

HB

108

<TARGET><BILL>HB 108</BILL><SUBJECT>HB
108</SUBJECT><COMM>HJUD30</COMM></TARGET>

CS FOR HOUSE BILL NO. 108()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES CLAMAN, Kawasaki

A BILL

FOR AN ACT ENTITLED

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

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

5 *** Section 1.** AS 13.26.645 is amended to read:

6 **Sec. 13.26.645. Statutory form power of attorney.** A person who wishes to
7 designate another as agent by a power of attorney may execute a statutory power of
8 attorney set out in substantially the following form:

9 **GENERAL POWER OF ATTORNEY**

10 **THE POWERS GRANTED FROM THE PRINCIPAL TO THE**
11 **AGENT OR AGENTS IN THE FOLLOWING DOCUMENT ARE**
12 **VERY BROAD. THEY MAY INCLUDE THE POWER TO**
13 **DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND**
14 **PERSONAL PROPERTY. ACCORDINGLY, THE FOLLOWING**

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DOCUMENT SHOULD ONLY BE USED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE.

YOU MAY REVOKE THIS POWER OF ATTORNEY AT ANY TIME.

Pursuant to AS 13.26.600, 13.26.625 - 13.26.640, and 13.26.655 - 13.26.695, I, (Name of principal), of (Address of principal), do hereby appoint (Name and address of agent or agents), my agent(s) to act as indicated below in my name, place, and stead in any way which I myself could do, if I were personally present, with respect to the following matters, as each of them is defined in AS 13.26.665, to the full extent that I am permitted by law to act through an agent:

MARK THE BOXES BELOW TO INDICATE THE POWERS YOU WANT TO GIVE YOUR AGENT OR AGENTS. MARK THE BOX FOR "YES" THAT IS OPPOSITE A CATEGORY BELOW TO GIVE YOUR AGENT OR AGENTS THE POWER IN THAT CATEGORY. IF YOU DO NOT MARK A BOX OPPOSITE A CATEGORY, YOUR AGENT OR AGENTS WILL NOT HAVE THE POWER IN THAT CATEGORY.

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|--|-----|
| | YES |
| (A) real estate transactions | () |
| (B) transactions involving tangible personal property, chattels, and goods | () |
| (C) bonds, shares, and commodities transactions | () |
| (D) banking transactions | () |
| (E) business operating transactions | () |
| (F) insurance transactions | () |
| (G) estate transactions | () |
| (H) retirement plans | () |
| (I) claims and litigation | () |
| (J) personal relationships and affairs | () |

- 1 (K) benefits from government programs
- 2 and civil or military service ()
- 3 (L) records, reports, and statements ()
- 4 (M) voter registration and absentee
- 5 ballot requests ()
- 6 (N) all other matters, including those
- 7 specified as follows: ()

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

The agent or agents you have appointed WILL NOT have the power to do any of the following acts UNLESS you MARK the box opposite that category:

- 15 () create, amend, revoke, or terminate an inter vivos trust;
- 16 () make a gift, subject to the limitations of AS 13.26.665(q) and any
- 17 special instructions in this power of attorney;
- 18 () create or change a beneficiary designation;
- 19 () revoke a transfer on death deed made under AS 13.48;
- 20 () create or change rights of survivorship;
- 21 () delegate authority granted under the power of attorney;
- 22 () waive the principal's right to be a beneficiary of a joint and survivor
- 23 annuity, including a survivor benefit under a retirement plan;
- 24 () exercise fiduciary powers that the principal has authority to
- 25 delegate;
- 26 **() exercise authority over the content of electronic**
- 27 **communications, as that term is defined in 18 U.S.C. 2510(12) sent**
- 28 **or received by the principal.**

IF YOU HAVE APPOINTED MORE THAN ONE AGENT, MARK ONE OF THE FOLLOWING:

- 31 () Each agent may exercise the powers conferred separately, without

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the consent of any other agent.

() All agents shall exercise the powers conferred jointly, with the consent of all other agents.

TO INDICATE WHEN THIS DOCUMENT SHALL BECOME EFFECTIVE, MARK ONE OF THE FOLLOWING:

() This document shall become effective upon the date of my signature.

() This document shall become effective upon the date of my incapacity and shall not otherwise be affected by my incapacity.

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE ON THE DATE OF YOUR SIGNATURE, MARK ONE OF THE FOLLOWING:

() This document shall not be affected by my subsequent incapacity.

() This document shall be revoked by my subsequent incapacity.

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE UPON THE DATE OF YOUR SIGNATURE AND WANT TO LIMIT THE TERM OF THIS DOCUMENT, COMPLETE THE FOLLOWING:

This document shall only continue in effect for _____ () years from the date of my signature.

NOTICE OF REVOCATION OF THE POWERS GRANTED IN THIS DOCUMENT

You may revoke one or more of the powers granted in this document. Unless otherwise provided in this document, you may revoke a specific power granted in this power of attorney by completing a special power of attorney that includes the specific power in this document that you want to revoke. Unless otherwise provided in this document, you may revoke all the powers granted in this power of attorney by completing a subsequent power of attorney.

NOTICE TO THIRD PARTIES

A third party who relies on the reasonable representations of an agent as to a matter relating to a power granted by a properly executed

1 statutory form power of attorney does not incur any liability to the
 2 principal or to the principal's heirs, assigns, or estate as a result of
 3 permitting the agent to exercise the authority granted by the power of
 4 attorney. A third party who fails to honor a properly executed statutory
 5 form power of attorney may be liable to the principal, the agent, the
 6 principal's heirs, assigns, or estate for a civil penalty, plus damages,
 7 costs, and fees associated with the failure to comply with the statutory
 8 form power of attorney. If the power of attorney is one which becomes
 9 effective upon the incapacity of the principal, the incapacity of the
 10 principal is established by an affidavit, as required by law.

