent gives the custodian

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

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

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

25 (4) if requested by the custodian,

26 (A) a number, username, address, or other unique subscriber or
27 account identifier assigned by the custodian to identify the principal's account;

28 or

29 (B) evidence linking the account to the principal.

30 **Sec. 13.63.080. Disclosure of digital assets held in trust when trustee is**
31 **original user.** Unless otherwise ordered by the superior court or provided in a trust, a

1 custodian shall disclose to a trustee that is an original user of an account any digital
2 asset of the account held in trust, including a catalog of electronic communications of
3 the trustee and the content of electronic communications.

4 **Sec. 13.63.090. Disclosure of contents of electronic communications held in**
5 **trust when trustee not original user.** Unless otherwise ordered by the superior court,
6 directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is
7 not an original user of an account the content of an electronic communication sent or
8 received by an original or successor user and carried, maintained, processed, received,
9 or stored by the custodian in the account of the trust if the trustee gives the custodian

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

11 (2) a certified copy of the trust instrument or a certification of the trust
12 under AS 13.36.079 that includes consent to disclosure of the content of electronic
13 communications to the trustee;

14 (3) a certification by the trustee, under penalty of perjury, that the trust
15 exists and the trustee is a currently acting trustee of the trust; and

16 (4) if requested by the custodian,

17 (A) a number, username, address, or other unique subscriber or
18 account identifier assigned by the custodian to identify the trust's account; or

19 (B) evidence linking the account to the trust.

20 **Sec. 13.63.100. Disclosure of other digital assets held in trust when trustee**
21 **not original user.** Unless otherwise ordered by the superior court, directed by the
22 user, or provided in a trust, a custodian shall disclose to a trustee that is not an original
23 user of an account a catalog of electronic communications sent or received by an
24 original or successor user and stored, carried, or maintained by the custodian in an
25 account of the trust and any digital assets, other than the content of electronic
26 communications, in which the trust has a right or interest if the trustee gives the
27 custodian

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

29 (2) a certified copy of the trust instrument or a certification of the trust
30 under AS 13.36.079;

31 (3) a certification by the trustee, under penalty of perjury, that the trust

1 exists and the trustee is a currently acting trustee of the trust; and

2 (4) if requested by the custodian,

3 (A) a number, username, address, or other unique subscriber or
4 account identifier assigned by the custodian to identify the trust's account; or

5 (B) evidence linking the account to the trust.

6 **Sec. 13.63.110. Disclosure of digital assets to conservator of protected**
7 **person.** (a) After an opportunity for a hearing under AS 13.26.401 - 13.26.595, the
8 superior court may grant a conservator access to the digital assets of a protected
9 person except that, if the conservator is a guardian with the powers and duties of a
10 conservator under AS 13.26.316(c), the superior court may grant the conservator
11 access to the digital assets of a protected person after an opportunity for a hearing
12 under AS 13.26.201 - 13.26.316.

13 (b) Unless otherwise ordered by the superior court or directed by the user, a
14 custodian shall disclose to a conservator the catalog of electronic communications sent
15 or received by a protected person and any digital assets, other than the content of
16 electronic communications, in which the protected person has a right or interest if the
17 conservator gives the custodian

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

19 (2) a certified copy of the superior court order that gives the
20 conservator authority over the digital assets of the protected person; and

21 (3) if requested by the custodian,

22 (A) a number, username, address, or other unique subscriber or
23 account identifier assigned by the custodian to identify the account of the
24 protected person; or

25 (B) evidence linking the account to the protected person.

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

31 **Sec. 13.63.120. Fiduciary duty and authority.** (a) The legal duties imposed

1 on a fiduciary charged with managing tangible property apply to the management of
2 digital assets, including

- 3 (1) the duty of care;
- 4 (2) the duty of loyalty; and
- 5 (3) the duty of confidentiality.

