

SB

16

<TARGET><BILL>SB 16</BILL><SUBJECT>SB
16</SUBJECT><COMM>SJUD30</COMM></TARGET>

Alaska State Legislature

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Senator Shelley Hughes

Senate District F – Greater Palmer, Butte, Fairview Loop, Eklutna, Chugiak, Peters Creek, Lazy Mountain

SB 16 Digital Assets Act

Sponsor Statement

Senate Bill 16, the Digital Asset Act (DAA) updates Alaska's fiduciary law for our digital and internet age. Under current law, fiduciaries in Alaska are curtailed in doing their legally mandated job in the area of digital assets. The DAA allows fiduciaries to fulfill their duties as it relates to digital assets.

In the internet age, the nature of property and our methods of communication have dramatically changed from what was common a generation ago. Regardless of demographics, it is commonplace today for at least some of Alaskans property and communications such as photos, music, personal documents and others personal digital property, to be stored as data on a server or accessed through 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 known as "custodians". Access to these digital assets are governed by the terms-of-services agreements that a user must agree to when registering and not by property law. This creates a challenge when a user dies or is otherwise incapacitated to the point where they are not able to properly manage these digital assets.

For example, recently a United States Marine was killed in action while serving in Iraq and his father tried to access his deceased son's yahoo mail account in order to settle any outstanding financial affairs. Yahoo denied access, citing its terms of service agreement. The father filed suit in the state's probate court and the court ordered Yahoo to release the emails to the father.

The passage of a law such as Senate Bill 16 would allow the fiduciary (the father) to access that information more easily than current statute allows, and without the expense of a court suit. A fiduciary is a trusted person with the legal authority to manage property on behalf of another and to act in that person's best interest. SB 16 addresses the four types of fiduciaries: Executors or administrator of a 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, if the standards in SB 16 are met, the law would then require 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 valid request for access are immune from any liability for acts done in good faith compliance.

SB 16 is an overlay statute that is designed to work in conjunction with Alaska's current laws on probate, guardianship, trusts, and powers of attorney and is a vital statutory update for our current digital age.

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Senate Bill 16 Revised Uniform Access to Digital Assets Act

Sectional Analysis

“An Act relating to the Revised Uniform Fiduciary Access to Digital Assets Act”

Section 1 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.²

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 2 of the bill sets out applicability of the act.

Staff contact: Buddy Whitt, (907) 465-5265



A Few Facts about

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

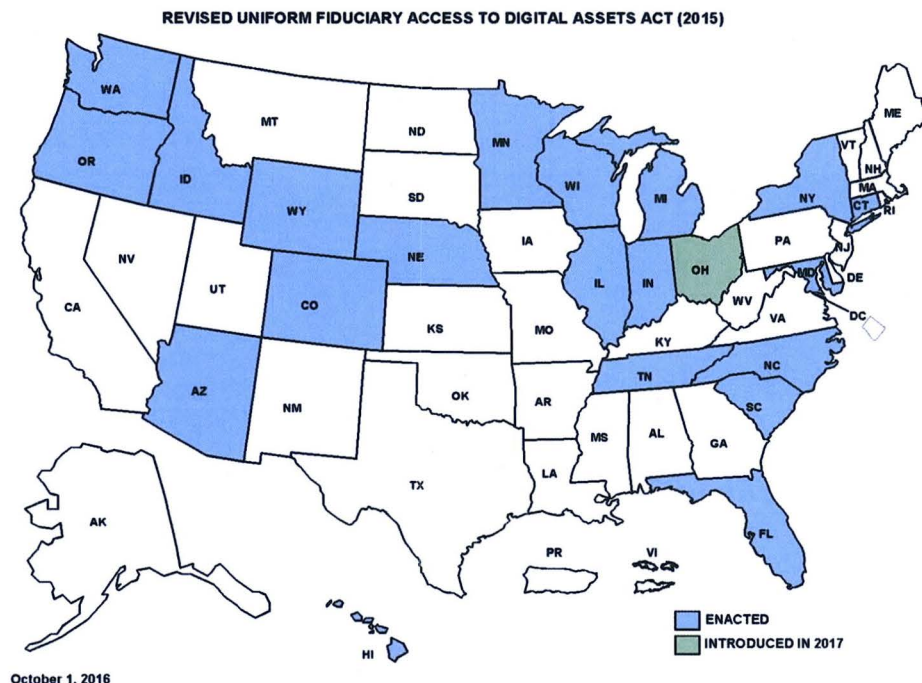
PURPOSE: The Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) updates state fiduciary law for the Internet age. When a person dies or loses the capacity to manage his or her affairs, a fiduciary receives legal authority to manage or distribute the person's property as appropriate. Most people now have 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 Chief Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.