11 IN WITNESS WHEREOF, I have hereunto signed my name
 12 this ____ day of _____, _____.

13 _____
 14 Signature of Principal

15 Acknowledged before me at _____
 16 _____ on _____.

17 Signature of Officer or Notary

18 If a person other than the principal executes the signature for the
 19 principal, the person may not be a person who is appointed an agent in
 20 the power of attorney, and the following signature line and notary
 21 verification must also be completed:

22 IN WITNESS WHEREOF, I have hereunto signed my name
 23 this ____ day of _____, _____.

24 _____
 25 Signature of person signing at the request of _____

Name of Principal

26 Printed name of person signing _____

27 Form of identification of person signing _____

28 Acknowledged before me at _____

29 _____ on _____

30 _____
 31 _____

Signature of Officer or Notary

* **Sec. 2.** AS 13 is amended by adding a new chapter to read:

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

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

(b) If a user has not used an online tool to give direction under (a) of this section or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

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

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

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

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

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

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

(2) grant a fiduciary or designated recipient partial access to the user's

1 account sufficient to perform the tasks with which the fiduciary or designated recipient
2 is charged; or

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

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

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

11 (d) If a user directs or a fiduciary requests a custodian to disclose under this
12 chapter some, but not all, of the user's digital assets, the custodian is not required to
13 disclose the assets if segregation of the assets would impose an undue burden on the
14 custodian. If the custodian believes the direction or request imposes an undue burden,
15 the custodian or fiduciary may seek an order from the superior court to disclose

16 (1) a subset limited by date of the user's digital assets;

17 (2) all of the user's digital assets to the fiduciary or designated
18 recipient;

19 (3) none of the user's digital assets; or

20 (4) all of the user's digital assets to the superior court for review in
21 camera.

22 **Sec. 13.63.040. Disclosure of content of electronic communications of**
23 **deceased user.** If a deceased user consented or a superior court directs disclosure of
24 the contents of electronic communications of the user, the custodian shall disclose to
25 the personal representative of the estate of the user the content of an electronic
26 communication sent or received by the user if the personal representative gives the
27 custodian

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

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

30 (3) a certified copy of the letters testamentary of the personal
31 representative;

1 (4) unless the user provided direction using an online tool, a copy of
2 the user's will, trust, power of attorney, or other record evidencing the user's consent to
3 disclosure of the content of electronic communications; and

4 (5) if requested by the custodian,

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

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

8 (C) a finding by the superior court that

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

11 (ii) disclosure of the content of electronic
12 communications of the user would not violate 18 U.S.C. 2701 - 2712,
13 47 U.S.C. 222, or other applicable law;

14 (iii) unless the user provided direction using an online
15 tool, the user consented to disclosure of the content of electronic
16 communications; or

17 (iv) disclosure of the content of electronic
18 communications of the user is reasonably necessary for administration
19 of the estate.

20 **Sec. 13.63.050. Disclosure of other digital assets of deceased user.** Unless
21 the user prohibited disclosure of digital assets or the superior court directs otherwise, a
22 custodian shall disclose to the personal representative of the estate of a deceased user a
23 catalog of electronic communications sent or received by the user and digital assets,
24 other than the content of electronic communications, of the user if the representative
25 gives the custodian

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

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

28 (3) a certified copy of the letters testamentary of the personal
29 representative; and

30 (4) if requested by the custodian,

31 (A) a number, username, address, or other unique subscriber or

1 account identifier assigned by the custodian to identify the user's account;

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

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

5 (D) a finding by the superior court that

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

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

10 **Sec. 13.63.060. Disclosure of content of electronic communications of**
11 **principal.** To the extent a power of attorney expressly grants an agent authority over
12 the content of electronic communications sent or received by the principal and unless
13 directed otherwise by the principal or the superior court, a custodian shall disclose to
14 the agent the content if the agent gives the custodian

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

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

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

20 (4) if requested by the custodian,

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

23 or

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

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

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

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

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

6 (4) if requested by the custodian,

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

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

11 **Sec. 13.63.080. Disclosure of digital assets held in trust when trustee is**
 12 **original user.** Unless otherwise ordered by the superior court or provided in a trust, a
 13 custodian shall disclose to a trustee that is an original user of an account any digital
 14 asset of the account held in trust, including a catalog of electronic communications of
 15 the trustee and the content of electronic communications.

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

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

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

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

28 (4) if requested by the custodian,

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

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

1 **Sec. 13.63.100. Disclosure of other digital assets held in trust when trustee**
 2 **not original user.** Unless otherwise ordered by the superior court, directed by the
 3 user, or provided in a trust, a custodian shall disclose to a trustee that is not an original
 4 user of an account a catalog of electronic communications sent or received by an
 5 original or successor user and stored, carried, or maintained by the custodian in an
 6 account of the trust and any digital assets, other than the content of electronic
 7 communications, in which the trust has a right or interest if the trustee gives the
 8 custodian

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

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

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

14 (4) if requested by the custodian,

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

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

18 **Sec. 13.63.110. Disclosure of digital assets to conservator of protected**
 19 **person.** (a) After an opportunity for a hearing under AS 13.26.401 - 13.26.595, the
 20 superior court may grant a conservator access to the digital assets of a protected
 21 person except that, if the conservator is a guardian with the powers and duties of a
 22 conservator under AS 13.26.316(c), the superior court may grant the conservator
 23 access to the digital assets of a protected person after an opportunity for a hearing
 24 under AS 13.26.201 - 13.26.316.

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

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

31 (2) a certified copy of the superior court order that gives the

1 conservator authority over the digital assets of the protected person; and

2 (3) 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 account of the
5 protected person; or

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

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

12 **Sec. 13.63.120. Fiduciary duty and authority.** (a) The legal duties imposed
13 on a fiduciary charged with managing tangible property apply to the management of
14 digital assets, including

- 15 (1) the duty of care;
- 16 (2) the duty of loyalty; and
- 17 (3) the duty of confidentiality.

