

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1107

By: Holt

AS INTRODUCED

An Act relating to assets; creating the Uniform Fiduciary Access to Digital Assets Act; providing short title; defining terms; providing for application of the act to certain persons; providing exception; authorizing certain persons to disclose digital assets; providing effect of terms-of-service agreements for users of online tools; specifying methods a custodian of digital assets may authorize access; allowing charges for certain costs; providing method of disclosure of electronic communications of deceased user; providing alternate method of disclosure of digital assets of deceased user; specifying method of disclosure of digital assets to an agent of principal; providing alternate method; specifying method of disclosure of digital assets when held in trust; providing alternate method; specifying method of disclosure of digital assets to a conservator; stating fiduciary duties to apply to management of digital assets; providing scope of fiduciary duties; providing method of terminating certain accounts; providing method of compliance upon digital asset request; allowing for certain notification; allowing for denial of request under certain conditions; providing for immunity of liability; clarifying implication of act to federal laws; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1091.1 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Uniform
5 Fiduciary Access to Digital Assets Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1091.2 of Title 58, unless there
8 is created a duplication in numbering, reads as follows:

9 In the Uniform Fiduciary Access to Digital Assets Act:

10 1. "Absentee" means an individual for whom a conservator has
11 been appointed. The term includes an individual for whom an
12 application for the appointment of a conservator is pending;

13 2. "Account" means an arrangement under a terms-of-service
14 agreement in which a custodian carries, maintains, processes,
15 receives or stores a digital asset of the user or provides goods or
16 services to the user;

17 3. "Agent" means an attorney-in-fact granted authority under a
18 durable or nondurable power of attorney;

19 4. "Carries" means engages in the transmission of an electronic
20 communication;

21 5. "Catalogue of electronic communications" means information
22 that identifies each person with which a user has had an electronic
23 communication, the time and date of the communication and the
24 electronic address of the person;

1 6. "Conservator" means a person appointed by a court pursuant
2 to Section 362 of Title 60 of the Oklahoma Statutes to manage the
3 estate of a living individual;

4 7. "Content of an electronic communication" means information
5 concerning the substance or meaning of the communication which:

- 6 a. has been sent or received by a user,
- 7 b. is in electronic storage by a custodian providing an
8 electronic communication service to the public or is
9 carried or maintained by a custodian providing a
10 remote computing service to the public, and
- 11 c. is not readily accessible to the public;

12 8. "Court" means the district courts of the State of Oklahoma;

13 9. "Custodian" means a person that carries, maintains,
14 processes, receives or stores a digital asset of a user;

15 10. "Designated recipient" means a person chosen by a user
16 using an online tool to administer digital assets of the user;

17 11. "Digital asset" means an electronic record in which an
18 individual has a right or interest. The term does not include an
19 underlying asset or liability unless the asset or liability is
20 itself an electronic record;

21 12. "Electronic" means relating to technology having
22 electrical, digital, magnetic, wireless, optical, electromagnetic or
23 similar capabilities;

24

1 13. "Electronic communication" has the meaning set forth in 18
2 U.S.C. Section 2510(12), as amended;

3 14. "Electronic communication service" means a custodian that
4 provides to a user the ability to send or receive an electronic
5 communication;

6 15. "Fiduciary" means an original, additional or successor
7 personal representative, conservator, agent, or trustee;

8 16. "Information" means data, text, images, videos, sounds,
9 codes, computer programs, software, databases or the like;

10 17. "Online tool" means an electronic service provided by a
11 custodian that allows the user, in an agreement distinct from the
12 terms-of-service agreement between the custodian and user, to
13 provide directions for disclosure or nondisclosure of digital assets
14 to a third person;

15 18. "Person" means an individual, estate, business or nonprofit
16 entity, public corporation, government or governmental subdivision,
17 agency or instrumentality or other legal entity;

18 19. "Personal representative" means an executor, administrator,
19 special administrator or person that performs substantially the same
20 function under law of this state other than the Uniform Fiduciary
21 Access to Digital Assets Act;

22 20. "Power of attorney" means a record that grants an agent
23 authority to act in the place of a principal;
24

1 21. "Principal" means an individual who grants authority to an
2 agent in a power of attorney;

3 22. "Record" means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and is
5 retrievable in perceivable form;

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

10 24. "Terms of service agreement" means an agreement that
11 controls the relationship between a user and a custodian;

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

15 26. "User" means a person that has an account with a custodian;
16 and

17 27. "Will" includes a codicil, testamentary instrument that
18 only appoints an executor and instrument that revokes or revises a
19 testamentary instrument.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1091.3 of Title 58, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The Uniform Fiduciary Access to Digital Assets Act applies
24 to:

1 1. A fiduciary acting under a will or power of attorney
2 executed before, on or after the effective date of this act;

3 2. A personal representative acting for a decedent who died
4 before, on, or after the effective date of this act;

5 3. A conservatorship proceeding commenced before, on or after
6 the effective date of this act; and

7 4. A trustee acting under a trust created before, on or after
8 the effective date of this act.