COMPARISON OF THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (ORIGINAL UFADAA), THE PRIVACY EXPECTATIONS AFTERLIFE AND CHOICES ACT (PEAC ACT), AND THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (REVISED UFADAA)

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Estate representative's access to the <i>content of a decedent's electronic communications</i> .	Permitted unless the decedent opted out while alive.	Not permitted unless a court finds that the decedent consented to disclosure and the estate indemnifies the custodian. The request must specifically identify the account.	Not permitted unless the decedent consented to disclosure. Custodian may request a court order specifically identifying the account and finding consent. Indemnification not required.
Estate representative's access to <i>other digital assets</i> of a decedent.	Permitted unless the decedent opted out while alive.	Unless the decedent opted out, access to one year's worth of records permitted with a court order only if relevant to resolve fiscal assets of the estate.	Permitted unless the decedent opted out or the court directs otherwise. Custodian may request a court order specifically identifying the account and finding that access is reasonably necessary for estate administration.
Conservator's access to the <i>content of a protected person's electronic communications</i> .	Permitted if access ordered by the court.	Not addressed.	Custodian need not disclose contents without the express consent of the protected person, but may suspend or terminate an account for good cause if requested by the conservator.
Conservator's access to <i>other digital assets</i> of a protected person.	Permitted if access ordered by the court.	Not addressed.	Permitted if authorized by the conservatorship order. Custodian may require specific identification of the account and evidence linking the account to the protected person.
Agent's access to the <i>content of a principal's electronic communications</i> .	Permitted if expressly authorized by the principal.	Not addressed.	Permitted if expressly authorized by the principal. Custodian may require specific identification of the account and evidence linking the account to the principal.

COMPARISON OF THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (ORIGINAL UFADAA), THE PRIVACY EXPECTATIONS AFTERLIFE AND CHOICES ACT (PEAC ACT), AND THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (REVISED UFADAA)

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Agent's access to <i>other digital assets</i> .	Permitted under a grant of general or specific authority.	Not addressed.	Permitted under a grant of general or specific authority. Custodian may require specific identification of the account and evidence linking the account to the principal.
Trustee's access to the <i>contents of electronic communications</i> of a trust account.	Permitted unless prohibited by the user, trust, or court.	Not addressed.	Permitted when trustee is the original user. Also permitted when the trustee is not the original user if authorized by the trust. Custodian may require specific identification of the account and evidence linking the account to the trust.
Trustee's access to <i>other digital assets</i> of the trust.	Permitted unless prohibited by the user, trust, or court.	Not addressed.	Permitted unless prohibited by the user, trust, or court. Custodian may require specific identification of the account and evidence linking the account to the trust.

COMPARISON OF THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (ORIGINAL UFADAA), THE PRIVACY EXPECTATIONS AFTERLIFE AND CHOICES ACT (PEAC ACT), AND THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (REVISED UFADAA)

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Effect of boilerplate term-of-service prohibiting fiduciary access.	A blanket prohibition on fiduciary access is void as against public policy.	Not specifically addressed, but terms-of-service arguably enforceable by the reference to "other applicable law" (i.e. contract law) in Sec. 3(c).	Three tiered approach: <ol style="list-style-type: none"> 1. A user's direction using an online tool prevails over an offline direction and over the terms-of-service <i>if</i> the direction can be modified or deleted at all times. 2. A user's direction in a will, trust, power of attorney, or other record prevails over the boilerplate terms-of-service. 3. If a user provides no direction, the terms-of-service control, or other law controls if the terms-of-service are silent on fiduciary access.
Effect of other terms-of-service.	Not addressed.	Recipient has no greater rights than the user.	Unless they conflict with a user's direction, terms-of-service are preserved and the fiduciary has no greater rights than the user.