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

- 20 (1) except as otherwise provided in AS 13.63.010, is subject to the
21 applicable terms of service;
- 22 (2) is subject to other applicable law, including copyright law;
- 23 (3) in the case of a fiduciary, is limited by the scope of the fiduciary's
24 duties; and
- 25 (4) may not be used to impersonate the user.

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

30 (d) A fiduciary acting within the scope of the fiduciary's duties is an
31 authorized user of the property of the decedent, protected person, principal, or settlor

1 for the purpose of applicable computer-fraud and unauthorized-computer-access laws,
2 including AS 11.46.200, 11.46.484(a)(3), and 11.46.740.

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

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

7 (2) is an authorized user for the purpose of computer-fraud and
8 unauthorized-computer-access laws, including AS 11.46.200, 11.46.484(a)(3), and
9 11.46.740.

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

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

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

18 (2) a certified copy of the letters testamentary of the personal
19 representative, the superior court order, the power of attorney, or the trust instrument
20 giving the fiduciary authority over the account; 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 user's account;

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

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

28 **Sec. 13.63.130. Custodian compliance and immunity.** (a) Not later than 60
29 days after receipt of the information required under AS 13.63.040 - 13.63.120, a
30 custodian shall comply with a request under this chapter from a fiduciary or
31 designated recipient to disclose digital assets or terminate an account. If the custodian

1 fails to comply, the fiduciary or designated recipient may apply to the superior court
2 for an order directing compliance.

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

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

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

11 (e) This chapter does not limit a custodian's ability to obtain or to require a
12 fiduciary or designated recipient requesting disclosure or termination under this
13 chapter to obtain a superior court order that

14 (1) specifies that an account belongs to the protected person or
15 principal;

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

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

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

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

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

29 **Sec. 13.63.160. Digital assets coverage.** In this chapter, a digital asset does
30 not apply to an underlying asset or liability unless the asset or liability is itself an
31 electronic record. This chapter does not apply to a digital asset of an employer used by

1 an employee in the ordinary course of the employer's business.

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

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

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

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

10 (3) "carries" means engages in the transmission of an electronic
11 communication;

12 (4) "catalog of electronic communications" means information that
13 identifies each person with which a user has had an electronic communication, the
14 time and date of the communication, and the electronic address of the person;

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

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

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

20 (B) is in electronic storage by a custodian providing an
21 electronic-communication service to the public or is carried or maintained by a
22 custodian providing a remote-computing service to the public; in this
23 subparagraph,

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

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

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

31 (7) "custodian" means a person that carries, maintains, processes,

1 receives, or stores a digital asset of a user;

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

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

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

9 (11) "electronic communication" has the meaning given in 18 U.S.C.
10 2510;

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

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

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

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

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

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

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

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

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

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

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

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

10 (24) "will" includes a codicil, a testamentary instrument that only
11 appoints an executor, and an instrument that revokes or revises a testamentary
12 instrument.

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

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

17 **APPLICABILITY.** (a) AS 13.63, enacted by sec. 2 of this Act, applies to a

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

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

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

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

26 (b) AS 13.26.645, as amended by sec. 1 of this Act, applies to a power of attorney
27 created under AS 13.26.645 on or after the effective date of this Act.

28 (c) In (a) of this section, "conservator," "fiduciary," "personal representative," "power
29 of attorney," "trustee," and "will" have the meanings given in AS 13.63.190, enacted by sec. 2
30 of this Act.



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919
Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

House Bill 108

"An Act adopting and relating to the Revised Uniform Fiduciary Access to Digital Assets Act"

Sponsor Statement

House Bill 108, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) modernizes Alaska's fiduciary law for the digital age. The bill brings Alaska's fiduciary laws in line with laws existing in other states. The bill is an overlay statute that is designed to work in conjunction with Alaska's current laws on probate, guardianship, trusts, and powers of attorney.

RUFADAA extends the powers of fiduciaries to include management of a person's digital assets. Fiduciaries are the people appointed to manage another persons' property when they die or lose the capacity to manage it themselves. Common types of fiduciaries include executors of a decedent's estate, trustees, conservators, and agents under a power of attorney. Under current Alaska law, fiduciaries are limited in their abilities to manage digital assets. They are often prevented from accessing those accounts by password protection or restrictive terms of service.

This act provides legal authority for fiduciaries to manage digital property like computer files, web domains, and virtual currency. In order to maintain user privacy, the act also restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

House Bill 108 addresses the four types of fiduciaries: Executors or administrator of deceased persons' estates; court-appointed guardians or conservators of protected persons' estates; agents appointed under powers of attorney; and trustees. In order to gain access to the digital assets, House Bill 108 requires a fiduciary to send a request to the custodian, accompanied by a certified copy of the document granting fiduciary authority. Custodians of digital assets that receive a request for access are immune from any liability for acts done in good faith compliance.

In the internet age, the nature of property and our methods of communication have dramatically changed from what was common a generation ago. For most Alaskans today, regardless of demographic, it is commonplace for at least some of their property and communication to be stored as data on a server or accessed through the internet. House Bill 108 is designed to modernize our fiduciary law for the digital age.



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919
Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

CS for House Bill 108 (JUD): Explanation of Changes Version J to Version U

CSHB108 Version U was amended to include 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.



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919
Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

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.



Alaska State Legislature

Representative Matt Claman

Session: State Capitol, Rm 118 Juneau, AK 99801 Phone: 465-4919
Interim: 1500 W. Benson Blvd., Anch, AK 99503 Phone: 269-0130

House Bill 108

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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 2 of the bill sets out applicability of the act.



Contact Us: 312.450.6600

Legislative Fact Sheet - Fiduciary Access to Digital Assets Act, Revised (2015)

Act Fiduciary Access to Digital Assets Act, Revised (2015)

Origin Completed by the Uniform Law Commission in 2014 and Revised in 2015.