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

8 (1) except as otherwise provided in AS 13.63.010, is subject to the
9 applicable terms of service;

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

11 (3) in the case of a fiduciary, is limited by the scope of the fiduciary's
12 duties; and

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

14 (c) A fiduciary with authority over the property of a decedent, protected
15 person, principal, or settlor has the right to access any digital asset in which the
16 decedent, protected person, principal, or settlor had a right or interest and that is not
17 held by a custodian or subject to a terms-of-service agreement.

18 (d) A fiduciary acting within the scope of the fiduciary's duties is an
19 authorized user of the property of the decedent, protected person, principal, or settlor
20 for the purpose of applicable computer-fraud and unauthorized-computer-access laws,
21 including AS 11.46.200, 11.46.484(a)(3), and 11.46.740.

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

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

26 (2) is an authorized user for the purpose of computer-fraud and
27 unauthorized-computer-access laws, including AS 11.46.200, 11.46.484(a)(3), and
28 11.46.740.

29 (f) A custodian may disclose information in an account to a fiduciary of the
30 user when the information is required to terminate an account used to access digital
31 assets licensed to the user.

1 (g) A fiduciary of a user may request a custodian to terminate the user's
 2 account. A request for termination must be in writing, in either physical or electronic
 3 form, and accompanied by

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

6 (2) a certified copy of the letters testamentary of the personal
 7 representative, the superior court order, the power of attorney, or the trust instrument
 8 giving the fiduciary authority over the account; and

9 (3) if requested by the custodian,

10 (A) a number, username, address, or other unique subscriber or
 11 account identifier assigned by the custodian to identify the user's account;

12 (B) evidence linking the account to the user; or

13 (C) a finding by the superior court that the user had a specific
 14 account with the custodian, identifiable by the information specified in (A) of
 15 this paragraph.

16 **Sec. 13.63.130. Custodian compliance and immunity.** (a) Not later than 60
 17 days after receipt of the information required under AS 13.63.040 - 13.63.120, a
 18 custodian shall comply with a request under this chapter from a fiduciary or
 19 designated recipient to disclose digital assets or terminate an account. If the custodian
 20 fails to comply, the fiduciary or designated recipient may apply to the superior court
 21 for an order directing compliance.

22 (b) An order under (a) of this section directing compliance must contain a
 23 finding that compliance is not in violation of 18 U.S.C. 2702.

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

26 (d) A custodian may deny a request under this chapter from a fiduciary or
 27 designated recipient for disclosure of digital assets or to terminate an account if the
 28 custodian is aware of any lawful access to the account following the receipt of the
 29 fiduciary's request.

30 (e) This chapter does not limit a custodian's ability to obtain or to require a
 31 fiduciary or designated recipient requesting disclosure or termination under this

1 chapter to obtain a superior court order that

2 (1) specifies that an account belongs to the protected person or
3 principal;

4 (2) specifies that there is sufficient consent from the protected person
5 or principal to support the requested disclosure; and

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

7 (f) A custodian and its officers, employees, and agents are immune from
8 liability for an act or omission done in good faith in compliance with this chapter.

9 **Sec. 13.63.140. Uniformity of application and construction.** In applying and
10 construing this chapter, consideration shall be given to the need to promote uniformity
11 of the law with respect to its subject matter among states that enact it.

12 **Sec. 13.63.150. Relation to Electronic Signatures in Global and National**
13 **Commerce Act.** This chapter modifies, limits, or supersedes 15 U.S.C. 7001 - 7031
14 (Electronic Signatures in Global and National Commerce Act), but does not modify,
15 limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
16 notices described in 15 U.S.C. 7003(b).

17 **Sec. 13.63.160. Digital assets coverage.** In this chapter, a digital asset does
18 not apply to an underlying asset or liability unless the asset or liability is itself an
19 electronic record. This chapter does not apply to a digital asset of an employer used by
20 an employee in the ordinary course of the employer's business.

21 **Sec. 13.63.170. Application to custodians.** This chapter applies to a custodian
22 if the user resides in this state or resided in this state at the time of the user's death.