COMPARISON OF THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (ORIGINAL UFADAA), THE PRIVACY EXPECTATIONS AFTERLIFE AND CHOICES ACT (PEAC ACT), AND THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (REVISED UFADAA)

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Procedure for disclosing digital assets.	Not addressed, but use of the term “access” throughout the act arguably contemplates the fiduciary logging on to the user’s account.	Provider not required to allow a requesting party to assume control of a deceased user’s account.	The custodian has three options for disclosing digital assets: <ol style="list-style-type: none"> 1. Allow the requestor to access the user’s account. 2. Allow the requestor to partially access the user’s account if sufficient to perform the necessary tasks. 3. Provide the requestor with a “data dump” of all digital assets held in the account.
Administrative fees.	Not addressed.	Not addressed.	A custodian may assess a reasonable administrative charge for the cost of disclosing a user’s digital assets.
Deleted assets.	Not addressed.	Deleted assets need not be disclosed.	Deleted assets need not be disclosed.
Unduly burdensome requests.	Not addressed.	Court shall quash an unduly burdensome order.	A request for some, but not all, of a user’s digital assets need not be fulfilled if segregation is unduly burdensome. Instead, either party may petition the court for further instructions.
Fiduciary duties.	Incorporated by a generic reference to “other law.”	Not addressed.	Expressly incorporated.

COMPARISON OF THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (ORIGINAL UFADAA), THE PRIVACY EXPECTATIONS AFTERLIFE AND CHOICES ACT (PEAC ACT), AND THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (REVISED UFADAA)

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Account termination.	Not addressed.	Not addressed.	If termination would not violate a fiduciary duty, the fiduciary may request account termination rather than disclosure of assets. A custodian may require specific identification of the account and evidence linking the account to the user.
Joint accounts.	Not addressed.	Custodian need not disclose if aware of any lawful access to the account following the death of the user.	Custodian need not disclose if aware of any lawful access to the account after receipt of the disclosure request.
Timely compliance.	Required within [60] days, or fiduciary may request an order of compliance.	Not addressed.	Required within [60] days, or fiduciary may request an order of compliance. The order must contain a finding that disclosure does not violate 18 U.S.C. § 2702.
Custodian immunity.	Custodian is immune from liability for an act or omission done in good faith compliance with the act.	Custodian not liable for compliance in good faith with a court order issued pursuant to the act.	Custodian is immune from liability for an act or omission done in good faith compliance with the act.



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.



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 Chief 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.

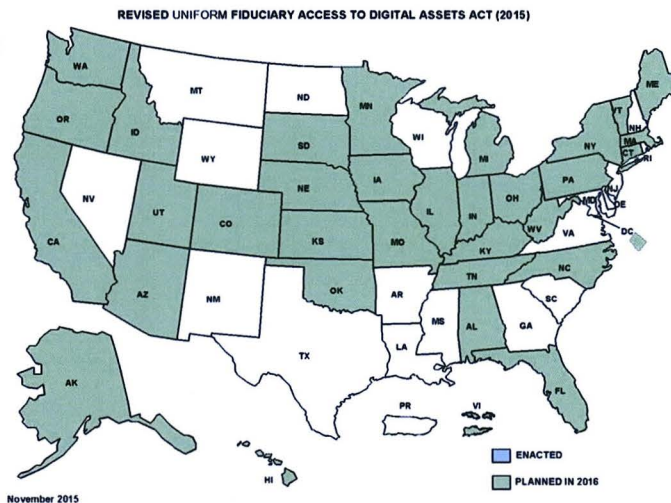
Privacy advocates, like the ACLU, expressed concerns about the possibility of oversight concerning an individual's wishes to not disclose certain instances of electronic communications but withdrew opposition in most instances upon learning the UFADAA includes language to honor those wishes.

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.



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 written over a light blue horizontal line.

Ron Barnes
Head of State Legislative Affairs

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.



1 Hacker Way
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THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Department of
Health and Social Services

ALASKA COMMISSION ON AGING

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March 9, 2017

Senator Shelley Hughes
Alaska State Capitol, Room 125
Juneau, AK 99801-1182

Subject: Support for SB 16, Fiduciary Access to Digital Assets

Dear Senator Hughes:

The Alaska Commission on Aging (ACoA) is pleased to offer our support for SB 16, a bill authored by you, 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, SB 16 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 SB 16 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

Sincerely,

Handwritten signature of Denise Daniello in blue ink.

Denise Daniello
ACoA Executive Director

Senator Shelley Hughes
State Capitol, Room 125
Juneau, Alaska 99801-1182

February 14, 2017

Re: SB 16 – Revised Uniform Fiduciary Access to Digital Assets Act - Support

Dear Sen. Hughes,

On behalf of Alaska's 88,000 AARP members, we offer our support for the Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA), Senate Bill 16. 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, Sen. Hughes, 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



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.

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>)

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.

Sincerely,

Matthew Blattmachr

Matthew D. Blattmachr
Vice President and Trust Officer