Description A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person's best interest. Common types of fiduciaries include executors of a decedent's estate, trustees, conservators, and agents under a power of attorney. This act extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

Endorsements Association of American Retired Persons
Center for Democracy and Technology
Facebook
Google
National Academy of Elder Law Attorneys

Enactments Arizona, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Maryland, Michigan, Minnesota, Nebraska, New York, North Carolina, Oregon, South Carolina, Tennessee, Washington, Wisconsin, Wyoming

2016 Introductions Alabama, Iowa, Louisiana, Maine, Mississippi, New Jersey, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, West Virginia

Staff Liaison(s) Katie Robinson, Benjamin Orzeske

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A Few Facts about
THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

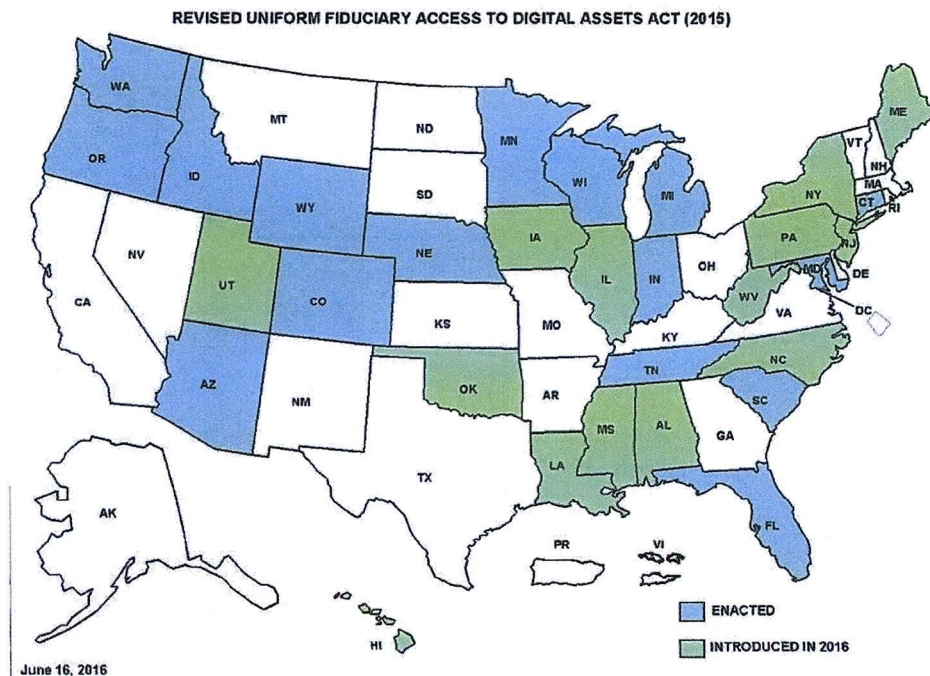
PURPOSE: The Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) updates state fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary receives legal authority to manage or distribute the person's property as appropriate. Most people now own a great variety of digital assets, including photographs, documents, social media accounts, web sites, and more, some of which present special privacy concerns. Revised UFADAA provides the legal authority for a fiduciary to manage digital assets in accordance with the user's estate plan, while ensuring that a user's private electronic communications remain private unless the user consented to disclosure.

ORIGIN: Completed by the Uniform Law Commission in 2014 and revised in 2015.

ENDORSED BY: AARP, National Academy of Elder Law Attorneys, Facebook, Google, The Center for Democracy and Technology.

APPROVED BY: American Bar Association

ENACTED BY:



For further information about Revised UFADAA, please contact ULC Legislative Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.



THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

- A Summary -

In the Internet age, the nature of property and our methods of communication have changed dramatically. A generation ago, a human being delivered our mail, photos were kept in albums, documents in file cabinets, and money on deposit at the corner bank. For most people today, at least some of their property and communications are stored as data on a computer server and accessed via the internet.

Collectively, a person's digital property and electronic communications are referred to as "digital assets" and the companies that store those assets on their servers are called "custodians." Access to digital assets is usually governed by a terms-of-service agreement rather than by property law. This creates problems when internet users die or otherwise lose the ability to manage their own digital assets.

A fiduciary is a trusted person with the legal authority to manage another's property, and the duty to act in that person's best interest. The Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) addresses four common types of fiduciaries:

1. Executors or administrators of deceased persons' estates;
2. Court-appointed guardians or conservators of protected persons' estates;
3. Agents appointed under powers of attorney; and
4. Trustees.

Revised UFADAA gives internet users the power to plan for the management and disposition of their digital assets in the same way they can make plans for their tangible property. In case of conflicting instructions, the act provides a three-tiered system of priorities:

1. If the custodian provides an online tool, separate from the general terms of service, that allows the user to name another person to have access to the user's digital assets or to direct the custodian to delete the user's digital assets, Revised UFADAA makes the user's online instructions legally enforceable.
2. If the custodian does not provide an online planning option, or if the user declines to use the online tool provided, the user may give legally enforceable directions for the disposition of digital assets in a will, trust, power of attorney, or other written record.
3. If the user has not provided any direction, either online or in a traditional estate plan, the terms of service for the user's account will determine whether a fiduciary may access the user's digital assets. If the terms of service do not address fiduciary access, the default rules of Revised UFADAA will apply.

Revised UFADAA's default rules attempt to balance the user's privacy interest with the fiduciary's need for access by making a distinction between the "content of electronic communications," the "catalogue of electronic communications", and other types of digital assets.

The content of electronic communications includes the subject line and body of a user's email messages, text messages, and other messages between private parties. A fiduciary may never access the content of electronic communications without the user's consent. When necessary, a fiduciary may have a right to access a catalogue of the user's electronic communications – essentially a list of communications showing the addresses of the sender and recipient, and the date and time the message was sent.