9 B. The Uniform Fiduciary Access to Digital Assets Act applies
10 to a custodian if the user resides in this state or resided in this
11 state at the time of the user's death.

12 C. The Uniform Fiduciary Access to Digital Assets Act does not
13 apply to a digital asset of an employer used by an employee in the
14 ordinary course of the employer's business.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1091.4 of Title 58, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A user may use an online tool to direct the custodian to
19 disclose or not to disclose some or all of the user's digital
20 assets, including the content of electronic communications. If the
21 online tool allows the user to modify or delete a direction at all
22 times, a direction regarding disclosure using an online tool
23 overrides a contrary direction by the user in a will, trust, power
24 of attorney or other record.

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

7 C. A user's direction under subsection A or B of this section
8 overrides a contrary provision in a terms-of-service agreement that
9 does not require the user to act affirmatively and distinctly from
10 the user's assent to the terms of service.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1091.5 of Title 58, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The Uniform Fiduciary Access to Digital Assets Act does not
15 change or impair a right of a custodian or a user under a terms-of-
16 service agreement to access and use digital assets of the user.

17 B. This act does not give a fiduciary any new or expanded
18 rights other than those held by the user for whom, or for whose
19 estate, the fiduciary acts or represents.

20 C. A fiduciary's access to digital assets may be modified or
21 eliminated by a user, by federal law or by a terms-of-service
22 agreement if the user has not provided direction under Section 4 of
23 this act.
24

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1091.6 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

4 A. When disclosing digital assets of a user under the Uniform
5 Fiduciary Access to Digital Assets Act, the custodian may at its
6 sole discretion:

7 1. Grant a fiduciary or designated recipient full access to the
8 user's account;

9 2. Grant a fiduciary or designated recipient partial access to
10 the user's account sufficient to perform the tasks with which the
11 fiduciary or designated recipient is charged; or

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

16 B. A custodian may assess a reasonable administrative charge
17 for the cost of disclosing digital assets under this act.

18 C. A custodian need not disclose, under this act, a digital
19 asset deleted by a user.

20 D. If a user directs or a fiduciary requests a custodian to
21 disclose under this act some, but not all, of the user's digital
22 assets, the custodian need not disclose the assets if segregation of
23 the assets would impose an undue burden on the custodian. If the
24 custodian believes the direction or request imposes an undue burden,

1 the custodian or fiduciary may seek an order from the court to
2 disclose:

- 3 1. A subset limited by date of the user's digital assets;
- 4 2. All of the user's digital assets to the fiduciary or
5 designated recipient;
- 6 3. None of the user's digital assets; or
- 7 4. All of the user's digital assets to the court for review in
8 camera.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1091.7 of Title 58, unless there
11 is created a duplication in numbering, reads as follows:

12 If a deceased user consented or a court directs disclosure of
13 the contents of electronic communications of the user, the custodian
14 shall disclose to the personal representative of the estate of the
15 user the content of an electronic communication sent or received by
16 the user if the representative gives the custodian:

- 17 1. A written request for disclosure in physical or electronic
18 form;
- 19 2. A certified copy of the death certificate of the user;
- 20 3. A certified copy of the letters of administration or letters
21 testamentary from the probate of the decedant's estate;
- 22 4. Unless the user provided direction using an online tool, a
23 copy of the user's will, trust, power of attorney or other record
24

1 evidencing the user's consent to disclosure of the content of
2 electronic communications; and

3 5. If requested by the custodian:

4 a. a number, username, address or other unique subscriber
5 or account identifier assigned by the custodian to
6 identify the user's account,

7 b. evidence linking the account to the user, or

8 c. a finding by the court that:

9 (1) the user had a specific account with the
10 custodian, identifiable by the information
11 specified in subparagraph a of this paragraph,
12 (2) disclosure of the content of electronic
13 communications of the user would not violate 18
14 U.S.C. Section 2701 et seq., as amended, 47
15 U.S.C. Section 222, as amended, or other
16 applicable law,