23 **Sec. 13.63.190. Definitions.** In this chapter,

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

27 (2) "agent" means an attorney-in-fact granted authority under a durable
28 or nondurable power of attorney;

29 (3) "carries" means engages in the transmission of an electronic
30 communication;

31 (4) "catalog of electronic communications" means information that

1 identifies each person with which a user has had an electronic communication, the
2 time and date of the communication, and the electronic address of the person;

3 (5) "conservator" means a person appointed by a superior court to
4 manage all or part of the estate of a living individual;

5 (6) "content of an electronic communication" means information
6 concerning the substance or meaning of the communication that

7 (A) has been sent or received by a user;

8 (B) is in electronic storage by a custodian providing an
9 electronic-communication service to the public or is carried or maintained by a
10 custodian providing a remote-computing service to the public; in this
11 subparagraph,

12 (i) "electronic-communication service" means the
13 ability to send or receive an electronic communication;

14 (ii) "remote-computing service" means computer-
15 processing services or the storage of digital assets by means of an
16 electronic communications system; in this subparagraph, "electronic
17 communications system" has the meaning given in 18 U.S.C. 2510; and

18 (C) is not readily accessible to the public;

19 (7) "custodian" means a person that carries, maintains, processes,
20 receives, or stores a digital asset of a user;

21 (8) "designated recipient" means a person chosen by a user using an
22 online tool to administer digital assets of the user;

23 (9) "digital asset" means an electronic record in which an individual
24 has a right or interest, but does not include an underlying asset or liability unless the
25 asset or liability is itself an electronic record;

26 (10) "electronic" means relating to technology having electrical,
27 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

28 (11) "electronic communication" has the meaning given in 18 U.S.C.
29 2510;

30 (12) "fiduciary" means an original, additional, or successor personal
31 representative, conservator, agent, or trustee;

1 (13) "information" means data, text, images, videos, sounds, codes,
2 computer programs, software, databases, or similar items;

3 (14) "online tool" means an electronic service provided by a custodian
4 that allows the user, in an agreement distinct from the terms-of-service agreement
5 between the custodian and user, to provide directions for disclosure or nondisclosure
6 of digital assets to a third person;

7 (15) "person" means an individual, estate, business or nonprofit entity,
8 public corporation, government or governmental subdivision, agency, or
9 instrumentality, or another legal entity;

10 (16) "personal representative" means an executor, administrator,
11 special administrator, or person that performs substantially the same function under
12 law of this state other than this chapter;

13 (17) "power of attorney" means a record that grants an agent authority
14 to act in the place of a principal;

15 (18) "principal" means an individual who grants authority to an agent
16 in a power of attorney;

17 (19) "protected person" means an individual for whom a conservator
18 has been appointed or an individual for whom an application for the appointment of a
19 conservator is pending;

20 (20) "record" means information that is inscribed on a tangible
21 medium or that is stored in an electronic or other medium and is retrievable in
22 perceivable form;

23 (21) "terms of service agreement" means an agreement that controls
24 the relationship between a user and a custodian;

25 (22) "trustee" means a fiduciary, whether the original fiduciary or a
26 successor fiduciary, with legal title to property under an agreement or declaration that
27 creates a beneficial interest in another person;

28 (23) "user" means a person that has an account with a custodian;

29 (24) "will" includes a codicil, a testamentary instrument that only
30 appoints an executor, and an instrument that revokes or revises a testamentary
31 instrument.

1 **Sec. 13.63.195. Short title.** This chapter may be cited as the Revised Uniform
2 Fiduciary Access to Digital Assets Act.

3 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **APPLICABILITY.** (a) This Act applies to a

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

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

10 (3) proceeding to appoint a conservator that is commenced before, on, or after
11 the effective date of this Act; and

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

14 (b) In this section, "conservator," "fiduciary," "personal representative," "power of
15 attorney," "trustee," and "will" have the meanings given in AS 13.63.190, enacted by sec. 1 of
16 this Act.