For example, the executor of a decedent's estate may need to access a catalogue of the decedent's communications in order to compile an inventory of estate assets. If the executor finds that the decedent received a monthly email message from a particular bank or credit card company, the executor can contact that company directly and request a statement of the decedent's account.

Other types of digital assets are not communications, but intangible personal property. For example, an agent under a power of attorney who has authority to access the principal's business files will have access under Revised UFADAA to any files stored in "the cloud" as well as those stored in file cabinets. Similarly, an executor that is distributing funds from the decedent's bank account will also have access to the decedent's virtual currency account (e.g. bitcoin).

Under Revised UFADAA Section 15, fiduciaries for digital assets are subject to the same fiduciary duties that normally apply to tangible assets. Thus, for example, an executor may not publish the decedent's confidential communications or impersonate the decedent by sending email from the decedent's account. A fiduciary's management of digital assets may also be limited by other law. For example, a fiduciary may not copy or distribute digital files in violation of copyright law, and may not exceed the user's authority under the account's terms of service.

In order to gain access to digital assets, Revised UFADAA requires a fiduciary to send a request to the custodian, accompanied by a certified copy of the document granting fiduciary authority, such as a letter of appointment, court order, or certification of trust. Custodians of digital assets that receive an apparently valid request for access are immune from any liability for acts done in good faith compliance.

Revised UFADAA is an overlay statute designed to work in conjunction with a state's existing laws on probate, guardianship, trusts, and powers of attorney. It is a vital statute for the digital age, and should be enacted by every state legislature as soon as possible.

For further information about Revised UFADAA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
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www.uniformlaws.org

WHY YOUR STATE SHOULD ADOPT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

The Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) modernizes fiduciary law for the Internet age. Fiduciaries are the people appointed to manage our property when we die or lose the capacity to manage it ourselves. Nearly everyone today has digital assets, such as documents, photographs, email, and social media accounts, and fiduciaries are often prevented from accessing those accounts by password protection or restrictive terms of service. Digital assets may have real value, both monetary and sentimental, but they also present novel privacy concerns. UFADAA provides legal authority for fiduciaries to manage digital assets in accordance with the user's estate plan, while protecting a user's private communications from unwarranted disclosure.

- ***Revised UFADAA gives Internet users control.*** Revised UFADAA allows users to specify whether their digital assets should be preserved, distributed to heirs, or destroyed.
- ***Revised UFADAA provides efficient uniformity for all concerned.*** Digital assets travel across state lines nearly instantaneously. In our modern mobile society, people relocate more often than ever. Because state law governs fiduciaries, a uniform law ensures that fiduciaries in every state will have equal access to digital assets and custodians will have a single legal standard with which to comply.
- ***Revised UFADAA respects privacy interests.*** Private communications like email and social media conversations are protected by federal privacy law. Revised UFADAA prevents the companies that store our communications from releasing them to fiduciaries unless the user consented to disclosure.
- ***Revised UFADAA addresses four common types of fiduciaries.*** Revised UFADAA provides appropriate default rules governing access to digital assets for executors of a decedent's estate, agents under a power of attorney, conservators, and trustees.
- ***Revised UFADAA works hand-in-hand with federal and state law.*** Under Revised UFADAA, fiduciaries must provide proof of their authority in the form of a certified document. Custodians of digital assets that comply with a fiduciary's apparently authorized request for access are immune from any liability under statutes that prohibit unauthorized access. A fiduciary's authority over digital assets is limited by federal law, including the Copyright Act and the Electronic Communications Privacy Act.

For further information about Revised UFADAA, please contact ULC Legislative Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

October 12, 2015

Uniform Law Commission
111 N. Wabash Avenue
Suite 1010
Chicago, Illinois 60602

Dear Uniform Law Commission:

Facebook appreciates the work of the ULC commissioners and staff in crafting a uniform act – the Revised Uniform Fiduciary Access to Digital Assets Act (“RUFADAA”) – which we believe creates a reasonable compromise regarding disposition of digital accounts upon death or incapacitation. We support the enactment of RUFADAA by state legislatures.

Recognizing that this is a sensitive issue involving an extremely complicated legal landscape and each state must conform RUFADAA to its own statutes, we will need to review proposed bills individually before determining our position. Uniformity in state law on this issue is important to Facebook and we are unlikely to support language that materially differs from RUFADAA.

Again, we appreciate the hard work of the ULC on this issue.

Sincerely,



Dan Sachs
Manager, State Policy
Facebook, Inc.

facebook

1 Hacker Way
Menlo Park, CA 94025



25 Massachusetts Ave., NW
Washington, DC 20001
Phone: 202-346-1100

October 13, 2015

Ben Orzeske
Chief Counsel
Uniform Law Commission
111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602

Dear Mr. Orzeske:

I am writing to express Google's support for the Revised Uniform Fiduciary Access to Digital Assets Act. We are pleased to have found common accord with the Uniform Law Commission in both of our efforts to address access issues to digital information of decedents and others.

The revised Uniform Act accommodates the needs of settling and administering estates, providing full or limited access to information for guardians, holders of powers of attorney and others assisting people who may be incapacitated, while respecting the account holder's rights to privacy. In addition to commitments made to users, custodians' obligations under the federal Electronic Communications Privacy Act prohibit disclosures of content or account information except under specific circumstances. The Uniform Act appropriately recognizes these limitations and provides a consistent framework for anyone petitioning for information related to the contents of another's account.

Support for this legislation extends only as far as bills based on the Uniform Act remain consistent with it and we reserve the right to support or oppose individual bills based on the Uniform Act after their review.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Barnes", is positioned above the typed name.

Ron Barnes
Head of State Legislative Affairs



PEAK TRUST COMPANY
Elevated Trust & Wealth Management Solutions

February 2, 2017

Senator Shelly Hughes
State Senate
State Capitol Room 125
Juneau AK, 99801

Dear Senator Hughes,

On behalf of Peak Trust Company (formerly, Alaska Trust Company), we would like to emphasize the importance of SB 16/HB 108.

