

HB

108

<TARGET><BILL>HB 108</BILL><SUBJECT>HB
108</SUBJECT><COMM>SJUD30</COMM></TARGET>



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; and relating to a specific electronic communications power that a principal may select for an agent under the statutory form power of attorney.”

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 R

CSHB108 Version R 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.



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.



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

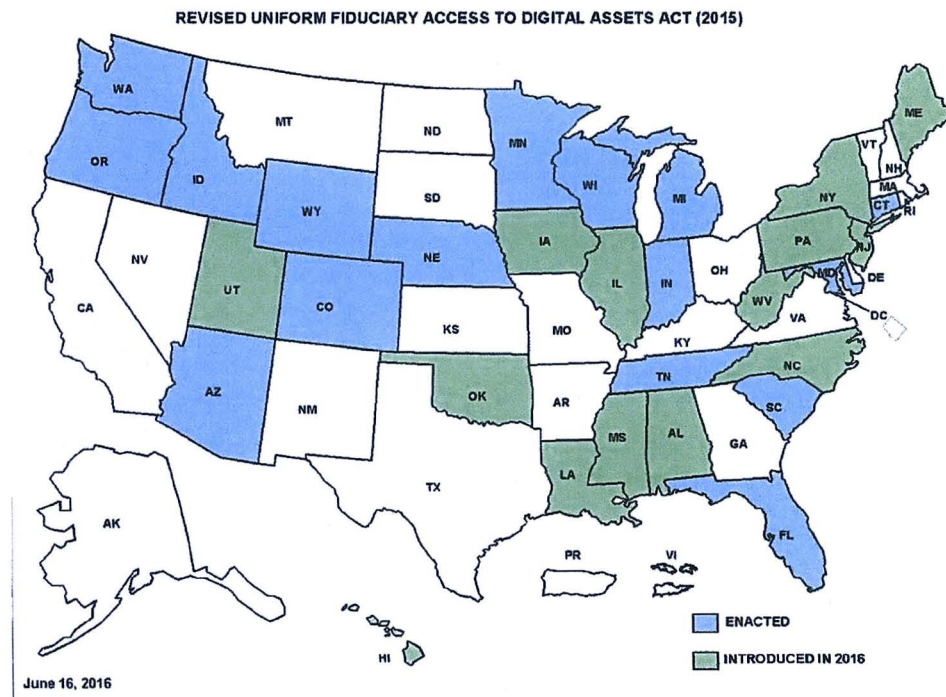
PURPOSE: The Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) updates state fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary receives legal authority to manage or distribute the person's property as appropriate. 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.



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

[Home](#) | [Acts](#) | [Committees](#) | [Legislation](#) | [Meetings](#) | [News](#) | [About ULC](#)

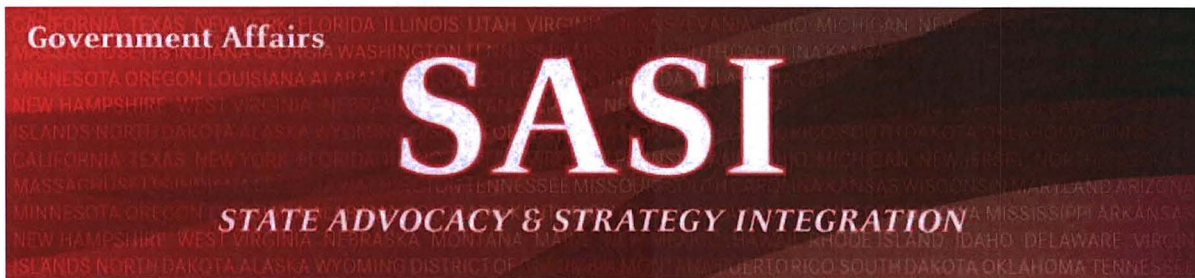


WHY YOUR STATE SHOULD ADOPT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

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.



Technological Requiems: The Uniform Fiduciary Access to Digital Assets Act

Family caregivers may manage their loved one's money by way of a legal power of attorney or guardianship or by less formal ways like organizing monthly bills. Sometimes, they continue to serve in this capacity after the death of their love one in settling an estate. With so much of the 21st century American lifestyle being lived out on and surrounded by online technologies, confusion exists in state laws about who ultimately controls these digital assets when loved ones pass away. Some fear that without updates which allow for the deactivation of online accounts, a deceased's social media, bank and other online accounts could remain active and become vulnerable to security issues such as e-vandalism, identity theft, and exploitation.

Probate laws, which govern the transfer of property at death, vary significantly from state to state. And with the rapid increase of an individual's online presence, state laws vary on whether or not the caregiver can access or deactivate their loved one's online accounts, including social media. States are now grappling with who owns online accounts of a deceased loved one and many are looking at a new uniform law for guidance.

What is UFADAA?

In 2014 the Uniform Law Commission (ULC) approved the Uniform Fiduciary Access to Digital Assets Act (UFADAA), which seeks to minimize the variation of state probate laws and extend them to cover online accounts. The UFADAA also seeks to protect the digital assets of an individual who passed away by giving their designated fiduciaries control of those assets much the same as the fiduciary would already have access to their tangible assets.