17 (3) unless the user provided direction using an
18 online tool, the user consented to disclosure of
19 the content of electronic communications, or

20 (4) disclosure of the content of electronic
21 communications of the user is reasonably
22 necessary for administration of the estate.
23
24

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1091.8 of Title 58, unless there
3 is created a duplication in numbering, reads as follows:

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

10 1. A written request for disclosure in physical or electronic
11 form;

12 2. A certified copy of the death certificate of the user;

13 3. A certified copy of letters of administration or letters
14 testamentary from the probate of the decedant's estate; and

15 4. If requested by the custodian:

16 a. a number, username, address or other unique subscriber
17 or account identifier assigned by the custodian to
18 identify the user's account,

19 b. evidence linking the account to the user,

20 c. an affidavit stating that disclosure of the user's
21 digital assets is reasonably necessary for
22 administration of the estate, or

23 d. a finding by the court that:
24

- 1 (1) the user had a specific account with the
2 custodian, identifiable by the information
3 specified in subparagraph a of this paragraph, or
4 (2) disclosure of the user's digital assets is
5 reasonably necessary for administration of the
6 estate.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1091.9 of Title 58, unless there
9 is created a duplication in numbering, reads as follows:

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

15 1. A written request for disclosure in physical or electronic
16 form;

17 2. An original or copy of the power of attorney expressly
18 granting the agent authority over the content of electronic
19 communications of the principal;

20 3. A certification by the agent, under penalty of perjury, that
21 the power of attorney is in effect; and

22 4. If requested by the custodian:
23
24

- 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1091.10 of Title 58, unless there is created a duplication in numbering, reads as follows:

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1091.11 of Title 58, unless there is created a duplication in numbering, reads as follows:

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1091.12 of Title 58, unless there is created a duplication in numbering, reads as follows:

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;

1 2. A certified copy of the trust instrument that includes
2 consent to disclosure of the content of electronic communications to
3 the trustee;

4 3. A certification by the trustee, under penalty of perjury,
5 that the trust exists and the trustee is a currently acting trustee
6 of the trust; and

7 4. If requested by the custodian:

8 a. a number, username, address or other unique subscriber
9 or account identifier assigned by the custodian to
10 identify the trust's account, or

11 b. evidence linking the account to the trust.

12 SECTION 13. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1091.13 of Title 58, unless
14 there is created a duplication in numbering, reads as follows:

15 Unless otherwise ordered by the court, directed by the user or
16 provided in a trust, a custodian shall disclose, to a trustee that
17 is not an original user of an account, a catalogue of electronic
18 communications sent or received by an original or successor user and
19 stored, carried or maintained by the custodian in an account of the
20 trust and any digital assets, other than the content of electronic
21 communications, in which the trust has a right or interest if the
22 trustee gives the custodian:

23 1. A written request for disclosure in physical or electronic
24 form;

1 2. A certified copy of the trust instrument;

2 3. A certification by the trustee, under penalty of perjury,
3 that the trust exists and the trustee is a currently acting trustee
4 of the trust; and

5 4. If requested by the custodian:

6 a. a number, username, address or other unique subscriber
7 or account identifier assigned by the custodian to
8 identify the trust's account, or

9 b. evidence linking the account to the trust.

10 SECTION 14. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1091.14 of Title 58, unless
12 there is created a duplication in numbering, reads as follows:

13 A. After an opportunity for a hearing under the state
14 conservatorship law pursuant to Section 361 et seq. of Title 60 of
15 the Oklahoma Statutes, the court may grant a conservator access to
16 the digital assets of an absentee.

17 B. Unless otherwise ordered by the court or directed by the
18 user, a custodian shall disclose to a conservator the catalogue of
19 electronic communications sent or received by an absentee and any
20 digital assets, other than the content of electronic communications,
21 in which the absentee has a right or interest if the conservator
22 gives the custodian:

23 1. A written request for disclosure in physical or electronic
24 form;

1 2. A certified copy of the court order that gives the
2 conservator authority over the digital assets of the absentee; and

3 3. If requested by the custodian:

4 a. a number, username, address or other unique subscriber
5 or account identifier assigned by the custodian to
6 identify the account of the absentee, or

7 b. evidence linking the account to the absentee.