This bill provides a meaningful update to Alaska. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust and estate planning/administration. Our distinctive statutes have made Alaska a top destination for trust and estate business and have provided Alaska with increased revenue, job creation and great benefits for our residents. In order to maintain our "top-tier" status in regard to estate planning, it requires a constant review, appraisal and change to Alaska Statutes.

While Alaska's laws are comprehensive and clear regarding the estate administration of tangible assets (homes, cars and other physical items), we have no statutes regarding the administration or access to digital assets (documents, photographs, email and social media accounts). Without statutory rights, a fiduciary has no authority to access these assets when a client is incapacitated or deceased. Many times, and increasingly so, these digital assets have substantial value and need to be properly managed.

Opponents to SB 16 may raise privacy concerns; however, SB 16 addresses these concerns by adding the ability for an individual to restrict access to certain digital assets. As stated best by the Uniform Law Commission, the bill "provides legal authority for fiduciaries to manage digital assets in accordance with the user's estate plan, while protecting a user's private communications from unwarranted disclosure." (<http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/Revised%202015/Revised%20UFADAA%20-%20Why%20Your%20State%20Should%20Adopt%20-%20Sep%202015.pdf>)

/HB 108

In summary, without SB 16, fiduciaries in Alaska will not be able to serve the best interests of their clients in regard to digital assets. The trust and estate laws of Alaska have brought us all great benefits and have cost the State nothing. We are looking to continue this fortune for years to come and thank you for your support in helping us to achieve this goal.

With this, we would like to voice our strong support for the ratification of Senate Bill 16/HB108 .

Sincerely,

Matthew Blattmachr

Matthew D. Blattmachr

Vice President and Trust Officer



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facebook.com/AARPAK

Representative Matt Claman
State Capitol, Room 118
Juneau, Alaska 99801-1182

February 14, 2017

Re: HB 108– Revised Uniform Fiduciary Access to Digital Assets Act - Support

Dear Rep. Claman,

On behalf of Alaska's 88,000 AARP members, we offer our support for the Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA), House Bill 108. We thank you for your sponsorship and encourage the passage and enactment of this increasingly important legislation.

This proposed legislation is the consequence of our digital age and the increasing role it plays in everyday lives. We have long accepted the legally defined role of conservator, agent, or executor in carrying out fiduciary duties with respect to tangible assets on behalf of a deceased individual or person incapacitated and unable to make decisions. The many accounts an average person now opens and uses digitally for commerce, banking, entertainment, research, and social networking are complex and are protected by each account's rules of privacy. Companies are reluctant to share information when they've promised not to, and it has been no less murky even in the event of a person's death. The importance of being able to close accounts, avoid unnecessary expenses, and prevent unauthorized account use or identity theft requires new approaches to manage these affairs.

This is an issue in which uniformity of practice makes sense. Digital accounts have no geographical or political boundary lines, whether city, state or nation, and should not be subject to probate laws that vary from state to state. Moreover the UFADAA applies to the four most common types of fiduciaries in any jurisdiction:

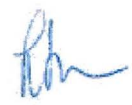
- Executors or administrators of deceased persons' estates
- Court-appointed guardians or conservators of protected persons' estates
- Agents appointed under powers of attorney
- Trustees

The proposed UFADAA would give individuals the opportunity to plan for what happens to their digital estate in the same way that they are now able to plan for their tangible estate. Furthermore, the proposed "revised" version has incorporated concerns of privacy advocates, like the ACLU, and many on-line trade association members, including Facebook, Amazon.com, Google, eBay, Expedia, and others. Google and Facebook endorse the revised UFADAA and the ACLU agreed they would not oppose it. Facebook says the revised UFADAA "creates a reasonable compromise regarding disposition of digital accounts upon death or incapacitation."

AARP Alaska appreciates your leadership, Rep. Claman, for bringing this legislation forward, and we support passage and enactment for the benefit of Alaskans.

Respectfully,


Ken Helander, Advocacy Director


Terry Snyder, AARP State President

Real Possibilities



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Health and Social Services

ALASKA COMMISSION ON AGING

P.O. Box 110693
Juneau, Alaska 99811-0693
Main: 907.465.3250
Fax: 907.465.1398

March 9, 2017

Representative Mat Claman
Alaska State Capitol, Room 118
Juneau, AK 99801-1182

Subject: Support for HB 108, Access to Digital Assets

Dear Representative Claman:

The Alaska Commission on Aging (ACoA) is pleased to offer our support for HB 108, a bill authored by you and co-sponsored by Representative Scott Kawasaki, that would update Alaska's current law to provide a means for the management and disposition of a person's digital legacy by their designated fiduciary. Based on our understanding, HB 108 is in alignment with the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) of 2015, as promulgated by the Uniform Law Commission, which would make Alaska's statute interstate-compatible and provide legal authority to fiduciaries to manage digital assets in the same manner as tangible property. Moreover, the RUFADAA allows owners of digital assets to specify how they would like their assets to be managed by their fiduciaries – identifying what items to preserve, distribute to heirs, and to be destroyed.

Due to technological advances and the increasing number of Internet users, the accumulation of personal digital assets is becoming more commonplace. These assets often include a wide array of personal digital files such as emails, photos, personal documents as well as digital accounts used for financial, business, social media, retail shopping and other on-line applications. Seniors are increasingly becoming on-line users by necessity as well as for pleasure. For example, the federal government now encourages individuals to apply on-line for Social Security, Medicare, and Medicaid benefits and to electronically submit tax returns. Many financial institutions are going paperless and promote on-line banking. In addition, a growing number of seniors use the Internet to connect with family and friends, share photos, and to shop on-line for lower-priced goods and services. Reportedly, the fastest-growing demographic of Facebook users are women between the ages of 50 to 70 years old.