The UFADAA applies to the four most common types of fiduciaries

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

Under the UFADAA, individuals have the opportunity to plan for what happens to their digital estate in the same way that they now plan for their tangible estate. For example, an executor of an estate, under the UFADAA, may access a descendant's email account in order to make inventory of essential information, like bank accounts, as well as close the account in a timely manner.

The UFADAA is designed to supplement current state statute on probate, guardianship, trusts and powers of attorney. Essentially in order to be allowed access to accounts under UFADAA, a fiduciary is required 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.

Current Status of UFADAA

Since it was approved in 2014, a modified UFADAA was enacted in Delaware, and the full version of the act was introduced in 27 states during the 2015 legislative session. Thus far, there are no further enactments, partly due to opposition from technology companies and privacy advocates.

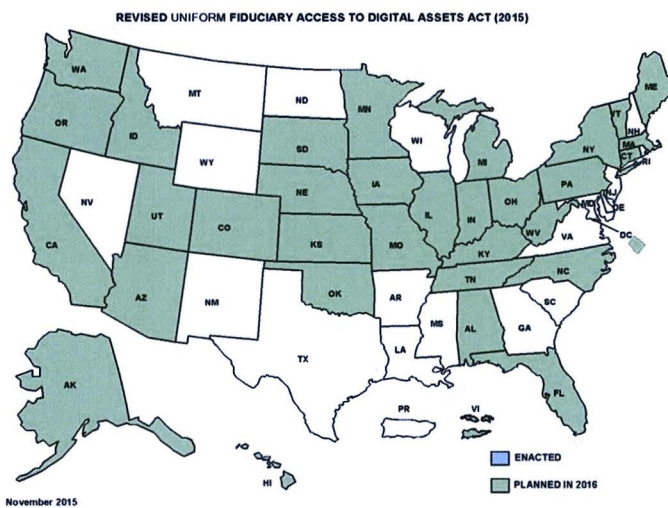
Privacy advocates, like the ACLU, expressed concerns about the possibility of oversight concerning an individual's wishes to not disclose certain instances of electronic communications but withdrew opposition in most instances upon learning the UFADAA includes language to honor those wishes.

In a [letter](#) to members of the Connecticut state legislature, Tammy Cota, the executive director of the Internet Coalition, a trade association whose members include (1-800-Flowers, Amazon.com, Expedia, Experian, eBay, Facebook, FTD, Google, Match.com, and Yahoo!), urged members not to advance UFADAA, because they assert it would allow the fiduciary unlimited access to all electronic communications on an individual's online account, not just those related to the estate.

To counter UFADAA, a coalition of internet companies drafted the Privacy Expectation Afterlife and Choices Act (PEAC). This act would, among other things, allow an executor to access to digital assets only with a court order, regardless of previous fiduciary roles, legal or otherwise. A modified version of this act was enacted in Virginia in 2015. There is a [comparison chart](#) in the SASI library of the two acts.

Throughout the ULC drafting process, which began in 2012, technology companies, lawyers, advocates and any other interested parties were invited to participate. However, most of the concerns were not raised until bills were introduced in state legislatures. Nonetheless, throughout 2015 both sides met to compare components of the PEAC act and the UFADAA to discuss privacy and liability concerns.

These conversations lead to revisions of the UFADAA to clarify what types of access a fiduciary will have to an individual's account. Highlights include language that would further protect an individual's privacy, allows the named beneficiary of current user agreements to continue to



serve in that capacity, and revisions that also incorporate data catalogs as an alternative when no written will exists. These data catalogs would only include a list of the sent and received messages and not the messages themselves. This allows for the fiduciary to contact those in communication with their loved one and carry out the wishes of the deceased without being given the entirety of electronic messages.

Since the revision, Facebook and Google have endorsed the UFADAA and the ACLU agreed they would not oppose. In a [letter](#) to the ULC, Google was “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.” Facebook also sent a [letter](#) to the ULC saying that the revised UFADAA, “creates a reasonable compromise regarding disposition of digital accounts upon death or incapacitation.” Going forward, both letters also mention the need for review as states consider the revised UFADAA.

AARP State Advocacy

During the 2015 state legislative session, several state offices were approached by state uniform law commissioners, legislators or other stakeholders requesting support or opposition to the UFADAA, and all remained neutral. The primary reason was the lack of policy on the issue. However, the 2015 AARP policy book modified language on estate planning. Specifically, AARP policy supports state efforts to simplify, modify, and clarify estate planning, and support of state efforts to enact laws like the Uniform Fiduciary Access to Digital Assets Act that would allow fiduciaries to treat digital assets in the same manner as tangible assets.

Similar to 2015, the Uniform Law Commission is anticipating a large number of introductions during the 2016 legislative session (see map). AARP state offices may be contacted by interested parties regarding the legislation.

For More Information

For more information on the UFADAA, guardianship, power of attorney or other probate issues, please visit the SASI library or contact Diana Noel, Senior Legislative Representative.

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.



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,

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



3601 C Street, #1420 | Anchorage, AK 99503
1-866-227-7447 | Fax: 907-341-2270 | TTY: 1-877-434-7598
aarp.org/ak | ak@aarp.org | twitter: @aarpalaska
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:

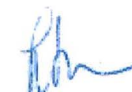
- Executors or administrators of deceased persons' estates
- Court-appointed guardians or conservators of protected persons' estates
- Agents appointed under powers of attorney
- Trustees

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

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.



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