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

14 SECTION 15. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1091.15 of Title 58, unless
16 there is created a duplication in numbering, reads as follows:

17 A. The legal duties imposed on a fiduciary charged with
18 managing tangible property apply to the management of digital
19 assets, including:

- 20 1. The duty of care;
21 2. The duty of loyalty; and
22 3. The duty of confidentiality.

23 B. A fiduciary's authority with respect to a digital asset of a
24 user:

1 1. Except as otherwise provided in Section 4 of this act, is
2 subject to the applicable terms of service;

3 2. Is subject to other applicable law, including copyright law;

4 3. Is limited by the scope of the fiduciary's duties; and

5 4. May not be used to impersonate the user.

6 C. A fiduciary with authority over the property of a decedent,
7 absentee, principal or settlor has the right to access any digital
8 asset in which the decedent, absentee, principal or settlor had a
9 right or interest and that is not held by a custodian or subject to
10 a terms-of-service agreement.

11 D. A fiduciary acting within the scope of the fiduciary's
12 duties is an authorized user of the property of the decedent,
13 absentee, principal or settlor for the purpose of applicable
14 computer fraud and unauthorized computer access laws, including the
15 Oklahoma Computer Crimes Act.

16 E. A fiduciary with authority over the tangible, personal
17 property of a decedent, absentee, principal or settlor:

18 1. Has the right to access the property and any digital asset
19 stored in it; and

20 2. Is an authorized user for the purpose of computer fraud and
21 unauthorized computer access laws, including the Oklahoma Computer
22 Crimes Act.

1 F. A custodian may disclose information in an account to a
2 fiduciary of the user when the information is required to terminate
3 an account used to access digital assets licensed to the user.

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

7 1. If the user is deceased, a certified copy of the death
8 certificate of the user;

9 2. A certified copy of the letters of administration or letters
10 testamentary from the probate of the decedant's estate, court order,
11 power of attorney or trust giving the fiduciary authority over the
12 account; and

13 3. If requested by the custodian:

14 a. a number, username, address or other unique subscriber
15 or account identifier assigned by the custodian to
16 identify the user's account,

17 b. evidence linking the account to the user, or

18 c. a finding by the court that the user had a specific
19 account with the custodian, identifiable by the
20 information specified in subparagraph a of this
21 paragraph.

22 SECTION 16. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1091.16 of Title 58, unless
24 there is created a duplication in numbering, reads as follows:

1 A. Not later than sixty (60) days after receipt of the
2 information required under Sections 7 through 14 of the Uniform
3 Fiduciary Access to Digital Assets Act, a custodian shall comply
4 with a request under this act from a fiduciary or designated
5 recipient to disclose digital assets or terminate an account. If
6 the custodian fails to comply, the fiduciary or designated recipient
7 may apply to the court for an order directing compliance.

8 B. An order under subsection A of this section directing
9 compliance must contain a finding that compliance is not in
10 violation of 18 U.S.C. Section 2702, as amended.

11 C. A custodian may notify the user that a request for
12 disclosure or to terminate an account was made under this act.

13 D. A custodian may deny a request under this act from a
14 fiduciary or designated recipient for disclosure of digital assets
15 or to terminate an account if the custodian is aware of any lawful
16 access to the account following the receipt of the fiduciary's
17 request.

18 E. This act does not limit a custodian's ability to obtain or
19 require a fiduciary or designated recipient requesting disclosure or
20 termination under this act to obtain a court order which:

21 1. Specifies that an account belongs to the absentee or
22 principal;

23 2. Specifies that there is sufficient consent from the absentee
24 or principal to support the requested disclosure; and

1 3. Contains a finding required by law other than this act.

2 F. A custodian and its officers, employees and agents are
3 immune from liability for an act or omission done in good faith in
4 compliance with this act.

5 SECTION 17. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1091.17 of Title 58, unless
7 there is created a duplication in numbering, reads as follows:

8 In applying and construing this uniform act, consideration must
9 be given to the need to promote uniformity of the law with respect
10 to its subject matter among states that enact it.

11 SECTION 18. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1091.18 of Title 58, unless
13 there is created a duplication in numbering, reads as follows:

14 The Uniform Fiduciary Access to Digital Assets Act modifies,
15 limits or supersedes the Electronic Signatures in Global and
16 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
17 modify, limit or supersede Section 101(c) of that act, 15 U.S.C.
18 Section 7001(c), or authorize electronic delivery of any of the
19 notices described in Section 103(b) of that act, 15 U.S.C. Section
20 7003(b) .

21 SECTION 19. This act shall become effective November 1, 2016.

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