While the majority of adult Internet users presumably would want their loved ones to have access to their digital assets upon their death or in situations when they become incapacitated and unable to make decisions themselves, it is difficult for fiduciaries to gain access to those assets based on current state law. While providing account passwords to a trusted person may provide access to digital content, that strategy would not necessarily grant the trusted person legal authority to access and manipulate the accounts of a deceased or incapacitated person in a court of law without undue hardship and court expense.

The legal landscape can be challenging for fiduciaries, especially when it comes to managing the estates of persons with digital assets. The Commission supports HB 108 and appreciates your leadership on this legislation to modernize fiduciary law in Alaska.

Sincerely,

Handwritten signature of David A. Blacketer in blue ink.

David A. Blacketer
Chair, Alaska Commission on Aging
Cc: Representative Scott Kawasaki

Sincerely,

Handwritten signature of Denise Daniello in blue ink.

Denise Daniello
ACoA Executive Director

My name is Terry Snyder and I am a resident and voter in Palmer. Thank you for hearing my testimony on HB108.

The very nature of property and our methods of communication have changed dramatically. A generation ago, a human being delivered all our mail to our doors, and we kept photos in albums, documents in file cabinets, and money on deposit at the corner bank. For most people today, a great deal of our property and communications now are stored as data on a computer server and accessed via the Internet. Our digital assets have tremendous financial, emotional, and aesthetic value.

And while the internet has made some things easier for most of us it has made it more complicated for others. It has added an extra layer of complexity to those that are left to settle the estates of our friends, family and loved ones, guardians, trustees and agents appointed under a power of attorney.

Passage of this bill will allow Alaskans the power to plan for the management and disposition of their digital assets in the same way they make plans for their tangible property. I see it as an extension of a life directive of sorts.

Thanks to Representative Claman for bringing this forward and I request the committees consideration of passage of this piece of common sense legislation.

**REVISED UNIFORM FIDUCIARY ACCESS TO
DIGITAL ASSETS ACT (2015)**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR
WILLIAMSBURG, VIRGINIA
JULY 10 - JULY 16, 2015

WITHOUT PREFATORY NOTE OR COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 8, 2016

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

SECTION 1. SHORT TITLE. This [act] may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act (2015).

SECTION 2. DEFINITIONS. In this [act]:

(1) “Account” means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) “Agent” means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) “Carries” means engages in the transmission of an electronic communication.

(4) “Catalogue of electronic communications” means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) “[Conservator]” means a person appointed by a court to manage the estate of a living individual. The term includes a limited [conservator].

(6) “Content of an electronic communication” means information concerning the substance or meaning of the communication which:

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

(B) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(C) is not readily accessible to the public.

(7) “Court” means the [insert name of court in this state having jurisdiction in matters

relating to the content of this act].

(8) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.

(10) “Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic communication” has the meaning set forth in 18 U.S.C. Section 2510(12)[, as amended].

(13) “Electronic-communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) “Fiduciary” means an original, additional, or successor personal representative, [conservator], agent, or trustee.

(15) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal

entity.

(18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this [act].

(19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

(20) "Principal" means an individual who grants authority to an agent in a power of attorney.

(21) "[Protected person]" means 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.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14)[, as amended].

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(26) "User" means a person that has an account with a custodian.

(27) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

Legislative Note: In paragraphs (5) and (21), an enacting jurisdiction should replace the bracketed language with local terminology, if different. Enacting jurisdictions should insert the appropriate court in paragraph (7) that would have jurisdiction over matters relating to this act. In jurisdictions in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in paragraphs (12) and (23).

SECTION 3. APPLICABILITY.

(a) This [act] applies to:

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

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

(3) a [conservatorship] proceeding commenced before, on, or after [the effective date of this [act]]; and

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

(b) This [act] applies to a custodian if the user resides in this state or resided in this state at the time of the user’s death.

(c) This [act] does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

Legislative Note: In subsection (a)(3), an enacting jurisdiction should replace the bracketed language with local terminology, if different.

SECTION 4. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.

(a) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user’s digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at

all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

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

SECTION 5. TERMS-OF-SERVICE AGREEMENT.

(a) This [act] does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

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

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under Section 4.

SECTION 6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.

(a) When disclosing digital assets of a user under this [act], the custodian may at its sole discretion:

- (1) grant a fiduciary or designated recipient full access to the user's account;
- (2) grant a fiduciary or designated recipient partial access to the user's account

sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

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

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this [act].

(c) A custodian need not disclose under this [act] a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this [act] some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

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

SECTION 7. DISCLOSURE OF CONTENT OF ELECTRONIC

COMMUNICATIONS OF DECEASED USER. If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a [certified] copy of the death certificate of the user;

(3) a [certified] copy of [the letter of appointment of the representative or a small-estate affidavit or court order];

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) if requested by the custodian:

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

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

(C) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A);

(ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq.[, as amended], 47 U.S.C. Section 222[, as amended], or other applicable law;

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

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

Legislative Note: *In jurisdictions that certify legal documents, the word "certified" should be included in paragraphs (2) and (3). Other jurisdictions may substitute a word or phrase that conforms to the local practice for authentication. Enacting jurisdictions should insert into paragraph (3) the local term given to a document that authorizes a personal representative to administer a decedent's estate. In jurisdictions in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in paragraph (5)(C)(ii).*

SECTION 8. DISCLOSURE OF OTHER DIGITAL ASSETS OF DECEASED

USER. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) a [certified] copy of the death certificate of the user;
- (3) a [certified] copy of [the letter of appointment of the representative or a small-estate affidavit or court order]; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
 - (B) evidence linking the account to the user;
 - (C) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or
 - (D) a finding by the court that:
 - (i) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A); or
 - (ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Legislative Note: In jurisdictions that certify legal documents, the word "certified" should be included in paragraphs (2) and (3). Other jurisdictions may substitute a word or phrase that conforms to the local practice for authentication. Enacting jurisdictions should insert into paragraph (3) the local term given to a document that authorizes a personal representative to administer a decedent's estate.

