



# Alaska State Legislature

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### CS for House Bill 108 (JUD) Version U

*“An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital Assets Act; and relating to a specific electronic communications power that a principal may select for an agent under the statutory form power of attorney.”*

#### Sectional Summary

**Section 1** of the bill amends statutory form power of attorney to include digital assets.

Section 13.26.645 edits the power of attorney form recognized by the State of Alaska. The form provides optional grant of specific authority to: Create, amend, revoke, or terminate a trust; make a gift; create or change beneficiaries; or revoke a transfer on death deed; change rights of survivorship; delegate authority; and waive the principal’s right to be a beneficiary. The form is amended to include exercising authority over the content of electronic communications.

**Section 2** of the bill adds a new chapter, the Revised Fiduciary Access to Digital Assets Act, to AS 13.

Sec. 13.63.010 sets out user direction for disclosure of digital assets. This proposed section addresses the relationship of online tools, other records documenting the user’s intent, and terms of service agreements. The section establishes a three-tier priority system for determining the user’s intent with respect to a digital assets. Subsection (a) gives top priority to the user’s wishes as expressed using an online tool. Subsection (b) gives next tier priority to user’s direction in will, trust, power of attorney, or other record. Subsection (c) recognizes the terms-of-service agreement if the user left no other direction.

Sec. 13.63.020 sets out the relationship of the terms-of-service agreement to the fiduciary. This section clarifies that to the extent a custodian gives a fiduciary access to digital assets, the terms- of -service agreement apply as well to the fiduciary.

Sec. 13.63.030 sets out procedures for disclosing digital assets. Subsection (a) gives the custodian of digital assets a choice of methods for disclosing digital assets to an authorized fiduciary. Subsection (b) allows the custodian to charge a reasonable administrative charge for the cost of disclosure. Subsection (c) states that a deleted digital asset of the user need not be disclosed, because deletion is a good indicator that the user did not intend access to the fiduciary. Subsection (d) addresses requests that are unduly burdensome and authorizes a process to obtain court direction on the request.

Sec. 13.63.040 sets out process for disclosure of the content of electronic communications of a deceased user. This section gives the personal representative of the estate access to digital assets if the user consented or if the court orders disclosure. Certain procedures set out in the section must be met.

Sec. 13.63.050 sets out procedures for the disclosure of other digital assets of a deceased user. This section gives the personal representative access to the catalogue of electronic communications and other digital assets, if the requirements of the section are met.

Sec. 13.63.060 sets out procedures for disclosure of content of electronic communications of a principal under a power of attorney. The procedures and process are similar to those given a personal representative under Sec. 13.63.040.

Sec. 13.63.070 sets out procedures for disclosure of other digital assets of the principal under a power of attorney. The procedures and process are similar to those given to a personal representative under Sec. 13.63.050.

Sec. 13.63.080 sets out procedures for disclosure of digital assets when held in a trust when the trustee is the original user. This section provides that trustee who is an original account holder can assess all digital assets held in the trust.

Sec. 13.63.090 sets out procedures for disclosure of content of electronic communications held in trust when the trustee is not the original user. The procedures and process are similar to those given a personal representative under Sec. 13.63.040.

Sec. 13.63.100 sets out procedures for disclosure of other digital assets held in trust when the trustee is not the original user. The procedures and process are similar to those given to a personal representative under Sec. 13.63.050. The trustee also must supply information about the trust specified in this section.

Sec. 13.63.110 sets out procedures for disclosure of digital assets to conservator of a protected person. This section applies when a conservator is appointed by the court to handle the assets of protected person who is physically or mentally unable to manage those assets. The proposed section provides an opportunity for a hearing concerning disclosure. Otherwise the procedures and process are similar to those given a personal representative under Sec. 13.63.050. The proposed section finally sets out a process to suspend or terminate an account of a protected person for good cause.

Sec. 13.63.120 sets out standards of a fiduciary's duty and authority under this chapter.

Sec. 13.63.130 sets out the standards for the custodian of digital assets compliance with the act. Subsection (f) immunizes the custodian of digital assets and its officers, employees, and agents from liability for an act or omission done in good faith in compliance with this chapter.

Secs. 13.63.140 and 13.63.150 are standard provisions included in uniform acts to facilitate their implementation among the states that enact them.

Sec. 13.63.160 establishes the coverage of digital assets under the chapter. In the chapter, a digital assets does not apply to the underlying asset or liability unless the asset or liability is itself an electronic record. The chapter does not apply to the digital asset of an employer used by the employee in the ordinary course of the employer's business.

Sec. 13.63.170 sets out the application of the chapter if the user resides in Alaska or resided in Alaska at the time of the user's death.

Sec. 13.63.190 sets out definitions of terms used in the chapter.3

**Section 3** of the bill sets out applicability of the act.