SECTION 9. DISCLOSURE OF CONTENT OF ELECTRONIC

COMMUNICATIONS OF PRINCIPAL. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
- (3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- (4) if requested by the custodian:
 - (A) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
 - (B) evidence linking the account to the principal.

SECTION 10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- (1) a written request for disclosure in physical or electronic form;
- (2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

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

(4) if requested by the custodian:

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

(B) evidence linking the account to the principal.

SECTION 11. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS ORIGINAL USER. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

SECTION 12. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

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

(2) a certified copy of the trust instrument[or a certification of the trust under [cite trust-certification statute, such as Uniform Trust Code Section 1013]] that includes consent to disclosure of the content of electronic communications to the trustee;

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

trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

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

(B) evidence linking the account to the trust.

SECTION 13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST

WHEN TRUSTEE NOT ORIGINAL USER. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

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

(2) a certified copy of the trust instrument[or a certification of the trust under [cite trust-certification statute, such as Uniform Trust Code Section 1013]];

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

(4) if requested by the custodian:

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

(B) evidence linking the account to the trust.

SECTION 14. DISCLOSURE OF DIGITAL ASSETS TO [CONSERVATOR] OF [PROTECTED PERSON].

(a) After an opportunity for a hearing under [state conservatorship law], the court may grant a [conservator] access to the digital assets of a [protected person].

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a [conservator] the catalogue of electronic communications sent or received by a [protected person] and any digital assets, other than the content of electronic communications, in which the [protected person] has a right or interest if the [conservator] gives the custodian:

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

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

(3) if requested by the custodian:

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

(B) evidence linking the account to the [protected person].

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

Legislative Note: Throughout this section, an enacting jurisdiction should replace the bracketed terms [conservator] and [protected person] with local terminology, if different. In jurisdictions that certify legal documents, the word "certified" should be included in subsections (b) and (c). Other jurisdictions may substitute a word or phrase that conforms to the local practice for authentication.

SECTION 15. FIDUCIARY DUTY AND AUTHORITY.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

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

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

- (1) except as otherwise provided in Section 4, is subject to the applicable terms of service;
- (2) is subject to other applicable law, including copyright law;
- (3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and
- (4) may not be used to impersonate the user.

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

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, [protected person], principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including [this state's law on unauthorized computer access].

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

(1) has the right to access the property and any digital asset stored in it; and
(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including [this state's law on unauthorized computer access].

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

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

(1) if the user is deceased, a [certified] copy of the death certificate of the user;
(2) a [certified] copy of the [letter of appointment of the representative or a small-estate affidavit or court order,] court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) if requested by the custodian:

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

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

(C) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (A).

Legislative Note: States with a computer trespass statute should cite to it in subsections (d) and (e), and may want to amend those statutes to be in accord with this act. In jurisdictions that certify legal documents, the word "certified" should be included in subsection (g). Other jurisdictions may substitute a word or phrase that conforms to the local practice for authentication. In subsections (c) and (e), an enacting jurisdiction should replace the bracketed language with local terminology, if different.

SECTION 16. CUSTODIAN COMPLIANCE AND IMMUNITY.

(a) Not later than [60] days after receipt of the information required under Sections 7 through 15, a custodian shall comply with a request under this [act] from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702[, as amended].

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

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

(e) This [act] does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this [act] to obtain a court order which:

- (1) specifies that an account belongs to the [protected person] or principal;
- (2) specifies that there is sufficient consent from the [protected person] or principal] to support the requested disclosure; and
- (3) contains a finding required by law other than this [act].

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

Legislative Note: In jurisdictions in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b). In subsection (e), an enacting jurisdiction should replace the bracketed language with local terminology, if different.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this 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.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[**SECTION 19. SEVERABILITY.** If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if the jurisdiction lacks a general severability statute or a decision by the highest court of the jurisdiction stating a general rule of severability.

SECTION 20. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 21. EFFECTIVE DATE. This [act] takes effect....

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 108
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB108-LAW-CIV-03-03-17
Title: FIDUCIARY ACCESS TO DIGITAL ASSETS
Sponsor: CLAMAN
Requester: (H) Labor & Commerce

Department: Department of Law
Appropriation: Civil Division
Allocation: Commercial and Fair Business
OMB Component Number: 2717

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Valerie Rose, Budget Analyst	Phone:	(907)465-3674
Division:	Administrative Services Division	Date:	03/03/2017 10:06 AM
Approved By:	Jahna Lindemuth, Attorney General	Date:	03/03/17
Agency:	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB 108

Analysis

HB 108 would amend AS 13 (Decedents' Estates, Guardianships, Transfers, Trusts, and Health Care Decisions) to add the Revised Uniform Fiduciary Access to Digital Assets Act. A fiduciary is a person who manages the property of another person, subject to strict duties to act in the other person's best interest. Common types of fiduciaries include executors of an estate, trustees, conservators, and agents under a power of attorney. This bill would extend the power of a fiduciary to include management of a person's digital assets. A digital asset means an electronic record in which an individual has a right or interest. Access to digital assets is usually governed by a terms-of-service agreement rather than by property or estate law.

The bill would provide ways for a person to decide what should happen to their digital assets at the person's death or incapacity, and establishes a priority system in the case of conflicting instructions (AS 13.63.010). The bill also addresses contracts relating to digital assets, procedures for disclosing digital assets, disclosure of the content of the digital assets of a deceased user or principal, as well as addresses rules for disclosure of digital assets held in trust or in a conservatorship. Proposed AS 13.63.120 would address the duties and authorities of a fiduciary, including the fiduciary's duties that apply to the management of digital assets.

Under proposed AS 13.63.160, the chapter would not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business. Further, the bill would provide definitions specific to the uniform act.

The Department of Law anticipates no fiscal impact should this bill become law.